



AMERICAN ACADEMY *of* ACTUARIES

September 9, 2004

By Electronic and Express Delivery

Sir Derek Morris
Commission of Inquiry into
Actuarial Profession
GC/08
1 Horse Guards Road
London SW1A 2HQ
United Kingdom

Dear Sir Derek:

The American Academy of Actuaries (“Academy”) appreciates this opportunity to submit additional information to you in response to your June 2004 consultation document (the “*Morris Review*”). The Academy, acting on behalf of the United States actuarial profession,¹ wishes to respond to the specific questions set forth in the *Morris Review* with respect to actuarial practice in the United States. If it would be helpful, our President-Elect, Bob Wilcox, would be happy to arrange to meet with you at your convenience to discuss this report and any other issues related to your review.

This letter is organized consistent with the *Morris Review*. To the extent the *Morris Review* raises questions concerning actuarial practice outside the United States, we defer to the actuarial associations in other countries (and, with particular regard to actuarial practice in the United Kingdom, to the Faculty and Institute of Actuaries) and to the International Actuarial Association.

¹ There are five organizations in the United States that represent actuaries: the American Academy of Actuaries, the American Society of Pension Professionals and Actuaries (formerly the American Society of Pension Actuaries), the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the Society of Actuaries. Pursuant to a working agreement between these organizations and actuarial organizations in Canada and Mexico, the Academy serves as the voice of the U.S. actuarial profession with respect to professionalism issues involving actuaries and its primary voice with respect to public policy, while the Casualty Actuarial Society and the Society of Actuaries focus on education and research, the American Society of Pension Professionals and Actuaries focuses on issues involving U.S. pension plans, and the Conference of Consulting Actuaries focuses on the needs of actuaries in consulting practice. Additional information concerning the Academy appears on our Web site, www.actuary.org.

Chapter 1 – The Role of Actuaries, the Profession and the Actuarial Services Market

The Scope of the Actuarial Role

Actuaries practicing in the United States bring to their clients and employers significant expertise in the identification, quantification and management of risks associated with insurance and employee benefit plans. As the U.S. Department of Labor's Bureau of Labor Statistics ("BLS") has recognized, "actuaries are essential to the insurance industry."² Increasingly, and we think appropriately, U.S. actuaries are also bringing their unique expertise, first, to the wider financial services industry, advising banks, investment houses, securities firms and other financial entities concerning the financial implications of risks and, second, to other enterprises that consider risks related to contingent events as part of their business. We believe the advice of actuaries will significantly benefit these entities to the ultimate good of the American public.

Insurance actuaries in the United States have reserved roles under state law with respect to the annual certification of insurance company reserves. Life insurance actuaries also have reserved roles in most states to certify the disciplined current scales for nonguaranteed elements underlying illustrations used to sell life insurance products to consumers, and a proposal to require the actuary to set and certify some elements of required risk-based capital for guarantees contained in certain variable insurance products is under consideration. Pension actuaries have reserved roles under federal law in calculating contributions to tax-exempt defined benefit pension plans. Additionally, accounting rules that are incorporated by reference into federal regulation reserve specific responsibilities for actuaries with respect to audit of insurance companies' financial statements. These rules have been made clearer and more explicit as part of recent amendments to federal laws governing accounting for publicly traded companies.

We have found that reserving statutory roles for actuaries works well in three respects. First, it gives actuaries clear responsibilities, permitting them to apply their talents in a well-defined way in the context of a larger statutory scheme. Second, in the process of reserving a statutory role for actuaries, actuaries can be protected from inappropriate litigation resulting from their activities, which is especially important in the litigious U.S. environment. Third, reserving specific roles for actuaries permits legislators or regulators to prevent actuaries from inadvertently exceeding appropriate practice or failing to address conflicts of interest. We understand, for example, that one factor that may have affected Equitable Life's actions was that the company's chief executive officer was also its statutorily appointed actuary; a statute requiring the appointed actuary to be independent from company management could have prevented this situation. Reserving statutory roles for actuaries gives public policy makers a means to set appropriate limits on those roles.

