IN THE MATTER OF REVISED POWER OF ATTORNEY OF RECIPROCAL MANAGEMENT CORPORATION	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISON Docket No. A CIVIL ACTION ON MOTION FOR LEAVE TO APPEAL FROM THE AGENCY DECISION ENTERED ON JUNE 28, 2024 BY THE STATE OF NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE

BRIEF & APPENDIX OF RECIPROCAL MANAGEMENT CORP. IN SUPPORT OF MOTION FOR LEAVE TO APPEAL

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PRELIMINARY STATEMENT

This appeal presents a simple issue: can an administrative agency force a regulated class to submit to an approval process regarding a central aspect of its business, when the enabling statute grants no such authority to the agency? The answer is clearly no. It is beyond dispute that administrative agencies are bound by the mandates of statutes, and may not act in violation or outside the scope of the enabling legislation or regulations. This is especially true in insurance, where predictability and stability in the law are not only fundamental to maintaining a viable business, but also critical to ensuring that the public has access to affordable, trustworthy insurance products.

Here, the New Jersey Department of Banking and Insurance (the "Department") has cast aside and attempted to expand the unambiguous direction of the legislature under the Reciprocal Exchange Act, N.J.S.A. 17:50-1 et. seq. (the "REA"), by requiring a pre-approval process for a document, where the REA explicitly states that the document only needs to be filed, and is absent of any requirement that it be approved. The REA is the *exclusive* means by which reciprocal exchanges and their attorneys-in-fact ("AIF") can be regulated, mandating that reciprocals and their AIFs "shall be regulated by this act, and by no other statute of this State relating to insurance, except as herein otherwise provided." Reciprocal Management Corporation ("RMC") is the individually-appointed exclusive AIF for

Citizens United Reciprocal Exchange ("CURE"), a not-for-profit reciprocal exchange formed under the REA. On January 10, 2024, RMC, on behalf of CURE, filed with the Department a revised Power-of-Attorney ("POA")—an agreement between individual subscribers and the AIF that sets forth certain rights and obligations—for use with new subscribers. RMC followed the letter of the law in doing so, as the REA requires the POA be **filed**, and nothing more. On January 15, 2024, the Department advised RMC that "the POA must be filed **and approved** by the Commissioner in order to become effective." (4a) (emphasis added).

The statute at issue, N.J.S.A. 17:50-3(d), mandates a filing obligation, only. It does not impose any pre-approval or pre-screening discretion on the Department as a condition to *filing*. The Department's expansive regulatory powers appear in *other* statutory and regulatory provisions, including the ability to revoke an insurance exchange's certificate of authority after a proper showing of improprieties. See N.J.S.A. 17:50-11. If the Legislature wanted to confer pre-approval power to the Department—as its counterparts in other states have done—it easily could have done so. Yet, for months, the Department has refused to *file* RMC's revised POA pending receipt of extrinsic support and rationale to underpin the document. This has left RMC in the untenable position of either acquiescing to a requirement not countenanced by statute, or being foreclosed from operating under its revised POA based on the requirements in N.J.S.A. 17:50-10,11. Absent immediate appellate

review and correction of this threshold procedural issue, RMC will be improperly confined to this perpetual holding pattern.

As the record shows, RMC has requested, time and again, that the Department allow it to implement its revised POA as required by statute or, alternatively, to issue a final determination regarding the Department's position on the revised POA. The Department has refused to take either action, unless and until RMC complies with the Department's unsupported demand for information. The Department's stated authority to request this information has also shifted over the course of several months – initially, the Department refused to identify *any* specific authority, then cited to N.J.S.A. 17:50-10, and most recently to conditions set forth in an Order approving the acquisition of RMC. The Department cannot simply create its own expansive powers when the statute delegating such authority to the Department is clear and unambiguous. This is exactly the type of administrative overreach the Supreme Court of the United States found impermissible in its recent holding, Loper Bright Enterprises v. Raimondo, which decried agencies "chang[ing] course even when Congress has given them no power to do so" and leaving those attempting to plan around agency action in an "eternal fog of uncertainty." Accordingly, RMC seeks this Court's intervention to resolve a straightforward issue of statutory interpretation regarding the scope of the Department's authority. The Department's disregard of statutory authority and due process cannot stand and must be reversed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

This motion presents a discrete question of statutory interpretation, namely—whether a state administrative agency may claim for itself a power that is pointedly omitted from the enabling statute. More specifically, whether the Department may assert the power to pre-screen and "pre-approve" a POA submitted by the attorney-in-facts of a reciprocal insurance exchange, notwithstanding the statutory language that simply requires such a document be *filed*. See N.J.S.A. 17:50-3. The inescapable answer is that the Department cannot unilaterally expand its statutory powers. Equally this has the practical consequence of holding reciprocal insurance exchanges in indefinite limbo pending acquiescence to impermissible, nebulous, and unstated approval criteria that the Department alone sets and applies, apparently on an *ad hoc* basis. This standoff necessitates immediate appellate review, as there is no other way for an aggrieved applicant to break the logjam if the Department will not even take the most basic step of *filing* a POA.

RMC, as the AIF for CURE, has the power to exchange insurance contracts under the REA, pursuant to the POA as conferred by N.J.S.A. 17:50-7. The REA is the exclusive means for the regulation of reciprocal insurance exchanges. See N.J.S.A. 17:50-1 ("Such contracts and the exchange thereof and such subscribers,

[1]The Procedural History and Statement of Facts are so intertwined in the present matter that they have been combined for clarity and the convenience of the court.

their attorneys in fact and representatives shall be regulated by this act, **and by no other statute of this State relating to insurance**, except as herein otherwise provided.") (emphasis added).

A. RMC Submits a Revised POA For Filing Pursuant to N.J.S.A. 17:50-3

The initial genesis of this dispute arose on January 10, 2024, when RMC submitted a revision to its POA to the Department for filing. (1a-3a). By the terms of the REA, such POA documents are to be "filed" with the Department: "[s] uch attorney shall file with the Commissioner of Banking and Insurance . . . **A certified copy of the power of attorney or other authorization of such attorney under or by which such attorney is to effect or exchange such insurance contracts; []**" N.J.S.A. 17:50-3 (emphasis added); see also N.J.A.C. 11:1-28.6.

B. With No Legal Authority, DOBI States that Pre-Approval of the POA is Required

In response, on January 15, 2024, the Acting Assistant Commissioner of the Office of Solvency Regulation declined to file the revised POA at that point, demanding extrinsic documentation and support for the document:

> **Pursuant to New Jersey law, including but not limited to N.J.S.A. 17:50-1 to -19, the POA must be filed and approved by the Commissioner in order to become effective.** Pursuant to N.J.S.A. 17:50-10, CURE and RMC have previously sought the Department's approval of amendments or revisions to the POA and provided the reasons and supporting material for such changes.
>
> To the extent CURE and RMC would like the Department to consider amendments or revisions to the POA, **please provide the reasons and**

> **supporting materials for its review. The POA has not undergone review by the Department, <u>and therefore will not become effective, until the Department has provided its express approval.</u>**

(4a) (emphasis added). On January 27, 2024, in relevant part, RMC responded:

> We have undertaken a thorough review of your letter to ensure RMC is in compliance with all provisions of the Reciprocal Act [citation omitted]. We note that in your January 15, 2024 letter, you allege that the Reciprocal Act provides that "the POA must be filed <u>and approved</u> by the commissioner" (emphasis added). Despite your clear statement of what the Reciprocal Act provides, we have thoroughly scoured the language of the statute, which included a costly review by three outside law firms, and simply cannot find any provision by which the Reciprocal Act requires "approval" of the POA. []

(5a-7a).

The Department responded on February 2, 2024. Absent from this response is any statutory support for the basis of the stated need to procure the Department's "approval" of the POA as a pre-condition to filing. The Department's response was:

> Further to the Department's letter, dated January 15, 2024, and to the extent CURE and RMC would like to move forward with amendments or revisions to the POA, please provide the reasons and supporting materials for the Department's review. This should include, **but is not necessarily limited to:**
>
> 1) A marked version of the POA which reflects the changes proposed to be made;
>
> 2) Rationale for the change(s) related to each numbered paragraph of the POA; and,
>
> 3) Supporting material for each change, including, but limited to, the related financial projections of CURE (e.g., increase in surplus contributions required by CURE).

> Until the materials requested above are received, the POA cannot undergo the review that is necessary for the Department to approve the proposed changes. As previously stated, **the POA will not become effective until the Department has provided its express approval**.

(8a) (emphasis added). Again, in refusing to accept the filing of the revised POA, the Department is preventing it from taking effect.

On February 16, 2024, RMC advised that it would assume the Department has made a final agency determination that it will not accept the revised POA for filing unless the Department either "1) confirms in writing that it is withdrawing its position that the revised power-of-attorney must be "approved"; or 2) specifically identifies the relevant authority on which this demand is premised, as well as the written standards used by DOBI when deciding whether to grant such approval []." (10a.) RMC requested a response by the close of business on February 23, 2024, lest it have no alternative but to consider this a final agency action. (10a).

On February 23, 2024, the Department responded, but it simply repeated its prior correspondence, and specifically declined to withdraw its pre-conditions:

> **Pursuant to New Jersey law, including but not limited to N.J.S.A. 17:50-1 to -19, the POA is a document that must be filed with and approved by the Department.** Depending upon the substance of the revisions, other laws and requirements may apply. **Over the years, RMC has filed with the Department, for its approval, proposed amendments and revisions to the POA.** In doing so, RMC provided the reasons and supporting material for the changes it sought to make to the POA – the same information the Department now seeks for its review of the latest proposed changes to the POA.

> These filings included, but were not limited to, proposed changes in 2004 and 2006 to the new business surplus contributions to NJ CURE as reflected in the POA. Each of these filings was supported by the rationale for the changes and detailed financial projections.
>
> Consistent with past practice and applicable requirements, until the materials requested above are received, the POA cannot undergo the review that is necessary for the Department to approve the proposed changes. **As previously stated, the POA will not become effective until the Department has provided its express approval.**

(11a-12a) (emphasis added).

C. RMC Appeals DOBI's Ultra Vires Actions as a Final Agency Decision

At that point, RMC filed a Notice of Appeal from the February 23, 2024 agency inaction. (13a). On April 15, 2024, this Court sent a non-finality letter requesting the parties to provide a letter of explanation regarding the finality of the Department's actions. (17a). Of note, in the Department's letter to the Court dated May 14, 2024, the Department cited, for the first time, the alleged basis for its authority to require pre-approval of the POA and request extrinsic information from RMC. (38a). Namely, the Department represented to this Court that, "[p]ursuant to N.J.S.A. 17:50-10, "[f]or the purposes or organization, and upon issuance of permit by the Commissioner of Banking and Insurance and under such conditions as he may impose, powers of attorney . . . may be solicited without compliance with the provisions of [the REA]" . . . . Here, the Commissioner has conditioned RMC's amendments to the POA on the need to obtain the Commissioner's review and approval of the proposed changes pursuant to the [REA]." (42a). Ultimately, on

May 21, 2024, via order of this Court in the matter found at A-2261-23, this court dismissed that appeal as non-final, without prejudice to RMC's ability to seek leave to appeal the February 23, 2024 determination at issue. (45a).

D. Post-Appeal, RMC Continues to Correspond with DOBI

On May 23, 2024, RMC again wrote to the Department to resolve the matter, while advising again that it would not provide any additional materials to the Department in connection with the filing of its revised POA. (46a). The Department responded by letter of May 31, 2024 reiterating its view that it had the statutory authority to demand extrinsic evidence in connection with the filing of Revised Power of Attorney. (50a). For the first time, the Department also stated that Order A22-13, approving a transaction between RMC and MGG Investment Group, LP (the "Order"), provided a contractual basis for its position that it had authority to approve the POA, and the Department also raised unsubstantiated "concern for CURE's solvency" as an additional basis (51a). On June 13, 2024, RMC responded one final time to challenge the newly manufactured statutory authority the Department claimed it possessed. (52a). On June 28, 2024, the Department responded, with no substantive change to its position. (54a).

E. DOBI Manufactures New Conditions to Attempt to Justify its Ultra Vires Actions

In its letter of June 28, 2024, the Department identified—again, for the first time—Conditions 1 and 6 of the Order as forming the basis for its apparent authority

to review and approve the POA prior to its implementation. (55a). Condition 1 of the Order simply states that RMC and MGG comply with all relevant laws. (55a). Condition 6 of the Order relates to the Department's approval of a "material change in business," which concerns liquidating, selling, or merging entities, as well as other material changes not effected in the ordinary course of business. (55a).

F. RMC Submits the Within Motion for Leave to File Interlocutory Appeal

RMC submits that the history in this matter, as most recently encapsulated in the June 28, 2024 letter, confirms that this is a final determination by DOBI that it will *not* file a Revised POA absent some type of nebulous "preapproval" process, including review of extrinsic documentation. However, in deference to this Court's determination that the prior Notice of Appeal from the February 23, 2024 agency determination was not "final," and after exhausting additional efforts to amicably resolve this issue with the Department, RMC respectfully brings this motion for leave to take an interlocutory appeal, reserving the right to file a Notice of Appeal within 45 days of the same determination, to place the matter before this Court.

LEGAL ARGUMENT

I. INTERLOCUTORY APPEAL TO ENSURE IMMEDIATE APPELLATE REVIEW IS PROCEDURALLY APPROPRIATE.

Under R. 2:5-6(a), an application for leave to appeal from interlocutory order or decision of a state administrative agency must be made by motion within twenty days of service of the administrative action. Interlocutory review is "highly

discretionary" and an exception to the general rule favoring a single uninterrupted proceeding in the lower court or administrative agency. See generally Grow Co., Inc. v. Chokshi, 403 N.J. Super. 443, 461 (App. Div. 2008).

This Court may grant leave to appeal "in the interest of justice." R. 2:2-4. While piecemeal litigation is disfavored, "leave to appeal may be appropriate if it would resolve a fundamental procedural issue and thereby prevent the court and the parties from embarking on an improper or unnecessary course of litigation." Brundage v. Estate of Carambio, 195 N.J. 575, 599 (2008) (citation omitted). The movant must establish that the desired appeal has merit and that justice calls for appellate intervention. Id.

A. Leave to appeal is uniquely appropriate in this instance, as this dispute concerns a threshold procedural issue regarding the scope of the Department's statutory authority.

Importantly, **this appeal is not an effort to litigate the merits of any of the Department's purported concerns about RMC's operations**. There is no dispute that the Department can properly exercise its regulatory function, within the confines of its statutory authority, via any number of permissible oversight mechanisms. What the Department cannot do, however, is refuse to *file* a POA pending some type of fabricated and legally baseless "pre-approval" process. The question presented by this appeal is solely one of statutory interpretation—whether the Department has the power to indefinitely defer filing a POA pending some type of undefined and

nonexistent pre-approval process. Unless there is appellate intervention, the parties remain at an impasse, and the applicant suffers the fundamental injustice of being unable to move forward to address alleged improprieties due to the Department's unilateral ability to simply stop the process in its tracks. This is untenable.

