

June 14, 2024

Mr. Shigeru Ariizumi
Chair, Executive Committee
Mr. Jonathan Dixon
Secretary General
International Association of Insurance Supervisors (IAIS)
Bank for International Settlements
CH-4002 Basel
Switzerland



Re: IAIS Draft Application Paper on Supervising Diversity, Equity and Inclusion (DEI)

Dear Messrs. Ariizumi and Dixon:

The IIF and its insurance members are pleased to comment on the IAIS Draft Application Paper on Supervising DEI (Draft Application Paper on DEI or Paper). We generally support the IAIS's work on DEI and we agree that a commitment to DEI can have many positive impacts on insurers' governance and risk management, as well as on policyholders and other stakeholders. The IAIS can play an important role in sharing valuable insights in terms of emerging best practices for DEI, encouraging insurance supervisors to consider these practices in their own programs, and supporting insurers as they consider how best to implement DEI policies and practices that best meet the needs of their organizations and key stakeholders.

Overarching Comments on the Draft Application Paper on DEI

The DEI frameworks utilized by both supervisors and insurers will be specific to local circumstances and organizational objectives. As noted in Paragraph 6 of the Draft Application Paper on DEI, local circumstances, particularly the legal, cultural and historical context, will influence how DEI is considered and the actions taken by supervisors and insurers. The current environment is one of a broad range of approaches to DEI across jurisdictions and among insurers.

Some jurisdictions have specific legislative measures for DEI. Other jurisdictions have adopted less prescriptive DEI measures while some have not enacted DEI legislative frameworks. DEI frameworks developed by insurers reflect the local context and the company's activities, strategies, workforce and key stakeholders.

Reflecting these differences in approaches to DEI, supervisors should refrain from suggesting a 'one-size-fits-all' approach as there is not a single 'good' company DEI policy, but rather a range of policies and actions that can promote DEI goals taking into consideration the local context as well as the company's activities, strategies, workforce, and key stakeholders. Accordingly, the IAIS should not take a prescriptive approach or adopt a punitive tone that calls for supervisory interventions and enforcement for DEI shortcomings. Rather, the IAIS should adopt a more positive tone that supports the industry and supervisors as they explore how best to

incorporate in their policies and practices DEI considerations in light of the local context as well as the company's activities, strategies, workforce and key stakeholders.

We note that these themes are similar to those raised in the IIF's response to the IAIS's 2021 *Draft Issues Paper on Insurer Culture*.¹ Just as a wide range of cultures can be aligned with good customer outcomes, a range of approaches to the promotion of DEI can be aligned with positive outcomes. The dimensions of DEI, as well as culture, vary across jurisdictions and companies and even within a corporate group, which makes a 'one size fits all' approach impractical.

To help address the challenges associated with better reflecting DEI in the policies and operations of insurers, we encourage supervisors to lead by example and publicize their policies and initiatives, as suggested in Paragraph 2.3.1 of the December 2022 IAIS DEI stock-take of its members. The IAIS could encourage insurance supervisory authorities to run their own pilot programs to determine the optimal programs for their jurisdictions. Such experiments should be evidence-based, using data to inform which areas to prioritize and integrating findings from DEI social science to shape the design of those interventions. Seeing what works for supervisors, as well as insurers, is an iterative process and we encourage the IAIS to support supervisors and insurers that experiment with incorporating various DEI initiatives.

A distinction should be drawn between the importance of supporting the boards and senior management of insurers in their efforts to increase diversity, equity and inclusion, and a finding that inadequate DEI policies and practices could result in actual material risks to policyholders or poor financial outcomes. The linkage between the DEI policies of an insurer and safety and soundness risks (see Paragraph 24) has not been established. Moreover, the promotion of DEI goals is not in the mandates of many supervisors, as supervisory mandates are primarily focused on the prudential supervision of financial risks and policyholder protection. Asking supervisors to evaluate the DEI policies and programs of an insurer as a separate and additional task would divert supervisory resources from the important task of protecting policyholders by confirming that insurers have adequate capital and financial resources to provide coverage and pay claims.

