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December 27, 2011

The Honorable Thomas M. Middleton,
Chairman
Senate Finance Committee
Miller Senate Building, 3 East Wing
11 Bladen Street
Annapolis, MD 21401

The Honorable Dereck E. Davis
Chairman
House Economic Matters Committee
House Office Building, Room 231
6 Bladen Street
Annapolis, MD 21401

Gentlemen:

Enclosed please find the Maryland Insurance Administration's Report on the Implementation of the Federal Nonadmitted and Reinsurance Reform Act of 2010. The Report provides the information required by Section 2, Chapters 520 and 521, Acts of 2011.

Very truly yours,

Therese M. Goldsmith
Insurance Commissioner

cc: Members, Senate Finance Committee and House Economic Matters Committee
Patrick Carlson, Staff to Senate Finance Committee
Erica White, Staff to House Economic Matters Committee
Sarah T. Albert, Library Associate (5 copies)

**Maryland Insurance Administration's
Report on the
Implementation of the
Federal Nonadmitted and Reinsurance
Reform Act of 2010**



December 27, 2011

**Maryland Insurance Administration's Report on the
Implementation of the
Federal Nonadmitted and Reinsurance Reform Act of 2010**

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I. Executive Summary

The purpose of this report is to provide information to the Senate Finance Committee and the House Economic Matters Committee on the implementation of the Nonadmitted and Reinsurance Reform Act of 2010 (the "NRRA").¹ Specifically, in accordance with Section 2, Chapters 520 and 521, Laws of Maryland, 2011 (the "Acts"), the Maryland Insurance Administration ("MIA") studied the various approaches taken by other states to implement the NRRA, paying particular attention to the approaches taken by contiguous states. The study included a review of other states' legislative enactments and execution of agreements or compacts, if any; the impact on nonadmitted insurance premium receipts tax revenue experienced by other states based on the approach taken, if known; and other states' future plans for NRRA implementation, if known or ascertainable. As required under the Acts, the MIA also attempted to estimate the impact of Maryland's approach on its nonadmitted insurance premium receipts tax revenue, if any, and conducted research to identify any available relevant guidance provided by Congress, the National Council of Insurance Legislators, the Council of State Governments, the National Council of State Legislators, and the National Association of Insurance Commissioners, as well as any available relevant industry guidance, statistics, or information.

At the conclusion of our study we made the following findings:

1. The states have not reached a consensus on how to implement the uniform nationwide requirements, forms, and procedures for the reporting, payment, collection and allocation of premium taxes to the states intended by Congress. Some states have chosen to retain for themselves all of the taxes they collect as Home States, at least for the time being. Other states have entered into agreements to share premium taxes, and others still are considering how to proceed.
2. To date, NIMA has been adopted by twelve states and SLIMPACT has been adopted by nine states. The states that have adopted either NIMA or SLIMPACT are scattered across the United States. As of the date of this report, none of Maryland's neighboring states has adopted NIMA or SLIMPACT. Delaware may adopt either NIMA or SLIMPACT based upon the results of a study currently underway. West Virginia's laws allow the Insurance Commissioner to adopt NIMA or to become a contracting member of another agreement; however, the Insurance Commissioner still is considering how to proceed.
3. The impact on Maryland's approximately \$10 million of annual nonadmitted insurance premium tax revenue from collecting and retaining taxes under the NRRA's Home State provisions cannot be determined with certainty at this time. Brokers of nonadmitted insurance generally have not maintained the data needed to determine the impact. Respondents to our

¹ The NRRA was part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) signed into law on July 21, 2010. Most provisions of the NRRA went into effect July 21, 2011.

survey of nonadmitted insurance brokers, who together paid approximately \$4.4 million of premium taxes during calendar year 2010 (out of a total of approximately \$10 million nonadmitted insurance premium tax collected in Maryland for calendar year 2010), indicated that Maryland would have collected premium taxes totaling at least \$3.9 million from this subset of surplus lines brokers had the premiums been allocated under the NRRA's Home State provisions, plus an additional, indeterminable amount from multi-state risks. It was unclear whether allocating these premiums would have resulted in the State collecting more or less premium tax revenue than the \$4.4 million it collected from these brokers under pre-NRRA provisions. Because of the brokers' lack of data, our survey results may not be indicative of the actual impact of the Home State approach.