1. An administrative agency may act only within the confines of the authority conferred by the legislature.

Although administrative agency power can be express or implied, it remains that "an agency may not give itself authority not legislatively delegated." Dragon v. New Jersey Dep't of Envtl. Prot., 405 N.J. Super. 478, 493 (App. Div. 2009) (citation omitted). Courts may imply "those incidental powers as are necessary to effectuate fully the legislative intent." New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 562 (1978) (citation omitted). Put another way, "the agency 'may not under the guise of interpretation. . .give the statute any greater effect than its language allows.'" In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 489 (2004). The agency cannot be the final arbiter of the scope of its own authority. See generally 2 AM. JUR. 2D ADMINISTRATIVE LAW § 67 ("Agencies cannot by interpretation enlarge the scope of or change a properly enacted statute. An agency cannot modify, abridge, or otherwise change the statutory provisions under which it acquires authority unless the statutes expressly grant it that power. Although an administrative agency has the authority and duty to determine its own limits of

statutory authority, it is the function of the judiciary to finally decide the limits of the authority of the agency.") (citations omitted). Put more simply, "it is the responsibility of a reviewing court to ensure that an agency's administrative actions do not exceed its legislatively conferred powers." In re Virtua-W. Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008).

In interpreting an enabling statute, extrinsic evidence as an interpretative should not be considered by the Court if the statutory language is unambiguous. See In re Passaic Cnty. Utilities Auth. Petition Requesting Determination of Fin. Difficulty & Application for Refinancing Approval, 164 N.J. 270, 299 (2000). That is, "the literal words of a statute, if clear, mark the starting and ending point of the analysis." In re Plan for Abolition of Council on Affordable Hous., 214 N.J. 444, 468 (2013).[2] It follows that the Court "may **not** rewrite a statute or **add language that the Legislature omitted**." State v. Munafo, 222 N.J. 480, 488 (2015) (emphasis added) (citation omitted).[3] The importance of hewing to the statutory limits of an

[2] The Department's contention that, in 1989, 2004, and 2006 RMC provided "supporting material" for changes to its Power-of-Attorney is wholly immaterial. Even taking that contention at face value, extrinsic evidence of a handful of prior dealings taking place over a three-decade period cannot be considered when construing an unambiguous statute. Any claimed acquiescence by providing additional information in 1989, 2004, and 2006 does not re-write the statute or waive RMC's rights to challenge the extent of the Department's statutory power.

[3] Here, as discussed infra, the relevant statutory provision is unambiguous. However, even if there were some arguable, alleged ambiguity, the Department should not be accorded any special deference in resolving the threshold question of *its own*

agency's authority are not theoretical. It is a fundamental safeguard. See United States v. Morton Salt Co., 338 U.S. 632, 644 (1950) (observing, under the federal statutory counterpart, that "[t]he Administrative Procedure Act was framed against a background of rapid expansion of the administrative process as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices. It created safeguards even narrower than the constitutional ones, against arbitrary official encroachment on private rights.").

2. Threshold determinations of agency authority are appropriately reviewed at the outset, rather than forcing an agency constituent to acquiesce to a potential agency overreach solely to obtain a "final" determination.

While interlocutory appeals are admittedly disfavored, resolution of a "fundamental procedural issue" that may terminate the controversy is appropriately done in the context of an interlocutory appeal. Brundage, 195 N.J. at 599. Issues that may elude appellate review are also appropriate candidates for interlocutory consideration. See Bass ex rel. Will of Bass v. DeVink, 336 N.J. Super. 450, 455

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authority. Cf. Loper Bright Enterprises v. Raimondo, 2024 WL 3208360, at *17 (U.S. June 28, 2024) ("For those reasons, delegating ultimate interpretive authority to agencies is simply not necessary to ensure that the resolution of statutory ambiguities is well informed by subject matter expertise. The better presumption is therefore that Congress expects courts to do their ordinary job of interpreting statutes, with due respect for the views of the Executive Branch.").

(App. Div. 2001) (despite appellant's consent to the judgment at issue, the Court considered the merits of a motion to stay, observing '[h]ad plaintiff moved for leave to appeal, we might have granted that application to insure that the stay order would not elude appellate review.")

RMC respectfully maintains that, from its perspective, this is a case of state agency *inaction*—namely, the refusal of the Department to file a properly revised and submitted POA. As such, the Department's stated refusal on February 3, 2024, alone, should have been sufficient for a direct appeal and Motion for Summary Disposition. See In re Failure by the Dep't of Banking & Ins. to Transmit a Proposed Dental Fee Schedule to OAL, 336 N.J. Super. 253, 261 (App. Div. 2001). However, this Court determined that the February 23, 2024 refusal to file the revised POA was not final. (45a). Informed by that determination, RMC again attempted to engage with the Department through June 2024, explicitly stating that it would *not* provide extrinsic information in connection with the mere *filing* of the revised POA as this demand was beyond the statutory authority of the Department.

On June 28, 2024, the Department reiterated its refusal to file the revised POA until its (undefined) pre-approval process was fulfilled. So, for all practical purposes, RMC's ability to operate under the revised POA has been preemptively rejected. RMC is out of options and respectfully requests immediate interlocutory review. RMC has no choice *other than* to accept the Department's position and oblige its

demand as part of the overarching effort to obtain a "final" determination, *or* to remain in a perpetual stalemate on the discrete question as to whether this request is within the Department's statutory prerogative.

II. SUBSTANTIVELY, THIS COURT SHOULD REJECT DOBI'S POSITION BECAUSE THE REA CONFIRMS THAT THE DEPARTMENT IS CLAIMING AUTHORITY BEYOND WHAT THE LEGISLATURE CONFERRED

A. The Legislature's omission of any "approval" power in connection with the filing of a POA forecloses the Department from exercising any such power.

The Department has taken an unsupported categorical position that RMC cannot *file* its revised POA unless and until it explains the rationale for the revisions to the satisfaction of the Department to receive some type of amorphous "approval." This undefined power does not appear anywhere in the statute. Title 17, Chapter 50 is the exclusive regulation of reciprocal insurance exchanges:

> Individuals, partnerships, trustees and all corporations of this State, herein designated "subscribers," are hereby authorized to exchange reciprocal or interinsurance contracts with each other and with individuals, partnerships, trustees and corporations of other States, districts, provinces and countries, for any or all of the kinds of business for which a company may be formed or authorized to transact under the provisions of chapter seventeen of Title 17 of the Revised Statutes, except life insurance.
> Such contracts and the exchange thereof and such subscribers, their attorneys in fact and representatives **shall be regulated by this act, and by no other statute of this State relating to insurance, except as herein otherwise provided**

N.J.S.A. 17:50-1(emphasis added)

The statute, itself, requires merely that POA documents be *filed*: "[s] uch attorney shall file with the Commissioner of Banking and Insurance . . . **A certified copy of the power of attorney or other authorization of such attorney under or by which such attorney is to effect or exchange such insurance contracts; []"** N.J.S.A. 17:50-3 (emphasis added)

As a general principle, "where the Legislature makes express mention of one thing, the exclusion of others is implied." Shapiro v. Essex Cnty. Bd. of Chosen Freeholders, 177 N.J. Super. 87, 94 (Law Div. 1980), aff'd, 183 N.J. Super. 24 (App. Div. 1982), aff'd, 91 N.J. 430 (1982) (citation omitted). Courts may not "rewrite a plainly-written enactment of the Legislature nor presume that the Legislature intended something other than that expressed by way of the plain language." *O'Connell v. State*, 171 N.J. 484, 488 (2002) (citation omitted). When "there exists reasonable doubt as to whether such power is vested in the administrative body, the power is denied." Matter of Closing of Jamesburg High Sch., Sch. Dist. of Borough of Jamesburg, Middlesex Cnty., 83 N.J. 540, 549 (1980) (citation omitted).

N.J.S.A. 17:50-3(d) is plainly written and self-limiting. The Legislature included a plethora of disclosure and reporting requirements under *other* provisions of the REA. Exchanges are obligated to annually make a "report, under oath, to the Commissioner of Banking and Insurance of this State for each calendar year in such form as he may prescribe, showing the financial condition of affairs at the office

where such contracts are issued, and shall at any reasonable time furnish such additional information and reports as may be required by said commissioner []. N.J.S.A. 17:50-8.

Axiomatically, "an administrative interpretation which attempts to add to a statute something which is not there can furnish no sustenance to the enactment." Serv. Armament Co. v. Hyland, 70 N.J. 550, 563 (1976) (citation omitted). Had the Legislature *wanted* to confer the *additional* authority of pre-screening and pre-approving POA documents as a condition of filing, the Department, it could (and would) easily have done so. Where *approval* of the POA is required, state legislatures have been explicit. See 215 Ill. Comp. Stat. Ann. 5/71 ("The documents and papers so delivered to the Director **may be approved or disapproved by the Director**, and the attorney-in-fact is entitled to a hearing, [].") (emphasis added).[4]

[4] See also Mass. Gen. Laws Ann. ch. 175, § 94D(e) (West) (requiring a domestic exchange to file "[a]n exact copy of the form of power of attorney authorizing the attorney in fact to effect the exchanging of insurance provided for and which as to domestic exchanges, **shall be subject to the approval of the commissioner**.") (emphasis added); 18 Del. C. § 5708(b) ("The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and **no such power or agreement shall be used or be effective in this State until approved by the Commissioner**.") (emphasis added); Ga. Code Ann. § 33-17-11(d) ("The terms of any power of attorney or agreement collateral to such power shall be reasonable and equitable and **shall be subject to review and approval** by the Commissioner.") (emphasis added); Ky. Rev. Stat. Ann. § 304.27-080(4) ("The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and **no such power or agreement, or any amendment thereof, shall be used or be effective in this state until approved by the commissioner**.") (emphasis added); Me. Rev. Stat. tit. 24-A, § 3858(4); Nev. Rev. Stat. Ann. § 694B.080(4) (Accord);

The New Jersey Legislature did ***not*** include language akin to the plethora of states which opted to explicitly include *approval* authority in conjunction with the filing of a POA. See N.J.S.A. 17:50-3(d). Its silence on this score is determinative.

Similarly, the Department's alleged basis for its authority set forth in its May 14, 2024, letter to the Court is equally unavailing. The Department stated:

> Under the Reciprocal Exchange Act, N.J.S.A. 17:50-1 to -19 . . . , the POA is subject to continuing approval by the Commissioner beginning with the formation of the Exchange. Pursuant to N.J.S.A. 17:50-10, "[f]or the purposes of organization, and upon issuance of permit by the Commissioner of Banking and Insurance and under such conditions as he may impose, powers of attorney . . . may be solicited without compliance with the provisions of this act" . . . . Here, the Commissioner has conditioned RMC's amendments to the POA on the need to obtain the Commissioner's review and approval of the proposed changes pursuant to the Act.

(42a). This interpretation is simply illogical and at odds with the plain language of the REA. First, N.J.S.A. 17:50-10 does not repeal or vitiate N.J.S.A. 17:50-3, which merely requires that a POA be filed. The Department is not seeking to impose "conditions" on RMC based upon concerns as to the terms of its two-page revised POA. It simply refuses to file it, at all, without identifying what concerns it harbors over the terms of the POA, or why those terms are allegedly in violation of the REA.

Okla. Stat. Ann. tit. 36, § 2910(D); Vt. Stat. Ann. tit. 8, § 4838(d) (Accord); Wash. Rev. Code Ann. § 48.10.120(D) (Accord); Wyo. Stat. Ann. § 26-27-109(d) (Accord).

Second, N.J.S.A. 17:50-10 discusses penalties for violations of the REA. The second paragraph of this section, which the Department cites as the basis for its authority, merely recognizes that certain actions may need to be taken, that are necessarily in violation of the REA, during the organization of an exchange, before a certificate of authority is ever issued. It is entirely possible—indeed, extremely likely—that an entity in the process of forming a reciprocal exchange and applying for a certificate of authority may not yet comply with every aspect of the REA.[5] The REA recognizes this fact and allows some flexibility during the organizational phase, which may or may not include conditions imposed by the Commissioner prior to the issuance of a certificate of authority. The Legislature did not intend to discourage the formation of reciprocal exchanges by subjecting individuals to penalties during this process. The Department's interpretation that N.J.S.A 17:50-10 somehow refers to POAs that are not in compliance with the REA or confers a power of "continuing approval" of the POA to the Department is, frankly, wrong. Under

[5] For instance, N.J.S.A. 17:50-3(f) requires that "[i]n the case of automobile insurance, applications shall have been made for indemnity upon at least one thousand motor vehicles or for insurance aggregating not less than one and one-half million dollars ($1,500,000.00) represented by executed contracts or bona fide applications to become concurrently effective on any or all classes of automobile insurance effected by said subscribers through said attorney[.]" Collecting this number of applicants for insurance with a new company is no small feat. Requiring an entity to be fully formed and entirely compliant with the REA at the time they solicit the first application of insurance is unrealistic and nonsensical.

this reasoning, the Commissioner would have unchecked discretion to impose "conditions" on an Exchange in virtually every aspect of its business.

If the Department believes that the revised POA is in violation of the REA—which it is not—it has statutorily prescribed means to enforce its position. Although the Department would like to create its own procedures to enforce its interpretation of the REA, it cannot do so absent express direction from the legislature.

B. The Department has any number of alternative, statutorily authorized means of regulating reciprocal insurance exchanges to fulfill its role, confirming that this self-assumed power is neither necessary nor incidental to its function.

The REA also provides robust means for the Department to monitor and regulate the activity and financial condition of insurance exchanges in service of its regulatory function. For example, the AIF must maintain a general deposit, file an annual report of its financial condition, and it cannot issue insurance contracts until it procures a "Certificate of Authority" from the Department evidencing compliance with the REA. N.J.S.A. 17:50-6, 8, 11. The administrative code provisions regarding the formation of a reciprocal insurance exchange do not contemplate the Department going beyond the "four corners" of the POA, itself. N.J.A.C. 11:1-28.6 When applying for a Certificate of Authority, the Department may require audited financial statements, a copy of the organization's proposed by-laws and an organizational chart, plan of operations, and financial projections. N.J.A.C. 11:1-28.9.

The puporported authority to pre-approve (and, therein, to preemptively reject) POA documents is not an "inicdental" power that is "reasonably necessary or appropriate to effectuate the specific delegation." New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 562 (1978) (citation omitted). Quite the opposite, it is *unnecessary* for the Department to fulfill its statutory mandate, because the Department has a panopoly of other, *statutorily authorized* means of sufficiently regulating insurance Exchanges.[6] If the Department has a specific issue with how RMC, or any other Exchange, conducts its business, the appropriate (and statutorily authorized) course is to identify that issue and demand the specific financial information through the proper statutory channels outlined above. In the event the Department believes it discovers improprieties, it can invoke N.J.S.A. 17:50-11 to suspend or revoke the exchange's certificate of authority.

