



April 29, 2013

**VIA ELECTRONIC-MAIL**

Doug Slape, Chair  
Captives and Special Purpose Vehicle Use (E) Subgroup  
of the Financial Condition (E) Committee

c/o Dan Daveline  
Assistant Director of Financial Regulatory Services  
National Association of Insurance Commissioners  
1100 Walnut Street  
Suite 1500  
Kansas City, MO 64106-2197

Re: Captives and Special Purpose Vehicles White Paper  
March 14, 2013 Discussion Draft

Dear Mr. Slape:

The Vermont Captive Insurance Association (the "VCIA") appreciates the opportunity to once again comment on the Captives and Special Purpose Vehicle (E) Subgroup's (the "Subgroup") Captives and Special Purpose Vehicles White Paper (the "White Paper"). The VCIA also appreciates the Subgroup's careful consideration of the comments submitted by the VCIA and other interested parties with regard to the initial draft of the White Paper.

The VCIA is composed of nearly 500 member companies and is the largest captive insurance trade association in the world.<sup>1</sup> The VCIA appreciates the time and effort expended by the Subgroup members and National Association of Insurance Commissioners ("NAIC") staff to study insurers' use of captives and special purpose vehicles and develop conclusions and recommendations based on its research. In general, the VCIA continues to be supportive of efforts to provide guidance to commercial insurers with regard to appropriate use of captives and special purpose vehicles.

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<sup>1</sup>Established in 1985, VCIA members include 44 of the companies that make up the Fortune 100 and 21 of the companies that make up the Dow 30. VCIA members write over \$25 billion in annual premium.

The VCIA specifically appreciates the Subgroup's consideration of its comments with respect to, and corresponding revisions to, the White Paper's recommendations regarding monitoring of IAIS action with respect to captives and SPVs, confidentiality and information sharing, and accounting considerations at the ceding company level. The VCIA also appreciates the removal of the inflammatory "shadow insurance industry" references from the White Paper.

Notwithstanding the foregoing, the VCIA would respectfully suggest to the Subgroup that the AG38 changes and implementation of Principles-Based Reserving, as referenced in the White Paper's Executive Summary, may not necessarily eliminate the need for captive/SPV use by commercial insurers. As such, the VCIA believes that the timing of the implementation of any proposed changes will be critical in this effort. Curtailing the use of captives in advance of changes that might occur at the ceding company level (e.g., the accounting changes to allow certain transactions at the ceding company level) could be problematic for companies that have ceded to captives/SPVs and should be discouraged.

The VCIA continues to be concerned by the suggestion that the NAIC consider making the Special Purpose Reinsurance Vehicle Model Act (#789) an accreditation standard. Although the VCIA is not opposed to updating the NAIC's Special Purpose Reinsurance Vehicle Model Act (#789), the VCIA would suggest that further analysis of the utility of making this Model an accreditation standard is warranted given its limited use to date. Multi-state classification for captives was thoroughly debated and settled by the NAIC in the early 1990's when it was agreed among the states that Risk Retention Groups (RRGs) that operate in multiple states would be considered "multi-state" and that other captive insurers would not. The issue was raised again in 2008 to the Financial Regulation Standards and Accreditation (F) Committee where, again, regulators determined that only RRGs should be considered multi-state insurance companies. The distinction between a captive operating in a single state and a company operating in multiple jurisdictions is important to maintain since the rationale for the accreditation program ends when an insurance company is regulated by a single state.

In Part VI. Accounting and Reporting and in Part X. Conclusions and Recommendations to the Financial Condition (E) Committee, 1. Accounting Considerations, we believe that the language should be clarified to avoid any impression that state regulators may be approving transactions that are contrary to appropriate accounting requirements. We agree with the Subgroup's statement that it would be inappropriate for captives and SPVs to be used to avoid statutory accounting prescribed by states; however, consistent with the rules applicable to related party reinsurance in most states, appropriate approval and notification from the state regulators of the ceding and assuming companies must generally be obtained.

The VCIA would also suggest the following specific edits with respect to the new Executive Summary section of the White Paper:

- The term “perceived” used in this section (as well as all other sections throughout the White Paper) should be changed to a term more factually suited, such as “calculated”, “agreed upon”, or “qualified”.
- Further, and in relation to the change in terminology above, the first paragraph in the Executive Summary should provide an explanation substantially similar to:

“The domicile regulator of the commercial insurer should be able to assess the calculation of the statutory reserves and economic reserves to qualify or agree upon the reserves ceded to the captive as part of the approval of the reinsurance contract with the captive.”

- With respect to Recommendation #7 (Financial Analysis Handbook Guidance), the VCIA would suggest that this recommendation specifically refer to the items contained in Appendix B of the White Paper as an appropriate start/approach for the review and analysis of such transactions.

The VCIA appreciates the opportunity to provide these comments on behalf of its members.

Respectfully submitted,



Richard Smith  
President