Estrada, Michele (DIFS)

From: Dyck Van Koevering <dyck@insurancealliancemichigan.org>
Sent: Tuesday, December 19, 2023 2:35 PM
To: Estrada, Michele (DIFS)
Cc: Erin McDonough; Melanie Rhine; Dyck Van Koevering
Subject: IAM Comment on Proposed Rule Set 2023-21 IF, Holding Companies
Attachments: 12-19-23 FINAL IAM Comment Letter.pdf

Mr. Estrada – Per the Notice of Public Hearing for DIFS' Proposed Rule Set 2023-21 IF, Holding Companies, attached is IAM's letter of comment.

Thank you in advance for your attention to this matter. Please let me know if you have any questions or comments.

DVK

Dyck E. Van Koevering
General Counsel
Insurance Alliance of Michigan
dyck@insurancealliancemichigan.org
o 517/371-2880
c 517/230-0122

Insurance Alliance of Michigan

Insurance Alliance of Michigan

December 19, 2023

Anita Fox, Esq.
Director
Department of Insurance and Financial Services
530 W. Allegan St., 8th Floor
Lansing, Michigan 48933-7720

Re: Proposed Rule Set 2023-21 IF
Holding Companies

Dear Director Fox:

The Insurance Alliance of Michigan (IAM) is the statewide trade association representing property and casualty insurers operating in Michigan. IAM members write approximately 95 percent of the automobile, 90 percent of the homeowners, and 65 percent of the commercial insurance markets in the state.

On behalf of the members of the IAM, I write to express our support for Proposed Rule Set 2023-21 IF, as drafted, which is intended to strengthen and clarify existing regulatory requirements regarding the evaluation of an insurer's financial condition at the group level.

We look forward to working with your department on the development and implementation of these proposed rules. Please do not hesitate to contact IAM should you have any questions or comments.

Sincerely,

Dyck E. Van Koevering
General Counsel

Merriman, Julie (DIFS)

From: Merriman, Julie (DIFS)
Sent: Thursday, January 4, 2024 12:03 PM
To: Merriman, Julie (DIFS)
Subject: FW: Comment on Proposed Rule Set 2023-21 IF

From: Johanna Novak <JNovak@uphp.com>
Sent: Wednesday, December 13, 2023 11:38 AM
To: Estrada, Michele (DIFS) <EstradaM1@michigan.gov>
Subject: Comment on Proposed Rule Set 2023-21 IF

Good morning. I am writing with a comment regarding the above-referenced proposed rules.

Proposed rule R 500.74 (2) states that:

"One complete copy of each statement, including exhibits and all other papers and documents filed as part of the statement, must be filed with the director by personal delivery or mail addressed to: Director of the Department of Insurance and Financial Services, P.O. Box 30220, Lansing, Michigan 48909, or 530 West Allegan Street, 7th
Floor, Lansing, Michigan 48933, Attention: Office of Insurance Financial and Market Regulation."

This conflicts with the most recently published Health Maintenance Organizations, Alternative Financing and Delivery Systems, Dental Service Corporations: Forms & Instructions for Required Filings in Michigan (attached), where on page 4 (numbered paragraph 14), payers are instructed to submit Forms B, C, D, etc. electronically. Perhaps it is DIFS' intent to return to paper filings. But if it's not, I would suggest revising the language in the proposed rule to ensure consistency with the Forms & Instructions. Perhaps: "One complete copy of each statement, including exhibits and all other papers and documents filed as part of the statement, must be filed with the director using the delivery method identified by the director."

Thank you!

Johanna M. Novak
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Merriman, Julie (DIFS)

From: Merriman, Julie (DIFS)
Sent: Thursday, January 4, 2024 12:06 PM
To: Merriman, Julie (DIFS)
Subject: FW: Comments on Administrative Rules for Holding Companies Rule Set 2023-21 IF

From: Justin Klitsch <jklitsch@cure.com>
Sent: Tuesday, December 19, 2023 3:08 PM
To: Estrada, Michele (DIFS) <EstradaM1@michigan.gov>
Subject: Comments on Administrative Rules for Holding Companies Rule Set 2023-21 IF

Ms. Estrada,

Attached please find the following comments regarding proposed rules to establish a new rule set based on the Insurance Holding Company System Model Regulation (#450) promulgated by the National Association of Insurance Commissioners in connection with Michigan's adoption of the Insurance Holding Company System Regulatory Act.

