



OFFICE OF
INSURANCE COMMISSIONER

September 19, 2007

The Honorable Margarita Prentice
Washington State Senate
PO Box 40411
Olympia, WA 98504-0411


Dear Senator Prentice:

Thank you very much for your letter date June 14, 2007, regarding the alternative share insurance regulations that the Department of Financial Institutions (DFI) is adopting. Your letter was prompted by comments that the Office of the Insurance Commissioner (OIC) provided to DFI on the proposed regulations, in which the OIC stated that a private entity offering share insurance to credit unions is an insurer under the Insurance Code (Title 48 RCW). In your letter, you stated that you were Chair of the Senate Financial Institutions Committee when RCW 31.12.408 was enacted, and it was not your intention that an alternative share insurance program be subject to state insurance laws.

I asked my staff and legal counsel to re-examine the issue to determine if the alternative share insurance that is being proposed to be sold to credit unions in this state is exempt from state insurance laws. Chief Deputy Insurance Commissioner Mike Watson and Deputy Insurance Commissioner Jim Odiorne met with various stakeholders interested in the DFI regulations, including a representative from American Share Insurance (ASI) – an entity that is expected to apply to DFI for approval under the proposed regulations – and representatives from the banking community who have been following these issues. They have also consulted the Attorney General's Office on this issue.

While I understand that you did not expect share insurance to be regulated by both DFI and the OIC, there is no specific exemption for share insurance from state insurance laws. While RCW 31.12.408 imposes certain standards that an alternative share insurance program must meet for DFI approval, it does not automatically relieve the entity providing share insurance from all other applicable state laws, including state insurance laws.

Share insurance being offered by ASI is regulated in a variety of manners in different states. Ohio, ASI's domestic state, provides dual regulation through statute by its insurance commissioner and director of financial institutions. ASI operates in eight states in addition to Ohio. In most of those states, the regulation of share insurance by the insurance commissioner is expressly limited or excluded by law. There are agreements between ASI and state insurance regulators in two states. OIC staff inquired of one of the states about its agreement with ASI and came to the conclusion that an agreement without a clear regulatory framework is not a preferred means of regulation. Even assuming that the Washington OIC had the authority to enter into such an agreement, it would have to be consistent with state law.

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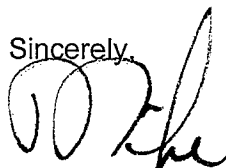
ASI has offered several reasons why its product should not be considered insurance, such as there is no transfer of risk, the payments to ASI are not premium, ASI is providing services not insurance, and the federal guaranty program is not regulated by the state insurance commissioner. However, private share insurance does meet the definition of "insurance" in RCW 48.01.040. Credit unions will be placing with the private share insurer large sums of money for the promise that, should a contingency occur, such as a default of the credit union, the insurer will cover the losses. The risk is spread among all of the credit unions that are covered under the private share insurance program.

The fact that there may be a single payment, the opportunity for refunds if there is no loss, or services provided by the insurer does not negate the nature of the transaction. It is not unusual in commercial types of insurance for there to be financial or service arrangements that do not typically exist in personal lines insurance. Finally, while the OIC recognizes that it does not have jurisdiction over the federally-created guaranty program, the alternative share insurance being proposed would be a transaction with a wholly private insurance entity doing business in this state. There is no substantive difference between a private share insurer and other private insurers doing business in Washington that are required to comply with the Insurance Code.

The Legislature could make clear the intention that you have expressed by creating an exemption for share insurance from insurance regulation either in the Insurance Code or in RCW 38.12.408. OIC staff are available to offer technical assistance on how that could be accomplished. I, too, am available at your convenience to discuss any next steps you are interested in pursuing.

I certainly respect your views on this matter and appreciate your sharing them with me. However, after carefully re-examining this issue, I believe that I would not be fulfilling my duty as Insurance Commissioner if I were to recognize an exemption for share insurance that does not have a clear basis in the law and is quite vulnerable to legal challenge.

Sincerely,



Mike Kreidler
Insurance Commissioner

cc: Scott Jarvis, Director, DFI
Christina Beusch, Assistant Attorney General
Gary Gardner
Jim Bricker
Denny Eliason
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Dennis R. Adams