Quarterly reports filed with the MIA summarizing surplus lines placements from July 1, 2011 through September 30, 2011 suggest that Maryland's premium tax revenue has not declined under the current Home State approach, but these results also may not be predictive of a full year's activity. The impact of the current Home State approach on Maryland's premium tax revenue will remain uncertain at least until we have data from a full year of operating under the NRRA's Home State provisions.

4. At this time, insufficient information exists to determine if it would be beneficial to Maryland from a premium tax revenue perspective to adopt either NIMA or SLIMPACT.
5. Guidance from Congress, interested organizations, and industry relating to the impact of the NRRA on premium taxes is unavailable at this time.

II. Background

The purpose of this report is to provide information to the Senate Finance Committee and the House Economic Matters Committee on the approaches taken by the various states to implement the provisions of the Nonadmitted and Reinsurance Reform Act of 2010 (the “NRRA” - see **Attachment A**). Specifically, in accordance with Section 2, Chapters 520 and 521, Laws of Maryland, 2011 (the “Acts”), the Maryland Insurance Administration (“MIA”) studied the various approaches taken by other states to implement the NRRA, paying particular attention to the approaches taken by contiguous states. The study included a review of other states’ legislative enactments and execution of agreements or compacts, if any; the impact on nonadmitted insurance premium receipts tax revenue experienced by other states based on the approach taken, if known; and other states’ future plans for NRRA implementation, if known or ascertainable. As required under the Acts, the MIA also attempted to estimate the impact of Maryland’s approach on its nonadmitted insurance premium receipts tax revenue, if any, and conducted research to identify any available relevant guidance provided by Congress, the National Council of Insurance Legislators, the Council of State Government, the National Council of State Legislators, and the National Association of Insurance Commissioners, as well as any available relevant industry guidance, statistics, or information.

As used in the NRRA, “nonadmitted insurance” means property and casualty insurance that may be placed directly or through a surplus lines broker with a nonadmitted insurer that is eligible to accept the insurance.² A “nonadmitted insurer” is an insurer that is not authorized to engage in the business of insurance in a state.³ The nonadmitted insurance market provides insurance on risks, such as off-shore drilling, mining and coastal properties, for which coverage in the traditional insurance market often is not available. Nonadmitted insurers wrote premiums in Maryland totaling \$355 million during calendar year 2010. In that year, Lexington Insurance Company (\$70 million) and Lloyds of London (\$64 million) were the largest writers of nonadmitted insurance in Maryland. During calendar year 2010, Maryland collected premium taxes on nonadmitted insurance totaling approximately \$10 million.

The NRRA was part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) signed into law on July 21, 2010. Most provisions of the NRRA went into effect July 21, 2011. The NRRA was enacted to:

“...fix the fragmented, cumbersome regulation of this important marketplace. The goal of the NRRA was not to eliminate regulatory protections, but to streamline the regulatory regime to enable insurers and brokers to more easily and efficiently comply with state rules and provide much-needed insurance protections to consumers. The law accomplishes this by giving sole regulatory authority over a surplus lines transaction –

² The term “nonadmitted insurance” includes insurance placed through a surplus lines broker (surplus lines insurance) and insurance placed directly with nonadmitted insurers by an insured. NRRA §527(9)(15 U.S.C. §8206(9)).

³ The NRRA defines “State” as 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. NRRA § 527(6) (15 U.S.C. § 8206(16)). In this report the term “state” refers to these 56 jurisdictions.

including the authority to collect premium taxes – to the home state of the insured.”⁴

The NRRA specifically addresses four areas of nonadmitted insurance regulation: premium taxation, insurer eligibility standards, licensing of brokers, and exemption of certain commercial purchasers from requirements to search for coverage in the traditional insurance market. With regard to premium taxation, the NRRA states that Congress intends for each state to:

“adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection and allocation of premium taxes for nonadmitted insurance...”