If supervisors are concerned that a company's DEI policies and practices (or the lack thereof) are contributing to unfair treatment of customers or a lack of policyholder protection, they should engage in discussions with the senior management and board of the insurer to determine and confirm the root causes of the unfair treatment or lack of protection before considering any supervisory action. Through their discussions with insurers, supervisors can share information about good practices for the promotion of diversity, equity and inclusion.

Finally, as we have noted in our recent responses to other IAIS Draft Application Papers, we believe that the IAIS should go back to first principles by providing further advice, information, recommendations, or examples of good practice related to specific supervisory materials in the ICPs or ComFrame that are intended to be applied proportionately. We remain concerned that Application Papers may be interpreted by supervisors as prescriptive requirements from the IAIS

¹ https://www.iif.com/portals/0/Files/content/Regulatory/08_16_2021_IAIS_response.pdf

and, by extension, that failure to implement those requirements could give rise to negative assessments.

Specific Comments on the Draft Application Paper on DEI

As noted above, a distinction should be drawn between encouraging businesses to embrace diversity, equity and inclusion initiatives and the suggestion that a lack of strong DEI policies directly leads to material risks to policyholders or poor financial outcomes. With respect to the ‘warning signs’ set forth in Section 3.2 of the Draft Application Paper on DEI, the IAIS has not advanced clear evidence or data that supports a finding of these ‘warning signs’ in insurers’ practices, nor has it demonstrated how better DEI policies and practices could improve the dynamics underlying these ‘warning signs.’ The IAIS should cite any empirical evidence that would link enhanced supervision of insurers’ DEI practices with measurably improved outcomes for policyholders or a material positive impact on financial outcomes or risk management.

The linkage between a lack of DEI policies or plans in an insurer and safety and soundness risks (see Paragraph 24) is tenuous at best. An incomplete assessment of the full range of risks faced by an insurer generally is more reflective of the quality and depth of management experience. An inappropriately targeted range of products and services or a failure to innovate and improve quality may reflect management shortcomings that have no connection to DEI shortcomings.

The warning signs also presume a link to DEI considerations that may not necessarily exist in the case of a particular insurer. There can be a number of reasons for the dynamics described in the warning signs. For example, persistent compliance breaches may result from a lack of training or sufficiently qualified personnel rather than from poor DEI policies. High or long-term vacancy rates and poor recruitment outcomes may be due to a challenging and competitive employment market rather than poor DEI practices. A lack of challenge in board discussions may reflect the development of a consensus view arising from engagement prior to the board meeting.²

Importantly, if the IAIS decides to include warning signs in its guidance to supervisors, the warning signs should be measurable and capable of clear linkage to performance deficiencies or financial risks. Warning signs that are not measurable or quantifiable are unlikely to lead to corrective actions that are meaningful and proportionate.

With respect to the suggestion in Paragraph 50 that supervisors could require insurers to set targets for demographic representation and/or improved inclusion metrics, we would caution that a reliance on demographic metrics may result in an oversimplification of diversity within an organization. Targets have a tendency to emphasize quantitative measures or a ‘tick-box’ approach which is suboptimal in the case of DEI objectives. The failure to meet targets may be viewed as discrimination

² Relatedly, we do not necessarily agree with the inherent suggestion that supervisors should observe board meetings in order to detect a lack of challenge because, as the IAIS acknowledges, the presence of supervisors may change the board’s behavior during a meeting and may stifle open discussion and the expression of differing viewpoints.

or potential misconduct even when the underlying reasons are unrelated to poor conduct or reflect complex dynamics in a particular market.