C. The lack of any objective standards or guidelines for the Department's purported "pre-approval" process *perforce* renders it inherently arbitrary and capricious, violating RMC's fundamental due process rights.

The Department identified no specific statutory non-conformity with the text of the revised POA, nor did it articulate the standards by which this information would be judged to decide whether, and if so when, it would "file" the document and

[6] Here, again, if the Legislature felt this power was necessary, it would have conferred it, as state legislatures in roughly 20 other states have done. See supra page 18.

permit RMC to implement it. This, alone, confirms that this "approval" process is subjective and arbitrary; consequently, immediate appellate review is appropriate. An administrative agency must be guided by objective standards that are readily available to the public. See In re N.J.A.C. 7:1B-1.1 Et Seq., 431 N.J. Super. 100, 128 (App. Div. 2013) ("It is well-settled that a rule that does not contain a clear or objectively ascertainable standard may not be upheld.") (citation omitted). Put another way, "it is by now a settled principle that administrative agencies, particularly where the underlying statute is silent, should 'articulate the standards and principles that govern their discretionary decisions in as much detail as possible.'" Lower Main St. Associates v. New Jersey Hous. & Mortgage Fin. Agency, 114 N.J. 226, 235 (1989) (quoting Crema v. New Jersey Dep't of Envtl. Protection, 94 N.J. 286, 301 (1983)).

This has due process implications. That is, "due process requires some standards, both substantive and procedural, to control agency discretion." Crema v. New Jersey Dep't of Envtl. Prot., 94 N.J. 286, 301 (1983) (citation and quotation marks omitted). The deference afforded administrative agencies in applying duties that are otherwise within their statutory powers are nevertheless bounded by constitutional due process constraints. See Gill v. N.J. Dep't of Banking & Ins., 404 N.J. Super. 1, 12 (App. Div. 2008). The Department demanded "support" and a "rationale" for each change as a precondition of "filing" the revised POA – laying

aside the fact that DOBI has no authority to request such information, even if it did, the Department offers *no guidance* or standards as to how that information will be evaluated. This is essentially no standard at all. For example, what factors or scoring criteria would render RMC's "support" to be adequate or sufficient? Is RMC's revised POA being comparatively measured against other insurance exchanges, a model POA promulgated by the Department, or something else altogether? How long will the Department take to complete this undefined review process? How many individuals participate in the process, and who renders the ultimate decision? If the Department ultimately rejects the filing, what recourse does RMC have? Neither RMC nor any other reciprocal or AIF in this State should be required to guess what amorphous standard it may be held to by the Department in the complete absence of statutory language conferring such authority on the Department.

There are no standards, procedural or substantive, to temper the Department's discretion in conjunction with this purported authority to pre-screen POA documents prior to filing. Crema, 94 N.J. at 301. An administrative agency must "articulate the standards and principles that govern their discretionary decisions in as much detail as possible.'" Lower Main St. Associates, 114 N.J. at 235 (citation omitted).

Finally, with regard to the Department's new and unfounded reliance on Condition 1 and Condition 6 of the Order as a basis to require pre-approval of the POA, such reliance is clearly misplaced. First, the Department has not identified

how the revised POA violates any applicable laws pursuant to Condition 1. Second, Condition 6 of the Order relates to the Department's approval of a "material change in business," which concerns liquidating, selling, or merging entities, as well as other material changes not effected in the ordinary course of business. Clearly, the revised POA does not implicate Condition 6. RMC, as a fiduciary appointed by each individual subscriber through the POA, is empowered to take executory actions on behalf of the exchange as a whole. Building surplus through increased surplus contributions is one such action taken in the ordinary course of business, which serves to bolster the solvency of the exchange and solely for the benefit of the exchange. The Department's allegation that such an action somehow creates "solvency concerns" is a pretext to support its untenable position regarding the POA, when the Department has no authority to do so under the plain meaning of the REA.

CONCLUSION

For the foregoing reasons, this Court should grant RMC's Motion for Leave to Appeal and order the Department to file RMC's revised POA.

Respectfully submitted,

McCORMICK & PRIORE, P.C.

BY: */s/ Robert J. Cahall*
Robert J. Cahall, Esquire
Attorneys for Movant
Reciprocal Management Corp.

Dated: July 18, 2024

IN THE MATTER OF REVISED POWER OF ATTORNEY OF RECIPROCAL MANAGEMENT CORPORATION	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISON Docket No. CIVIL ACTION ON MOTION FOR LEAVE TO APPEAL FROM THE AGENCY DECISION ENTERED ON JUNE 28, 2024 BY THE STATE OF NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE

APPENDIX OF RECIPROCAL MANAGEMENT CORP. IN SUPPORT OF MOTION FOR LEAVE TO APPEAL

Robert J. Cahall, Esquire (#011492010)
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Phone: (609)-716-9550
rcahall@mccormickpriore.com
Attorneys for Reciprocal Management Corp.

From: Les Yesner
Sent: Wednesday, January 10, 2024 3:03 PM
To: Cross, Camellia [DOBI]
Cc: Mechaiel, Amal [DOBI]; Jason Lee
Subject: CURE Revised Power of Attorney

Hi Camellia,

Attached please find a revised Power of Attorney for use with all new policyholders in New Jersey who join the exchange beginning February 15, 2024 onward.

Regards,

Les Yesner

CFO, Reciprocal Management Corp.

Attorney-In-Fact for CURE Auto Insurance

609 608-7631

POWER OF ATTORNEY

1. The undersigned subscriber HEREBY offers to exchange reciprocal insurance contracts with other subscribers at the Citizens United Reciprocal Exchange (CURE, hereinafter called the "Exchange"), organized pursuant to N.J.S.A. 17:50-1 et seq., and hereby appoints Reciprocal Management Corporation (RMC), a New Jersey corporation, as Attorney-in-Fact, through whom to exchange reciprocal insurance contracts with others in the name of the Exchange. The location of the office of the Attorney-in-Fact for the Exchange is Princeton, New Jersey, but may be changed by the Attorney-in-Fact upon notice to the subscriber and in compliance with any requirements of the Secretary of State and the Department of Banking & Insurance.
2. Subscriber understands and agrees that the reciprocal insurance contracts to be exchanged hereunder are non -assessable as provided for in N.J.S.A. 17:50-7 and that the Exchange shall have at the time of the issuance of a reciprocal insurance contract to subscriber, and shall thereafter maintain, a surplus of at least $750,000.
3. Subscriber agrees to pay, in addition to premiums, an amount equal to 15% of the subscriber's total policy term premium for each policy term of membership, as a surplus contribution, for the benefit and protection of all subscribers. Return of surplus contributions can occur only after withdrawal from the Exchange and only with the approval of the Attorney -in-Fact and the Commissioner of Banking and Insurance. In any event, such return cannot be authorized prior to the satisfaction of the surplus requirements of the Exchange valued at the next following year-end valuation of assets and reserves.
4. Subscriber agrees to pay Attorney-in-Fact an "organizational charge" equal to 1% of subscriber's total policy term premium during each of subscriber's first four years of membership in the Exchange. Such amounts shall be used initially to pay the start -up charge of the Attorney-in-Fact for its services in forming, conducting initial solicitation, and obtaining a license for the Exchange. After the Attorney-in-Fact has received full payment of the start-up charge plus accrued interest it will credit all subsequently paid "organizational charges" to the surplus account of the Exchange for the benefit of all policyholders.
5. Subscriber authorizes Attorney-in-Fact, on subscriber's behalf, to issue, effect, modify and terminate reciprocal insurance contracts containing such terms and conditions as Attorney-in-Fact deems suitable for the purpose of exchanging with other subscribers any and all kinds of reciprocal insurance contracts for which the Exchange is authorized by law; to perform solicitation, underwriting, classification and rating of reciprocal insurance contracts; to collect monies due; to manage, invest and reinvest the funds of Exchange; to borrow money in the name of the Exchange; to give, waive or receive all notices and proofs of loss; to settle losses and claims; to effect reinsurance; to accept and authorize others to accept services of process and appear in behalf of subscriber in any suits, actions, or proceedings; to perform every lawful and appropriate act not herein specified that the subscriber or subscribers could individually or collectively perform in relation to contracts herein authorized; to enter into contracts with other corporations, individuals, or partnerships to perform one or more of the duties set forth above, such as, but not limited to, marketing and solicitation, claims handling, actuarial services, investment counseling; and to have such other powers and duties as are or may be required to properly and efficiently manage the affairs of the Exchange and to act on behalf of the subscriber.
6. Subscriber specifically authorizes the Attorney-in-Fact to act in subscriber's behalf and as the representative of subscriber in concert with all other subscribers, in any legal matter including any class actions which directly or individually involve matters of insurance or finance that have or may have, in the opinion of the Attorney-in-Fact, an adverse effect on the Exchange and constitutes an appropriate action for the benefit of the Exchange. Subscriber agrees that the costs of any such action shall be paid in full by the Exchange.
7. Subscriber authorizes Attorney-in-Fact, at its sole discretion, to return, or accrue for the benefit of each subscriber, savings realized from the exchange of contracts and the management of the Exchange and its funds and, for the purpose of apportioning savings between subscribers, Attorney-in-Fact shall divide subscribers by kinds of contracts exchanged, such as automobile or homeowners.
8. Subscriber authorizes payment of 12.5% of total policy term written premiums as compensation to the Attorney-in-Fact for overall management of the Exchange including, but without limitation, the provision of senior management, at the attorney's sole cost, for functions such as marketing and solicitation, underwriting, claims handling, internal legal and financial accounting, and regulatory compliance. By way of this authorization, subscriber acknowledges that, with respect to this provision, the Exchange is acting as a collection agency on behalf of the Attorney-in-Fact for this percentage of the subscriber's premiums, and that the services provided by the Attorney-in-Fact on behalf of the Exchange are for the purpose of managing each subscriber's individual risk as the subscriber enters into the Exchange with the other subscribers.
9. Subscriber authorizes Attorney-in-Fact to use the remaining portion of premium deposits and investment income derived from the funds of the Exchange (a) to establish loss and unearned premium reserves; (b) to pay losses and loss adjustment expenses; (c) to pay costs required for reinsurance premiums and expenses; fees for legal, actuarial, accounting and other consulting services; investment expenses; taxes; license fees and other fees; membership fees and costs of services of rating bureaus and trade associations; costs of bonding as required; costs of independent audits and regulatory examinations; costs of assessments for the Guaranty Fund or Unsatisfied Claim and Judgment Fund, or any other charges imposed by any regulatory or government agency of New Jersey or of the United States; for support services necessary for the functions identified in paragraph 8, and such other costs as may be necessary for the proper and efficient operation of the Exchange; and (d) together with paid-in surplus contributions, to maintain required surplus levels for the Exchange.
10. Subscriber understands and agrees that subscriber's liability incurred hereunder shall be individual and several and shall not be joint.
11. Subscriber agrees that no officer or advisor of the Attorney-in-Fact or the Exchange shall be personally liable to the Exchange or

its subscribers for any breach of duty owed to the Exchange or its subscribers, provided however that this provision shall not relieve an officer or advisor from liability for any breach of duty based on an act or omission (a) in breach of such person's duty of loyalty to the Exchange and it subscribers; (b) not done in good faith or involving a knowing violation of law; or (c) resulting in receipt by such person of an improper personal benefit. Such officers and advisors of the Attorney -in-Fact or the Exchange shall be entitled to indemnification and advancement of expenses subject to the same exceptions recited above. Subscriber is aware and agrees that the purpose of this provision is to give to such officers and advisors the same protection afforded by statute to officers and directors of for-profit corporations, not-for-profit corporations, banks, savings and loans and insurance companies domiciled in the State of New Jersey.

12. As always, subscribers are unrelated parties who must execute this Power of Attorney upon their desire to secure insurance through the Exchange. Subscriber agrees that this Power of Attorney establishes only a two-party relationship between the subscriber and the Attorney-in-Fact, as the Exchange is simply the mechanism through which the contracts are exchanged. Subscriber further agrees that by entering into this Power of Attorney, subscriber is doing so as an unrelated party to the Attorney-in-Fact, and that, by entering into this Power of Attorney, subscriber has not entered into an agreement with the Exchange, as a collective whole, which will only occur when, and if, subscriber's application for insurance has been approved and subscriber has an active policy with the Exchange.
13. Subscriber agrees that this power of attorney is expressly limited to the uses and purposes herein expressed and to no other. This power of attorney shall remain in full force and effect, unless and until a modified form is required by the Attorney -in-Fact, so long as the subscriber remains a member in good standing of the Exchange. The power of attorney may be terminated by subscriber, or by the Attorney-in-Fact, by the termination of all reciprocal insurance contracts of the subscriber to which it applies, subject to the provisions of N.J.S.A. 17:50-1 et seq. and the reciprocal insurance contracts. However, in respect to any claims involving the reciprocal insurance contract of subscriber and any other matter existing between the subscriber and the Exchange, or with third parties, the power of attorney is considered to be coupled with an interest and shall not be terminated by the subscriber until such matter or matters shall be finally settled or satisfied.

I hereby agree to the provisions of the foregoing Power of Attorney, which shall take effect and bind me only when my application is accepted and I become a subscriber of CURE.

I hereby declare that the statements on this application are true and request CURE to issue the reciprocal insurance contract applied for in reliance thereon and at rates based on these facts. I authorize the driving records OF ALL DRIVERS to be checked through the State Division of Motor Vehicles.

I affirm that I reside/domicile in New Jersey, I understand that I am eligible to be a subscriber / policyholder with CURE only if I remain a resident/domiciliary of the State of New Jersey. I understand and agree that when or if I no longer meet this requirement my reciprocal insurance contract will be invalid.

I acknowledge the only members who currently reside/domicile in my household are listed in this application, and if any additional person(s) become new residents/domiciliaries of my household, I will notify CURE in writing prior to such time.

I acknowledge that RMC, the Attorney-in-Fact for the subscribers of CURE, has informed me that the submission of complete and accurate application information to CURE is necessary for proper underwriting and rating of my application. I further acknowledge that the completeness and accuracy of this information is of the essence for the exchange of reciprocal insurance contract to be effective. I understand and agree that any material misrepresentation or omission by me in this application will void coverage from the inception date of the contract and/or cause the contract to be cancelled in accordance with any applicable laws.

