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Anticipated Policy Directions in Light of the 2020 U.S. Federal Elections

EXECUTIVE SUMMARY

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The November 3rd election of former Vice President Joe Biden to the Presidency, coupled with continued Democratic control of the House of Representatives and likely continued Republican control of the U.S. Senate* heralds a strong push by the White House and House Democrats for policies they believe will distribute economic opportunities more evenly, especially to middle and lower income individuals. How successfully they can implement those policies beginning in January 2021 will depend heavily on the degree to which a Republican Senate is willing to compromise. Should the Republican Senate prove a persistent obstacle to Democrats' legislative goals, the new Administration is likely to pursue many policy changes, where it is able, through executive actions.

We expect the new Administration to focus intensively on trying to shore up critically important economic sectors, and to address the nation's infrastructure and environment in ways that deploy large numbers of workers, especially from underserved communities. To help finance this policy reorientation, the Democratic-led government will likely seek to reverse recent corporate tax cuts and some individual ones, and potentially impose new taxes on large financial institutions and certain financial transactions, although Senate Republicans are not likely to support these measures. The new Administration could also revisit perceived recent rollbacks of U.S. financial sector regulation.

A Democratic Administration and House will pursue a mix of incentives and penalties to drive U.S. companies to address climate change, and are likely to seek to create a Federal pandemic insurance program in which large property casualty insurers may be required to share some risk. They will likely also pursue various means to enhance savings and retirement security for lower- and middle-income individuals, both via tax incentives and what they view as stronger regulation (e.g., restoring a version of the 2016 DOL Fiduciary Rule).

At the international level, a Biden Administration will rely much less on unilateral, punitive trade measures (such as tariffs), and more on working with allies to address systemic challenges (e.g., by rejoining the Paris Climate Accord and restoring the functioning of the World Trade Organization).

Across these and other areas, the degree of policy reform and how it affects AIG will be influenced by other key developments, including: (i) the continuing economic impacts of COVID-19; (ii) who takes up key seats in the Biden Cabinet; and (iii) whether the new Administration keeps to its pledge to work on a bipartisan basis with Republicans in Congress, especially a continuing Senate Republican majority.

* Note: Retention by Republicans of their Senate majority assumes, as currently appears likely, that they will win at least one of two special January 5, 2021 run-off elections for two Senate seats in Georgia, where the Republican vote count prevailed in the regular Senate elections just held.

We will advise on the perceived impacts of those developments as they occur. Please do not hesitate to contact us with questions or for more information along the way.

CORPORATE / TAXATION & FINANCE

- › **COVID-19 Relief Proposals:** We expect there to be further relief measures enacted (possibly including some interim measures during the November-December lame duck session of the current Congress) focused on assistance to individuals (e.g., expanded unemployment insurance), state and local governments, small businesses, and other industries most impacted by the pandemic (e.g., airlines, restaurants, and others). As a condition for accepting some significant additional spending in those areas, Senate Republicans are likely to continue to push for liability protection for businesses as they seek to re-open or remain open, to the degree the pandemic allows. Broader provisions that may also impact AIG could include new employee paid leave benefits and retirement account relief. The ACLI has also been advocating life insurance industry relief through changes in the tax code that would provide ordinary (vs. capital) tax treatment for insurer debt investments, and market-based (vs. static) rates for determining the cash value of life insurance policies. (A prior House-approved relief bill included the market-based rate proposal).
- › **Tax Rate Changes and Related Reforms:** With a divided government, there will likely be no major changes in corporate tax policy. The Biden Administration and Democratic House are likely to propose numerous revisions to the 2017 Republican-led Tax Cuts and Jobs Act, including an increase in the corporate tax rate that was cut by that Act, as well as increases to certain Social Security taxes. Some Democrats, particularly in Congress, may also seek to impose specific fees on large financial institutions or certain financial transactions that they regard as adding risk to economy. Senate Republicans are likely to strongly resist such changes, especially a change to the corporate rate cut that they regard as one of their primary achievements of the last several years. Instead, tax policy changes are likely to focus on extending bipartisan tax provisions that will expire over the next several years (e.g., R&D expensing). In addition, it's possible that the Biden Administration may pursue modifications to international tax regulations that could impact AIG (e.g., changes to regulations on Global Intangible Low-Taxed Income).