² *BLS Occupational Outlook Handbook*, <http://stats.bls.gov/oco/ocos041.htm>.

Accountability of Actuaries

U.S. actuaries are required by the Code of Professional Conduct, which has been adopted by all five of the U.S.-based organizations, to provide professional services “with integrity, skill and care” and in a manner to uphold the profession’s responsibility to the public. It should be borne in mind that, when insurance products are being developed, it may be almost impossible for any professional to recognize that those products might ultimately prove unsuitable for certain consumers, particularly if the legal or financial environment in which they were developed subsequently changes in a material way. However, if U.S. actuaries participated in the development of products that they knew would be unfit for consumer use, their conduct would likely be deemed a violation of the Code and would subject them to the profession’s discipline process.

U.S. actuaries are accountable to their professional associations, their clients and employers and, in most cases, the regulators who oversee their work on their principals’ behalf. When actuaries comply with the Code, provide professional services to honest management that appropriately uses their work, and have the benefit of competent regulatory oversight, it is rare for their conduct to harm the public interest. Quite the contrary – actuaries working under those conditions contribute significantly to the ongoing integrity of the U.S. insurance industry, employee benefit plans, financial service providers and social insurance programs.

The United States is the most litigious country in the world, and actuaries object quite legitimately to being sued solely because of their perceived “deep pockets.” It is not appropriate to hold actuaries responsible for management fraud, malpractice on the part of other professionals who also serve actuaries’ principals, or regulators’ failure to address insurers’ problems.

The actuarial profession acknowledges, however, that any professional, including an actuary, whose professional negligence or intentional misconduct directly caused a compensable injury to an individual to whom the professional owed a legal duty of care, that professional would expect to be held appropriately liable to the injured party. In the very rare instances when actuaries negligently or intentionally harm the interests of other parties to whom they owe a legal duty, the U.S. legal system provides a set of remedies in addition to those provided by the profession’s discipline process.

One means to mitigate the liability of individual actuaries is for the profession to take an active role in advising public policy makers when laws, regulations or common business practices create an elevated risk of harm to the public interest. In the United States, the Academy fulfills that role, assisted by the American Society of Pension Professionals and Actuaries with regard to pension issues.

The Profession

The Academy is very active at both the state level (where insurance is primarily regulated in the U.S.) and the federal level (where employee benefit plans and financial services are primarily regulated in the United States) in representing the actuarial profession to public policy makers. Hundreds of reports, comment letters, analyses, monographs, testimony, court briefs and other communications between the Academy and public policy makers are archived on the Academy Web site, offering evidence of the U.S. actuarial profession's high level of activity in the public policy arena.

While many of these communications speak to the benefits of using actuaries to perform a variety of necessary tasks, the Academy is not simply engaged in promoting the actuarial profession. Academy members donate thousands of hours of their time to the analysis of public policy concerns and proposals to address them, offering legislators, regulators and the courts invaluable advice on the actuarial implications of a range of situations and problems. While more can always be done to promote the work of the actuarial profession, we are proud of this record of public service.

One example of an instance in which the U.S. actuarial profession worked cooperatively with regulators to curb inappropriate industry practice occurred when the U.S. Actuarial Standards Board ("ASB") worked with the National Association of Insurance Commissioners ("NAIC") to develop a means to prevent life insurers from using unrealistically optimistic illustrations when selling insurance to consumers. The NAIC developed a model regulation requiring insurers to obtain from a qualified actuary a certification that their sales illustrations were based on a "disciplined current scale" representing reasonable projections of the nonguaranteed elements of the policies being sold. At the same time, the ASB developed an Actuarial Standard of Practice guiding actuaries' compliance with the model regulation when evaluating the disciplined current scale underlying a sales illustration. This project provided a substantial benefit to insurance consumers.

