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March 21, 2011

Alfred M. Pollard, General Counsel  
*Attention:* Comments/RIN 2590-AA39  
Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, NW  
Washington, DC 20552

**Re: Comments/RIN 2590-AA39; Proposed Rules for Members of Federal Home Loan Banks**

Mr. Pollard:

This letter is in response to the Federal Housing Finance Agency's Notice of Proposed Rulemaking, issued December 27, 2010. For your background, our firm provides regulatory services to the insurance industry in general and to the industry's regulators in Michigan. The Notice of Proposed Rulemaking raises questions, among other matters, with respect to captive insurers and so-called "shell" insurers. We comment on those entities as formed and regulated under the laws of the State of Michigan in the following.

While the Federal Housing Finance Agency raised a concern relative to whether captive insurers are "in fact subject to the degree of supervision and examination contemplated by ... the Bank Act..." (75 Fed Reg 81150), we do not believe that it should have concern with respect to a Michigan captive insurer (here a "captive") or so-called "shell" insurers in Michigan<sup>1</sup> due to what we view as robust statutory protections and regulatory oversight of all insurers under the Insurance Code. MCL 500.100 *et seq.*

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<sup>1</sup> If an insurer is a Michigan domiciled insurer, or if it is a "foreign" insurer authorized as an insurer in Michigan, such an entity must "continue to be safe, reliable, and entitled to public confidence." MCL 500.403. Additionally, "[e]very like domestic, foreign, or alien insurer doing business in [Michigan] shall at all times be subject to the same standards and requirements concerning financial conditions and shall be in substantial compliance with those standards and requirements." MCL 500.404. All such insurers, whether denoted as "shell" insurers or otherwise, must meet all continuing applicable licensure requirements and filing requirements of the Code, as well as all other Code provisions applicable to the type of insurer in question. See *Id.*

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Initially, we note that a captive is subject to regulation and oversight by the Michigan Office of Financial and Insurance Regulation (“OFIR”) as are other forms of Michigan insurers under the Code. We delineate in the following pertinent statutory controls applicable to captives:

- Similar to other Michigan insurers, a captive must apply for and be issued a limited certificate of authority by the Commissioner in order to transact insurance business. See MCL 500.4603(2)(a); MCL 500.4705(2)(a) (identical requirement for special purpose financial captives).
- Before a limited certificate of authority can be issued, a captive is subject to a thorough investigation by OFIR. An applicant for a limited certificate of authority must submit comprehensive information, including, but not limited to: (1) The applicant’s finances, including evidence of the source and form of capitalization and evidence of the amount and liquidity of assets relative to risks; (2) the types of risks to be assumed; (3) the business plan of the captive insurance company; (4) an actuarial study demonstrating the financial suitability of the business plan; (5) evidence of the character, business probity, financial responsibility, and business qualification of the officers and directors; and (6) biographical affidavits for all officers and directors. See MCL 500.4603(6); MCL 500.4705(6).
- Captives must submit to OFIR “[a] statement acknowledging that all financial records of the captive insurance company, including records pertaining to protected cells, if applicable, shall be made available for inspection or examination by the commissioner.” MCL 500.4603(6)(a); MCL 500.4705(7)(b); see also MCL 500.4731(5) (a special purpose financial captive “shall make its records available for examination by the commissioner at any time”).
- Captives must submit annual reports to OFIR, including an opinion of a qualified actuary concerning the captive insurance company’s reserves and compliance with the Code. See MCL 500.4621(2); MCL 500.4711(4); MCL 500.4731(4) (requiring a special purpose financial captive to submit an annual statement of operations).
- Captives must adhere to statutory paid-in capital and capital reserve requirements. See MCL 500.4611; MCL 500.4709(1). Moreover, the Commissioner has the authority to require captives to maintain paid-in capital above the statutory requirements. See MCL 500.4611(6); MCL 500.4709(2).
- Captives are subject to the “same terms and conditions under chapter 81 [of the Michigan Insurance Code] pertaining to administrative supervision, conservation, rehabilitation, receivership, and liquidation” as are other OFIR regulated insurers. MCL 500.4655(1); MCL 500.4741(1).

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Additionally, the ability of a captive to either lend money to affiliates or pay dividends is severely restricted under the Code. For instance, only a “pure captive” may make loans to its parent company or affiliates and then only upon the prior review and written approval of the Commissioner. See MCL 500.4639(3). The Code also limits the ability of a captive insurance company to pay dividends, or other distributions, in a similar fashion to other insurance companies regulated by OFIR. See MCL 500.4611(8); MCL 500.4729.

Moreover, if the captive is part of an insurance company holding system with other insurers, then the provisions of Chapter 13 of the Code (“Holding Companies”), MCL 500.1301 *et seq.*, as relate to—for instance—financial, governance, reporting, transactional and even criminal acts are applicable to the non-captive Michigan (and, in certain instances, even “foreign”) insurers in that insurance company holding system, thus affording additional regulatory context and oversight by Michigan regulators.

In sum, in Michigan, captives are comprehensively regulated insurers, and in response to the December 27, 2010 Notice of Proposed Rulemaking, we encourage the Federal Housing Finance Agency not to revise its membership regulations to exclude captive insurers from Federal Home Loan Bank membership.

Sincerely,

Joseph A. Fink

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