CORPORATE / POLICY & REGULATORY

- › **Potential Resumption of SIFI Designations:** The statutory and regulatory framework that vested the Financial Stability Oversight Council (FSOC) with authority to designate individual companies as systemically important and therefore subject to Federal Reserve Board supervision remains in place. While the current Administration reoriented FSOC towards a more activities-based approach to addressing system risk, a Biden Administration (possibly with strong encouragement from key Democratic Members of Congress) could consider resuming company-specific designations, especially if signs of broad financial distress in the economy appear in the wake of further economic disruptions from COVID-19. Because the current Administration's shift in FSOC focus was achieved through the issuance of policy guidance, no new laws or regulations would need to be adopted for the new Administration to revert to a focus on individual firms.
- › **International Trade Policy:** A Biden Administration is likely to bring greater stability, predictability and rationality to U.S. trade policy, along with a more collaborative approach to working with allies to address systemic challenges confronting the global trading system. While most of the Trump Administration's actions can be reversed through executive action, a Biden Administration may find it difficult to unwind some already implemented tariff actions without first negotiating some kind of result. Even so, a Biden team is likely to seek to remove tariffs on allies like Canada and the EU, and to work toward a multiparty agreement at the OECD to discipline China's overproduction.

The continuation of a divided Congress is unlikely to have a significant impact on the new Administration's trade policy. Many Members of Congress from both parties have been unhappy with the Trump Administration's tendency toward unilateral actions, casual use of tariffs, stretching the bounds of delegated authority, and refusal to consistently consult with them on trade matters.

In addition, foreign retaliation has been felt most heavily at the regional or district level, such that Members of Congress are sensitive to the economic impacts on their constituents, particularly in agricultural districts. These factors suggest that Members of Congress, regardless of party, will welcome a more normalized approach to trade policy.

The U.S. trade relationship with China will continue to be tense but the focus is likely to shift from the bilateral trade deficit and broad economic decoupling to the confluence of trade, security, and human rights objectives. U.S. concerns about national security and human rights are deeply held by Members of Congress of both parties, and are likely to compel a Biden Administration to maintain and possibly even expand economic sanctions. Beyond China, a Biden Administration is likely to rebuild relationships with other trading partners and re-engage with the World Trade Organization (WTO). At the WTO, the new Administration is likely to constructively seek reforms to the dispute settlement system, and to consider re-engaging in negotiations on a potential trade in services agreement, which, because it covers both financial services and digital trade, would be of interest to AIG.

- › **Climate Change:** Although the incoming Biden Administration is likely to have the U.S. rejoin the Paris Climate accord, it is unlikely that climate change and sustainability will play a significantly greater role in the development of policy in financial services areas given continued Republican control of the Senate. Republicans in the Senate have blocked any major climate control legislation for decades. We can expect President Biden to do what he can via executive and regulatory action to roll back Trump's efforts to expand the development and use of fossil fuels. It is also likely that a Democratic House will use its majority platform to try to draw attention to climate change issues, including via frequent hearings on the subject. But the prospects are low for major legislative action imposing new obligations on the corporate sector to deal with climate change and its impacts.
- › **Diversity & Inclusion:** We expect to see continued initiatives from House Democrats, most likely with support from the Biden Administration, to press for improvements in the area of diversity and inclusion, but do not anticipate significant legislative enactments to that end. Already in the current Congress, the Democratic majority created for the first time a Subcommittee on Diversity and Inclusion (D&I) within the House Financial Services Committee. To date, the Subcommittee's most prominent activity has been letters they sent to 44 financial institutions (mostly banks) to obtain their diversity and inclusion data, and hearings they have held on the results. We anticipate the Subcommittee will expand the scope of its queries to include insurers, in order to highlight best (and worst) practices. We also expect D&I efforts in the Administration itself, as the new President has pledged to continue in government the efforts he undertook as a candidate to hire significant numbers of diverse employees, and to focus energetically on racial justice issues.
- › **Availability of Insurance / Disparate Impacts:** Key elements of the Biden Administration (such as the Department of Housing and Urban Development and the Federal Insurance Office), along with relevant committees of the House of Representatives, are likely to closely examine insurers' use in underwriting and premium decisions of certain factors such as gender, geographic location, occupation and credit scores. Proposals were already pending in the current Congress to have the U.S. Government Accountability Office study such practices, and some proposals offered by Democrats would prohibit these practices outright. These and similar measures are likely to be supported by the new President, who said in a recent town hall meeting that he is concerned the practice of redlining still exists and causes minorities to pay higher insurance rates. However, we do not expect a rush to legislate in this area, especially given the low likelihood such measures could pass through the Republican-held Senate.
- › **Data Privacy:** We expect the introduction of legislation to limit how companies can share consumers' data with third parties, and to enable consumers to control their personal data. Democrats are also likely to press for provisions ensuring that states can establish stricter standards (so that Federal legislation creates a policy floor, rather than a ceiling), and possibly to establish a private right of action for consumers if a company violates the law. Republicans are expected to push for provisions to preempt state privacy laws and to resist including a private right of action. It is not clear whether any Federal standard for insurers would be enforced by state insurance regulators or a Federal regulator such as the Federal Trade Commission. The issues of