Academy members who donate their time come from every segment of the profession, and represent a broad cross-section of the profession as a whole. The Academy requires its members to follow the Code of Professional Conduct, including its provisions dealing with conflict of interest, when volunteering on the Academy's behalf. This requirement is essential to ensure, first, that the Academy gets a wide range of thought from its members based on their varying professional perspectives and, second, that actuaries' employers do not unduly influence Academy work products.

There is no shortage of special interest groups, lobbyists and consumer rights advocacy organizations in the United States, and these groups are also very active in expressing their views to the federal and state public policy makers to whom the Academy speaks. The Academy, therefore, typically focuses on the actuarial aspects and implications of public policy issues and avoids taking political positions. (For example, in addressing proposals to reform Social Security, a high-profile topic in U.S. politics, the Academy

has analyzed the actuarial implications of many proposals but has not advocated for the adoption of any, recognizing that any solution will likely favor some segments of the American public over others.) The Academy, however, maintains a list of contacts among other groups that address issues with actuarial implications and communicates regularly with them, allowing for a free-flowing exchange of ideas and opinions.

Entry into the Profession

Interested individuals can enter the U.S. actuarial profession by successful completion of examinations offered by the Casualty Actuarial Society or the Society of Actuaries or, for practice on employee benefit plans, successful completion of examinations offered by the federal government (with support from the profession's membership associations). Actuaries who have successfully achieved full membership in many other countries' actuarial associations (including those of Australia, Canada, Mexico and the U.K.) and appropriate levels of experience are also eligible to join the U.S. actuarial profession through the Academy or the Society of Actuaries.³

The profession's examination process in the United States is extremely challenging and takes an average of six or seven years to complete. However, the time frame should be put in context to be fully understood. Many candidates begin taking the actuarial exams while they are still in college (approximately fifty-five colleges and universities in the U.S. offer degrees in actuarial science, and hundreds of others offer degrees in mathematics or statistics that can serve as a base from which to take the actuarial exams) and complete the examination process while working after graduation, which amounts to an "apprentice period" of four to six years in many cases. The leadership of the U.S. profession is well aware of how rigorous the process is and regularly re-evaluates the specific content of the examination syllabi. However, the application of actuarial science is extremely demanding, blending elements of many disciplines, and the consequences of poor actuarial work can be significant. The U.S. actuarial profession would be irresponsible in the extreme if it failed adequately to prepare its students to practice.

The members of the profession who design the examination syllabi work hard to keep abreast of new developments and to strike an appropriate balance between academic and practical subjects. There is so much that a new actuary must understand that, of necessity, the examination syllabi focus primarily on actuarial science and professionalism, with less emphasis on broader business and management skills. However, these topics are covered regularly in continuing educational programs that are offered to U.S. actuaries by all of the U.S. membership organizations as well as many employers of actuaries. Again, one can always improve on general business and management skills, but we believe the U.S. profession makes good use of continuing education to enhance actuaries' abilities in this important area.

³ Please note that the word "actuary" is not copyrighted and there exist, therefore, a handful of individuals in the United States who call themselves "actuaries" but who have not demonstrated their competence to practice by achieving any professional designation.

U.S. actuaries tend to be more specialized in their practices than actuaries elsewhere in the world, in part because the U.S. profession and the industries they serve are large enough to allow for, and even encourage, specialization. Nearly all actuaries work in only one broadly defined “practice area” such as life, health or general insurance, employee benefits or finance, and a significant majority of those specialize further. Thus, for example, in a life, health, or general insurance area, there are actuaries who specialize in product design, ratemaking, reserving, or reinsurance. U.S. actuaries are sensitive to the need to practice only within their areas of expertise. If they issue statements of opinion to comply with law, accounting requirements or standards of practice, U.S. actuaries are also required by the Code of Professional Conduct to meet qualification standards (including practice-specific continuing education requirements) that are issued by the Academy. We believe the level of specialization in U.S. actuarial practice enhances our members’ ability to master particular areas and, thereby, provide better professional advice.