1. Comment on behalf of Reciprocal Management Corp. and CURE Auto Insurance
2. Comment on behalf of Reciprocal Attorney-In-Fact, Inc., and NJ PURE.

Thank you.

Best regards,
Justin

RECIPROCAL ATTORNEY-IN-FACT, INC.
(RAF)

VIA ELECTRONIC MAIL

December 19, 2023

Michele Estrada
Administrative Assistant to the Director
of the Office of Research, Rules and Appeals
Department of Insurance and Financial Services
Office of Research, Rules, and Appeals
P.O. Box 30220
Lansing, MI 48909-7720

Re: **Comments on proposed rules to establish a new rule set based on the Insurance Holding Company System Model Regulation (#450) promulgated by the National Association of Insurance Commissioners (NAIC).**

Dear Ms. Estrada:

On behalf of Reciprocal Attorney-In-Fact, Inc. ("RAF"), attorney-in-fact ("AIF") for New Jersey Physicians United Reciprocal Exchange ("NJ PURE"), and NJ PURE, thank you for the opportunity to provide comments on the proposed rules to establish a new rule set based on the Insurance Holding Company System Model Regulation (#450) promulgated by the National Association of Insurance Commissioners ("NAIC") in connection with Michigan's adoption of the Insurance Holding Company System Regulatory Act (the "Holding Act"). RAF and NJ PURE believe that this rule set could impose additional burdens on stand-alone reciprocal insurance exchanges and their respective AIFs, which we believe will have a significant impact on reciprocal insurance exchanges doing business in Michigan and throughout the country. Specifically, RAF and NJ PURE believe that the proposed new rule set imposes undue obligations on "stand-alone" reciprocal exchanges and their AIFs, which are subject to the Holding Act only due to their affiliation with each other.

NJ PURE is a direct writer of medical malpractice insurance in New Jersey. It was founded in 2002, in the midst of a crisis in the medical malpractice insurance industry. Some of the largest insurers were placed into rehabilitation or experienced significant financial distress, and physicians who relied on these insurers were forced to find more reasonable rates and coverage elsewhere. In response to this crisis, former New Jersey Insurance Commissioner, James J. Sheeran, and nationally renowned actuarial science expert, Dr. Lena Chang, Ph.D., founded NJ PURE as a reciprocal exchange to help bring back integrity and stability to the marketplace. Mr. Sheeran and Dr. Chang had significant experience in founding reciprocal exchanges in times of industry crisis, as they knew that reciprocal exchanges were particularly suited to thrive in such conditions. Indeed, traditional stock insurance companies often react to instability by over-inflating rates to maintain profit levels. Reciprocal exchanges, on the other hand, can maintain

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stable rates, as they operate organically on a not-for-profit basis by separating the function of the insurance operation (the reciprocal exchange) and the executive management company (the AIF). In this regard, reciprocal exchanges serve a critical role in meeting crisis capacity needs for consumers, who cannot afford to pay the exorbitant prices charged by traditional insurance companies.

Despite the numerous advantages of reciprocals as an insurance entity, the ongoing viability of reciprocals is directly tied to the ability of the reciprocal to grow its pool of policyholders to a point where the risk of loss is sufficiently mitigated. Many state laws acknowledge the fact that it is difficult to generate capital solely from policyholder contributions, and accordingly hold reciprocals to more stringent financial standards than traditional insurance companies. See, e.g., N.J.S.A. 17:50-5 (liquidity ratio requirements for certain capital levels to be maintained above the standards required of other insurance entities).