preemption and private right of action have stalled Federal privacy legislation in the past and may do so in the next Congress.

GENERAL INSURANCE

- › **Federal Pandemic Insurance Proposals:** There is a higher prospect than has been the case this year that a new Biden Administration and a returning Democratic House majority will attempt to move forward on consideration of measures to create a Federal Pandemic Insurance Program. It is also highly likely that the Democratic majority in the House and the Biden Administration will insist that a prospective pandemic program requires property casualty insurers to bear some of the risk entailed in such a program. If so, the model most likely to provide the program template in the House Financial Services Committee is the proposal by Rep. Carolyn Maloney (D-NY) to mirror provisions of the Terrorism Risk Insurance Act (TRIA). To date, however, there has been no significant Republican support for modeling a Federal pandemic program after TRIA, so gaining support from Senate Republicans will likely necessitate a compromise reflecting significant input from the insurer community. While we do not currently anticipate a rush to impose retroactive obligations on insurers, pressures from House Democrats for such an approach cannot be completely ruled out if economic disruptions caused by COVID-19 dramatically worsen and concerns increase that the Federal government alone cannot continue to carry the entire burden of the ensuing financial costs. We expect that Senate Republicans would continue to resist legislation imposing such obligations.
- › **Travel Insurance:** Travel insurance products had already been the subject of scrutiny by Sen. Ed Markey (D-MA) before the COVID-19 pandemic. This attention increased dramatically, especially on the part of a House Oversight Subcommittee, with the significant travel disruptions caused by the pandemic, and the ensuing need for insurers to abide by policy coverage terms that exclude coverage resulting from virus or disease. A consistent theme of the Markey and House Oversight Subcommittee inquiries into the travel insurance sector is their view that insurers do not provide insured parties with sufficiently clear explanations before purchase on the circumstances that are excluded from policy coverage. We anticipate that the Democratic Members of Congress previously interested in this area will scrutinize it further in the Congress that convenes in January 2021, as the travel sector continues to encourage a rebound in consumer travel.
- › **Flood Insurance:** The National Flood Insurance Program was recently extended until September 2021. In the run-up to the next needed program renewal, it is possible that a Democratic House and President could pursue program revisions such as adjustments to recognize climate change and enable the government to purchase coastal properties from owners who want to leave. During the re-authorization effort a number of Democrats indicated that climate change needed to be considered when assessing the NFIP and the future of the program in light of growing costs and increasing evidence that coastal flooding in particular is persistently worsening. However, with a returning Republican Senate majority, significant changes to the NFIP in these areas are unlikely and another, possibly longer, status quo extension is the most likely result.
- › **Cyber Insurance:** While it is difficult to determine specific actions the new Administration and House Democrats in Congress may pursue in regard to the regulation of cyber insurance, it is likely that there will be a preference that cyber insurance become more accessible and perhaps more standardized. A number of Democrats (joined by some Republicans) have signaled support for a more holistic view of cyber defense that places insurance in the context of a much broader government approach, including active defense measures, and industry-government partnerships, as reflected in the Cyber Solarium Commission's recent report. The Republican Senate majority would likely be open to working in a bipartisan manner on cyber issues identified in that Report, as the Commission is itself bipartisan and has a Republican Senator on its Board. Also, Democrats tend to view the issue of cyber defense as more global in nature, and thus it is likely that more attention will be given to international views of cyber defense and international cooperation in general.

