

Subject: Entry of Alternative Asset Manager Brookfield into Pension Risk Transfer Market

Dear plan administrator,

I am writing to bring your attention to a new alternative asset manager-backed insurer that has recently entered the U.S. Pension Risk Transfer (PRT) market. American National Insurance Company, based in Galveston, Texas, entered the U.S. PRT market in December 2022.<sup>1</sup>

American National was acquired in May 2022 by Brookfield Reinsurance, which is a Bermuda-based affiliate of Brookfield Corporation, a private Canadian alternative asset management company.<sup>2</sup> Brookfield had previously entered the Canadian Pension Risk Transfer (PRT) market through its affiliate Brookfield Annuity Company a start-up that received its charter in 2016 and completed its first group annuity buy-out in 2017.<sup>3</sup> In only a few years, Brookfield has become one of the leading PRT companies in Canada. Brookfield CEO Bruce Flatt said on a 2022 earnings call, “We expect to further grow our PRT efforts through expanding into the U.S. and European markets.”<sup>4</sup> It appears that American National is the platform company through which Brookfield seeks to gain entry to the U.S. market.

Regulators have turned their attention to the risks inherent in private equity-backed insurers. We are encouraged by the recent response from the Department of the Treasury on behalf of the Federal Insurance Office (FIO) to an inquiry from Senate Banking Committee Chairman Sherrod Brown. In June of last year, the Treasury wrote:<sup>5</sup>

*Specifically, the growth of alternative and non-traditional investments in the insurance sector may be associated with the potential amplification and migration of risk in at least the following ways:*

- 1. Regulatory incentives may help drive private equity-owned insurers to incorporate substantial reliance on offshore risk-bearing entities for certain blocks of business, potentially masking from U.S. regulators the full scope and magnitude of risk to U.S. policyholders.*
- 2. The increased interconnectivity of the U.S. and Bermuda insurance markets through the growth of private equity-owned insurers may have implications for U.S. policyholders.*
- 3. The increased use of complex investment strategies has led to the greater prominence of illiquid and volatile assets on insurers’ books. This could contribute to potential market liquidity concerns, valuation challenges, uncertain levels of credit risk, and potential concentration risk, which could intensify under situations of economic uncertainty or dislocation.*
- 4. Firms may be leveraging opportunities for capital arbitrage that may exist, in part, because regulators and the NAIC have not fully aligned supervisory frameworks with market developments, including securitization structures, allowing for the assumption of new and greater risks by insurers that may not be appropriately captured in regulatory capital requirements. In this regard, FIO is supportive of efforts by the NAIC to revise and consider improvements to its Securities Valuation Office (SVO).*
- 5. Through the expertise and business models of their private equity affiliates, alternative asset managers and private equity-owned insurers have access to diversified channels to source private credit, enabling them to engage in more complicated transactions, and to take positions*

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D. TAYLOR, PRESIDENT

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*with increased levels of interconnectedness and reduced levels of transparency on the amount and distribution of risk across the rest of the financial system, as compared to other insurers.*

We ask that you and your plan professionals consider these amplified risks identified in Treasury's response to Senator Brown when evaluating the paying ability and creditworthiness of American National, a firm acquired by Bermuda-domiciled Brookfield Reinsurance.<sup>6</sup>

Why is Toronto-based Brookfield keen to enter the U.S. PRT market? In part as an outlet for the buyout loans originated by its other affiliates, including Oaktree Capital Management. Brookfield says its "Insurance Solutions business manages policyholder capital and deploys this across liquid credit strategies, direct loans and private funds"<sup>7</sup> and believes it is "very well positioned to benefit from the current rising rate environment with the ability to deploy a significant amount of insurance capital into our alternative strategies."<sup>8</sup>

Brookfield's strategy of acquiring blocks of annuities and group annuities, replacing a portion of the safest assets with complex or illiquid investments like private loans, and its use of an affiliated Bermuda reinsurer, has been compared to the controversial strategy pioneered by Apollo Global Management and its subsidiary Athene.<sup>9</sup> However, there is one important difference: a substantial proportion of Athene's portfolio over the past decade has been invested in CLOs and other asset-backed securities,<sup>10</sup> whereas Brookfield indicates that its focus will be its ability to originate or acquire private loans destined for American National's portfolio, where they need not be marked-to-market during short-lived downturns.<sup>11</sup> But what might happen to these private-debt assets during long downturns or permanent credit impairments is far less clear.