Employers of actuaries have not tended to influence the educational process except in one, we believe, very positive respect. Women are increasingly entering the actuarial profession, but minorities are still underrepresented. The Casualty Actuarial Society and the Society of Actuaries jointly sponsor a Web site for students who are interested in learning more about the profession, www.beanactuary.org. That Web site describes, among other things, the profession’s efforts to enhance minority recruitment, efforts that are actively supported by many actuarial employers.

The Market for Actuarial Services

There is a strong market for actuarial services in the United States, driven by not only statutory requirements for certifications or actuarial participation in annual audits, but also by employers’ recognition that actuaries’ skills add value to many kinds of risk analysis. We do not believe that consumers of actuarial services have had difficulty finding actuaries or switching actuaries if they wished to do so. There is intense competition between actuarial firms for clients, not only among the large firms but among smaller firms and solo practitioners as well.

The Code of Professional Conduct appropriately restrains the market to the extent it prohibits actuaries from: taking on assignments they are not qualified to do; working in the face of an unresolved conflict of interest; or permitting their work to be used to mislead or to violate or evade the law. We consider these minimal restrictions essential to professional practice and protection of the public interest, and are careful to review all professional standards, including the Code of Professional Conduct, for compliance with federal antitrust law.

Consumers of actuarial services select between in-house actuaries and external service providers for a variety of reasons, and some use both. It is not unusual for an insurance company, for example, to retain an in-house actuary to handle ongoing product development, actuarial projections and analysis and to contract with an outside consultant

for an annual review of reserves. Consumers may hire consultants to provide second opinions or for specialized knowledge. A company may prefer to hire an in-house actuary because there is enough work to keep the actuary occupied full time and to make the actuary regularly available for professional consultation with boards of directors, unions, or regulators. We are not aware of any systemic difficulties experienced by employers of in-house actuaries.

International Comparisons

Actuaries from the United Kingdom are well respected in the United States. In fact, as stated above, Fellows of the Faculty and Institute of Actuaries are eligible for membership in the Academy and the Society of Actuaries. It is relatively easy for actuaries to work across international borders (although it is more difficult for them to obtain authority to issue statutory certifications without membership in a local actuarial association).

The work of the U.S. actuarial professional associations may be of interest in a number of respects. Our work on public policy issues, as described in this response, has been very helpful in protecting the public from unintended consequences when laws and regulations are developed. The work of the ASB, described in this response, has been essential to the definition of generally accepted actuarial practice in the United States. The work of the Actuarial Board for Counseling and Discipline (“ABCD”), described in this response and in our May 27, 2004 letter to you, has been tremendously valuable, particularly with respect to providing individual actuaries with confidential guidance on how to resolve potential ethical dilemmas. We also believe that the profession’s work to educate members on the importance of professionalism in daily practice is worthy of consideration.

Other Professions

We believe that a study of other professions can be extremely helpful, and occasionally study the practices of other professions in the United States when designing our own systems. (For example, before the ABCD began writing the Rules of Procedure that govern its operations, it surveyed the practices of the discipline committees of other professions.) Compliance with broad principles of due process, openness and accountability can be achieved in a variety of ways, and it can be valuable to compare the practices of various professions to capture the best ideas of each. However, the actuarial profession is comparatively small and may not be in a position to implement structures other, larger professions have put into place.

Chapter 2 – The Current Regulatory Framework of the Actuarial Profession

The Regulatory Role of the Profession

As our responses below indicate, U.S. actuaries fulfill a variety of reserved roles, and we believe they normally fulfill those roles very effectively. However, the existence of reserved roles does not prevent actuaries from undertaking other types of professional assignments or from moving into broader management and oversight roles as their individual talents and experience permit. For that matter, the reservation of statutory roles for actuaries does not prevent other professions from exercising their abilities or from competing with actuaries for non-reserved assignments. We do not argue that actuaries are better qualified than anyone else to undertake any and all aspects of insurance, employee benefit plan or financial management. Rather, we believe that, where a specific task calls for actuarial expertise and will confer a benefit to society, a role should be reserved for actuaries to complete that task.