It is important to note that an AIF is not an insurance entity and, therefore, the Department of Insurance and Financial Services ("DIFS") does not have statutorily-derived authority to conduct regulatory oversight of an AIF, other than in the AIF's capacity as a fiduciary for the reciprocal exchange. For instance, DIFS has no control or authority to determine the organizational structure of an AIF, or to set forth mandatory criteria an entity must meet to become an AIF. An AIF takes on no risk, and simply cannot be subject to insurance regulation any more than other non-insurance entities.

While it is true that some AIFs may be part of a larger insurance company holding system and, therefore, appropriately be subject to the Holding Act in Michigan, a review of New Jersey and Michigan insurance statutes and accompanying regulations makes clear that AIFs are not generally within the purview and jurisdiction of state regulators. This is especially true for "stand-alone" AIFs and reciprocal exchanges, consisting of only the AIF and the reciprocal, which are not part of a larger insurance company holding system.

<u>Harm to Reciprocal Exchanges and their AIFs if the New Rule Set is Enacted:</u>

Although NJ PURE and RAF do not currently do business in Michigan, we are compelled to comment on Michigan's proposed adoption of rules implementing NAIC's model Holding Act. NAIC is a national organization comprised of the insurance commissioners of all 50 states (including New Jersey), the District of Columbia, and five U.S. territories to coordinate regulation of multistate insurers. When action is taken interpreting NAIC model acts and regulations, it affects not only the state implementing such changes, but all states. NJ PURE believes it has an obligation to protect our physician policyholders from burdensome regulation that has the potential to raise rates and negatively impact their ability to obtain affordable malpractice insurance.

As discussed above, AIFs are not generally within the purview or jurisdiction of state regulators and are not subject to regulatory oversight as a result. The Group Capital Calculation, set forth in MCL 500.1325b and the accompanying proposed rule, R. 500.89, requires insurance company holding systems to report, on an annual basis, financial information of each entity within the

holding company system, subject to various exceptions. The NAIC developed the current Group Capital Calculation methodology as an analytical tool for use by state regulators to assess group risks and capital adequacy within an insurance holding company system. The calculation includes information on potential risks to policyholders emanating from outside the insurance companies, as well as the location and sources of capital within the group.

The reasons for the Group Capital Calculation, as well as the potential concerns envisioned by NAIC, simply do not apply to stand-alone AIFs and their reciprocal exchanges. A reciprocal exchange is already required to report the same information to DIFS regardless of whether it is required to comply with the Holding Act. The AIF Fee—which is set forth in the POA signed by each individual policyholder and reported by the reciprocal exchange—is also known to DIFS. Otherwise, DIFS has no statutory or regulatory authority to inspect, review, or conduct oversight of any aspect of a stand-alone AIF's financial condition.

Accordingly, the Group Capital Calculation serves no purpose for stand-alone reciprocal exchanges and their AIFs, as it would not provide any new or different information concerning the financial health, risks, or capital adequacy of a reciprocal exchange—the insurance entity that DIFS has authority to regulate. Requiring a stand-alone AIF to provide additional information concerning its financial condition would allow state regulators to exert control over a non-insurance entity that is simply not authorized by statute or regulation. It would also impose an undue and costly burden on stand-alone reciprocal exchanges and their AIFs to comply with the new, unnecessary reporting requirements, when all of the information relevant to state regulators is already reported in other formats.

<u>Proposed Amendment to R. 500.89:</u>

RAF proposes the following amendment to R. 500.89, which would exempt stand-alone reciprocal exchanges and their AIFs from complying with the annual Group Capital Calculation filings. The rule already exempts insurers who meet certain criteria from filing the report on an ongoing basis. Including an additional exemption for stand-alone reciprocals and their AIFs would be consistent with existing practices and is the only solution that avoids imposing undue and unnecessary requirements upon such entities.

> R 500.89 Group capital calculation.
> Rule 19. (1) If an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:
> (a) Has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,000,000.00.

(b) Has no insurers within its holding company structure that are domiciled outside of the United States or 1 of its territories.

(c) Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure.

(d) The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital calculation.

(e) The non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(2) If an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept instead of the group capital calculation a limited group capital filing if both of the following apply:

(a) The insurance holding company system has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,000,000.00.