I understand that any person who knowingly makes an application for Motor Vehicle Insurance Coverage containing any statement that the applicant resides or is domiciled in this State when, in fact, that applicant resides or is domiciled in a state other than this State is subject to criminal and civil penalties. I understand that any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

Signature of Applicant / Subscriber _____ **Date** _____

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PHIL MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

JUSTIN ZIMMERMAN
Acting Commissioner

January 15, 2024

Leslie H. Yesner, Chief Financial Officer
Citizens United Reciprocal Exchange
Reciprocal Management Corporation
214 Carnegie Center, Suite 301
Princeton, New Jersey 08540

Re: Citizens United Reciprocal Exchange ("CURE")
Reciprocal Management Corporation ("RMC")
Amended (Revised) Power of Attorney

Dear Mr. Yesner:

The New Jersey Department of Banking and Insurance ("Department") received an amended (revised) Power of Attorney ("POA") from you in an email dated, January 10, 2024, to Camellia (Cross) Jasper. In the email, you state "find a revised Power of Attorney for use with all new policyholders in New Jersey who join the exchange beginning February 15, 2024 onward."

Pursuant to New Jersey law, including but not limited to N.J.S.A. 17:50-1 to -19, the POA must be filed and approved by the Commissioner in order to become effective. Pursuant to N.J.S.A. 17:50-10, CURE and RMC have previously sought the Department's approval of amendments or revisions to the POA and provided the reasons and supporting material for such changes.

To the extent CURE and RMC would like the Department to consider amendments or revisions to the POA, please provide the reasons and supporting materials for its review. The POA has not undergone review by the Department, and therefore will not become effective, until the Department has provided its express approval.

Regards,

David Wolf
Acting Assistant Commissioner, Office of Solvency Regulation
New Jersey Department of Banking and Insurance

cc: Jason Lee [CURE]
Paul Lupo, Amal Mechaiel, Camellia Jasper, Carmen Williams [Department]

RMC
Reciprocal Management Corp.

January 27, 2024

Acting Assistant Commissioner
Office of Solvency Regulation
New Jersey Department of Banking and Insurance
PO Box 325
Trenton, NJ 08625-0325

Dear Assistant Commissioner Wolf:

I am in receipt of your letter dated January 15, 2024, through which you responded to Reciprocal Management Corp.'s ("RMC") January 10, 2024 filing of its revised Power of Attorney ("POA") for use with all new policyholders in New Jersey who join the exchange beginning February 15, 2024.

At the outset, it is important to recognize that the Power Of Attorney is a document that is at the heart of how a reciprocal exchange functions as a not-for-profit alternative to stock and mutual insurance companies – a standard put in place by the New Jersey legislature in 1945. If one reads each section of N.J.S.A. 17:50-1 et seq. (the "Reciprocal Act"), one can clearly see the painstaking detail and thought the state legislature invested when drafting it. Without question the most prominent and unambiguous language in the statute is set forth in the very first section of the Act where it states, "contracts and the exchange thereof and such subscribers, their attorneys in fact and representatives **shall be regulated by this act, and by no other statute of this State relating to insurance**, except as herein otherwise provided." N.J.S.A. 17:50-1.

In light of this explicit language contained in Section 1, it is surprising that you have decided to cite the Reciprocal Act in your recent letter as the basis for your correspondence demanding that we gain approval from your department in order to use the new Power Of Attorney – in particular because Section 1 of the Reciprocal Act was simply ignored by the Department when it stated that the New Jersey Holding Company Act, N.J.S.A. 17:27A-1, et seq., (the "Holding Company Act") applied to RMC and CURE and the entire state. Your reliance on the Reciprocal Act as a basis for state action or enforcement on the one hand, without any express language to support your position, while refusing to comply with the Reciprocal Act's clear and express language on the other, is not only a contradiction – it is the definition of arbitrary and capricious.

With regard to the substance of the revised POA, the revisions were carefully crafted with the primary intent of providing additional surplus to the Exchange for the benefit of all subscribers. This is specifically prescribed by N.J.S.A. 17:50-7 and is being done on behalf of all CURE subscribers. As you know, RMC has a fiduciary duty to CURE's

subscribers, having been appointed by each individual unrelated subscriber in accordance with their statutory rights under the Reciprocal Act and their constitutional rights as citizens of the United States.

RMC is taking this action of increasing the annual surplus contributions by 5% for new policyholders after February 15, 2024 in order to improve CURE's overall financial solvency position. The increase would only impact new policyholders who find the out-of-pocket costs for insurance more affordable, and who wish to appoint RMC as their Attorney-In-Fact upon entrance into the reciprocal. These policyholders have the opportunity to choose from among many other carriers, and are not even known to CURE or RMC until they independently decide to join CURE.

As the Department is well aware, the additionnel surplus contributions addressed by the amendments to the POA are added directly to CURE's surplus once new subscribers join the exchange, and these funds are exclusively and entirely used for the benefit of its policyholders. Any delay in the implementation of the revised POA will cause irreparable harm to all of CURE's subscribers, as the solvency of the exchange is less well capitalized and thus more at risk.

We have undertaken a thorough review of your letter to ensure RMC is in compliance with all provisions of the Reciprocal Act. We note that in your January 15, 2024 letter, you allege that the Reciprocal Act provides that "the POA must be filed and approved by the commissioner" (emphasis added). Despite your clear statement of what the Reciprocal Act provides, we have thoroughly scoured the language of the statute, which included a costly review by three outside law firms, and simply cannot find any provision by which the Reciprocal Act requires "approval" of the POA. In this regard, we also reviewed RMC's recently amended POA in Michigan, which has a reciprocal exchange act that is substantially similar to New Jersey's, and the Michigan regulators agreed that the POA did not need prior approval.

As a general matter, the Legislature certainly knows how to confer particular powers within a statutory scheme, such as the power to approve or disapprove a filing. Examples of legislative direction which explicitly confers approval-type powers upon the Department include, among other items, the ability to approve or disapprove rating systems (see e.g. N.J.S.A. 17:29A-14). We hope you would agree that, if the POA required approval of the Department, such a requirement would be found within the explicit language of the Reciprocal Act.

Finally, I am compelled to highlight your curious and specific citation to N.J.S.A. 17:50-10. This section is entitled *"**Misdemeanor,** solicitation of powers of attorney and applications for insurance contract; injunction, appointment of receiver*" and simply provides the penalties if one were to fail to comply with the Reciprocal Act. Oddly, your letter not only fails to contain a specific provision of the law that RMC has failed to comply with by filing and using the new POA, but also cites only to this particular section of the Reciprocal Act that discusses a "penalty" – namely a misdemeanor and a fine. I cannot help but believe this specific citation is being used as a threat on the part of the

Department, apparently to coerce RMC into accepting the Department's unsubstantiated proclamation that the POA must be approved prior to use.

By taking this action, the Department is unlawfully interfering with RMC's and its subscribers' rights to freely enter into contracts without proper justification, and extraordinarily, this action is directly detrimental to the financial health of the reciprocal exchange itself.

In summary, we believe the revised POA is compliant with all the relevant requirements of the Reciprocal Act. To the extent the Department believes it is deficient, we request that the Department specifically state how it fails to comply with the Act and provide any relevant supporting legal authority. To the extent practicable, we ask that the Department timely advise of its position prior to February 5, 2024. As you know, RMC intends for the revised POA to become effective on February 15, 2024, and requires at least ten (10) days to prepare the POA to go live with new policies. Therefore, delay damages would begin to accrue if, as of February 5th, there remains uncertainty as to the implementation of the POA.

We look forward to your response.

Regards,

Eric S. Poe, Esq., CPA
Chief Executive Officer

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PHIL MURPHY
Governor

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Lt. Governor

JUSTIN ZIMMERMAN
Acting Commissioner

February 2, 2024

Eric Poe, Chief Executive Officer
Citizens United Reciprocal Exchange
Reciprocal Management Corporation
214 Carnegie Center, Suite 301
Princeton, New Jersey 08540

Re: Citizens United Reciprocal Exchange ("CURE")
Reciprocal Management Corporation ("RMC")
Amended (Revised) Power of Attorney

Dear Mr. Poe:

The New Jersey Department of Banking and Insurance ("Department") received your letter dated January 29, 2024 regarding an amended (revised) Power of Attorney ("POA"),

Further to the Department's letter, dated January 15, 2024, and to the extent CURE and RMC would like to move forward with amendments or revisions to the POA, please provide the reasons and supporting materials for the Department's review. This should include, but is not necessarily limited to:

1) A marked version of the POA which reflects the changes proposed to be made;
2) Rationale for the change(s) related to each numbered paragraph of the POA; and,
3) Supporting material for each change, including, but limited to, the related financial projections of CURE (e.g., increase in surplus contributions required by CURE).

Until the materials requested above are received, the POA cannot undergo the review that is necessary for the Department to approve the proposed changes. As previously stated, the POA will not become effective until the Department has provided its express approval.

Regards,

David Wolf
Acting Assistant Commissioner, Office of Solvency Regulation
New Jersey Department of Banking and Insurance

cc: Christopher Lowe [RMC]
Paul Lupo, Amal Mechaiel, Camellia Jasper, Carmen Williams [Department]

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February 16, 2024

VIA EMAIL: david.wolf@dobi.nj.gov
David Wolf
Acting Assistant Commissioner
Office of Solvency Regulation
New Jersey Department of
Banking and Insurance
P.O. Box 325
Trenton, New Jersey 08625

Re: Citizens United Reciprocal Exchange ("CURE")
Reciprocal Management Corporation ("RMC")
Amended (Revised) Power of Attorney

Dear Mr. Wolf:

The law firm of McCormick & Priore, P.C. represents Reciprocal Management Corporation ("RMC") the attorney-in-fact for Citizens United Reciprocal Exchange ("CURE"). We write in response to your letter of February 2, 2024, which in turn was in response to Erie Poe's letter of January 29, 2024.

Given RMC's most recent request that DOBI identify any statutory or regulatory authority for your position, and DOBI's failure to provide any in response, RMC can only conclude that either: 1) there is no such statutory or other authority; or 2) DOBI has opted not to disclose the authority on which it premised its position that changes to a power-of-attorney must be pre-approved.

This is particularly noteworthy given that the failure to identify any such authority necessarily leaves unanswered the standards upon which DOBI would be reviewing the submissions for approval. To this end, RMC likewise requests that DOBI identify or provide the written standards used by DOBI when completing the review and approval process described in your letter of February 2, 2024.

The statute is straightforward. It does not set forth any requirement that a revised power of attorney be approved by DOBI. Instead, it simply must be filed. *See* N.J.S.A. 17:50-3(d) (requiring the attorney-in-fact to file, among other things, "[a] certified copy of the power of attorney or other authorization of such attorney under or by which such attorney is to effect or exchange such insurance contracts."). As DOBI is the highest regulatory agency in this industry, authority and rationale for its demand that RMC also submit to a pre-approval process in addition to the

statutory mandate should be readily available. If in fact no such authority exists, then RMC respectfully requests that DOBI withdraw its prior request without further undue delay.

The ongoing and, in RMC's assessment, wholly unnecessary delay in the implementation of the revised power-of-attorney is prejudicial and financially detrimental to RMC and CURE. Therefore, unless DOBI either 1) confirms in writing that it is withdrawing its position that the revised power-of-attorney must be "approved"; or 2) specifically identifies the relevant authority on which this demand is premised, as well as the written standards used by DOBI when deciding whether to grant such approval by the close of business on February 23, 2024, RMC will have no alternative but to consider DOBI's stated position that the revised power-of-attorney is not effective until approved, to be a final agency decision.

RMC is a member of the constituency that is impacted by DOBI's decisions and actions. As such, it is attempting, in good faith, to engage in a productive dialogue to efficiently resolve a difference of position so that it can move forward in the operation of its business. In the absence of any substantive engagement from DOBI on this simple issue, particularly in light of the ongoing irreparable harm to the subscribers of the Exchange, RMC can only infer that DOBI's current unsupportable position is retaliatory and/or ultra vires conduct that is informed or motivated by RMC's unrelated challenge to DOBI's recently issued Bulletin No. 22-11, which, as DOBI is aware, RMC contends was improperly or unlawfully done. In that event, RMC will pursue all legal remedies available to it, including appellate review of this final agency decision.

We thank you for your attention to this matter.

Respectfully,

/s/ *Robert J. Cahall*

Robert J. Cahall

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PHIL MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

JUSTIN ZIMMERMAN
Acting Commissioner

February 23, 2024

Eric Poe, Chief Executive Officer via email at epoe@cure.com
Citizens United Reciprocal Exchange
Reciprocal Management Corporation
214 Carnegie Center, Suite 301
Princeton, New Jersey 08540

Copy to:
Robert J. Cahall, Esq., McCormick and Priore, P.C. via email at RCahall@mccormickpriore.com

Re: Citizens United Reciprocal Exchange
Reciprocal Management Corporation
Amended (Revised) Power of Attorney

Dear Mr. Poe:

The New Jersey Department of Banking and Insurance ("Department") received a letter dated February 16, 2024, from Robert Cahall, Esq., regarding an amended (revised) Power of Attorney ("POA"). Mr. Cahall states that his letter is in response to the Department's letter of February 2, 2024, which in turn was in response to your letter of January 29, 2024.

Further to the Department's letters, dated January 15, 2024 and February 2, 2024, and to the extent Citizens United Reciprocal Exchange ("CURE") and Reciprocal Management Corporation ("RMC") (CURE's Attorney-in-Fact) would like to amend or revise the POA, please provide the Department with the rationale and supporting materials for such changes. As previously requested, this should include, but is not necessarily limited to:

1) A marked version of the POA which reflects the proposed changes;
2) Rationale for the change(s) related to each numbered paragraph of the POA; and,
3) Supporting material for each change, including, but limited to, the related financial projections of CURE (e.g., increase in surplus contributions required by CURE).

The Department's request is in accord with past precedent. On August 7, 1989, RMC requested permission pursuant to N.J.S.A. 17:50-10 to solicit POAs and applications of automobile insurance on behalf of New Jersey Citizens United Reciprocal Exchange ("NJ CURE"[1]) and submitted the

[1] Renamed Citizens United Reciprocal Exchange in 2007 pursuant to a filing by RMC which included a request to review and approve the revised POA.

required documents, including the POA, for review and approval of the Department. On October 6, 1989, the Department approved the application of RMC, as Attorney-in-Fact for NJ CURE, to solicit POAs and applications for reciprocal insurance contracts pursuant to N.J.S.A. 17:50-10. After soliciting and collecting the POAs and applications for insurance on more than 1,000 motor vehicles as required by N.J.S.A. 17:50-3(f), RMC filed an application, on behalf of NJ CURE, for a certificate of authority as required by N.J.S.A. 17:50-11. The submission included a Declaration of the Attorney in Fact as required by N.J.S.A. 17:50-3 and the POA. The POA authorizes the Attorney in Fact to perform business functions for the exchange. The Department issued the certificate of authority on March 29, 1990.