We understand that the International Actuarial Association has provided you with a paper from the International Association of Insurance Supervisors (“IAIS”), *The Use of Actuaries as Part of a Supervisory Model* (2003) (the “IAIS paper”). The IAIS paper comes to a number of conclusions that are relevant to your review, starting with its initial conclusion that the application of actuarial expertise “is a key component in the operation of insurers, insurance markets and insurance supervisory authorities.” We agree with the IAIS’s conclusions in that regard.

The Role of the Appointed Actuary

In the United States, appointed actuaries for life and health insurers are appointed by the Boards of Directors of insurance companies and cannot be replaced without notice to the responsible regulators. While appointed actuaries’ direct access to the Boards varies from company to company, most appointed actuaries in the U.S. prefer to present their findings directly to the Boards (or their audit committees), rather than through management, and many actuaries make direct access to the Boards a pre-condition of accepting appointment.

This section of the *Morris Review* asks whether directors in life insurers have sufficient expertise and information to challenge the actuarial calculations of the value of the insurer’s assets and liabilities or whether policyholders are being treated unfairly. The answer to that question undoubtedly varies from company to company and director to director, depending on the skills, backgrounds and diligence of the individuals who serve as directors. Recent changes to U.S. federal laws governing publicly-traded companies, including insurers, have heightened the standard of diligence and responsibility that corporate directors must meet, and the literature of corporate governance is beginning to recognize and warn directors against relying too much on the representations of management or allowing a single, strong personality to dominate a Board. These changes

may ultimately strengthen the ability of directors of U.S. insurance companies to understand actuarial and other technical communications.

That said, the U.S. actuarial profession recognizes that its members have a responsibility to document and present their opinions, conclusions and analyses so that intelligent individuals with appropriate backgrounds in finance, insurance or pension plans could reasonably be expected to understand them. That obligation is expressly set forth in the U.S. Code of Professional Conduct, which requires the actuary, when issuing an actuarial communication, to “take appropriate steps to ensure that the Actuarial Communication is clear and appropriate to the circumstances and intended audience, and satisfies applicable standards of practice.” Extensive guidance on meeting this requirement is provided in Actuarial Standard of Practice No. 41, *Actuarial Communications*,⁴ which applies to all professional services performed by U.S. actuaries, including work for insurance companies. We believe the standard requires actuaries to provide insurance company management and directors with the necessary information to evaluate and, if necessary, challenge the actuary’s work.

The Role of the Scheme Actuary

In the U.S., all sponsors of tax-exempt defined benefit plans are required to obtain certifications from pension actuaries who are “enrolled” (i.e., licensed) by the federal government. The vast majority of these enrolled actuaries are also members of one or more of the U.S.-based actuarial organizations, a fact that brings them under the U.S. Code of Professional Conduct and within the oversight jurisdiction of the ABCD. (These actuaries are, therefore, subject to oversight from both the profession and federal regulators.) Pension plans are heavily regulated in the United States, and the regulations have grown increasingly complex over time, requiring highly specialized expertise to perform the tasks reserved to the enrolled actuary by law.

We believe that the reserved role for pension actuaries has been highly beneficial to maintaining the stability of our nation’s defined benefit plans, and that the services provided to plans by enrolled actuaries (many of which services go well beyond the limited role defined by statute into plan design, tax analysis, risk management and investment analysis) have added real and substantial value to pension plan sponsors, administrators, participants and beneficiaries. We would also observe that our comments concerning life and health insurance actuaries’ communications responsibilities are equally applicable here.