(b) All of the following additional criteria are met: (i) Has no insurers within its holding company structure that are domiciled outside of the United States or 1 of its territories.

(ii) Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework.

(iii) The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state commissioner and the non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(3) For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to subrule (1) or (2) of this rule, the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the group capital calculation instructions, if any of the following criteria are met:

(a) An insurer within the insurance holding company system is in a risk-based capital action level event, as prescribed by the director in an order issued under section 438 of the act, MCL 500.438, or otherwise prescribed by the director, or a similar standard for a non-United States insurer.

(b) An insurer within the insurance holding company system meets 1 or more of the standards of an insurer determined to be in hazardous financial condition as established under section 436a of the act, MCL 500.436a.

(c) An insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(4) A non-United States jurisdiction is considered to recognize and accept the group capital calculation if it satisfies the following criteria: (a) With respect to an exemption described under section 1325b(3)(d) of the act, MCL 500.1325b, either of the following:

(i) The non-United States jurisdiction recognizes the United States state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in that jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program are subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and shall not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-United States jurisdiction.

(ii) Where no United States insurance groups operate in the non-United States jurisdiction, that non-United States jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This serves as the documentation otherwise required in paragraph (i) of this subdivision.

(b) The non-United States jurisdiction provides confirmation by a competent regulatory authority in that jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, must be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and that jurisdiction, including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

(5) A list of non-United States jurisdictions that recognize and accept the group capital calculation must be published through the NAIC Committee Process as follows:

(a) A list of jurisdictions that recognize and accept the group capital calculation pursuant to section 1325b(3)(d) of the act, MCL 500.1325b, is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list must clarify those situations in which a jurisdiction is exempted from filing under section 1325b(3)(d) of the act, MCL 500.1325b. To assist with a determination under section 1325b(4) of the act, MCL 500.1325b, the list must also identify whether a jurisdiction that is exempted under either sections 1325b(3)(c) and (d) of the act, MCL 500.1325b, requires a group capital filing for a United States based insurance group's operations in that non-United States jurisdiction.

(b) For a non-United States jurisdiction where no United States insurance groups operate, the confirmation provided to meet the requirement of subrule (4)(a)(ii) of this rule serves as support for recommendation to be published as a jurisdiction that recognizes and accepts the group capital calculation through the NAIC Committee Process.

(c) If the lead state commissioner makes a determination pursuant to section 1325b(3)(d) of the act, MCL 500.1325b, that differs from the NAIC List, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.

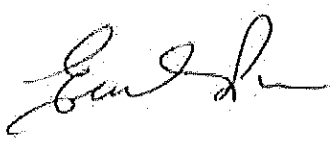
(d) Upon determination by the lead state commissioner that a non-United States jurisdiction no longer meets 1 or more of the requirements to recognize and accept the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-United States jurisdiction be removed from the list of jurisdictions that recognize and accepts the group capital calculation.

(6) If an insurance holding company consists solely of a reciprocal insurance exchange and its attorney as set forth in MCL 500.7200, et seq., the lead state commissioner shall exempt the ultimate controlling person from filing the annual group capital calculation.

In summary, RAF and NJ PURE believe that exempting stand-alone reciprocal exchanges and their AIFs from filing an annual Group Capital Calculation is the only fair and equitable solution, which is also consistent with the authority of DIFS and other state regulators.

RAF and NJ PURE appreciate the opportunity to provide these written comments and to be a part of this important process. Because we believe these comments sufficiently convey our position regarding the proposed new rule set, we do not intend to speak at the public hearing. Thank you again for your consideration.

Sincerely,



Eric Poe, Esq., CPA
Chief Executive Officer

214 Carnegie Center, Suite 101 • Princeton, NJ 08540
Tel: 609-520-9619 • Fax: 609-951-0091

RMC
Reciprocal Management Corp.