Pursuant to New Jersey law, including but not limited to N.J.S.A. 17:50-1 to -19, the POA is a document that must be filed with and approved by the Department. Depending upon the substance of the revisions, other laws and requirements may apply. Over the years, RMC has filed with the Department, for its approval, proposed amendments and revisions to the POA. In doing so, RMC provided the reasons and supporting material for the changes it sought to make to the POA – the same information the Department now seeks for its review of the latest proposed changes to the POA.

These filings included, but were not limited to, proposed changes in 2004 and 2006 to the new business surplus contributions to NJ CURE as reflected in the POA. Each of these filings was supported by the rationale for the changes and detailed financial projections.

Consistent with past practice and applicable requirements, until the materials requested above are received, the POA cannot undergo the review that is necessary for the Department to approve the proposed changes. As previously stated, the POA will not become effective until the Department has provided its express approval.

Regards,

David Wolf
Acting Assistant Commissioner, Office of Solvency Regulation
New Jersey Department of Banking and Insurance

cc: Christopher Lowe [RMC]
Paul Lupo, Amal Mechaiel, Camellia Jasper, Carmen Williams [Department]

New Jersey Judiciary
Superior Court - Appellate Division

Notice of Appeal

TITLE IN FULL (AS CAPTIONED BELOW)	ATTORNEY / LAW FIRM / PRO SE LITIGANT
IN THE MATTER OF REVISED POWER OF ATTORNEY OF RECIPROCAL MANAGEMENT CORPORATION	NAME **ROBERT J CAHALL, Esq.**
	STREET ADDRESS **300 CARNEGIE CTR STE 160**
	CITY **PRINCETON** / STATE **NJ** / ZIP **08540** / PHONE NUMBER **609-716-9550**
	EMAIL ADDRESS **rcahall@mccormickpriore.com** **ljones@mccormickpriore.com (*)**

ON APPEAL FROM

TRIAL COURT JUDGE	TRIAL COURT OR STATE AGENCY	TRIAL COURT OR AGENCY NUMBER
	BANKING & INSURANCE	**N/A**

Notice is hereby given that **RECIPROCAL MANAGEMENT CORPORATION** appeals to the Appellate Division from a ☐ Judgment or ☐ Order entered on _____ in the ☐ Civil ☐ Criminal or ☐ Family Part of the Superior Court ☐ Tax Court or from a

■ State Agency decision entered on **02/23/2024**

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a ☐ conviction ☐ post judgment motion ☐ post-conviction relief ☐ pre-trial detention
If post-conviction relief, is it the ☐ 1st ☐ 2nd ☐ other _____ (specify)

Is defendant incarcerated? ☐ Yes ☐ No

Was bail granted or the sentence or disposition stayed? ☐ Yes ☐ No

If in custody, name the place of confinement:

Defendant was represented below by:

☐ Public Defender ☐ self ☐ private counsel _____ (specify)

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge		
Trial Court Division Manager		
Tax Court Administrator		
State Agency	**BANKING & INSURANCE**	**03/29/2024**
Attorney General or Attorney for other Governmental body pursuant to *R.* 2:5-1(b)		**03/29/2024**

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
BANKING & INSURANCE	**MELISSA H RAKSA, Esq.** **ATTORNEY GENERAL LAW** **25 MARKET ST** **PO BOX 112** **TRENTON NJ 08625-0112** **609-984-3900** **dol.appeals@law.njoag.gov** **(DOLAPPEALS@LPS.STATE.NJ.US;** **DOLAPPEALS@LPS.STATE.NJ.US)**	**03/29/2024**

Attached transcript request form has been served where applicable on the following:

	Name	Date of Service
Transcript Office		
Clerk of the Tax Court		
State Agency		

Exempt from submitting the transcript request form due to the following:

■ There is no verbatim record for this appeal.

☐ Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).

List the date(s) of the trial or hearing:

☐ Motion for abbreviation of transcript filed with the court or agency below. Attach copy.

☐ Motion for transcripts at public expense filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by *N.J.S.A.* 22A:2 has been paid.

03/29/2024
Date

s/ **ROBERT J CAHALL, Esq.**
Signature of Attorney or Pro Se Litigant

(*) truncated due to space limit. Please find full information in the additional pages of the form.

			rcahall@mccormickpriore.com;
BAR ID #	**011492010**	EMAIL ADDRESS	**ljones@mccormickpriore.com**

	New Jersey Judiciary Superior Court - Appellate Division Notice of Appeal
Additional appellants continued below	
Additional respondents continued below	
Additional parties continued below	
Appellant's attorney email address continued below **PARTY NAME: RECIPROCAL MANAGEMENT CORPORATION ATTORNEY NAME: ROBERT J CAHALL, Esq.** **rcahall@mccormickpriore.com** **ljones@mccormickpriore.com** **kholzer@mccormickpriore.com**	
Respondent's attorney email address continued below	
Additional Party's attorney email address continued below	

New Jersey Courts
Independence • Integrity • Fairness • Quality Service

Superior Court of New Jersey - Appellate Division

MARIE C. HANLEY, ESQ.
DEPUTY CLERK – CASE PROCESSING

SAUL E. HERNANDEZ
DEPUTY CLERK – ADMINISTRATIVE SERVICES

JOSEPH H. ORLANDO, ESQ.
CLERK OF THE APPELLATE DIVISION

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DIRECTOR, CENTRAL RESEARCH

LISA D. BIGONY, ESQ.
CHIEF COUNSEL

Richard J. Hughes Justice Complex • P.O. Box 006 • Trenton, NJ 08625-0006 njcourts.gov • Tel: 609-815-2950 • Fax: 609-815-2949

Date: April 15,2024

ROBERT J CAHALL
300 CARNEGIE CTR
STE 160
PRINCETON, NJ 08540

Re: IN THE MATTER OF REVISED POWER OF ATTORNEY OF RECIPROCAL MANAGEMENT CORPORATION
Docket No. A-002261-23 TEAM 01

Dear ROBERT J CAHALL :

You may file a notice of appeal as of right if the determination being appealed is final. R. 2:2-3 and 2:5-1. A determination is final when all claims as to all parties below, either in this or a consolidated action, have been disposed. This includes all counterclaims, crossclaims, third-party claims and applications for counsel fees. For an agency matter to be considered final and appealable as of right, it must be demonstrated that "all avenues of internal administrative review have been exhausted." R. 2:2-3(a); Bouie v. Dept. of Comm. Affairs, 407 N.J. Super. 518, 527 (App. Div. 2009). Otherwise, the determination is interlocutory and requires a motion for leave to appeal. R. 2:2-4 and 2:5-6.

Here, you are seeking to appeal from the Department of Banking and Insurance's February 23, 2024 letter. It is unclear whether this letter constitutes a final agency decision from which appeal can be taken and/or all administrative remedies have been exhausted. A matter is not considered to be final and appealable as of right until all issues as to all parties are resolved. R. 2:2-3(a); In re Donohue, 329 N.J. Super. 488, 494 (App. Div. 2000).

If the determination is not a final agency decision from which appeal can be taken, you should either: (1) file a motion for leave to appeal; or (2) withdraw this appeal and file a new appeal once a final decision is entered. If you feel that the determination being appealed is final, please send a letter of explanation.

Your motion, letter of explanation or letter withdrawing the appeal should be submitted within 15 days. ***By copy of this letter, we are informing all other parties to this appeal of their responsibility to respond to this notice and to notify the court in writing of whether the determination being appealed is a final agency decision from which appeal can be taken.***

JOSEPH H. ORLANDO
CLERK

cc: ATTORNEY GENERAL LAW - RICHARD E. WEGRYN JR., DAG
ATTORNEY GENERAL LAW - ELEANOR HECK, DAG
ATTORNEY GENERAL LAW - MELISSA H. RAKSA, AAG

State of New Jersey

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

OFFICE OF THE ATTORNEY GENERAL
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PO Box 117
TRENTON, NJ 08625-0117

MATTHEW J. PLATKIN
Attorney General

MICHAEL T.G. LONG
Director

April 19, 2024

BY eCOURTS

Joseph H. Orlando, Clerk
Superior Court of New Jersey
Appellate Division
P.O. Box 006
Trenton, New Jersey, 08625-0006

Attention: Susan M. Brown
Case Manager

Re: In re Revised Power of Attorney of Reciprocal Management Corporation
Docket No. A-0022661-23

Dear Mr. Orlando:

This office represents Respondent, the New Jersey Department of Banking and Insurance, in this appeal. Confirming my April 17, 2024 conversation with Case Manager Susan M. Brown, I write to request a one-week extension of time, until May 7, 2024, to file a response to the recently issued Notice of Non-Finality. The reason for this request is that the original due date of April 30, 2024, conflicts with a religious holiday.

I have consulted with Robert J. Cahall, Esq., of McCormick & Priore, P.C., counsel for Appellant, and he consents to this request.

Thank you.

Respectfully yours,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Eleanor Heck
Eleanor Heck
Deputy Attorney General

c: All counsel (by eCourts)

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April 24, 2024

Joseph H. Orlando
Clerk
Superior Court of New Jersey-Appellate Division
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625

Re: In the Matter of Revised Power of Attorney of Reciprocal Management Corporation
Docket No. A-002261-23

Dear Mr. Orlando:

The law firm of McCormick & Priore, P.C. represents Reciprocal Management Corporation ("RMC") the attorney-in-fact for Citizens United Reciprocal Exchange ("CURE") in the above-captioned matter.

The New Jersey Department of Banking & Insurance ("DOBI") has requested an extension of time, until May 7, 2024, to file its response to the non-finality letter. As indicated in Ms. Heck's April 19, 2024 letter, RMC does not oppose this request.

RMC is requesting that its deadline to respond be reciprocally extended such that its response to the non-finality letter will also be filed on May 7, 2024. The non-finality letter initially directed the parties

to submit their responses by the same date and, accordingly, extending the deadlines reciprocally maintains the status quo in this regard.

Counsel for DOBI, Eleanor Heck, Esquire, confirmed via email of April 22, 2024 that she consents to this arrangement and, indeed, a reciprocal extension was assumed to be the manner in which DOBI's request would be handled.

I am available at the convenience of the Court, should anything further be required.

Respectfully,

/s/ *Robert J. Cahall*

Robert J. Cahall

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May 7, 2024

Joseph H. Orlando
Clerk
Superior Court of New Jersey-Appellate Division
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625

Re: In the Matter of Revised Power of Attorney of Reciprocal Management Corporation
Docket No. A-002261-23

Dear Mr. Orlando:

The law firm of McCormick & Priore, P.C. represents Reciprocal Management Corporation ("RMC") the attorney-in-fact for Citizens United Reciprocal Exchange ("CURE") in the above-captioned matter. We write to provide a letter of explanation in response to the non-finality letter of April 15, 2024. As detailed below, it is indisputable by mere reading of the DOBI correspondence that it constituted a final decision that the revised POA must be pre-approved prior to filing. This is unambiguous.

Succinctly, this is an appeal from a determination by the New Jersey Department of Banking & Insurance ("DOBI") prohibiting RMC from filing and implementing a revised power-of-attorney ("POA") for

use with new subscribers of CURE. At the outset, it is important to note that the POA is a document that is at the heart of how a reciprocal exchange functions as a not-for-profit alternative to stock and mutual insurance companies—a standard put in place by the New Jersey legislature in 1945. The POA is an agreement between individual subscribers and the attorney-in-fact for the exchange, which sets forth certain rights and obligations between the parties and is critical to the function of the exchange as a whole.

Here, on January 10, 2024, RMC, on behalf of CURE, filed its revised POA with DOBI. RMC followed the letter of the law in doing so, as the REA requires the POA be **filed**, and nothing more. In response, DOBI stated, in no uncertain terms, that it will *not* even allow RMC to file the revised POA until certain extrinsic materials are provided and DOBI evaluates those materials. Yet, DOBI has no authority—statutory or otherwise—to require pre-approval of the POA before RMC can implement it. To further underscore this point, there are no guidelines, standards or other criteria against which DOBI is unilaterally requiring RMC's compliance before DOBI agrees to the "filing" of the revised POA.

Meanwhile, unless and until it is "filed," the revised POA cannot take effect. Here, again, DOBI has unequivocally reaffirmed that point. In its determination on February 23, 2024, which is the decision presently on appeal, DOBI stated: "As

previously stated, the POA **will not become effective until the Department has provided its express approval**." (emphasis added).

The sole and exclusive statutory regulation of reciprocal insurance exchanges is found in the Reciprocal Exchange Act. See N.J.S.A. 17:50-1 (the "REA"). The REA provides that a power-of-attorney is to be *filed* by the attorney-in-fact for the Exchange, only. N.J.S.A. 17:50-3. The corresponding Administrative Code likewise merely contemplates the *filing* of the power-of-attorney. See N.J.A.C. 11:1-28.6. The statute does not allow DOBI any type of "pre-screening" or other *ad hoc* requirements as a condition to the mere *filing* of the POA. Yet, the refusal to file the document has the significant legal consequence of precluding it from being effective.

DOBI has any number of statutorily prescribed mechanisms to monitor and regulate insurance exchanges. For example, the attorney in fact must maintain a general deposit, file an annual report of its financial condition, and it cannot issue insurance contracts until it procures a "Certificate of Authority" from DOBI evidencing compliance with the REA, up to and including suspending the exchange's certificate of authority if sufficient improprieties are proven. N.J.S.A. 17:50-6, 8, 11. The demands it is imposing in this case simply are not within DOBI's statutory prerogative, and its refusal to even accept RMC's *filing* of the POA unless RMC capitulates to these demands equates to a rejection of RMC's filing.

Equally problematic is DOBI's stated position that it has been, and may continue to demand additional information to evaluate whether, in its *subjective* view, the POA can be filed. That is, the February 23, 2024 determination on appeal states:

> Further to the Department's letters, dated January 15, 2024 and February 2, 2024, and to the extent Citizens United Reciprocal Exchange ("CURE") and Reciprocal Management Corporation ("RMC") (CURE's Attorney-in-Fact) would like to amend or revise the POA, please provide the Department with the rationale and supporting materials for such changes. As previously requested, this should include, but is not necessarily limited to:
>
> > 1) A marked version of the POA which reflects the proposed changes;
> >
> > 2) Rationale for the change(s) related to each numbered paragraph of the POA; and,
> > 3) Supporting material for each change, including, but limited to, the related financial projections of CURE (e.g., increase in surplus contributions required by CURE).

Yet, there is nothing to suggest any objective metric against which RMC's "rationale" will be judged, or what "supporting material" would be sufficient, in order for DOBI to decide that RMC's POA can be "filed." Indeed, DOBI leaves open for itself the possibility of continuing to demand ever more documentation as a pre-condition to even considering filing the revised power-of-attorney. This is no standard at all. See In re N.J.A.C. 7:1B-1.1 Et Seq., 431 N.J. Super. 100, 128 (App.

Div. 2013) ("It is well-settled that a rule that does not contain a clear or objectively ascertainable standard may not be upheld.") (citation omitted). Yet, it is a requirement that DOBI has imposed as a pre-condition to even *filing* the revised power-of-attorney.