General Insurance and the Role of the Syndicate Actuary

U.S. general insurance companies are required by law to have their reserves evaluated annually by a qualified actuary and to submit the actuary’s statement of opinion as to whether the reserves (which are set by management) fall within a reasonable range to the

⁴ The standard is available online at http://www.actuarialstandardsboard.org/pdf/asops/asop041_086.pdf.

state insurance departments along with the companies' annual financial statements. We have found that this requirement is extremely valuable in alerting company management and regulators when general insurers' reserves are understated. We believe that other professions are not as well qualified as actuaries to value general insurance companies' obligations. Consequently, we believe that this statutory function should continue to be reserved for actuaries. Again, our comments concerning life and health insurance actuaries' communications responsibilities are equally applicable here.

Maintenance of Professional Competence

The U.S. actuarial profession does not use practicing certificates. Instead, it requires its members to perform work only when qualified to do so and to meet codified qualification standards when issuing statements of professional opinion to comply with law, accounting requirements or Actuarial Standards of Practice. Those qualification standards require the actuary to obtain continuing education in the subject area of the statement of opinion. A committee of the Academy develops the qualification standards and recently issued an exposure draft of a proposal to amend the qualification standards to apply to any actuary who issues statements of actuarial opinion, regardless of their purpose. The exposure draft is based on an earlier discussion draft that drew a substantial number of supportive comments; if the exposure draft receives a similar reaction from the membership, it is likely to be adopted.⁵

Whistle-blowing

When U.S. actuaries certify reserves, illustrations or pension plan contributions, their certifications are filed as a matter of public record. If the actuary finds that reserves or contributions are inadequate, the actuary is required to state that finding in the filed opinion. Further, when life or health insurance appointed actuaries are replaced by their clients or employers, the insurers are required to notify the insurance regulators and provide an explanation for the decision to change actuaries. All of these requirements reflect elements of "whistle-blowing" but, as yet, U.S. law does not impose other, more direct, whistle-blowing responsibilities on the actuary. As the *IAIS Paper* suggests, if actuaries are to be required to "blow the whistle" on their clients or employers, actuaries should be granted appropriate protection against retaliatory lawsuits.

Standard-Setting

In the United States, Actuarial Standards of Practice are promulgated by the Actuarial Standards Board ("ASB"). Like the ABCD, the ASB is a board of respected actuaries with varied professional backgrounds, created by the Academy's bylaws and operating with support from Academy professional and legal staff, but funded and authorized by all five of the U.S.-based actuarial organizations.⁶ Significant effort is made to assure the

⁵ The exposure draft is posted online at http://www.actuary.org/pdf/prof/qualification_may04.pdf.

⁶ The ASB has its own Web site, www.actuarialstandardsboard.org.

independence of the ASB from improper influence by either the professional organizations or by the employers of actuaries. The ASB maintains several operating committees of actuaries to develop preliminary drafts of standards. The ASB then revises these drafts before releasing them to the membership for exposure and comment prior to adoption.

The U.S. Code of Conduct requires actuaries to comply with the ASB's standards when practicing in the U.S., and the standards are understood within and outside the profession to represent generally accepted actuarial practice. Indeed, the standards are regularly cited in litigation as evidence of generally accepted actuarial practice, and the ASB is in the process of developing an Introduction to the standards that unambiguously describes the standards as codifying generally accepted practice.

Actuarial standards of practice are technical standards written for use by trained professionals performing technical assignments; consequently, the ASB and its operating committees are all comprised of actuaries who can provide the necessary technical expertise to describe fully and accurately what practices are generally accepted and appropriate for actuaries to follow. However, the ASB receives legal advice from the Academy's general counsel (who is actively involved in the drafting of standards), and solicits and accepts comments from interested parties on exposure drafts of proposed new or revised standards. Thus, not all of the comments received on the drafts come from members of the profession. For example, the American Institute of Certified Public Accountants commented on a recent proposal to update the Actuarial Standard of Practice on actuaries' responsibilities to auditors.

