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January 23, 2005

Arlene Joyce, Senior Staff Counsel  
California Department of Insurance  
45 Fremont Street, 24<sup>th</sup> Floor  
San Francisco, CA 94105

**RE: Comments on Regulation File: RH01015731**

Dear Ms. Joyce:

Both the Pacific Association of Domestic Insurance Companies (PADIC) and the National Association of Mutual Insurance Companies (NAMIC) are providing this joint response and comments on the proposed regulation of reinsurance, file RH01015731.

PADIC members write approximately a \$1 billion in property and casualty premium almost exclusively in California. Because the vast majority of PADIC business is written in California, insurance regulation will have a greater impact on our members and their policyholders than foreign companies that write insurance throughout the country.

NAMIC is a full-service national trade association with more than 1,400 member companies that underwrite 43 percent (\$196 billion) of the property/casualty insurance premium in the United States. NAMIC membership includes four of the seven largest property/casualty insurance carriers in the nation, and every size regional, national and state specific property/casualty insurer, including hundreds of farm mutual insurance companies. NAMIC has 106 member insurance carriers doing business in the state of California, who write approximately 23% of the property/casualty insurance business in the state.

Both PADIC and NAMIC oppose the implementation of these proposed regulations. Our opposition to these proposed regulations focuses on four major areas:

- These regulations are not necessary and offer no appreciable benefit to the insurance consumer.
- These regulations, if implemented, have the potential to limit availability of reinsurance to small, domestic insurance companies (those that need it the most).
- There is a high probability that these regulations, as proposed, will raise the cost of reinsurance products for insurance carriers, which could ultimately increase premium rates for policyholders.
- These regulations could adversely impact insurance carriers' ability to secure reinsurance to handle natural disaster and/or terrorism related claims

### **These Regulations are not necessary in California**

While the NAIC has adopted a model regulation for reinsurance regulation, there are a growing number of experts, both within and outside the insurance industry, that question the necessity of such regulation. Historically, regulations are created and adopted to resolve a particular problem within the insurance industry or to deal with a potential problem. Yet there does not appear to be any evidence that insurance company insolvencies are on the increase, or at least to the extent that would warrant the adoption of these regulations.

Insolvencies occur on occasion and some of them may be related, in whole or in part to reinsurance transactions. However, there is no evidence to support the conclusion that any reinsurance carriers engage in any business practices that would lead to insolvency problems and pose a meaningful risk to the primary insurance market. Yet these regulations appear to be developed to resolve a problem that does not exist. The California insurance market place is in fine shape with ample availability of insurance products at competitive prices. Insurance companies continue to pay claims and invest in the California economy. Further, there are current administrative mechanisms in place within the California Division of Insurance (CDI) to prevent and detect insolvencies that could adversely impact the insurance consumer.

Moreover, the proposed regulations offer no discernable or appreciable benefit to the insurance consumer that would merit imposing new administrative burdens on insurance companies and reinsurance carriers. Since insurance overhead costs will have to increase to cover the expenses associated with complying with these new regulations, insurance carriers will be forced to increase insurance rates and/or decrease the level of customer services afforded to insurance consumers in order to fund these new administrative responsibilities.

### **These Regulations have the potential to limit reinsurance capacity in California**

Increased regulation of the reinsurance industry in California has the potential of creating reinsurance capacity limitations. These limitations would be felt most strongly by the small, domestic companies. With greater regulation, especially unnecessary regulation, reinsurers will be forced to reconsider whether it is a good business decision to participate in the California market and may focus their efforts elsewhere. If reinsurance carriers start to leave the California

insurance market, this will adversely impact the competitive nature of the reinsurance market, which will have the net effect of limiting the reinsurance capacity of the industry; will limit the variety, accessibility and cost of insurance products currently available in the market place; and will limit the number of policies available for certain insurance products.

The irony here is that the potential decrease in reinsurance capacity that these regulations may create will make it that much more difficult for the commissioner to move forward with his National Catastrophe Program in California. While there will be a strong need for increased catastrophe capacity, this potential capacity may be eliminated because of these proposed regulations.

### **These Regulations may increase insurance costs to California policyholders**

The California Department of Insurance itself has indicated that “Costs for reinsurance may increase” as a result of the implementation of these proposed regulations. There will be increased costs for the state to implement these regulations and increased administrative costs for insurance companies.

While neither PADIC nor NAMIC has had an opportunity to quantify these costs, particularly the increase in cost for the reinsurance product, the scope and extent of the economic impact of these proposed regulations, though real, are unknown at this time. Regardless of the exact amount of the economic burden created by these unnecessary regulations, the increased administrative costs associated with these proposed regulations will ultimately be paid by the insurance consumer in the form of higher premiums.

### **These regulations could adversely impact insurance carriers’ ability to secure reinsurance to handle natural disaster and/or terrorism related claims**

In light of the new financial responsibilities imposed on insurance carriers as a result of the Terrorism Risk Insurance Extension Act of 2005 (TRIEA) and the widespread natural disaster claims that the insurance industry has had to deal with this past year, it is imprudent to impose new regulations that could limit an insurance carrier’s reinsurance options. As recent terrorism and natural disaster events have taught us, the professional relationship between the insurance industry and reinsurance industry must be vibrant with competition in order to afford consumers the insurance protection they need to address these ever growing insurance realities. Thus, any regulation, especially one that offers no documented benefit to the insurance consumer like the ones presently proposed by the CDI, should be opposed as being an unreasonable impediment to market competition in the reinsurance industry.

### **Conclusion**

These proposed regulations, if implemented, will not be good for California insurance consumers. The regulations have the strong potential to limit capacity in the reinsurance market place which will needlessly limit the variety and number of insurance products sold in California. Moreover, Insurance premiums for the consumer will increase, because of increased

costs to the reinsurance company, reinsurance intermediary and increased administrative costs to the primary insurance company to implement these proposed regulations.

Both PADIC and NAMIC would recommend that the California Department of Insurance, rather than adopt these proposed regulations, agree to hold a workshop on these proposed regulations. A workshop would provide all interested parties an opportunity to study and develop specific information regarding the capacity and cost issues generated by these regulations and their impact on the California market place.

PADIC and NAMIC have attached a list of questions that relate to the alleged necessity of the proposed regulations, the desired CDI objectives of the regulations, and the purported benefits to the insurance consumer of implementing these regulations, that should be addressed by the CDI before the department moves forward with these regulations.

Respectfully submitted,

(Signature on file with CDI)  
Milo Pearson, Executive Director of PADIC

(Signature on file with CDI)  
Christian J. Rataj, State Affairs Manager for NAMIC