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The Leading Provider of Captive Insurance Services



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OXFORD SUBMITS COMMENTS ON PROPOSED IRS AND TREASURY DEPARTMENT REGULATIONS

FOR IMMEDIATE RELEASE:

SPARKS, MD., June 14, 2023 - - Oxford Risk Management Group LLC submitted comments on regulations proposed by the Treasury Department and Internal Revenue Service with respect to disclosure and reporting obligations for certain captive insurance arrangements. The comments, filed by our attorneys at Caplin & Drysdale, are now available at the following website: <https://www.regulations.gov/docket/IRS-2023-0017/comments>.

The proposed regulations would designate some captive arrangements as “listed transactions” within the meaning of the tax laws, and others as “transactions of interest.” Two tests were proposed for these categories, a “loss ratio” test and a “financing” or loan-back test. If finalized, the regulations would require disclosures by captives and certain participants in transactions meeting the two tests.

Briefly, Oxford recommended that Treasury and the IRS: (1) should not use the “loss ratio” and “financing” tests because of the serious conceptual flaws underlying them, particularly that these approaches are inconsistent with how insurance actually works; (2) entirely abandon the effort to designate captive insurance transactions as *per se* abusive, listed transactions, because Congress has not empowered the IRS to undermine the statutes it passes; (3) at most, continue to require disclosures by labeling some captive arrangements as transactions of interest, under substantially different criteria subject to notice and comment; and/or (4) provide safe harbors from any reporting for certain captive insurance arrangement meeting alternative, improved criteria.

Oxford pointed out that its insurance program has been accepted as insurance by numerous state Departments of Insurance, other federal and state agencies, multiple federal and state courts, and many commercial businesses, banks, and hospitals. Oxford’s insurance carriers are, to our knowledge, the only ones in this captive industry to have received a Financial Strength Rating of “A” (Excellent) and a Long-Term Issuer Credit Rating of “a” (Excellent) from A.M. Best Company, one of the preeminent rating companies for the insurance industry.

One of Oxford’s customers, Three Puglisi Brothers LLC, also submitted comments on the proposed regulations. Oxford insures their family-owned agricultural business, Puglisi Egg Farms of Delaware LLC, against a number typical risks in farming that the traditional commercial market would not insure. To our knowledge they are the only taxpayers who have obtained favorable determinations from the U.S. Tax Court on the tax treatment of their small

captive insurance arrangement. Their comments are available at:
<https://www.regulations.gov/comment/IRS-2023-0017-0058>

Previously, the IRS had attempted rulemaking by issuing Notice 2016-66, which required additional reporting. The United States Supreme Court unanimously ruled that the IRS was required to follow the Administrative Procedures Act (APA) in rulemaking like this. The APA requires the IRS to publish proposed regulations, open a public comment period, then respond to the comments submitted.

Oxford does not give tax advice and cannot predict what Treasury and the IRS will do with respect to the proposed regulations. We urge our insureds to consult with their legal and/or tax advisors concerning these important developments.

Oxford is not publicly commenting further on the proposed regulations, however.

To learn more about Oxford, please visit www.oxfordrmg.com/.

About Oxford Risk Management Group

Founded in 2010, Oxford has earned the reputation as a leader in providing forward-thinking captive insurance solutions for our clients. Oxford has implemented over 1,000 total captives with a variety of structures and a broad range of insurance coverages. Oxford's internal team of seasoned insurance and financial services professionals works together with the best-in-class external service providers (including actuaries, accountants, and attorneys) to provide bespoke alternative risk management solutions for our clients.

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