According to Preqin, "Private debt burst onto the private asset stage following the Global Financial Crisis (GFC), and has enjoyed 11% average annual growth in North American AUM ever since."<sup>12</sup> Bloomberg recently described private credit as an "**inherently risky industry**" that "**received little oversight,**" and whose institutional holders have yet to be tested by (or survive) a default wave of the sort that could accompany a prolonged recession.<sup>13</sup>

Annuity providers like American National may represent a new frontier for private credit. S&P Global reports: "Recently, we've seen further pairings between alternative asset managers and insurers, where the insurance company can provide a source of perpetual capital for the lending platform. Alternative asset managers place illiquid credit assets in the buy-and-hold portfolios of insurers to earn the illiquidity premium."<sup>14</sup>

Brookfield has given investors several indications that they are in fact following this playbook. As previously discussed, Brookfield Asset Management (BAM) reported in its 2022 supplemental information document, "Our Insurance Solutions business manages policyholder capital and deploys this across **liquid credit strategies, direct loans and private funds.**"<sup>15</sup> In the same document, BAM reports capital metrics, including fee-bearing capital and capital invested, with "credit and insurance solutions" grouped together as one single category.

Brookfield Reinsurance's Q3 2022 report stated, "For the nine months ended September 30, 2022, we deployed \$16.9 billion into new investments, including \$4.1 billion relating to the acquisition of a 100%

interest in American National, net of cash acquired, as well as \$13.0 billion of redeployment into new investments within our insurance operating subsidiaries investment portfolios, **which was primarily funded by the sale of liquid securities as we redeploy into higher-yielding strategies.**"<sup>16</sup>

Shortly after its acquisition by Brookfield was approved by regulators, American National reported that **its entire \$13 billion (fair value) bond portfolio had been placed in the "available for sale" category.**<sup>17</sup> In the first full quarter after its acquisition, American National reported \$1.3 billion in proceeds from bond sales.<sup>18</sup> That same quarter, American National purchased \$953 million in new bonds, many of them asset-backed securities<sup>19</sup> and \$777 million in private equity and other alternative investments.<sup>20</sup>

At a Goldman Sachs US Financial Services Conference on December 7, 2022, Brookfield Corporation CEO Bruce Flatt elaborated on his company's strategy:

*But just take our insurance business, we bought a book, we bought three pools of insurance money 24 months ago on the assumption that interest rates would go up some time. They happened to go up quicker than we thought. And we've locked in 3% over here. And we put all of the assets **we liquidated all of the equities and all of the fixed income instruments beyond 18 months.** So we're sitting on an enormous amount of cash. We're now putting that into incredible fixed income opportunities. And I think on the distress side Oaktree is going to have an unbelievable next 24 months putting money to work both in the fund they have today, but in the next fund that we raise. **In addition to that the Direct Origination Credit business is evolving around the world.***<sup>21</sup>

You may be aware that a provision in the recently enacted bipartisan SECURE Act requires the Department of Labor to examine the current state of the PRT marketplace to determine whether a revision of its 1995 guidance IR-95 is needed.<sup>22</sup> We are encouraged by that development, and we hope DOL will provide updated guidance to fiduciaries that will allow them to distinguish between time-tested practices and newer business models that carry different and more complex risks.

Following the collapse of Executive Life Insurance Company in the early 1990s, the Department of Labor issued an Interpretive Bulletin (IB-95, codified at 29 CFR § 2509.95-1) to provide guidance to fiduciaries considering transferring plan liabilities to annuity providers. The Bulletin advises fiduciaries who wish to undergo a risk transfer to an insurance company to select the "safest annuity available, unless under the circumstances it would be in the interests of participants and beneficiaries to do otherwise." Among the six factors the Bulletin advises fiduciaries to consider is "the quality and diversification of the annuity provider's investment portfolio."<sup>23</sup>

IB-95 predated by more than a decade the emergence of alternate asset manager-backed annuity providers and their investment strategies and corporate structures. The bulletin does not provide any specific guidance on how fiduciaries should factor risks such as those raised by investments in a new and expanding private credit industry with little oversight that has not been tested in an environment of rising interest rates or a prolonged recession.

We look forward to the DOL's report to Congress, as mandated in the SECURE Act, about whether to update the 1995 guidance to reflect the emergence of new players in the PRT market, some of whom have expressed a preference for complexity and illiquidity risk and have established offshore

reinsurance affiliates in part to “free-up” capital that would otherwise need to be held in reserve for policyholders.

In our view, pension obligations should not be used as a cheap funding source for private equity asset managers chasing the illiquidity premium or offloading illiquid assets their own affiliates have originated.

Unless and until there is updated guidance from the DOL, plan fiduciaries must navigate the new developments in PRT themselves. We ask that you carefully review the investment practices of prospective group annuity providers, as well as the degree to which they make use of affiliated offshore reinsurance, and their track records as risk managers of long duration liabilities.