The IAIS should consider the legal and reputational risks that could accompany any requirements to publicly disclose insurers' DEI data and approaches, as suggested in Paragraph 50, or to disclose non-compliance and fines. Public disclosure of DEI data risks crowding out and distracting from more tangible measures of outcomes which might be of greater importance. As noted above, consumers may construe data about demographic characteristics, or changes in demographic metrics, as discrimination or potential misconduct when it may be random variations, or a function of normal staff attrition. Supervisors would be better served by requesting information on how insurers are addressing any concerns regarding groupthink, ineffective challenge or other DEI challenges, instead of requiring specific DEI disclosures.

The Paper contains multiple references to 'groupthink' (e.g. Box 2) and links this dynamic to a lack of 'psychological safety'. While 'groupthink' may impede the challenge function of the board and may result in suboptimal decisions, the phenomenon may emanate from a variety of causes that include but are not limited to poor DEI policies. Moreover, an excessive focus on the challenge function of the board may in fact lead to dysfunction and an inability to reach the consensus and senior management alignment that is critical to moving forward with new initiatives and growth opportunities.

More generally, the IAIS should reconsider aspects of the Draft Application Paper on DEI that direct supervisors to involve themselves in aspects of governance that are the responsibility of the insurer's board or management, specifically with respect to Paragraph 35. Corporate culture may differ among insurers, reflecting the local context, business models and management styles, and should not be the subject of prescriptive supervisory expectations. Companies have a reasonable expectation that the individuals they employ will be aligned with the corporate culture and values.

Section 4 of the Draft Application Paper on DEI discusses possible supervisory responses to DEI issues at an insurer. Recognizing the range of approaches to DEI and the continuing evolution of the understanding and measurability of DEI, we encourage the IAIS to focus on the use of soft powers described in Section 4.1.1. In light of the challenges in quantifying diversity metrics, we do not believe that extensive data collections would result in the collection of meaningful or actionable information, even if those data collections are consistent with the supervisory mandate. The results of DEI data collections may reflect a variety of dynamics in a particular market that are not reflective of an insurer's or the industry's commitment to DEI. As noted above, we encourage supervisors to explore best practices for the incorporation of DEI considerations in the policies and practices of insurers (as well as insurance authorities).

We strongly believe that it is inappropriate to develop requirements and to adopt formal actions or interventions, including enforcement actions, given the lack of evidence linking inadequate DEI policies and practices to material risks to policyholders or poor financial outcomes for insurers. In particular, the establishment of DEI targets for an insurer or a requirement for companies to assign senior responsibility for DEI with linkages to performance objectives and remuneration would be

inappropriate given the lack of a linkage to prudential concerns. These suggested actions would exceed many supervisory mandates and may conflict with the mandates and directives of other authorities with responsibilities for employment law or market conduct. Moreover, any such requirements would be inconsistent with the need for companies to have the flexibility and discretion to develop and evolve their DEI policies and practices. Instead of developing prescriptive requirements and imposing formal actions on insurers who fail to fully follow those requirements, we encourage the IAIS and its insurance supervisor members to consider best practices for DEI based on their experiences across a wide range of jurisdictions.

Finally, in light of the comments expressed above, the conclusions set forth in Section 5 of the Draft Application Paper on DEI, and particularly in Paragraph 70, are overbroad and not clearly supported by evidence. There is not a clear link between a lack of DEI and 'widespread misconduct, groupthink, inappropriate decision making and financial and consumer harm'. We also reiterate our comments about the mandate and role of a prudential supervisor in helping to ensure that *financial* risks are appropriately managed and mitigated for the protection of policyholders and other stakeholders. We encourage the IAIS to reflect in any final Application Paper a clear focus on financial risks.

We appreciate the opportunity to comment on the Draft Application Paper on DEI and we welcome the opportunity to discuss our views on this topic with you and IAIS members.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mary Frances Monroe', with a long horizontal flourish extending to the right.

Mary Frances Monroe

Director, Insurance Regulation and Policy