Attorney-In-Fact For
Citizens United Reciprocal Exchange
(CURE)

VIA ELECTRONIC MAIL

December 19, 2023

Michele Estrada
Administrative Assistant to the Director
of the Office of Research, Rules and Appeals
Department of Insurance and Financial Services
Office of Research, Rules, and Appeals
P.O. Box 30220
Lansing, MI 48909-7720

Re: **Comments on proposed rules to establish a new rule set based on the Insurance Holding Company System Model Regulation (#450) promulgated by the National Association of Insurance Commissioners (NAIC).**

Dear Ms. Estrada:

On behalf of Reciprocal Management Corporation, attorney-in-fact ("AIF") for CURE Auto Insurance ("CURE"), and CURE, thank you for the opportunity to provide comments on the proposed rules to establish a new rule set based on the Insurance Holding Company System Model Regulation (#450) promulgated by the National Association of Insurance Commissioners ("NAIC") in connection with Michigan's adoption of the Insurance Holding Company System Regulatory Act (the "Holding Act"). RMC and CURE believe that this rule set could impose additional burdens on stand-alone reciprocal insurance exchanges and their respective AIFs, which we believe will have a significant impact on reciprocal insurance exchanges doing business in Michigan. Specifically, RMC and CURE believe that the rule set should exempt "stand-alone" AIFs and their respective reciprocal exchanges from filing an annual "Group Capital Calculation," for the reasons discussed below.

Background on Reciprocal Exchanges:

To fully understand the potential effect of this new rule set on reciprocals and their AIFs, some background concerning the structure, formation, and purpose of reciprocal exchanges is vital. In the United States, there are three legal vehicles through which to provide insurance: (1) traditional for-profit stock companies; (2) mutual insurance companies; and (3) reciprocal exchanges. Though small in number, some of the world's best performing insurance entities are reciprocals, such as USAA, Farmers Insurance Exchange, and Erie Insurance Exchange. By statute, a reciprocal exchange separates the two traditional functions within a single insurance

company: the executive management company and the insurance operation itself. By doing so, it isolates the function of the insurance operation—the reciprocal exchange—allowing the reciprocal to be organically operated on a not-for-profit basis.

Indeed, avoiding the profit motive of traditional stock insurance companies was one of the primary reasons reciprocals were created. Each individual policyholder pays a percentage of their premium (the "AIF Fee") to the executive management company, the AIF. The AIF cannot, by statute, unilaterally increase its fees. Thus, the AIF's financial incentive is simply to make the reciprocal grow so the AIF can make profits. The only way to grow the reciprocal is to provide better rates or better service, which aligns perfectly with what the policyholder wants. This is why, traditionally, reciprocal exchanges thrived in "crisis markets," where the contributions collected from policyholders above their sound actuarial rates were still less than the over-inflated market rates charged by traditional insurance companies. In such unpredictable times, reciprocal exchanges serve a critical role in meeting crisis capacity needs for consumers, who simply cannot afford to pay the exorbitant prices charged by traditional insurance companies.

Despite the numerous advantages of reciprocals as an insurance entity, the ongoing viability of reciprocals is directly tied to the ability of the reciprocal to grow its pool of policyholders to a point where the risk of loss is sufficiently mitigated. Although it is overall beneficial to the policyholder that reciprocals cannot have outside stockholders who, in turn, can be enticed to profit from policyholders, it remains a challenge for reciprocals to generate the capital necessary solely from its own policyholders' contributions. Many state laws acknowledge this fact and accordingly hold reciprocals to more stringent financial guidelines than traditional insurance companies. See, e.g., N.J.S.A. 17:50-5 (liquidity ratio requirements for certain capital levels to be maintained above the standards required of other insurance entities).

It is important to note that the AIF is not an insurance entity and, therefore, the Department of Insurance and Financial Services ("DIFS") does not have statutorily-derived authority to conduct regulatory oversight of the AIF, other than in the AIF's capacity as a fiduciary for the reciprocal exchange. For instance, DIFS has no control or authority to determine the organizational structure of an AIF, or to set forth mandatory criteria an entity must meet to become an AIF. An AIF takes on no risk, and simply cannot be subject to insurance regulation any more than other non-insurance entities.