By giving sole regulatory authority over the placement of nonadmitted insurance, including the authority to collect premium taxes, to the Home State⁵ of the insured, the NRRA streamlined much of the regulatory regime over nonadmitted insurance. For example, a broker placing a nonadmitted policy on a multi-state risk now needs to be licensed only in the Home State of the insured, rather than in each state which contains a portion of the risk. Congress left to the states the manner by which they would achieve the intended nationwide uniform requirements for the reporting, payment, collection and allocation of premium taxes. To date, the states have not reached a consensus on how to achieve the uniformity Congress intended.

Two significant issues, explained in more detail below, are impeding the states’ ability to reach such a consensus. First, the NRRA changed the way premiums on multi-state risks are allocated between states for premium tax purposes, which has the potential to significantly change the amount of taxes the various states collect. Second, states have not agreed on which interstate agreement governing nonadmitted insurance, if any, to adopt.

With regard to the first issue, the NRRA’s rules for allocating premiums on multi-state risks between the states for premium tax purposes⁶ will result in some states seeing an increased allocation of premiums, and a corresponding increase in premium tax

⁴ H.R. 4173, The Dodd-Frank Wall Street Reform and Consumer Protection Act – Clarification of Intent with Respect to Title V, Subtitle B, December 15, 2010 (Statement of Representative Dennis Moore of Kansas, co-sponsor of the NRRA, in the House of Representatives).

⁵ The NRRA defines “Home State” as:

(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. NRRA § 527(6) (15 U.S.C. § 8206(6)).

⁶ Before the NRRA took effect, nonadmitted insurance premiums were allocated between states for premium tax purposes based on the percentage of the risk covered by the premium in each state. Under the NRRA, all premiums are allocated to the Home State of the insured.

collections, while other states will see a decrease. States naturally have been concerned about their potential loss of premium tax revenue under the NRRA.

To address this, the NRRA provides that the states may enter into a compact or otherwise establish procedures to allocate among the states the premium taxes paid to an insured's Home State. If such an allocation mechanism were implemented nationally, the amount of taxes ultimately received by the various states would, in theory, approximate the amount they received prior to the enactment of the NRRA. Because the NRRA provides states the option of entering into an agreement to share premium taxes, but does not require them to do so, some states have chosen to retain for themselves all of the taxes they collect as Home States, at least for the time being. Other states have entered into agreements to share premium taxes, and others still are considering how to proceed.

With regard to interstate agreements governing nonadmitted insurance, two approaches emerged, with proponents on both sides. The National Association of Insurance Commissioners ("NAIC") developed an interstate agreement, known as the Nonadmitted Insurance Multi-State Agreement ("NIMA"), which focuses on tax allocation. The surplus lines industry, along with the National Council of Insurance Legislators (NCOIL), the Council of State Governments (CSG), and the National Council of State Legislators (NCSL), favored a compact, known as the Surplus Lines Insurance Multi-State Compliance Compact ("SLIMPACT"), which more broadly addresses not only the tax allocation issue but other industry concerns. **Attachment B** provides a comparison of key provisions of NIMA and SLIMPACT. **Attachment C** provides a copy of NIMA, and **Attachment D** provides a copy of SLIMPACT.

Under NIMA, the "participating states" agree to a plan of operation relating to the establishment of a clearinghouse that the participating states will use for reporting and paying taxes on nonadmitted insurance and sharing those taxes with other NIMA states. NIMA includes, within the agreement, the terms of premium allocation, a premium allocation formula, and a list of the required data elements for each nonadmitted insurance placement to be provided to the clearinghouse by brokers of nonadmitted insurance in the participating states. The participating states have selected the Florida Surplus Lines Service Office to act as their clearinghouse. It is anticipated that this clearinghouse will be operational for policies placed on or after January 1, 2012.