DOBI's action (or inaction) in this case is a final decision. DOBI has clearly and unequivocally stated that RMC cannot implement the revised POA unless DOBI's demands are met. The proverbial "Hobson's choice" this creates for RMC proves the point as to finality. RMC is in a position where it must either: 1) forego having its revised POA take effect; or 2) comply with a pre-screening requirement that is neither statutorily authorized nor objectively guided, with nothing more than the *hope* that DOBI might then merely *file* the POA.

Under New Jersey law, an "unmistakable written notice of the finality of the decision or action." is a hallmark of a final agency decision. De Nike v. Bd. of Trustees of Pub. State Emp. Ret. Sys., 34 N.J. 430, 436 (1961). Similarly, if all available avenues of internal administrative review are exhausted, the action is effectively final such that an appeal must be filed within forty-five days. See Bouie v. New Jersey Dep't of Cmty. Affairs, 407 N.J. Super. 518, 527 (App. Div. 2009); see also Bennett v. Spear, 520 U.S. 154, 177–78 (1997) ("As a general matter, two conditions must be satisfied for agency action to be 'final': First, the action must

mark the "consummation" of the agency's decision making process,—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow [].") (citation and quotations omitted).

The fact that DOBI's repeatedly-stated position was communicated by letter does not render it any less final, for purposes of commencing an appeal. See generally In re CAFRA Permit No. 87-0959-5 Issued to Gateway Associates, 152 N.J. 287, 300 (1997). Essentially, DOBI advised RMC by letter that it flatly refused to file (or, more accurately, to even *consider* filing) the revised POA unless and until it deemed itself satisfied with the universe of extrinsic documents and information it received, as judged against unstated, undefined, and unknown, criteria.

Under these circumstances, RMC has no further avenues of internal review or administrative remedy, as DOBI has *repeatedly* told RMC that it will not file the revised POA unless and until DOBI's demands are met, and this position has profound legal consequences to RMC. See Bouie, 407 N.J. Super. at 527; Bennett, 520 at 177-78; see also Griepenburg v. Twp. of Ocean, 220 N.J. 239, 261 (2015) (observing that "the requirement of exhaustion [of administrative remedies] is not absolute and [e]xceptions are made when the administrative remedies would be futile, when irreparable harm would result, when jurisdiction of the agency is

doubtful, or when an overriding public interest calls for a prompt judicial decision.") (citation and quotations omitted).

RMC is not obligated to acquiesce to an unauthorized requirement as a precursor to finality. RMC has been repeatedly apprised by DOBI that its amendments will not take effect unless and until this amorphous, temporally unlimited "approval process" is completed, and, further, DOBI has taken pains to remind RMC of the criminal consequences for engaging in the exchange of insurance contracts without complying with the REA. See N.J.S.A. 17:50-10. By analogy, just as one is not required to actually be subject to arrest for violation of a statute for standing to challenge its constitutionality, see, e.g., Steffel v. Thompson, 415 U.S. 452, 459 (1974), neither must RMC be required to acquiesce to unauthorized conditions as a precondition to *filing* its revised power-of-attorney.

For the reasons stated above, this determination on appeal is final, and RMC's appeal is appropriate. We are available at the convenience of the Court, should anything further be required.

Respectfully,

/s/ *Robert J. Cahall*

Robert J. Cahall

State of New Jersey

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

OFFICE OF THE ATTORNEY GENERAL
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MATTHEW J. PLATKIN
Attorney General

MICHAEL T.G. LONG
Director

May 13, 2024

BY eCOURTS

Joseph H. Orlando, Clerk
Superior Court of New Jersey
Appellate Division
P.O. Box 006
Trenton, New Jersey, 08625-0006

Re: In re Revised Power of Attorney of Reciprocal Management Corporation
Docket No. A-002261-23T1

Respondent's Letter in Response to Notice of Non-Finality

Dear Mr. Orlando:

Please accept this letter on behalf of Respondent, the New Jersey Department of Banking and Insurance, in response to the Clerk's April 15, 2024 Notice of Non-Finality, which seeks input from the parties to the appeal regarding whether the decision being appealed from is a "final decision or action of a state administrative agency" under R. 2:2-3(a)(2). Appellant, Reciprocal Management Corporation ("RMC"), attorney-in-fact for Citizens United Reciprocal Exchange ("CURE" or the "Exchange"), has appealed from a letter

that the Department issued on February 23, 2024. However, the letter does not constitute a "final decision or action" and is therefore not subject to appeal.

Procedural History and Facts

On January 10, 2024, RMC's Chief Financial Officer sent an email to Department staff that attached a revised Power of Attorney ("POA") for use with all new policyholders in New Jersey who join the Exchange beginning February 15, 2024 onward. Among other significant and fundamental changes, the revised POA would, if approved by the Department, (1) increase CURE's subscribers' (i.e., policyholders') payment toward surplus from ten to fifteen percent; (2) change the amount of AIF fees (fees paid to the attorney-in-fact as compensation for overall management of the Exchange) from "an amount not exceeding 12.5%" of premium to a flat 12.5% of premium; (3) newly describe the Exchange as a collection agency on behalf of the Attorney-in-Fact; and (4) add a paragraph that newly describes subscribers as unrelated parties to the Attorney-in-Fact and the Exchange.

The Department responded to the email by letter dated January 15, 2024, advising RMC that pursuant to New Jersey law, including but not limited to N.J.S.A. 17:50-1 to -19, the POA must be filed and approved by the Commissioner to become effective.

On January 29, 2024, Eric Poe, RMC's and CURE's Chief Executive Officer, responded to the Department's January 15 letter. "As a mere deferential courtesy," he stated the reason for increasing subscribers' annual surplus contributions by five percent is "to improve CURE's overall financial solvency position." He did not elaborate further regarding the changes nor provide supporting materials, but he did state that "[a]ny delay in the implementation of the revised POA will cause irreparable harm to all of CURE's subscribers, as the solvency of the exchange will be less well capitalized and thus more at risk."

On February 2, 2024, the Department responded to the January 29 letter, reminding RMC of the information that RMC needed to submit for the Department to review the revised POA and advising RMC that the proposed changes to the POA would not become effective until the Department provided its express approval.

By letter dated February 16, 2024, Robert Cahall, Esq., of McCormick & Priore, P.C., representing RMC, responded to the Department's February 2 letter, advising that RMC considered the Department's communication to be a final agency decision.

On February 23, 2024, the Department responded directly to Mr. Poe and copied Mr. Cahall. The Department restated the information that must

be filed to enable the Department to review the amended POA; reminded Mr. Poe that over the years, RMC has filed for the Department's approval proposed amendments and revisions to the POA, providing reasons and supporting materials for the changes it sought to make to the POA; and once again reminded him that the revised POA will not become effective until the Department has provided its express approval.

On March 29, 2024, without providing the information that would allow the Department to review the revisions to the POA, RMC filed a notice of appeal with the Appellate Division, appealing the February 23, 2024 letter as a final agency action.

This request from the court regarding the finality of the agency action followed.

Analysis

The February 23, 2024 letter is not a final agency action from which an appeal can be taken because it does not enunciate a decision one way or the other regarding the amended POA. The Department has not issued a final decision regarding whether it approves of the changes RMC seeks to make to its POA.

Appellate review of an administrative agency's decision or action "shall not be maintainable so long as there is available a right of review" before

the agency. R. 2:2-3(a)(2). "To be appealable without leave granted, the judgement or administrative determination must be final as to all parties and all issues." In re Donahue, 329 N.J. Super. 488, 495 (App. Div. 2000). Here, the Department has not issued any determination or judgment regarding the POA.

Under the Reciprocal Exchange Act, N.J.S.A. 17:50-1 to -19 (the "Act"), the POA is subject to continuing approval by the Commissioner beginning with the formation of the Exchange. Pursuant to N.J.S.A. 17:50-10, "[f]or the purposes of organization, and upon issuance of permit by the Commissioner of Banking and Insurance and under such conditions as he may impose, powers of attorney . . . may be solicited without compliance with the provisions of this act" (emphasis added).

Here, the Commissioner has conditioned RMC's amendments to the POA on the need to obtain the Commissioner's review and approval of the proposed changes pursuant to the Act. That is not unreasonable, given the potentially profound impact of the changes on CURE's subscribers. These changes would increase charges to CURE's subscribers (i.e., policyholders) and significantly and fundamentally alter the relationship between the subscribers, the attorney-in-fact and the Exchange as a whole. However, RMC seems to take the position that once the POA has undergone the initial approval process, further amendments to the POA are not subject to approval by the Department.

That position is illogical because it contemplates that after initial approval, RMC can simply change the POA at will, bypassing the Department's regulatory requirements and responsibility for protecting the interests of the subscriber-policyholders and ensuring the overall financial stability and solvency of the Exchange.

RMC has thus far failed to supply the Department with the necessary information to support its proposed amendments to the POA and its reasons for the changes and the impact on subscriber-policyholders and the Exchange. As part of the collaborative effort that is often a part of the review process, the February 23, 2024 letter (and the Department's earlier letters, dated January 15, 2024 and February 2, 2024) requested that RMC provide the rationale and supporting material for each of the changes it seeks. RMC has not provided that necessary information. Therefore, the Department has neither approved nor disapproved the amendments to the POA. Consequently, there is no agency decision nor action that provides the finality necessary to bring an appeal of right under R. 2:2-3(a)(2). If RMC submits the requested information, the Department can review it and issue a final decision. If RMC continues to refuse to supply the Department with the requested information, the Department will proceed to review the Amended POA and issue a final decision approving or disapproving the Amended POA based upon what has been submitted to date.

Accordingly, for the reasons set forth above, the February 23, 2024, letter is not a final agency action under R. 2:2-3(a)(2).

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: /s/ Eleanor Heck
Eleanor Heck
Deputy Attorney General
N.J. Attorney #020951991
Eleanor.heck@law.njoag.gov

Donna Arons
Assistant Attorney General
Of Counsel

c: All counsel of record (by eCourts)

May 14, 2024 Amended Response to Non-Finality Letter by DOBI

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 117
TRENTON, NJ 08625-0117

MATTHEW J. PLATKIN
Attorney General

MICHAEL T.G. LONG
Director

May 14, 2024

BY eCOURTS

Joseph H. Orlando, Clerk
Superior Court of New Jersey
Appellate Division
P.O. Box 006
Trenton, New Jersey, 08625-0006

Re: In re Revised Power of Attorney of Reciprocal Management Corporation
Docket No. A-002261-23T1

Respondent's Amended Letter in Response to Notice of Non-Finality

Dear Mr. Orlando:

Please accept this letter on behalf of Respondent, the New Jersey Department of Banking and Insurance, in response to the Clerk's April 15, 2024 Notice of Non-Finality, which seeks input from the parties to the appeal regarding whether the decision being appealed from is a "final decision or action of a state administrative agency" under R. 2:2-3(a)(2). Appellant, Reciprocal Management Corporation ("RMC"), attorney-in-fact for Citizens United

Reciprocal Exchange ("CURE" or the "Exchange"), has appealed from a letter that the Department issued on February 23, 2024. However, the letter does not constitute a "final decision or action" and is therefore not subject to appeal.

Procedural History and Facts

On January 10, 2024, RMC's Chief Financial Officer sent an email to Department staff that attached a revised Power of Attorney ("POA") for use with all new policyholders in New Jersey who join the Exchange beginning February 15, 2024 onward. Among other significant and fundamental changes, the revised POA would, if approved by the Department, (1) increase CURE's subscribers' (i.e., policyholders') payment toward surplus from ten to fifteen percent; (2) change the amount of AIF fees (fees paid to the attorney-in-fact as compensation for overall management of the Exchange) from "an amount not exceeding 12.5%" of premium to a flat 12.5% of premium; (3) newly describe the Exchange as a collection agency on behalf of the Attorney-in-Fact; and (4) add a paragraph that newly describes subscribers as unrelated parties to the Attorney-in-Fact and the Exchange.

The Department responded to the email by letter dated January 15, 2024, advising RMC that pursuant to New Jersey law, including but not limited to N.J.S.A. 17:50-1 to -19, the POA must be filed and approved by the Commissioner to become effective.

On January 29, 2024, Eric Poe, RMC's and CURE's Chief Executive Officer, responded to the Department's January 15 letter. "As a mere deferential courtesy," he stated the reason for increasing subscribers' annual surplus contributions by five percent is "to improve CURE's overall financial solvency position." He did not elaborate further regarding the changes nor provide supporting materials, but he did state that "[a]ny delay in the implementation of the revised POA will cause irreparable harm to all of CURE's subscribers, as the solvency of the exchange will be less well capitalized and thus more at risk."

On February 2, 2024, the Department responded to the January 29 letter, reminding RMC of the information that RMC needed to submit for the Department to review the revised POA and advising RMC that the proposed changes to the POA would not become effective until the Department provided its express approval.

By letter dated February 16, 2024, Robert Cahall, Esq., of McCormick & Priore, P.C., representing RMC, responded to the Department's February 2 letter, advising that RMC considered the Department's communication to be a final agency decision.

On February 23, 2024, the Department responded directly to Mr. Poe and copied Mr. Cahall. The Department restated the information that must

be filed to enable the Department to review the amended POA; reminded Mr. Poe that over the years, RMC has filed for the Department's approval proposed amendments and revisions to the POA, providing reasons and supporting materials for the changes it sought to make to the POA; and once again reminded him that the revised POA will not become effective until the RMC provides information to the Department to review in order to allow the department to provide its express approval or disapproval.

On March 29, 2024, without providing the information that would allow the Department to review the revisions to the POA, RMC filed a notice of appeal with the Appellate Division, appealing the February 23, 2024 letter as a final agency action.

On April 15, 2024, the court issued a Notice of Non-Finality, asking the parties to provide submissions to the court regarding whether the February 23, 2024 letter was a final agency action.

Analysis

The February 23, 2024 letter is not a final agency action from which an appeal can be taken because it does not enunciate a decision one way or the other regarding the amended POA; it merely requests information from the RMC to allow the Department to appropriately review the amended document in order to provide an approval or disapproval. The Department has not issued a final

decision regarding whether it approves of the changes RMC seeks to make to its POA because no information to support the need for the changes to the POA has been filed with the Department to allow it to make a decision.

Appellate review of an administrative agency's decision or action "shall not be maintainable so long as there is available a right of review" before the agency. R. 2:2-3(a)(2). "To be appealable without leave granted, the judgement or administrative determination must be final as to all parties and all issues." In re Donahue, 329 N.J. Super. 488, 495 (App. Div. 2000). Here, the Department has not issued any determination or judgment regarding the POA.