In this regard, the AIF's authority to act on behalf of the exchange is governed by the Power of Attorney ("POA"). As a prerequisite for an individual to obtain insurance from the reciprocal, he or she must execute an unrelated party contract with the AIF—the POA—that segregates the AIF from the not-for-profit reciprocal exchange. The policyholder's rights and obligations are statutorily prescribed and clearly set forth in the POA, a form which is filed with DIFS and which DIFS repeatedly reviews. Only the policyholder and the AIF are parties to the POA; the exchange (i.e., the entire collective group of policyholders itself) is not a party. The POA must be signed and executed by each individual policyholder, as the exchange is a product of individual

contracts executed by the AIF and the policyholders. The AIF does not have control over the terms of a reciprocal exchange, as evidenced by the fact that policyholder's signature is required. If the individual policyholder does not agree to the AIF Fee, or any other term of the POA, he/she is free to decline coverage and seek insurance from another carrier.

While it is true that some AIFs may be part of a larger insurance company holding system and, therefore, appropriately be subject to the Holding Act, a review of Michigan insurance statutes and accompanying regulations makes clear that AIFs are not generally within DIFS' purview and jurisdiction. This is especially true for "stand-alone" AIFs and reciprocal exchanges, consisting of only the AIF and the reciprocal, which are not part of a larger insurance company holding system.

Effect of the New Rule Set on Reciprocal Exchanges:

In light of the above, RMC and CURE believe that the proposed new rule set imposes undue obligations on "stand-alone" reciprocal exchanges and their AIFs, which are subject to the Holding Act only due to their affiliation with each other. As discussed, AIFs are not generally within the purview or jurisdiction of DIFS and are not subject to regulatory oversight by DIFS as a result.

The Group Capital Calculation, set forth in MCL 500.1325b and the accompanying proposed rule, R. 500.89, requires insurance company holding systems to report, on an annual basis, financial information of each entity within the holding company system, subject to various exceptions. The NAIC developed the current Group Capital Calculation methodology as an analytical tool for use by state regulators to assess group risks and capital adequacy within an insurance holding company system. The calculation includes information on potential risks to policyholders emanating from outside the insurance companies, as well as the location and sources of capital within the group.

The reasons for the Group Capital Calculation, as well as the potential concerns envisioned by NAIC, simply do not apply to stand-alone AIFs and their reciprocal exchanges. A reciprocal exchange is already required to report the same information to DIFS regardless of whether it is required to comply with the Holding Act. The AIF Fee—which is set forth in the POA signed by each individual policyholder and reported by the reciprocal exchange—is also known to DIFS. Otherwise, DIFS has no statutory or regulatory authority to inspect, review, or conduct oversight of any aspect of a stand-alone AIF's financial condition.

Accordingly, the Group Capital Calculation serves no purpose for stand-alone reciprocal exchanges and their AIFs, as it would not provide any new or different information concerning the financial health, risks, or capital adequacy of a reciprocal exchange—the insurance entity that DIFS has authority to regulate. Requiring a stand-alone AIF to provide additional information concerning its financial condition would allow state regulators to exert control over

a non-insurance entity that is simply not authorized by statute or regulation. It would also impose an undue and costly burden on stand-alone reciprocal exchanges and their AIFs to comply with the new, unnecessary reporting requirements, when all of the information relevant to state regulators is already reported in other formats.

Proposed Amendment to R. 500.89:

RMC proposes the following amendment to R. 500.89, which would exempt stand-alone reciprocal exchanges and their AIFs from complying with the annual Group Capital Calculation filings. The rule already exempts insurers who meet certain criteria from filing the report on an ongoing basis. Including an additional exemption for stand-alone reciprocals and their AIFs would be consistent with existing practices and is the only solution that avoids imposing undue and unnecessary requirements upon such entities.

R 500.89 Group capital calculation.

Rule 19. (1) If an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

(a) Has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,000,000.00.

(b) Has no insurers within its holding company structure that are domiciled outside of the United States or 1 of its territories.

(c) Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure.

(d) The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital calculation.