Under SLIMPACT, the "compacting states"⁷ agree to the creation of the Surplus Lines Insurance Multi-State Compliance Compact Commission (or "Commission") which will have the power to adopt mandatory rules relating to, among other things, premium allocation formulas, required clearinghouse placement transaction data, foreign insurer eligibility requirements, and a uniform policyholder notice. SLIMPACT also provides for the establishment of a number of committees which will be comprised of individuals from the nonadmitted insurer industry, state insurance departments, law firms, state stamping offices and nonadmitted insurance brokers. Nine jurisdictions have executed SLIMPACT. The Commission is not operational until the compact has been adopted by a combination of ten compacting states and contracting states, or until the

⁷ A state may either adopt SLIMPACT and become a "compacting state" or contract with the Commission as a "contracting state" for the purpose of utilizing the services of the clearinghouse. Contracting states do not have a vote with regard to Commission actions.

compacting states and contracting states represent greater than 40% of surplus lines premium volume. Although the Commission is not yet operational, representatives from the nine current SLIMPACT member states have been meeting over the last few months and have developed bylaws and initial rules for rulemaking.

As previously noted, Chapters 520 and 521, Laws of Maryland, 2011 (the "Acts") provided for the implementation of the NRRA in Maryland and conformed Maryland's nonadmitted insurance laws to federal law. With regard to premium taxes, 100% of the premiums on placements where Maryland is the Home State of the insured are now subject to premium tax, whereas before the Acts took effect, the State taxed only that portion of premiums allocable to risks located in Maryland. Because these laws did not provide for the adoption of either NIMA or SLIMPACT, Maryland now retains 100% of the premium taxes on nonadmitted insurance it collects as a Home State.

At the time these laws were enacted, it was unclear how collecting and retaining premium taxes as a Home State ultimately would impact Maryland's premium tax collections. A key focus of this study was to try to quantify that impact. We also reviewed the NRRA implementation actions taken by other states and attempted to identify guidance from Congress and interested organizations to determine whether it would be more advantageous to the State to continue to collect and retain premium taxes as a Home State, or to share taxes with other states under either NIMA or SLIMPACT.

The Acts required the Insurance Commissioner to study the various approaches taken by other states to implement the NRRA, paying particular attention to the approaches taken by contiguous states. The study was to include a review of:

- a. the approaches taken by other states, including:
 - (i) legislative enactments;
 - (ii) the execution of agreements or compacts, if any;
 - (iii) the impact on nonadmitted premium receipts tax revenue experienced by other states based on the approach taken, if known; and
 - (iv) future plans for implementation, if known or ascertainable;
- b. the impact of Maryland's approach on its nonadmitted premium receipts tax revenue, if any;
- c. relevant congressional guidance;
- d. guidance provided by the National Council of Insurance Legislators, the Council of State Government, the National Council of State Legislators, and the National Association of Insurance Commissioners; and
- e. industry guidance, statistics, or information.

III. Implementation of the NRRA by the States

In order to determine the actions taken by the various states to implement the provisions of the NRRA, including identifying states which have adopted either NIMA or SLIMPACT, we obtained information from the National Association of Insurance Commissioners and from various nonadmitted insurance trade association web sites. The following table summarizes the actions taken by the states:

Action taken	Number of jurisdictions	List of jurisdictions
States that have adopted NIMA	12	AK, CT, FL, HI, LA, MS, NE, NV, SD, PR, UT, WY
States that have adopted SLIMPACT	9	AL, KS, KY, NM, ND, IN, VT, TN, RI
States that have approved NRRA-conforming legislation only (without seeking authority to enter into NIMA or SLIMPACT)	10	CA, ID, MD, MN, MO, NY, NC, PA, VA, WA
States that have approved NRRA-conforming legislation and include authority to enter into NIMA or SLIMPACT	14	OH, AZ, AR, DE, GA, ME, MA, MT, NH, NJ, OK, OR, TX, WV
States that have not passed legislation	11	IL, CO, IA, MI, SC, WI, DC, Guam, the Northern Mariana Islands, the Virgin Islands and American Samoa.
TOTAL	56	

We also contacted representatives of Maryland's neighboring states to obtain additional information regarding their legislative actions to implement the NRRA, plans for future legislation, plans for joining either NIMA or SLIMPACT, anticipated premium tax revenue impact, and steps taken to achieve uniformity with other states. The following table summarizes the information we compiled relating to states contiguous to Maryland:

