CICA
CAPTIVE INSURANCE COMPANIES ASSOCIATION

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

Re: Proposed Definition of Multi-State Reinsurers

Dear Director Huff,

The Captive Insurance Companies Association ("CICA") is writing this letter to provide comments 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.

CICA is the leading domicile neutral trade association representing the global captive insurance industry. CICA represents hundreds of members, both onshore in North America and offshore in markets like Bermuda and Europe. CICA's members are individual captives, companies that own and utilize captives, and service providers to captives, such as actuaries, accountants, attorneys and insurance consultants. These members represent a wide range of industries and include both Fortune 100 companies and small, family-owned businesses.

CICA understands the concerns expressed by Superintendent Torti regarding the utilization of special purpose vehicles ("SPVs") and captives as reinsurance mechanisms by life and annuity insurers regarding the excess reserves required by Regulation XXX and AXXX. However, CICA respectfully submits that the proposed revisions to the definition of "multi-state reinsurer" (the"Proposal") should not be adopted because they would impose an unreasonable and unneeded regulatory burden on the captive industry.

The Proposal is overly broad and the language is imprecise. The Preamble for Part A previously excluded "insurers that are licensed, accredited or operating in only their state of domicile but assuming business from insurers writing that business that is directly written in a different state". The Proposal would eliminate this exclusion and create a new definition:

Reply to:
CICA Administrative Office
4248 Park Glen Road
Minneapolis, MN 55416
Phone: (952) 928-4655; Fax: (952) 929-1318
e-mail: info@CICAworld.com

CICA President
1401 S. Ocean Blvd #1007
Pompano Beach, FL 33062
Phone: (954) 960-2627
e-mail: dharwick@CICAworld.com

> "A multi-state reinsurer is an insurer assuming business that is directly written in more than one state and/or in any state other than its state of domicile. This includes but is not limited to captive insurers, special purpose vehicles and other entities assuming business".

This broad definition would sweep in numerous alternative risk structures that have nothing to do with life reinsurance, including some captives that operate on a direct basis. The vast majority of captives insure or reinsure some form of property / casualty risk. No supporting information has been provided by Superintendent Torti, or any other NAIC representative, as to why the property /casualty industry should be included in the proposal.

The proposed definition is vague and, in some instances, contradictory. For example, it references "business that is directly written" in the context of a reinsurance captive, which does not directly write, but rather reinsures. The imprecision of the language may stem from the fact that the problem to be remedied has not been established.

The effect of the Proposal would be to impose NAIC accreditation standards on most captive reinsurers. Why should reinsurance captives, which reinsure the risk of the parent or affiliates of the captive, have to sustain the additional expense of adhering to all the Part A standards imposed on insurers and reinsurers providing insurance to the general public? For decades captives have been providing risk transfer to businesses all over the world in a cost efficient manner. Where is the evidence that captives need this additional regulatory burden?

CICA recognizes that life and annuity reinsurance provided by the captive subsidiaries of some of the largest commercial insurers in the world may need special attention because some of these entities are, in fact, large enough to present "systemic risk" to the global financial system. However, this does not warrant the application of the same rules or scrutiny to the thousands of captives that are not in this category.

The Proposal poses legal problems. A captive insurer is licensed in its state of domicile and only "transacts insurance business" within that state. The Proposal seems to assume that captives conduct insurance business in non-domiciliary states, which would include the solicitation of insurance and negotiations regarding the insurance contract in the non-domiciliary state. Because this is not the case, attempting to empower such non-domiciliary states to regulate the captive would potentially violate the McCarran – Ferguson Act and the Due Process Clause of the U.S. Constitution.

The exceptions to the Proposal are too narrow and ineffectual. First, the "grandfather" provision for existing captives would only allow a window of six months, which would be of

almost no assistance to an existing captive. Second, the exception for "captive insurers owned by non-insurance entities for the management of their own risk", while well intentioned, is vague. Does a "non-insurance entity" mean a non-insurance company, i.e., any entity that is not a licensed insurer? Does "owned" mean controlled by? Does "their own risk" mean the risk of a controlling entity and its affiliates? Would it include an association or a pool? Clearly, more thought and precision needs to be brought to bear on this important portion of the Proposal.

The Proposal appears to violate the NAIC's own rules regarding the adoption of amendments to the Accreditation Standards. The NAIC procedure for the adoption of Accreditation Standards requires that changes be adopted by the relevant committee and, after exposure, adopted by the NAIC Executive Committee and Plenary and then exposed again. Those procedural safeguards are being ignored by the Proposal.

The Proposal appears not to consider the existing regulatory structure which is designed to ensure financial soundness. For example, the regulator of the ceding insurer has to approve the credit for reinsurance provided by the captive reinsurer. Moreover, the regulator of the captive has to approve the captive reinsurer's business plan and financial filings showing this and other transactions.

In sum, the adoption of the Proposal would cause severe damage to the captive insurance industry, and no bases have been put forward as to why the Proposal should apply to the entire captive industry. Clearly, the Proposal is an attempt to address some regulatory concerns regarding the use of captives in the context of large commercial life and annuity insurers. For the reasons set forth above, CICA respectfully requests that the Proposal not be adopted.

Respectfully submitted,

Dennis P. Harwick
President

Cc: Julie Garber (jgarber@NAIC.org)
Daniel Schelp (dschelp@NAIC.org)
Ryan Couch (rcouch@NAIC.org)

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