INVESTMENTS

- › **Infrastructure Policy Proposals:** With continued Republican control of the Senate, the scale of expansion of existing infrastructure programs is likely to be relatively modest, but could still occur if the new Administration and House prioritize the issue significantly. Recently adopted legislation extends most Federal transportation funding programs through September 2021, which provides the new Congress and Administration time to overhaul and possibly increase the nation's infrastructure spending. A necessarily bipartisan infrastructure package may contain some elements from the American Recovery and Reinvestment Act (ARRA) of 2009, the implementation of which was overseen by then Vice President Biden. The financing structure for ARRA leveraged state resources and included the Build America Bond (BAB) program, which permitted state and local governments to issue tax credit bonds for any type of capital investment. It is reported that the insurance industry purchased roughly one-third of the BABs. These provisions were popular with both parties, and could help solve the problem of paying for the legislation, which has kept it from being considered in the Senate in the current Congress.
- › **LIBOR:** Congress has already been examining the need for legislation to create a legal safe harbor for fallback contracts when LIBOR ceases to exist as the primary reference rate. Efforts by Rep. Brad Sherman (D-CA), Chairman of the House Financial Services Subcommittee on Capital Markets, have been running in parallel with efforts by the Alternative Reference Rate Committee (established by the Federal Reserve Bank of New York) to address those aspects of the issue that are governed by New York state law. Rep. Sherman's objective is that any Federal legislation be bipartisan and reflect whether New York state either does or does not take action. With a Democratic House and President, there will be pressure to ensure that any Federal aspects of the issue's resolution be seen as primarily helping borrowers who are affected by LIBOR's end, rather than lenders.

LIFE & RETIREMENT

- › **Incentives for Retirement Savings:** There have been bipartisan efforts to build upon the incentives included in the SECURE Act, major retirement security legislation that was enacted into law in 2019. "SECURE 2.0" legislation is expected to advance in the next Congress and will likely consist largely of previously introduced proposals. The legislation may include provisions that AIG has advocated for in direct lobbying: (i) expanding Open Multiple Employer Plans (MEPs) to cover 403(b) plans; and (ii) allowing employers to provide a "matching" retirement contribution for employees who make student loan repayments but cannot afford to also save for retirement.
- › **Employer-Provided Retirement Plan Mandate:** We anticipate there may be an effort by Democrats to advance legislation that would require all employers to maintain a retirement plan (e.g., 401k, 403b), with some exceptions (e.g., very small private employers, governments, churches). It is not clear at this point whether a retirement plan mandate can advance in a Republican-controlled Senate. Several life insurance industry associations (e.g., ACLI, IRI) have publicly supported the proposal.
- › **Investment Advice Rules:** The Biden Administration will push to rewrite investment advice rules implemented by the SEC in June 2020 and proposed by the Department of Labor (DOL) in July 2020. Many Democrats and consumer groups argue that the SEC/DOL rules do not provide enough protections for investors, and instead support reinstating much of the 2016 DOL Fiduciary Rule, which was generally opposed by the financial services industry and invalidated in 2018 by the U.S. Court of Appeals for the Fifth Circuit.
- › **Emergency Savings Proposals:** Congress has been considering ways to incentivize Americans to build emergency savings. Proposals in the next Congress may include the establishment of tax-preferred accounts outside the retirement system or special rules for retirement plans that permit penalty-free withdrawals for any reason up to a certain dollar amount (e.g., \$1,000).