The ASB's standards provide actuaries with a process of analysis to follow when performing a wide range of professional services. Although most of the standards deal with specific actuarial techniques, two are of broader application: ASOP No. 41, *Actuarial Communications* (discussed above); and Actuarial Standard of Practice No. 23, *Data Quality*. As of this date, there are forty-two Actuarial Standards of Practice.

The ASB develops its standards under a "notice and comment" rule making process by which it exposes one or more drafts of a standard for comment before finalizing and adopting it. The ASB actively publicizes release of exposure drafts in a paper publication called *The ASB Boxscore* that is mailed with the Academy's newsletter, in e-mails to the other U.S.-based organizations, online at its Web site and, where feasible and appropriate, at meetings of actuaries. All of these activities are intended to encourage the submission of comments on exposure drafts.

The exposure process takes time. This is essential if actuaries (and other interested parties) are to have a reasonable opportunity to be thorough in their review and comment on the standards that will guide their and other actuaries' professional work. The ASB reserves the right to release exposure drafts with a fairly short exposure period, but its procedural rules do not allow for a "fast track" approach. The ASB's standards are extremely important to practicing actuaries. It is essential to give them a meaningful

opportunity to comment on standards with which they and the profession will be required to comply.

Most U.S. actuaries work in highly regulated industries, and many of the regulations governing those industries prescribe actuaries' practices. For this reason, the ASB sometimes issues standards for compliance with specific legal or regulatory requirements. Actuaries generally prefer to operate under rules that allow them to exercise professional judgment, since no two assignments are ever exactly the same and regulations can be unduly restrictive. However, U.S. actuaries routinely function in situations where their work is subject to both government regulations and standards of practice, so the existence of regulations need not co-opt the development of complementary professional standards.

Openness, Peer Review and Audit of Actuarial Work

The U.S.-based actuarial organizations are not government entities and, therefore, are bound by U.S. antitrust laws. Consequently, the organizations are prevented by law from requiring their members to obtain peer review of work products from other actuaries who are their potential competitors. Nonetheless, U.S. actuaries recognize the value that peer review adds to a work product, and many actuarial firms have established peer review programs. Additionally, companies with internal actuaries often have a review or required sign-off process.

The profession encourages peer review. The Academy has published two discussion papers, one on peer review and the other on actuaries' relationships with users of their work products, which assist actuaries in obtaining appropriate peer review of their work and in taking into account the interests of various classes of users of their work. Both papers are posted on the Academy's Web site. Peer review is also regularly discussed and recommended in continuing education programs.

It can be difficult to determine under what circumstances actuarial opinions should be communicated directly to the public. Actuaries often become privy to proprietary information from their clients and employers and, unless their work is likely to be used to mislead or to violate or evade the law, have an obligation under the Code of Professional Conduct to keep such information absolutely confidential. (Indeed, an actuary who could not express an opinion to policyholders or other interested parties without revealing confidential information might have no alternative but to resign the assignment rather than breach confidentiality.) The U.S. profession addresses this matter in two ways: first, by making the ABCD available to provide confidential advice to actuaries who must determine whether and when to "go public" with their opinions; and second, by advising public policy makers when a law, regulation or business practice requirement would prevent an actuary from disclosing an opinion to the detriment of interested parties.

Monitoring, Complaints and Disciplinary Schemes

In our May 27, 2004 letter to you, we provided a broad description of the operations of the Actuarial Board for Counseling and Discipline (“ABCD”), including case statistics since the ABCD’s inception. Like the ASB, the ABCD is a board of respected actuaries with varied professional backgrounds, created by the Academy’s bylaws and operating with support from Academy professional and legal staff, but funded and authorized by all five of the U.S.-based actuarial organizations and with jurisdiction over the members of all of those organizations.⁷ As with the ASB, significant effort is made to maintain the independence of the ABCD.

The ABCD receives complaints from a wide range of sources, from members of the profession, users of actuarial services, participants in employee benefit plans, regulators, and other interested parties. It also initiates investigations when it becomes aware (usually through media reports) of situations where an actuary’s compliance with the Code of Professional Conduct appears questionable.

