

FROM: W. Jay Branum, South Carolina Department of Insurance, Captive Division
TO: Distribution
SUBJECT: South Carolina's New Code of Conduct for Captive Managers –
Background Rationale & Commentary – Six Takeaways
Date: April 25, 2019

INTRODUCTION:

On the eve of the world's largest gathering of risk and insurance professionals in Boston – the annual RIMS conference – the South Carolina Department of Insurance has announced that it has adopted a Code of Conduct for captive managers, which Captive Director **Jay Branum** calls "an absolute first among the over three dozen state domiciles in the U.S. captive marketplace". Here Branum highlights six takeaways about the Code and its background rationale.

1. The impetus for the project was the recognition of a gap in the U.S. captive marketplace. There is no other codified statement of regulatory standards and expectations for captive managers *promulgated by a regulatory body* in the U.S. Nor is there a professional standard-setting and credentialing body for captive management practitioners as a profession, as the field of captive management is not a discrete profession *per se* in the same sense that the term "profession" applies to accountants, actuaries, and lawyers. This Code fills that gap.
2. The Code is the product of a highly inclusive and consultative process, which involved successive rounds of outreach to the management community, including the South Carolina Captive Insurance Association, over about a two-year period. My first draft of the Code bears the date September 1, 2016, and the final version is version 17, so it has been through many revisions, and has been vetted by senior representatives of management firms with appreciable numbers of South Carolina captives under management.

The final document incorporates some very constructive changes recommended by members of South Carolina's resident captive management community, and as a result, the final Code is a better document than would otherwise have been the case. We could not have been more gratified by the positive reception this effort received from the South Carolina captive management community.

3. The Code gives us an objective set of standards to apply in determining whether a manager is qualified to serve as an approved manager of captives domiciled in this state. It will help us distinguish between properly professional and competent management firms which are adequately experienced and resourced, and those which are not. It will also equip us with standards which we can cite in denying, suspending, or withdrawing such approval, in those exceptional cases where such action may be appropriate.

Of particular interest to captive owners as well as managers is the fact that the Code makes explicit both to managers and to their clients that managers have an *affirmative duty of compliance and cooperation with the SCDOI separate and apart from the captives' statutory duties of compliance and the managers' contractual duties to their clients*. It does this by requiring that all captive management contracts with SC captives contain "a provision obliging both the captive and the Captive Manager to cooperate fully with the Department.

4. I believe this Code will reinforce our reputation for thought leadership, depth of understanding of the captive business, and all-round excellence among U.S. domiciles – and not just by banging our own drum more loudly about being "business-friendly" like every other domicile, but by developing a well-thought-out practical framework that:
 - a. fills an unmet need,
 - b. strikes the right balance,
 - c. is fair and reasonable,
 - d. makes sense from both a business and a regulatory standpoint, and
 - e. is unique and unrivaled among U.S.-based domiciles.

It makes a statement that we have standards and expectations and demonstrates that we're serious about our regulatory responsibilities and not just a soft touch jurisdiction with virtual regulation characterized by illusory, low bar standards. It implicitly refutes any charge that we are engaged in a "race to the bottom". It shows that we attach importance to standards, and consider them to be helpful *both* to ourselves as regulators *and* to the managers, while stopping short of the overly formalistic step of embedding them in our statute.

5. The Code also expressly rescinds and replaces, in their entirety, two DOI pronouncements that have been an impediment to the further development of our domicile, namely:
 - **Bulletin 2008-03** dated March 28, 2008, and
 - **Statement of Policy: Principal Place of Business ("PPOB")**,

dated July 1, 2013.

In fact, our most recent captive legislation, H.4675 signed into law in May of 2018, changed the statutory definition of "Principal Place of Business" in such a way as to render these two policy statements inconsistent with the new statute, thus necessitating their rescission, and I considered a Code of Conduct to be the most effective instrument for accomplishing that.

6. I want to stress that *this Code is not harsh, overly prescriptive, or threatening to our captive managers*. On the contrary, it is benign and even-handed in spirit, tone, and substance. Most reputable managers are already adhering to the standards set forth in this Code, and will not find it onerous to comply. Many of them have sister operations in Bermuda which have been subject to a similar Code for many years.

This Code is very much in keeping with our continuing commitment to the captive industry and its stakeholders. We want to see the managers of South Carolina captives continue to grow, prosper, and invest in this state, and we believe this Code will enhance our captive ecosystem in such a way as to help us achieve that objective together.

WJB::25Apr2019