Sincerely,

Charles Decker  
Research Coordinator  
UNITE HERE

This information is being provided by UNITE HERE, a labor organization that represents workers in the US and Canada. UNITE HERE maintains [www.PrivateEquityRetirementWatch.org](http://www.PrivateEquityRetirementWatch.org).

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<sup>1</sup> <https://bcgpension.com/about/news/American-National-Insurance-Company.asp>

<sup>2</sup> <https://bnre.brookfield.com/press-releases/brookfield-reinsurance-completes-51-billion-acquisition-american-national>

<sup>3</sup> <https://www.brookfieldannuity.com/en/news/2017/03/brookfield-annuity-announces-its-first-group-annuity-deal.html>

<sup>4</sup> <https://seekingalpha.com/article/4533077-brookfield-asset-management-inc-bam-ceo-bruce-flatt-on-q2-2022-results-earnings-call>

<sup>5</sup> <https://www.banking.senate.gov/newsroom/majority/brown-push-private-equity-firms-involvement-insurance-industry>

<sup>6</sup> <https://www.sedar.com/DisplayProfile.do?lang=EN&issuerType=03&issuerNo=00052024>

<sup>7</sup> <https://bam.brookfield.com/sites/brookfield-bam/files/2023-02/2023-q1-bam-investor-presentation.pdf>

<sup>8</sup> Nick Goodman, BAM 3Q 2022 Earnings Call Transcript, 11/10/2022.

<sup>9</sup> See for example, “Brookfield/American National: alternatives lifestyles suit insurers,” *Financial Times*, 8/9/2021. “Alternative asset investors have been following the example of Apollo and Berkshire Hathaway and rushing to amass insurance assets. Brookfield is betting that it can invest the cash from insurance premiums into its portfolios of higher-yielding assets. Its vast real estate and infrastructure businesses can be used to source debt investments, for example.” <https://www.ft.com/content/10795af1-5aab-4dc9-bc57-b648706d4472>

<sup>10</sup> Athene acknowledges that relative to its peers, it holds a larger proportion of its portfolio in ABS/CLO, mortgage loans, and alternatives, and a smaller proportion in corporate and government bonds. See slide 16 from “Athene Balance Sheet Tutorial: Asset Portfolio Risk & Stress Considerations,” October 2021 [https://docs.publicnow.com/viewDoc?hash\\_primary=78C04A5986A8F49C9ACC6242C89EE7E6410FB650](https://docs.publicnow.com/viewDoc?hash_primary=78C04A5986A8F49C9ACC6242C89EE7E6410FB650) 6

<sup>11</sup> Under US Statutory Accounting (SAS) rules that state-regulated insurers in the United States are required to use, bonds (including private loans) that are classified as “held to maturity” can be held at “book value,” also known as “amortized cost,” for as long as market declines that may lower the value of that bond are deemed temporary.

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Since held to maturity bonds are ordinarily not required to be revalued during the term of the loan, the cost at which the insurer purchased the bond is perhaps the only reference point available to regulators or policyholders for that asset's value. And it's worth noting that in some cases, affiliates of the same private equity asset manager may have acted as originator, seller and buyer of a private loan. In such a case, it could mean that the only reference point available to regulators or third parties that would provide an indication of a private loan's value, had been derived by related parties that may not have had any fiduciary duty under law to policyholders. According to Chapter 13.5 of an online publication by PWC, "13.5 Key differences between SAP and US GAAP, "Under SAP, investments in bonds are generally carried at amounts that differ from the carrying value under GAAP. For life and health insurers, bonds rated "1" through "5" by the NAICs Securities Valuation Office are carried at amortized cost. Bonds rated "6" are carried at the lower of cost or fair value. For property/casualty companies and HMOs, bonds rated "1" and "2" are carried at amortized cost. All other bonds are valued at the lower of cost or fair value."

[https://viewpoint.pwc.com/dt/us/en/pwc/accounting\\_guides/insurance-contracts/Insurance-Contracts/Ch13\\_statutory\\_accounting/13\\_5keydifferencesbetween.html](https://viewpoint.pwc.com/dt/us/en/pwc/accounting_guides/insurance-contracts/Insurance-Contracts/Ch13_statutory_accounting/13_5keydifferencesbetween.html)

<sup>12</sup> <https://www.alterdomus.com/media/46312658-3cf7-4b47-9bab-abb2099d33e1/pregin-markets-in-focus-alternative-assets-in-the-americas-2021.pdf> , p.7.

<sup>13</sup> <https://www.bloomberg.com/news/articles/2023-01-13/what-is-private-credit-industry-poses-regulatory-risks#xj4y7vzkg>

<sup>14</sup> Evan Gunter, Abby Latour, and Joe Maguire , "Private Debt: A Lesser-Known Corner Of Finance Finds The Spotlight," S&P Global, 10/12/2021.

