

# Center for Insurance Research

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March 21, 2014

Superintendent Joseph Torti, Co-Chair  
Commissioner Julie M. McPeak, Co-Chair  
Principle-Based Reserving Implementation Task Force  
NAIC Central Office  
1100 Walnut Street, Suite 1500  
Kansas City, MO 64106-2197

RE: Report of Rector & Associates, Inc.

Dear Co-Chairs Torti and McPeak:

I am writing to offer my comments on the Report of Rector & Associates, Inc. (the “Report”), provided to the Task Force on February 17<sup>th</sup>. I am one of the members of the NAIC consumer funded liaison program and the Director of the Center for Insurance Research. The Center for Insurance Research (CIR) is a nonprofit, public policy and advocacy organization founded in 1991 that represents consumers on insurance matters nationally.

I have been following the discussion and analysis regarding the use of captive insurers and non-standard assets and wish to voice a few concerns from my perspective as a consumer advocate.

In particular, I concur and support the following recommendations made in the Report:

- “[T]hat [a] direct/ceding insurer only get credit for reinsurance if it retains (on a funds withheld or trust basis) “Primary Assets’ in an amount approximately equal to what the statutory reserve would be under PBR.” (Report at 7);
- [T]hat key information about the use of financing transactions and assets supporting such transactions be publicly disclosed.” (Report at 7);
- The “Actuarial Method selected should effectively eliminate the financial incentive for further financing transactions once PBR become effective.” (Report at 8-9);
- That the “cash flow testing approach” suggested by the ACLI is not a viable approach here for the many reasons identified by Rector & Associates. (Report at 10);
- “[T]hat captives/SPVs not be used as a way to avoid statutory accounting requirements,” (Report at 32); and
- That “conditional LOC’s [lines of credit] and parental guarantees could not be used to satisfy the Primary Asset Level.” (Report at 34.)

While I agree with the recommendation in the Report that focusing on the ceding insurer (Report at p. 5) is important, I do not believe that regulators should focus “exclusively” on the ceding entities and disregard the regulation of assuming insurers.<sup>1</sup>

In particular, I remain concerned about the lack of disclosure regarding captive reinsurance transactions and captives in general. As a consumer advocate, I do not believe that captive entities and their financial statements should be accorded “top-secret” status and that reinsurance contracts with any entities that do not offer any public report of their financial state cannot be treated as creditable reinsurance transactions.<sup>2</sup>

I recommend that disclosure requirements should not apply only to the direct/ceding party. Whether this creates obstacles due to “confidentiality laws in some captive jurisdictions” (Report at 17) is irrelevant to consumers interested in know their insurance benefits are secure. CIR believes no credit for reinsurance should be given under SAP for contracts with an entity whose assets and financial status are “confidential.”

I also fully concur with the Report’s statement that “unless key information about the direct/ceding insurer’s use of reserve financing transactions is made public, at approximately the same level of detail as contained in existing public documents such as statutory financial statements, the financial condition of the insurer reported in such public documents may be incomplete or misleading.” (Report at 18, emphasis added.) I also strongly agree that “there should be a regulatory presumption in favor of public disclosure.” *Id.*

Thank you for the consideration of my comments on this important matter.

Sincerely,

/s/

Brendan Bridgeland  
Director

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<sup>1</sup> While the Report observes that increasing regulatory scrutiny on assuming insurers may lead to transactions moving off-shore, I do not believe this should be a determinative factor. Regulators will still have the authority, after all, to refuse to credit questionable off-shore reinsurance transactions for financial reporting purposes.

<sup>2</sup> I believe that disclosure by captives is a critical issue the Task Force should not overlook, because the question of whether “atypical, non-admitted assets should be allowed to support portions of the reserve that have a low probability of being needed to pay claims” (Report at 5) is truly relevant only when consumers are informed about what sort of “atypical” assets are being used to support their insurance contracts.