
May 12, 2014

Director John M. Huff, Chair
Financial Regulation Standards and Accreditation (F) Committee
National Association of Insurer Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

**Re: Proposed Definition of Multi-State Reinsurers**

Dear Director Huff:

The Vermont Captive Insurance Association ("VCIA") appreciates the opportunity to comment on the Financial Regulation Standards and Accreditation (F) Committee's ("Committee") proposed revisions to the definition of "multi-state reinsurer" in the Part A and Part B preambles of the standards for state accreditation. Specifically, the Committee is proposing to define a "multi-state reinsurer" as "an insurer assuming business that is directly written in more than one state and/or in any state other than its state of domicile."

The VCIA is composed of nearly 500 member companies and is the largest captive insurance trade association in the world. The VCIA recognizes the intention behind the efforts of the Committee members and National Association of Insurance Commissioners ("NAIC") staff to study and clarify the definition of "multi-state reinsurer." In general, the VCIA supports efforts to eliminate inconsistencies and provide guidance regarding the use of captives and special purpose vehicles (SPVs). However, the VCIA respectfully urges the Committee to reconsider the proposed, overly inclusive definition of "multi-state reinsurer" for several reasons.

First, the suggested definition is overly broad and would encompass a number of alternative arrangements not currently covered or envisioned in the accreditation standards process, thereby unnecessarily imposing NAIC accreditation standards on almost all captive reinsurance transactions. For example, the proposed definition would encompass fronting or pooling arrangements and many captive reinsurers other than SPVs created by life insurance industry participants. As a result, the Committee's proposal would impact not only life reinsurance captives, but other captive insurers that currently operate under a robust system of state supervision and regulation.

Second, the Committee's proposed language is vague and unclear. The Committee uses the phrases "assuming business" and "directly written" without clarifying whether this includes risks underwritten in a non-domiciliary state or whether the insurer must physically be writing business in that state. A captive insurer generally "writes business" in its state of domicile, which is traditionally how most captive insurers conduct business.

Third, the proposed accelerated effective date for including captive reinsurers under the multi-state reinsurance accreditation requirements (July 1, 2014 but January 1, 2015 for reinsurance agreements entered into before July 1, 2014) is too short to allow states time to fully prepare for these significant changes, if they are ultimately adopted.

Fourth, imposing NAIC accreditation standards on most captive reinsurers by including them in the definition of "multi-state reinsurer" not only would have a chilling effect on the formation of domestic captives, but also would drive existing captive reinsurers offshore and out of reach of U.S. regulators.

Fifth, a captive insurer traditionally only does business in the state of domicile which has regulatory jurisdiction over the captive. Generally, states may regulate an insurer that is transacting business within the state. "Transacting business" is defined by law in many states as (1) solicitation, (2) negotiation, (3) execution of a contract, or (4) transactions in the state subsequent to execution of a contract arising out of that contract. By these criteria, captive insurers do business only in the domiciliary state and are not subject to the regulatory jurisdiction of other states, although a policy issued by the captive insurer may cover risks in other states. The attempt to subject captive insurers to the regulatory jurisdiction of non-domiciliary states would run afoul of limitations established by the McCarran-Ferguson Act as well as the Due Process Clause of the U.S. Constitution.

VCIA believes the change in the definition of multi-state insurer is not necessary to address perceived concerns about the use of SPVs by life insurers. Under the law of every state, the regulator of the ceding insurer has the authority to approve a reinsurance transaction and the domestic regulator of the captive insurer also has authority over the transaction. The issue appears to be how to provide more transparency of captive reinsurers whose activities may have an effect on the general public, as opposed to a defined group. VCIA would support greater transparency in these arrangements. The Committee should delay taking any action on the proposed "multi-state" definition of captive reinsurers until more thought and consideration have been given to other options to address the need for improved transparency. The Committee could address the transparency issue of life insurer-owned SPVs by referring directly to such arrangements and thereby avoid the unintended consequences that will surely result from the proposed definition of multi-state reinsurer.

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

Respectfully submitted,

Richard Smith
President

cc: Daniel Schelp, Managing Counsel
Julie Garber

180 Battery Street | Burlington, Vermont 05401-5212
*phone*: 802-658-8242 | *fax*: 802-658-9365 | *e-mail*: vcia@vcia.com