

November 15, 2012

VIA EMAIL: ddaveline@naic.org

Dan Daveline, CPA, FMLI
Assistant Director – Financial Regulatory Services
National Association of Insurance Commissioners

Subject: NAIC Discussion Draft White Paper Captives and Special Purpose Vehicle Use (E) Subgroup of the Financial Condition (E) Committee

Dear Mr. Daveline,

Please accept this letter on behalf of the Captive Insurance Companies Association (“CICA”) in response to your request for comments on the White Paper produced by the NAIC Captives and Special Purpose Vehicle Use (E) Subgroup of the Financial Condition (E) Committee.

CICA is the leading domicile neutral trade association representing the global captive insurance industry. 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.

CICA has reviewed the discussion draft of the White Paper. While the charge of the Subgroup excluded the study of pure captives or other single captive structures providing self-insurance to non-insurance affiliates, and risk retention groups operating under captive laws, the Subgroup spent a substantial amount of time and effort examining the regulation of captives in general, as is evidenced by Appendix A (types of captive insurers defined) and commentary on various topics throughout the document. While the Subgroup’s examination of captives is admittedly limited, it draws several conclusions for which there are little support in the White Paper.

First, the Subgroup seems to conclude that “a majority of the most recent increase in captive insurers and SPV activity can be attributed to an intention to finance perceived redundant reserves without actually transferring the risk outside of the insurance holding company system.” *White Paper, p.20*. There is no support for this conclusion in the White Paper. Captives are formed in domiciles both in the United States and offshore for a wide variety of reasons. Financing perceived redundant reserves is just one reason among many and constitutes a relatively small portion of all captive formations.

Second, the White paper appears to support the International Association of Insurance Supervisors (IAIS) Insurance Core Principles (ICPs) and, quite reasonably, refers to the principle of proportionality within the ICPs standards. *White Paper, p.4-5*. It then establishes that there are no specific ICPs standards with respect to captives or captive supervision, although the IAIS adopted the “Guidance Paper on the Regulation and Supervision of Captive Insurers” in 2008.

In its conclusions, the White Paper states that “the Subgroup believes that the use of captives should generally follow the international views contained within this Guidance Paper [IAIS Guidance Paper].” *White Paper, p.23*. In the same paragraph, it acknowledges that “insurer or reinsurer owned or common controlled captive/SPV, that are not otherwise self-insurance, should be subject to a similar regulatory framework as commercial insurers.” *See also p.5*.

CICA supports the state based regulatory system in the United States, which provides broad regulatory authority to the state of domicile. The majority of the states now have captive laws. Without further detailed examination, it seems premature for the Subgroup to draw the conclusion that regulators should generally follow international standards.

Third, the White Paper also asserts that “consideration should be given to developing a database using NAIC company code, name, domiciliary information with respect to all captives in order to ensure that data on the universe of all such entities is available to allow regulators to quickly response to questions on the same.” *White Paper, p.11*. Captives by definition are single state insurers which provide risk financing to the parent business entity and/or its affiliates. There is no analysis within the White Paper on the need for “quick response” to questions and therefore for creating a new role for the NAIC.

CICA will continue to monitor this and other activities of the NAIC for both content and form. Thank you for this opportunity to comment.

Sincerely,



Dennis P. Harwick
President