Under the Reciprocal Exchange Act, N.J.S.A. 17:50-1 to -19 (the "Act"), the POA is subject to continuing approval by the Commissioner beginning with the formation of the Exchange. Pursuant to N.J.S.A. 17:50-10, "[f]or the purposes of organization, and upon issuance of permit by the Commissioner of Banking and Insurance and under such conditions as he may impose, powers of attorney . . . may be solicited without compliance with the provisions of this act" (emphasis added).

Here, the Commissioner has conditioned RMC's amendments to the POA on the need to obtain the Commissioner's review and approval of the proposed changes pursuant to the Act. That is not unreasonable, given the potentially profound impact of the changes on CURE's subscribers. These

changes would increase charges to CURE's subscribers (i.e., policyholders) and significantly and fundamentally alter the relationship between the subscribers, the attorney-in-fact and the Exchange as a whole. However, RMC seems to take the position that once the POA has undergone the initial approval process, further amendments to the POA are not subject to approval by the Department. That position is illogical because it contemplates that after initial approval, RMC can simply change the POA at will, bypassing the Department's regulatory requirements and responsibility for protecting the interests of the subscriber-policyholders and ensuring the overall financial stability and solvency of the Exchange.

RMC has thus far failed to supply the Department with the necessary information to support its proposed amendments to the POA and its reasons for the changes and the impact on subscriber-policyholders and the Exchange. As part of the collaborative effort that is often a part of the review process, the February 23, 2024 letter (and the Department's earlier letters, dated January 15, 2024 and February 2, 2024) requested that RMC provide the rationale and supporting material for each of the changes it seeks. RMC has not provided that necessary information. Therefore, the Department has neither approved nor disapproved the amendments to the POA. Consequently, there is no agency decision nor action that provides the finality necessary to bring an

appeal of right under R. 2:2-3(a)(2). If RMC submits the requested information, the Department can review it and issue a final decision. If RMC continues to refuse to supply the Department with the requested information, the Department's options for next steps include, but are not limited to, compelling RMC to submit the necessary information, deeming the filing incomplete, and/or reviewing the Amended POA and issuing a final decision approving or disapproving the Amended POA based upon what has been submitted to date. To consider this matter on appeal before the Department has had the opportunity to take a course of action would prematurely supersede the regulatory process.

Accordingly, for the reasons set forth above, the February 23, 2024, letter is not a final agency action under R. 2:2-3(a)(2).

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: /s/ Eleanor Heck
Eleanor Heck
Deputy Attorney General
N.J. Attorney #020951991
Eleanor.heck@law.njoag.gov

Donna Arons
Assistant Attorney General
Of Counsel

c: All counsel of record (by eCourts)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002261-23T1

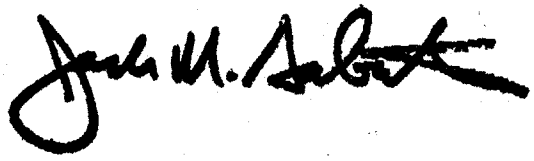
IN THE MATTER OF REVISED POWER OF ATTORNEY OF RECIPROCAL MANAGEMENT CORPORATION

ORDER DISMISSING APPEAL

This matter being opened to the court on its own motion and it appearing that the decision appealed from is not a final agency decision in accordance with R. 2:2-3(a)(2) and that leave to appeal has not been sought;

It is, on this 21st day of May 2024, HEREBY ORDERED that the above appeal is dismissed without prejudice to Reciprocal Management Corporation filing a motion for leave to appeal within 20 days of the date of this order.

FOR THE COURT:



JACK M. SABATINO, P.J.A.D.

STATEWIDE N/A

RMC
Reciprocal Management Corp.

May 23, 2024

Mr. David Wolf
Acting Assistant Commissioner
Office of Solvency Regulation
New Jersey Department of Banking and Insurance
PO Box 325
Trenton, NJ 08625-0325

Dear Assistant Commissioner Wolf:

I am writing with regard to the Order dated May 21, 2024, of the Superior Court of New Jersey, Appellate Division, Docket No. A-002261-23T1 (the "Order"), dismissing Reciprocal Management Corp.'s ("RMC") appeal concerning the January 10, 2024, filing of its revised Power of Attorney ("POA"). As stated in the Order, the Court determined that the actions of the Department of Banking and Insurance ("DOBI"), in preventing RMC from implementing its revised POA, did not constitute a final agency decision.

RMC intends to file a motion for leave to appeal within 20 days, as permitted by the Order. To avoid the time and expense of pursuing an appeal at this juncture, however, RMC requests that the Department review the revised POA and issue a decision, based on the information in its possession, whether the POA is accepted, rejected, or "deemed incomplete" as set forth in your letter to the Court dated May 14, 2024. That is, the Department represented the following:

> If RMC continues to refuse to supply the Department with the requested information, the Department's options for next steps include, but are not limited to, compelling RMC to submit the necessary information, deeming the filing incomplete, and/or reviewing the Amended POA and issuing a final decision approving or disapproving the Amended POA based upon what has been submitted to date. To consider this matter on appeal **before the Department has had the opportunity to take a course of action would prematurely supersede the regulatory process**

(emphasis added). The Department has had the opportunity to take a course of action since January 2024. RMC again urges the Department to use this opportunity to select and take a course of action, as it has represented it desires as part of the regulatory process.

The Department has identified nothing in the terms of the revised POA that is incompatible with the Reciprocal Exchange Act ("REA") or otherwise impermissible, and the terms of the revised POA are evident from the face of the document, without the need for extrinsic evidence. **To be clear, RMC does not believe that the Department has the statutory authority to request additional, extrinsic materials from RMC to provide a rationale or support for the revised POA, and RMC will not provide any such materials to the Department.**

In this regard, we are compelled to address the Department's alleged basis for its authority set forth—for the first time despite RMC's continued urging—in its May 14, 2024, letter to the Court. The Department stated:

> Under the Reciprocal Exchange Act, N.J.S.A. 17:50-1 to -19 . . . , the POA is subject to continuing approval by the Commissioner beginning with the formation of the Exchange. Pursuant to N.J.S.A. 17:50-10, "[f]or the purposes of organization, and upon issuance of permit by the Commissioner of Banking and Insurance and under such conditions as he may impose, powers of attorney . . . may be solicited without compliance with the provisions of this act" . . . . Here, the Commissioner has conditioned RMC's amendments to the POA on the need to obtain the Commissioner's review and approval of the proposed changes pursuant to the Act.

This interpretation is simply illogical and at odds with the plain language of the REA. First, N.J.S.A. 17:50-10 does not repeal or vitiate N.J.S.A. 17:50-3, which merely requires that a POA be filed. The Department is not seeking to impose "conditions" on RMC based upon concerns as to the terms of its two-page revised POA. It simply refuses to file it, at all, without identifying what concerns it harbors over the terms of the POA, or why those terms are allegedly in violation of the REA.

Second, N.J.S.A. 17:50-10 discusses penalties for violations of the REA. The second paragraph of this section, which the Department cites as the basis for its authority, merely recognizes that *certain actions may need to be taken that are necessarily in violation of the REA* during the organization of an exchange, before a certificate of authority is ever issued. It is entirely possible—indeed, extremely likely—that an entity in the process of forming a reciprocal exchange and applying for a certificate of authority may not yet comply with every aspect of the REA.[1] The REA recognizes this simple fact and allows some flexibility during the organizational phase, which may or may not include conditions imposed by the Commissioner prior to the issuance of a certificate of authority. The legislature clearly did not intend to discourage the formation of reciprocal exchanges by

[1] For instance, N.J.S.A. 17:50-3(f) requires that "[i]n the case of automobile insurance, applications shall have been made for indemnity upon at least one thousand motor vehicles or for insurance aggregating not less than one and one-half million dollars ($1,500,000.00) represented by executed contracts or bona fide applications to become concurrently effective on any or all classes of automobile insurance effected by said subscribers through said attorney[.]" Collecting this number of applicants for insurance with a new company is no small feat. Requiring an entity to be fully formed and entirely compliant with the REA at the time they solicit the first application of insurance is unrealistic and nonsensical.

subjecting individuals to penalties during this process. The Department's far-fetched interpretation that N.J.S.A 17:50-10 somehow refers *to POAs that are not in compliance with the REA* or confers a power of "continuing approval" of the POA to the Department is, frankly, wrong. Under this reasoning, the Commissioner would have unchecked discretion to impose "conditions" on an Exchange in virtually every aspect of its business. Is it the Department's position that it possesses such unfettered authority in the **complete absence of any** delegation from the legislature? I would hope not.

Finally, on its face, N.J.S.A. 17:50-10 provides that the enforcement mechanism for violations of the REA is for the Department to seek enjoinment of alleged violations in Superior Court, not to refuse the filing of a POA. If the Department believes that the revised POA is in violation of the REA—which it is not—the Department has a clear statutorily prescribed means to enforce its position. As much as the Department would like to create its own procedures to enforce its interpretation of the REA, it cannot do so absent express direction from the legislature. As we have stated previously, and at length, the REA contains no provisions whatsoever regarding a "pre-approval" procedure, or any metrics or standards by which the Department intends to evaluate the materials it has demanded, or what recourse RMC or CURE may have if the Department rejects the POA. As a result, RMC can only guess what law it is (allegedly) violating and how it will be judged. If the Legislature had intended to create such a pre-approval process, it is puzzling how it could neglect to include such basic standards and guidelines—due process requires agency action to be guided by disclosed and objective criteria, which are completely absent here.

In light of the above, and in addition to RMC's prior correspondence regarding this matter, RMC can reach no conclusion other than the Department is intentionally treating RMC, its owners and CURE differently than other reciprocals and AIFs in New Jersey without any stated, rational basis for this disparate and unlawful treatment. On the one hand, you state that the Department is concerned about "ensuring the overall financial stability and solvency of the Exchange," yet you are purposefully delaying an unambiguous increase in surplus contributions, which are voluntarily agreed to by subscribers upon entering the not-for-profit Exchange to help bolster its financial solvency. As the Acting Assistant Commissioner of the Office of Solvency Regulation, you are well aware that this delay is causing RMC and CURE irreparable harm. The planned increase in surplus contributions would result in a direct and immediate infusion of capital into CURE, and represents the most efficient way to build solvency in a subscriber owned reciprocal exchange as 100% of such contributions are recorded to CURE's surplus when collected, and no amount of the contributions are distributed or shared with third parties (reinsurers, tax authorities, etc.).

Accordingly, RMC requests that the Department issue its decision on or before May 31, 2024. Respectfully, RMC believes this is more than enough time for the Department to review this matter. The POA is a two-page document and the differences from RMC's current, approved POA are minimal. Further, the Department has been in possession of the revised POA since January 10, 2024, is clearly aware of the changes made (as they are enumerated in the Department's letter to the Court of May 14, 2024), and does not have additional materials to consider, as RMC does not intend to provide any.

RMC sincerely hopes that the Department will not continue to prevent RMC from implementing its revised POA, as the law requires. However, if the Department maintains its current position that more information is required before it can act, it is clear we are at an impasse that is tantamount to a rejection. In other words, as RMC does not intend to provide additional information, the Department will never render a decision on the POA and RMC will never be able to implement it. Rather than relitigating the issue of whether such a decision is "final," RMC believes the more efficient course is simply for the Department to reject the filing and allow the Appellate Division to settle this dispute regarding the scope of the Department's authority. RMC will consider the Department's failure to respond to this letter by May 31, 2024, a final agency decision.

We look forward to your response.

Regards,

Eric S. Poe, Esq., CPA
Chief Executive Officer

cc: Robert Cahall, Esq.
Eleanor Heck, Esq.

State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE
OFFICE OF SOLVENCY REGULATION
PO BOX 325
TRENTON, NJ 08625-0325

TEL (609) 292-7272
FAX (609) 292-6765

PHIL MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

JUSTIN ZIMMERMAN
Acting Commissioner

May 31, 2024

Eric Poe, Chief Executive Officer via email at epoe@cure.com
Citizens United Reciprocal Exchange
Reciprocal Management Corporation
214 Carnegie Center, Suite 301
Princeton, New Jersey 08540

Re: Citizens United Reciprocal Exchange ("CURE")
Reciprocal Management Corporation ("RMC")
Amended (Revised) Power of Attorney ("POA")

Dear Mr. Poe:

The New Jersey Department of Banking and Insurance ("Department") writes to respond to your letter, dated May 23, 2024, regarding the Order, dated May 21, 2024, issued by the Appellate Division of the Superior Court of New Jersey ("Order"). The Order dismissed RMC's appeal on the grounds that the Department's letter issued on February 23, 2024 requesting information to review the changes reflected within the POA was not a final agency decision.

Your letter, dated May 23, 2024, now requests "…that the Department review the revised POA and issue a decision, based on the information in its possession…" Further, you state "…RMC does not intend to provide additional information…". You also request "…that the Department issue its decision on or before May 31, 2024."

As stated in the Department's response to the Court's April 15, 2024 Notice of Non-Finality ("Department's Response"), the proposed changes reflected in the POA are significant and fundamental to the Exchange, as a whole. These proposed changes include but are not limited to (1) increasing CURE's subscribers' (i.e., policyholders') payment toward surplus from ten to fifteen percent; (2) changing the amount of AIF fees (fees paid by CURE to RMC as compensation for overall management of the Exchange) from "an amount not exceeding 12.5%" of premium to a flat 12.5% of premium; (3) newly describing the Exchange as a collection agency on behalf of the Attorney-in-Fact; and (4) adding a paragraph that newly describes subscribers as unrelated parties to the Attorney-in-Fact and the Exchange.

These proposed changes have broader implications and effects on the Exchange than a simple revision to the POA document itself. The Department's Response stated that its review of the changes reflected in the proposed POA includes, but is not limited to, a review of compliance with N.J.S.A. 17:50-1 to -19 (the Reciprocal Exchange Act or "REA").

The Department will also review the proposed changes in relation to compliance with the Department's Order A22-13 and the materials filed by the applicants (e.g., business plan, financial projections, and the capital maintenance plan). Increases to subscriber surplus contribution rates were not requested nor indicated in the plans that were submitted less than two years ago as part of Order A22-13. Consequently, the Department is requesting supporting material to understand what has changed and is causing concern for CURE's solvency.

Further, on May 22, 2024, the Department sent a letter in relation to its review of CURE's 2023 annual financial statement filing pursuant to N.J.S.A. 17:23-1. The letter addressed inquiries to the company in relation to its affairs and related matters, including inconsistencies with the existing POA and similar concerns raised by the proposed revisions to the POA. The Department's letter requested a response within 15 business days (i.e., June 13, 2024).

More broadly, consideration must be given to all relevant laws and requirements applicable to reciprocal exchanges given the significance of the changes reflected in the POA.

For these reasons, the Department reiterates the request for RMC and CURE to provide the reasons and supporting materials in relation to the changes. This should include, but is not necessarily limited to:

1) A marked version of the POA which reflects the changes proposed to be made;
2) Rationale for the change(s) related to each numbered paragraph of the POA; and,
3) Supporting material for each change, including the related financial projections of CURE (e.g., increase in surplus contributions required by CURE).