<sup>15</sup> <https://bam.brookfield.com/sites/brookfield-bam/files/2023-02/bam%E2%80%9322-supplement.pdf> , p. 18 (emphasis added).

<sup>16</sup> , p. 57 (emphasis added).

<sup>17</sup> "All held-to-maturity securities were transferred to available-for-sale through a management election allowed under business combination guidance." p.19, American National Consolidated Financial Statements, September 30, 2022. [https://www.americannational.com/wps/wcm/connect/americanational/0f21cdeb-e391-4370-b6b9-712659eb3317/ANAT-09.30.22\\_Debt+Reporting+Final.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTWORKSPACE.Z18\\_M2M0\\_HJ01LG8QD0APPS6TVN3F17-0f21cdeb-e391-4370-b6b9-712659eb3317-ojeBl.T](https://www.americannational.com/wps/wcm/connect/americanational/0f21cdeb-e391-4370-b6b9-712659eb3317/ANAT-09.30.22_Debt+Reporting+Final.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M2M0_HJ01LG8QD0APPS6TVN3F17-0f21cdeb-e391-4370-b6b9-712659eb3317-ojeBl.T) (emphasis added).

<sup>18</sup> American National Consolidated Financial Statements, September 30, 2022, p.19

<sup>19</sup> For example, on 8/9/2022, American National bought two classes of a bond they identified as "BPR TR-2022 STAR," one for \$6 million and the other for \$9 million (par value). These are reportedly the A and B classes of a CMBS loan in which Brookfield is the sponsor (borrower). The mortgage loan is secured by North Star Mall in San Antonio, TX. (See Finsight Market data: <https://finsight.com/issuer-23853-bpr-trust?products=ABS%2CHYC%2CIGC&regions=APAC%2CEMEA%2CLATM%2CUSOA> ) North Star Mall is listed as a portfolio property on Brookfield Properties' website: <https://www.brookfieldproperties.com/en/our-properties/north-star-mall-387.html> Another example: On its Schedule D, Part 3 for the third quarter 2022, American National listed an investment in "Oaktree Mezzanine Fund V feeder" which was acquired on 9/28/2022 for consideration of \$12.16 million. (See p. E04) According to a Form D filed with the SEC on 8/18/2021, Oaktree Mezzanine Fund C feeder was a Cayman Islands-based limited partnership managed by Oaktree Capital Management, which is majority owned by Brookfield.

([https://www.sec.gov/Archives/edgar/data/1879055/000187905521000001/xslFormDX01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/1879055/000187905521000001/xslFormDX01/primary_doc.xml) )

American National also lists on its Schedule D, Part 3 for the third quarter 2022 three bonds they identify only as "Hospitality Investors Trust." Hospitality Investors Trust, a non-traded REIT, was acquired by Brookfield pursuant to a bankruptcy restructuring plan in 2021. Also, several of the investments purchased by American National in the third quarter of 2022 that were listed on Schedule D, Part 3 as "Industrial and Miscellaneous (Unaffiliated)" bonds, may be related to a 2021 purchase of convertible preferred shares of Enlink Midstream, a natural gas distribution company, by two Brookfield-affiliated funds in August 2021. Brookfield Infrastructure Partners (BIP) and its majority-owned affiliate Oaktree Capital Management, reportedly bought 100% of a convertible preferred security in Enlink Midstream for a combined purchase price of \$800 million. According to Adam Le, Senior Editor at Private Equity International, "With Enlink, Brookfield and Oaktree are acquiring a non-control investment in the form of

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preferred stock.” (See <https://www.infrastructureinvestor.com/what-brookfields-atypical-debut-says-about-infra-secondaries/>). See also: Enlink Midstream, 2022 10-K, p. 119. According to the American National Quarterly Statement, on 8/9/2022 it purchased a security it called “OCM ENLK Holdings LLC” for consideration of \$2.8 million and “Patton BIP Holdco II” for consideration of \$1.567 million.

(<https://www.sec.gov/ix?doc=/Archives/edgar/data/0001592000/000159200023000003/enlc-20221231.htm>)

<sup>20</sup> American National Consolidated Financial Statements, September 30, 2022, p. 8.

<sup>21</sup> <https://seekingalpha.com/article/4563062-brookfield-asset-management-ltd-bam-ceo-bruce-flatt-presents-goldman-sachs-2022-us-financial>

<sup>22</sup> Div. T of Pub. L. No. 117-328. See <https://www.mercer.com/our-thinking/law-and-policy-group/taking-a-look-at-secure-2-0-defined-benefit-plan-provisions.html>

<sup>23</sup> 29 CFR § 2509.95-1(c)(1), <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XXV/subchapter-A/part-2509/section-2509.95-1>