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MIA BULLETIN 11-26

DATE: September 1, 2011

TO: All Insurers Eligible to Write Nonadmitted Insurance in Maryland and All Licensed Surplus Lines Brokers

All Insureds Who Independently Procure Insurance with a Nonadmitted Insurer

RE: Implementation of the Federal Nonadmitted Reinsurance Reform Act in Maryland

Changes to the Nonadmitted Insurance Laws

The purpose of this Bulletin is to outline nationwide regulatory changes that will affect the placement of nonadmitted insurance on Maryland risks. One of the components of last year's Dodd-Frank Wall Street Reform and Consumer Protection Act is the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"),¹ which established federal standards for surplus lines coverage and other nonadmitted insurance. On May 19, 2011, Governor O'Malley signed into law Chapters 520 and 521, Acts 2011, which provide for the implementation of the NRRA in Maryland and conform Maryland's nonadmitted insurance laws to federal law. Chapters 520 and 521 took effect July 1, 2011.²

The NRRA provides that only an insured's "Home State" may require the payment of premium tax for nonadmitted insurance.³ Moreover, the NRRA subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured's Home

¹ Congress enacted the NRRA last year as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, (Title V, Subtitle B, §§511 *et seq.*) The provisions regulating the nonadmitted insurance market, NRRA §§521-525 & 527, are codified at 15 U.S.C. 8201-8206.

² Please note that all subsequent footnotes in this Bulletin which cite to statutory provision in the Insurance Article, Annotated Code of Maryland, are citing to the provisions as they were amended by Chapters 520 and 521, Acts 2011.

³ NRRA §521(a) (15 U.S.C. §8201(a)).

State, and provides that only the insured's Home State may require a surplus lines broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to that insured.⁴ Key definitions from the NRRA are included in the Appendix to this Bulletin.

What is the scope of the NRRA?

“Nonadmitted insurance,” as defined in the NRRA, includes both surplus lines and independently procured insurance, but is restricted to property and casualty insurance.⁵ In addition, the NRRA does not preempt state laws restricting workers' compensation insurance or excess workers' compensation insurance for self-funded plans to be placed in the admitted market.⁶ The NRRA does not expand the scope of the kinds of insurance that an insurer may write in the nonadmitted insurance market, and each state continues to determine which kinds of insurance an insurer may write in that state. Although the NRRA preempts certain state laws with respect to nonadmitted insurance, it does not have any impact on insurance on Maryland risks offered by insurers licensed or authorized in Maryland.

When is Maryland the insured's Home State for purposes of a particular placement?

If Maryland is considered the insured's Home State, only Maryland's requirements regarding the placement of nonadmitted business will apply.⁷ Maryland is the insured's Home State if the insured maintains its principal place of business in Maryland or, in the case of an individual, the individual's principal residence is Maryland. However, if 100% of the insured risk is located outside Maryland, the insured's Home State is the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.⁸

If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, and the insureds have different Home States, Maryland will be considered the Home State for that contract if Maryland is the Home State of the insured that has the largest percentage of premium attributed to it under the insurance contract.

How will these rules be applied?

New and renewal policies with an effective date before July 21, 2011 will be subject to the laws and regulations of Maryland and other jurisdictions, as applicable, as of the policy effective date. The laws and regulations of Maryland and other jurisdictions, as applicable, as of the effective date of any such policy will also apply to any modification to that policy during the policy period, such as all endorsements, installment payments, and premium audits. New and renewal policies with an effective date on or after July 21, 2011, and any modifications thereto,

⁴ NRRA §§522(a), (b) (15 U.S.C. §§8202(a), (b)).

⁵ NRRA §527(9) (15 U.S.C. §8206(9)).

⁶ NRRA §522 (d) (15 U.S.C. 8202(d)).

⁷ NRRA §522(a) (15 U.S.C. 8202(a)). See §3-324(i) of the Insurance Article, Annotated Code of Maryland.

⁸ See definition of “Home State” at NRRA §527(6) (15 U.S.C. 8206(6) and §3-301(e) of the Insurance Article, Annotated Code of Maryland.

will be subject only to the laws and regulations of Maryland if Maryland is the Home State of the insured.

What are the requirements for premium tax allocation and payment in Maryland?

Until July 21, 2011, the laws and regulations of Maryland and other jurisdictions, as applicable, will continue to apply to premium tax due on multi-state placements. Under current Maryland law, only the portion of the premium attributable to Maryland risk is subject to Maryland's premium receipts tax, and this applies whether or not Maryland is the insured's Home State. For policies effective on or after July 21, 2011, if Maryland is the insured's home state the entire premium is subject to Maryland's premium receipts tax.⁹

The Administration will provide additional information regarding the process for paying premiums receipts taxes in a future bulletin.