	Delaware	District of Columbia	Pennsylvania	Virginia	West Virginia
What laws has the state passed to implement the provisions of the NRRA?	Delaware passed legislation to conform its nonadmitted insurance laws to the NRRA. This law also authorizes, but does not require, the Delaware Insurance Commissioner to enter into NIMA or SLIMPACT.	None.	Pennsylvania passed legislation to conform its nonadmitted insurance laws to the NRRA.	Virginia passed legislation to conform its nonadmitted insurance laws to the NRRA.	West Virginia passed legislation to conform its nonadmitted insurance laws to the NRRA. This law also authorizes, but does not require, the West Virginia Insurance Commissioner to enter into NIMA or to become a contracting member of another agreement.
What additional possible laws are being considered to implement the provisions of the NRRA?	Additional laws may be required should Delaware decide to enter into NIMA or SLIMPACT.	None.	None.	None.	Additional laws will be required should West Virginia decide to enter SLIMPACT.
Does the state anticipate joining either NIMA or SLIMPACT?	No. However, Delaware is conducting a fiscal study to determine the impact of joining NIMA or SLIMPACT on its premium tax revenues and the cost-efficiency of doing so.	No.	No.	No.	No. However, the West Virginia Insurance Commissioner is considering how best to proceed.

	Delaware	District of Columbia	Pennsylvania	Virginia	West Virginia
Has the state determined the likely impact of the NRRRA on its premium tax revenue?	No. Delaware is conducting a fiscal study to determine the impact, if any.	No.	No.	No. However, since Virginia's laws already imposed taxes on a Home State basis it does not expect a significant change in revenue.	No. However, premium taxes from placements on mining and chemical risks are expected to decline.
Has the state made any changes to its tax collection process following the passage of the NRRRA, such as contracting with a clearinghouse for tax collection?	No.	No.	No.	No.	No changes were made except to update its tax reporting forms to reflect West Virginia's new tax rate.
Has the state taken any steps to achieve uniformity with other states, such as changing tax forms or filing requirements?	No.	No.	No.	No.	No.

As previously noted, states have the option of adopting either NIMA or SLIMPACT, or they can choose not to adopt either model. Based on the above summaries, we note the following:

- NIMA has been adopted by twelve states.
- SLIMPACT has been adopted by nine states.
- The states that have adopted NIMA or SLIMPACT are scattered across the United States.
- None of Maryland's neighboring states have adopted NIMA or SLIMPACT. However, Delaware currently is conducting a study similar to Maryland's study, and as a result of that study may decide to adopt either NIMA or

SLIMPACT. West Virginia's law allows its Insurance Commissioner to join NIMA or to become a contracting member of another agreement; however, the Insurance Commissioner still is considering how to proceed.

- The 35 states that have adopted neither NIMA nor SLIMPACT still are evaluating, in one form or another, how best to proceed.

Finding 1 The states have not reached a consensus on how to implement the uniform nationwide requirements, forms, and procedures for the reporting, payment, collection and allocation of premium taxes to the states intended by Congress. Some states have chosen to retain for themselves all of the taxes they collect as Home States, at least for the time being. Other states have entered into agreements to share premium taxes, and others still are considering how to proceed.

Finding 2 To date, NIMA has been adopted by twelve states and SLIMPACT has been adopted by nine states. The states that have adopted either NIMA or SLIMPACT are scattered across the United States. None of the states contiguous to Maryland has adopted NIMA or SLIMPACT to date. However, Delaware may adopt either NIMA or SLIMPACT based upon the results of a study currently underway. West Virginia's laws allow the Insurance Commissioner to adopt NIMA or to become a contracting member of another agreement; however, the Insurance Commissioner still is considering how to proceed.

Although it is clear that the states have not yet reached a consensus on how to achieve the uniformity Congress intended, we considered available information in an effort to determine if it would be beneficial to Maryland to adopt either NIMA or SLIMPACT from a premium tax revenue perspective. We note the following:

- As discussed more fully below, our survey results indicated that brokers' records currently lack the data needed to determine the states to which the remainder of the premium has been allocated for multi-state placements where a portion of the risk is in Maryland. We therefore cannot determine at present which states share multi-state risks with Maryland, or the premium allocated to those states. This information is crucial to determine the likely premium tax revenue impact of joining either NIMA or SLIMPACT.
- If a portion of the risk covered by a nonadmitted insurance policy is in Maryland, it seems more likely that some of the risk is in a neighboring state than a distant state. However, to date, none of Maryland's neighboring states have adopted NIMA or SLIMPACT. This reduces the likelihood of Maryland

sharing premium taxes on multi-state placements with other states should it adopt either NIMA or SLIMPACT at this time.