Concurrent with the Department's May 22, 2024 request pursuant to N.J.S.A. 17:23-1, please provide the information above no later than Thursday, June 13, 2024. We urge RMC and CURE to actively engage with the Department rather than having the Department make assumptions, rely on previously filed information, consider further actions to compel the information, and ultimately take additional time in its review.

For the reasons above, it is simply not reasonable or appropriate to request a deadline of May 31, 2024 for the Department to review the POA without the appropriate supporting material.

Regards,

David Wolf
Acting Assistant Commissioner, Office of Solvency Regulation
New Jersey Department of Banking and Insurance

cc: Robert Cahall, Esq.
DAG Eleanor Heck

RMC
Reciprocal Management Corp.

June 13, 2024

Mr. David Wolf
Acting Assistant Commissioner
Office of Solvency Regulation
New Jersey Department of Banking and Insurance
PO Box 325
Trenton, NJ 08625-0325

Dear Assistant Commissioner Wolf:

I am writing in response to your May 31, 2024, letter regarding the continued refusal of the Department of Banking and Insurance ("DOBI") to allow Reciprocal Management Corp. ("RMC") to implement its revised Power of Attorney ("POA").

RMC's position has been consistent from the outset – from the clear and unambiguous reading of the Reciprocal Exchange Act ("REA"), the REA does not give DOBI the authority to review an amended POA and decide whether it is approved or not. As addressed in my May 23, 2024, letter to you, DOBI's purported basis for its authority to do so (N.J.S.A. 17:50-10) is clearly inapplicable. Now, for the first time, you state that DOBI's need for additional materials to review the POA is related to Order A22-13. RMC is acutely aware of its obligations under Order A22-13, including the Capital Maintenance Agreement, which was demanded as a condition for approval and made under duress. It is clear from the plain language of these documents that nothing in the Order or the Capital Maintenance Agreement grants DOBI the authority to review RMC's POA, let alone approve it, reject it, or do anything other than accept the POA as amended and allow RMC to implement it.

DOBI cannot demand compliance with a review process that is not authorized under the REA. While it is true that the Commissioner may impose conditions on insurers *in certain circumstances*, none of those circumstances are present here. As more fully discussed in my prior correspondence, RMC has no obligation under the law to provide the information DOBI is requesting and does not intend to do so. If, as you have indicated on several occasions, DOBI believes it has the authority to compel RMC to produce such information in order to review and approve the POA, DOBI has clearly made a final decision that such a review and approval process is required by the REA.

I think the position of DOBI has been made abundantly clear that it believes it has such authority to review and approve the POA; however, for the purpose of clarity if this matter must be determined via litigation, please advise whether DOBI has made a final decision that the REA allows for such a review and approval process for a revised POA. RMC will

consider DOBI's failure to respond to this letter **by June 28, 2024**, a final agency decision that DOBI believes it is authorized to conduct such a review.

I look forward to your response.

Regards,

Eric S. Poe, Esq., CPA
Chief Executive Officer

cc: Robert Cahall, Esq.
Eleanor Heck, Esq.

State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE
OFFICE OF SOLVENCY REGULATION
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PHIL MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

JUSTIN ZIMMERMAN
Acting Commissioner

June 28, 2024

Kevin F. Griffin, CEO
MGG Investment Group LP
One Penn Plaza, Suite 5320
New York, NY 10119
Via Email: kgriffin@mgginv.com

Eric Poe, Chief Executive Officer via email at epoe@cure.com
Citizens United Reciprocal Exchange
Reciprocal Management Corporation
214 Carnegie Center, Suite 301
Princeton, New Jersey 08540

Re: Citizens United Reciprocal Exchange ("CURE")
Reciprocal Management Corporation ("RMC")
Amended (Revised) Power of Attorney ("POA")
New Jersey Department of Banking Order A22-13

Dear Messrs. Griffin and Poe:

The New Jersey Department of Banking and Insurance ("Department") writes in response to Mr. Poe's letter, dated June 13, 2024, regarding RMC's efforts to implement a revised POA containing proposed changes that are material and fundamental to the Exchange, as a whole. The June 13, 2024 letter demands that the Department state whether it has made a final decision that review and approval of the POA is required by the Reciprocal Exchange Act. However, the Department cannot make a final agency decision relating to the revised POA until RMC provides the Department with the information it has requested repeatedly, including the reasons and supporting materials in relation to the changes. As will be explained more fully below, the refusal to provide information the Department has requested in order to properly evaluate the proposed changes to the POA raises broader concerns. As such, the Department reiterates its request for information specific to the proposed changes to the POA, and additionally requests information under the Department's Order No. A22-13 ("Order") that relate both to the POA and the broader regulatory concerns identified below.

The proposed changes to the POA include but are not limited to (1) increasing CURE's subscribers' (i.e., policyholders') payment toward surplus from ten to fifteen percent ("Subscriber Surplus Contributions"); (2) changing the amount of Attorney-in-Fact ("AIF") fees (fees paid by CURE to RMC as compensation for overall management of the Exchange) from "an amount not exceeding 12.5%" of premium to a flat 12.5% of premium; (3) newly describing the Exchange as a collection agency on behalf of the AIF; and (4) adding a paragraph that newly describes subscribers as unrelated parties to the AIF and the Exchange.

The Department has indicated that these changes require prior approval under applicable law, including but not limited to N.J.S.A. 17:50-1 to -19. The changes also require approval pursuant to Condition 6 of the Order and must also be in compliance with Condition 1 of the Order. While the June 13, 2024 letter claims the Order was entered into "under duress," the underlying transaction seeking a change in control was initiated by the applicants, including Mr. Griffin and Mr. Poe. The Order was negotiated by experienced attorneys representing the applicants in the usual course, consistent with the Department's regulatory obligations under applicable law. As you are aware, under the Order, the Commissioner approved the proposal of MGG, Mr. Griffin and Mr. Poe to acquire and change control of CURE and RMC subject to specific conditions and under clearly articulated authority outlined in the Order. The conditions center around solvency and compliance with a range of regulatory requirements. As such, a response from the MGG Applicants as defined by the Order is requested by July 10, 2024, including MGG GP and MGG GP III, which are 100% controlled by Kevin Griffin, Manager, and the ultimate controlling entity for RMC and CURE.

In a May 23, 2024 letter to the Department, Mr. Poe states "RMC does not intend to provide additional information." That same letter states "…this delay [in providing approval of the POA] is causing RMC and CURE irreparable harm. The planned increase in surplus contributions [Subscriber Surplus Contributions] would result in a direct and immediate infusion of capital into CURE, and represents the most efficient way to build solvency in a subscriber owned reciprocal exchange as 100% of such contributions are recorded to CURE's surplus when collected, and no amount of the contributions are distributed or shared with third parties (reinsurers, tax authorities, etc.)." The expression of the need to "build solvency" is concerning.

The Department's core function is to protect policyholders and help ensure the solvency of the companies it regulates. Therefore, the solvency concerns raised in the above statements are concerning, particularly when they are made without providing the additional supporting information requested by the Department. In other words, these statements only heighten the need and justification for responses to the Department's request.

Further, RMC and CURE have failed to respond to requests from the Department to support their compliance, at all times, with related-party requirements, including SSAP No. 25 for related-party loans, transactions involving the exchange of assets or liabilities, and transactions involving services.

SSAP No. 25, paragraphs 20 and 21, requires transactions involving services between related parties to be fair and reasonable and on an arm's length basis. Amounts charged by RMC (up to 12.5% as set forth in the approved POA) for current and future services need to be supported by current market rates or on an allocation-of-cost basis and to be fair and reasonable in relation to the services provided to CURE.

On December 21, 2023, Sheila Woolson, Esq., of the firm Epstein, Becker and Green, put forth a position on behalf of RMC and CURE that SSAP No. 25 did not apply to the fees paid to RMC by CURE for services provided by RMC. Ms. Woolson argues the fees charged by the attorney-in-fact need not be subject to the fair-and-reasonable standard pursuant to SSAP No. 25, as adopted by reference in NJSA 17:23-1. Effectively, Ms. Woolson contends RMC is entitled to 12.5% of every premium dollar paid to CURE by its subscribers/policyholders regardless of the actual costs to RMC for providing the services and the resulting profit that its provision of those services generates for RMC.

The Department disagrees with Ms. Woolson's arguments given the potential to shift excessive profits to related parties of an insurer which SSAP No. 25 effectively regulates. In fact, the financial results of RMC and CURE in 2023 raise concerns which have gone unanswered by RMC and CURE.

RMC's audited financial statements for 2023 (Note B) indicate that RMC was entitled to charge and receive [redacted] in fees based on [redacted] of premiums paid to CURE by its subscribers/policyholders. However, RMC indicated within its audited financial statements that it chose to take [redacted] in fees from CURE. The same financial statements indicate the actual cost of RMC's services was only [redacted] As a result, even with reduced fees, RMC generated a before-tax profit from its services to CURE of [redacted] as reported in the audited financial statements.

On the other hand, CURE reported a loss of $24 million for 2023 in its annual financial statements. Effectively, CURE utilized all of the $23 million Subscriber Surplus Contributions during 2023 to pay claims and expenses, including the service fees paid to RMC. Further, if RMC had charged the full [redacted] that it contends it is entitled to, RMC would have made a profit of [redacted] while CURE would have lost over $32 million.

RMC is not entitled to generate excessive profits, above the cost of the services it provides to CURE, while CURE and its subscribers experience excessive losses. If RMC does not adhere to the requirements of SSAP No. 25, the outcome is far from fair and reasonable to CURE's subscribers/policyholders. Such considerations are well within the Department's regulatory purview under applicable law and clearly articulated in the Order.

Further, the results from 2023 as stated above demonstrate that the proposed changes to the POA have broader implications and effects on CURE and its subscribers/policyholders than a simple revision to the document itself. Consequently, the Department reiterates its request that RMC and CURE provide the reasons and supporting materials in relation to the changes. This should include, but is not necessarily limited to:

1) A marked version of the POA which reflects the changes proposed to be made;
2) Rationale for the change(s) related to each numbered paragraph of the POA; and,
3) Supporting material for each change, including the related financial projections of CURE (e.g., increase in surplus contributions required by CURE).

The Department will review the proposed changes in relation to all relevant laws, including compliance with the Order. The Department will also consider the materials filed by the applicants (e.g., business plan, financial projections, and the capital maintenance plan) when the MGG Applicants obtained the majority controlling interest in RMC and CURE. For example, increases to

subscriber surplus contribution rates were not requested nor indicated in the plans that were submitted less than two years ago as part of the Order. Consequently, the Department is requesting supporting material to understand what has changed and is causing concern for CURE's solvency while also ensuring the subscribers/policyholders are treated fairly.

We look forward to your production of the documents and requested information by July 10, 2024.

Regards,

David Wolf
Acting Assistant Commissioner, Office of Solvency Regulation
New Jersey Department of Banking and Insurance

cc: Robert Cahall, Esq.
DAG Eleanor Heck

RMC
Reciprocal Management Corp.

July 16, 2024

Mr. David Wolf
Acting Assistant Commissioner
Office of Solvency Regulation
New Jersey Department of Banking and Insurance
PO Box 325
Trenton, NJ 08625-0325

Dear Assistant Commissioner Wolf:

I write in response to your June 28, 2024, letter regarding the continued attempted refusal of the Department of Banking and Insurance ("DOBI") to allow Reciprocal Management Corp. ("RMC") to implement its revised Power of Attorney ("POA").

RMC has made its position regarding DOBI's lack of authority to (i) pre-approve the revised POA, and (ii) request extrinsic information in doing so, clear on several occasions.

With regard to DOBI's newly manufactured and unfounded reliance on Condition 1 and Condition 6 of Order No. A22-13 (the "Order") as a basis to require pre-approval of the POA, such reliance is clearly misplaced. First, DOBI has not identified how the revised POA violates any applicable laws pursuant to Condition 1. Second, Condition 6 of the Order relates to a "material change in business," which is not present here. No terms in the revised POA implicate a "material change" in business as defined by the Order, which relates primarily to liquidating, selling, or merging entities. The POA, as a contract between two unrelated parties—an individual receiving a quote for car insurance, who sees the full, transparent out-of-pocket costs before agreeing to the terms of the POA, and the AIF—is not subject to, nor does it require, additional oversight from DOBI in this regard. Further, DOBI's statement that a desire to "build solvency" equates to "solvency concerns" is simply not true. RMC, as a fiduciary appointed by each individual subscriber through the POA, is empowered to take executory actions on behalf of the exchange as a whole. Building surplus through increased surplus contributions is one such action, which serves to bolster the solvency of the exchange. As opposed to a premium rate increase, additional capital raised through surplus contributions is used solely and directly to benefit subscribers. Surely, an action taken by RMC to improve the solvency of the exchange and benefit all subscribers cannot reasonably support DOBI's alleged belief in undefined "solvency concerns" that "only heighten the need and justification for responses to the Department's request."

While the Department admittedly enjoys broad latitude, it does not have carte blanche to create law out of whole cloth or arbitrarily manufacture roadblocks to the detriment of the

regulated class and consumers it serves. Indeed, DOBI's actions in this matter are exactly the type of administrative overreach decried in the Supreme Court's recent decision in Loper Bright Enterprises v. Raimondo, 2024 WL 3208360 (U.S. June 28, 2024), which overruled the Chevron-doctrine affording deference to an agency's interpretation of statutory ambiguity. Under the now-defunct Chevron-doctrine, the Court noted that agencies could "change course even when Congress ha[d] given them no power to do so" and that those attempting to plan around agency action in such circumstances were left in an "eternal fog of uncertainty." Loper Bright at *21. In overruling Chevron, the Court noted that:

> [A]gencies have no special competence in resolving statutory ambiguities. Courts do. The Framers anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by exercising independent legal judgment. Chevron gravely erred in concluding that the inquiry is fundamentally different just because an administrative interpretation is in play. The very point of the traditional tools of statutory construction is to resolve statutory ambiguities. **That is no less true when the ambiguity is about the scope of an agency's own power—perhaps the occasion on which abdication in favor of the agency is least appropriate.**

Id. at *3 (emphasis added). Here, the varied and changing positions relied upon by DOBI to support its alleged authority are clearly not supported by the plain meaning of any statute or regulation. Even if one were to assume there is ambiguity in the law, DOBI is engaging in exactly the type of conduct the Supreme Court proscribed by expanding the scope of its authority based on its own, self-serving interpretations.

RMC has no obligation under any statute or regulation to provide the information requested in your June 28, 2024 letter and does not intend to do so.

Regards,

Eric S. Poe, Esq., CPA
Chief Executive Officer

cc: Robert Cahall, Esq.
Eleanor Heck, Esq.