What are the license requirements for surplus lines brokers?

Only the insured's Home State may require a surplus lines broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to a particular contract.¹⁰ If Maryland is the insured's Home State, the surplus lines broker must be licensed in Maryland.¹¹ The NRRA provides that Maryland may not collect licensing fees for surplus lines brokers on or after July 21, 2012, unless Maryland participates in the NAIC's national insurance broker database or any other equivalent uniform national database.¹² Maryland complies with this requirement by participating in the National Insurance Producer Registry (NIPR).¹³ Consequently, Maryland will continue to impose licensing fees upon surplus lines brokers.

What are the requirements for a diligent search and when is a diligent search not required?

The procurement procedures for surplus lines insurance are set forth in Sections 3-306 to 3-309 of the Insurance Article.

On or after July 21, 2011, the NRRA provides that a surplus lines broker seeking to procure or place nonadmitted insurance on behalf of an "exempt commercial purchaser" is not required to perform a diligent search if: 1) the broker has disclosed to the exempt commercial purchaser that insurance that may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and 2) the exempt commercial purchaser has subsequently requested in writing for the broker to procure or place the insurance from a nonadmitted insurer.¹⁴ Chapters 520 and 521, Acts 2011, conform Maryland law to these

⁹ Sections 3-324(d) and 4-209(b)(3) of the Insurance Article, Annotated Code of Maryland.

¹⁰ NRRA §522 (b) (15 U.S.C. §8022(b)).

¹¹ Section §3-310 of the Insurance Article, Annotated Code of Maryland.

¹² NRRA §523 (15 U.S.C. §8203).

¹³ Section 3-306(d) of the Insurance Article, Annotated Code of Maryland.

¹⁴ NRRA §525 (15 U.S.C. 8205).

provisions and incorporate by reference the NRRA’s definition of “exempt commercial purchaser.”¹⁵

What are the eligibility requirements for nonadmitted insurers?

The NRRA restricts the eligibility requirements a state may impose on nonadmitted insurers. For nonadmitted insurers domiciled in the United States, state eligibility requirements must be in conformance with the financial criteria of the NAIC’s Nonadmitted Insurance Model Act.¹⁶ Chapters 520 and 521, Acts 2011, conform the provisions under which the Commissioner may approve insurers domiciled in the United States as surplus lines insurers to that criteria.¹⁷

For nonadmitted insurers domiciled outside the United States, a producer may place business with such insurers provided the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

Any questions about this bulletin should be directed to Neil A. Miller, Associate Commissioner, Examination and Auditing, at (410) 468-2122.

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INSURANCE COMMISSIONER

By: Signature on Original Document
Neil A. Miller
Associate Commissioner
Examination and Auditing

¹⁵ Sections §§3-306.1 (d) and 3-301(d) of the Insurance Article, Annotated Code of Maryland.

¹⁶ NRRA §524 (15 U.S.C. §8204).

¹⁷ Section 3-318 of the Insurance Article, Annotated Code of Maryland.

Appendix: Key Definitions from the NRRA

The NRRA includes several definitions relevant to this State's implementation of its requirements. Key definitions include the following:

“Exempt commercial purchaser” (NRRA § 527(5) (15 U.S.C. § 8206(5)): The term “exempt commercial purchaser” means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.

(C) (i) The person meets at least one of the following criteria:

(I) The person possesses a net worth in excess of \$20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of \$50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

“Home State” (NRRA § 527(6) (15 U.S.C. § 8206(6)):

(A) In General.—Except as provided in subparagraph (B), the term “Home State” means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) **Affiliated Groups.**—If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “Home State” means the Home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

“Independently procured insurance” (NRRA § 527(7) (15 U.S.C. § 8206(7)): The term “independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer.

“Nonadmitted insurance” (NRRA § 527(9) (15 U.S.C. § 8206(9)): The term “nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

“Nonadmitted insurer” (NRRA § 527(11) (15 U.S.C. § 8206(11)): The term “nonadmitted insurer” —

(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but

(B) does not include a risk retention group, as that term is defined in section 2(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4)).

“Premium tax” (NRRA § 527(12) (15 U.S.C. § 8206(12)): The term “premium tax” means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

“Qualified risk manager” (NRRA § 527(13) (15 U.S.C. § 8206(13)): The term “qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i) (I) has a bachelor’s degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II) (aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has—

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as “CPCU”) issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii) (I) has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any one of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

“Surplus lines broker” (NRRA § 527(15) (15 U.S.C. § 8206(15)): The term “surplus lines broker” means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

“State” (NRRA § 527(16) (15 U.S.C. § 820(16)): The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.