(e) The non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(2) If an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept instead of the group capital calculation a limited group capital filing if both of the following apply:

(a) The insurance holding company system has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,000,000.00.

(b) All of the following additional criteria are met: (i) Has no insurers within its holding company structure that are domiciled outside of the United States or 1 of its territories.

(ii) Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework.

(iii) The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state commissioner and the non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(3) For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to subrule (1) or (2) of this rule, the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the group capital calculation instructions, if any of the following criteria are met:

(a) An insurer within the insurance holding company system is in a risk-based capital action level event, as prescribed by the director in an order issued under section 438 of the act, MCL 500.438, or otherwise prescribed by the director, or a similar standard for a non-United States insurer.

(b) An insurer within the insurance holding company system meets 1 or more of the standards of an insurer determined to be in hazardous financial condition as established under section 436a of the act, MCL 500.436a.

(c) An insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(4) A non-United States jurisdiction is considered to recognize and accept the group capital calculation if it satisfies the following criteria: (a) With respect to an exemption described under section 1325b(3)(d) of the act, MCL 500.1325b, either of the following:

(i) The non-United States jurisdiction recognizes the United States state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in that jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program are subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and shall not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-United States jurisdiction.

(ii) Where no United States insurance groups operate in the non-United States jurisdiction, that non-United States jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This serves as the documentation otherwise required in paragraph (i) of this subdivision.

(b) The non-United States jurisdiction provides confirmation by a competent regulatory authority in that jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, must be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and that jurisdiction, including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

(5) A list of non-United States jurisdictions that recognize and accept the group capital calculation must be published through the NAIC Committee Process as follows:

(a) A list of jurisdictions that recognize and accept the group capital calculation pursuant to section 1325b(3)(d) of the act, MCL 500.1325b, is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list must clarify those situations in which a jurisdiction is exempted from filing under section 1325b(3)(d) of the act, MCL 500.1325b. To assist with a determination under section 1325b(4) of the act, MCL 500.1325b, the list must also identify whether a jurisdiction that is exempted under either sections 1325b(3)(c) and (d) of the act, MCL 500.1325b, requires a group capital filing for a United States based insurance group's operations in that non-United States jurisdiction.

(b) For a non-United States jurisdiction where no United States insurance groups operate, the confirmation provided to meet the requirement of subrule (4)(a)(ii) of this rule serves as support for recommendation to be published as a jurisdiction that recognizes and accepts the group capital calculation through the NAIC Committee Process.

(c) If the lead state commissioner makes a determination pursuant to section 1325b(3)(d) of the act, MCL 500.1325b, that differs from the NAIC List, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.

(d) Upon determination by the lead state commissioner that a non-United States jurisdiction no longer meets 1 or more of the requirements to recognize and accept the group capital calculation, the lead state commissioner may

provide a recommendation to the NAIC that the non-United States jurisdiction be removed from the list of jurisdictions that recognize and accepts the group capital calculation.

(6) If an insurance holding company consists solely of a reciprocal insurance exchange and its attorney as set forth in MCL 500.7200, et seq., the lead state commissioner shall exempt the ultimate controlling person from filing the annual group capital calculation.

In summary, RMC and CURE believe that exempting stand-alone reciprocal exchanges and their AIFs from filing an annual Group Capital Calculation is the only fair and equitable solution, which is also consistent with the authority of DIFS and other state regulators.

Finally, if these rules are passed without amendment, and non-insurance entities are compelled to submit to oversight by state agencies that have no statutory or regulatory authority over them, RMC and CURE are concerned that prompt legal action will be necessary to preserve the rights of stand-alone AIFs such as RMC. We believe the better course of action is for DIFS to acknowledge the unique structure of stand-alone reciprocal exchanges and exempt them from the Group Capital Calculation filing as set forth above.

RMC and CURE appreciate the opportunity to provide these written comments and to be a part of this important process. Because we believe these comments sufficiently convey our position regarding the proposed new rule set, we do not intend to speak at the public hearing. Thank you again for your consideration.

Sincerely,

Eric Poe, Esq., CPA
Chief Executive Officer