The ABCD does not conduct routine reviews of actuarial certifications and filings; such reviews would be redundant of oversight already conducted by state and federal regulators. Neither does the ABCD determine actuaries’ legal liability, civil or criminal. The ABCD does not have the power to subpoena witnesses or documents nor to compel testimony or cooperation outside the profession. The Code of Professional Conduct requires members of the U.S. actuarial profession to cooperate with ABCD investigations (whether they are the subject of an investigation or not), but the ABCD cannot require that others outside the profession support its discipline process.

That the ABCD’s authority is limited does not mean the ABCD is ineffective. To the contrary, U.S. actuaries are well aware of the ABCD’s existence and are extremely reluctant to run afoul of the Code and the discipline process. Professional discipline bodies such as the ABCD co-exist, and share jurisdiction, with civil and criminal courts and regulatory bodies, each of which has its own authority over professionals. The risk of civil or criminal legal liability or regulatory censure is a real deterrent to improper conduct, but so is the risk of reduced standing in a professional community, particularly because of its smaller size, or the loss of membership, both of which can have significant impact on career opportunities as well as reputation.

Moreover, a breach of professional standards is not necessarily a breach of a legal or regulatory requirement or vice versa. The ABCD is extremely well equipped to verify a member’s compliance with professional standards, but it is neither qualified nor empowered to enforce legal or regulatory requirements. (However, a finding by a court or regulator that an actuary acted improperly would normally serve as a basis for a separate inquiry by the ABCD into whether the requirements of the Code had been

⁷ The ABCD also has its own Web site, www.abcdboard.org.

concurrently violated.) It is entirely appropriate for the legal, regulatory and professional bodies to maintain separate jurisdiction over professionals and for each to impose its own penalties in the case of misconduct.

Nonetheless, it would be enormously helpful to the ABCD if regulators, who often are the first to become aware of an actuary's questionable conduct, were more willing to report objectionable work to the ABCD. We have discovered that U.S. regulators often fear that they will be sued if they report an actuary and that their employing agencies are frequently unwilling to support them in making such reports. ABCD representatives regularly meet with the regulatory community to discuss the actuarial profession's discipline process and to encourage reporting, and a state insurance regulator who is well known and respected in the regulatory community has been selected to serve as an ABCD member. Nonetheless, progress can still be made in this regard.

Chapter 3 – Roles and Responsibilities of the Government Actuary's Department

There exists in the United States no equivalent to the Government Actuary's Department. While hundreds of U.S. actuaries provide professional services in federal, state and local government, bringing valuable expertise to their employers, they work in dozens of individual organizations, not in a single office addressing multiple social programs. Actuaries working in government certainly serve the public interest, whether by overseeing the operations of insurance companies, advising Congress and the President concerning projected costs for Social Security and Medicare, analyzing benefit claims for veterans, or otherwise bringing their risk analysis and management skills to bear. Government actuaries function effectively in the structure of our multi-tiered government, but other models could certainly be effective as well.

Many government actuaries serve on committees of the U.S.-based organizations, contributing their experience overseeing the work of actuaries to the development of basic and continuing educational curriculum and analysis of public policy issues. For example, government actuaries regularly serve on Academy committees, bringing their perspective to the table when the Academy prepares public statements and makes reports or recommendations to regulatory bodies, thus facilitating ongoing communications between the profession and the legal and regulatory bodies that oversee actuarial practice. The Academy finds their participation in its activities to be so helpful that government actuaries are offered a 50% dues reduction to join the Academy and, often, reimbursement of travel expenses when they participate in Academy work.

Conclusion

Thank you for the opportunity to respond to the *Morris Review* consultation document. As stated at the outset, we would be happy to respond to any further questions and to do so in person if that would be helpful. Please do not hesitate to contact us through the

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Academy office if there is any additional information or assistance we can provide to you.

Sincerely,

Barbara J. Lautzenheiser
President

Robert E. Wilcox
President-Elect