IV. Impact of the NRRA on Maryland's Premium Tax Revenue

The NRRA impacts the amount of nonadmitted insurance premium tax collected by the various states by changing the way premiums are allocated between states for tax purposes. Prior to the enactment of the NRRA, most states, including Maryland, imposed premium taxes only on the portion of multi-state premiums attributable to their states. For example, if an insured sought coverage in the nonadmitted market for its business operations in multiple states, Maryland received only the premium tax for the portion of the premium that was attributable to the risk that was located in Maryland. Under the NRRA, all premiums are allocated to the Home State of the insured. Therefore, in our example above, Maryland may receive all the premium tax (if it were the Home State of the insured) or it may receive none of the premium tax (if another state were the Home State). Thus, some states may see an overall increased allocation of premiums, and a corresponding increase in premium tax collections, while others may see decreases.

Our review identified no state that had completed a comprehensive analysis of the impact the NRRA will have on its premium tax collections. We note, however, that at least five states (including Maryland) are undertaking such studies as a result of legislation that was passed last year.⁸

Insufficient time has passed to see the actual impact on premium tax revenue. The NRRA's new multi-state premium allocation provisions only became effective for placements on or after July 21, 2011. Until these provisions have been in place for at least an entire year, and the nonadmitted insurance brokers have filed the related premium tax reports, states will not be certain of the impact.

Brokers Survey

We conducted a survey of nonadmitted insurance brokers to try to determine the likely impact of the NRRA on Maryland's nonadmitted insurance premium tax revenue. Our survey was designed to first determine the amount of each broker's placements on Maryland-only risks, which would continue to be allocated to the State. Then, for multi-state risks, we asked the brokers to attempt to determine the placements where Maryland would be the Home State, and to advise us how this determination was made (e.g., based on a review of a broker's records or on a broker's estimates).

We sent our survey to the State's 40 largest brokers of nonadmitted insurance during calendar year 2010, plus 5 smaller brokers. These 45 brokers placed \$233 million, or 66%, of the \$355 million of Maryland nonadmitted placements during calendar year 2010.

Of the 45 surveys distributed, we received responses from 31 brokers, yielding a response rate of 69%. The responding brokers had placements totaling approximately

⁸ The states that are conducting studies are: OH, DE, ME, MD, NC.

\$147 million during calendar year 2010. Thus, the brokers completing our survey were responsible for approximately 41% of the approximately \$355 million in Maryland placements during calendar year 2010.

Under pre-NRRA premium allocation provisions, Maryland collected premium taxes totaling \$4.4 million from the brokers who responded to the survey. The responses indicated that Maryland would have collected premium taxes totaling at least \$3.9 million had the premiums been allocated under the NRRA's Home State provisions. An additional, indeterminable amount would have been collected on premiums for multi-state risks for which the brokers could not make a determination of the insureds' Home States. It was unclear whether allocating these premiums would have resulted in the State collecting more or less premium tax revenue than the \$4.4 million it collected under the pre-NRRA provisions.

In order to determine the likely impact, Maryland needs to determine (1) the amount of its total taxable premiums that come from multi-state risks; (2) the Home States of those multi-state risks; and (3) whether the total premiums allocable to those states as Home States would be more or less than those that would have been allocated under pre-NRRA rules. However, brokers responding to our survey generally did not capture information relating to each insured's Home State prior to July 21, 2011. Although the responding brokers attempted to approximate multi-state risk allocations based upon a review of existing records or upon the broker's best estimates, for example, in our opinion the information cannot be considered complete, and the impact on premium tax collections will remain uncertain until at least the end of the first year of premium tax collections under the NRRA.

Third Quarter 2011 Broker Placements Reports

For further information about the potential impact of the NRRA on Maryland's premium tax revenues, we examined quarterly reports filed with the MIA summarizing surplus lines broker placements from July 1, 2011 through September 30, 2011. These were the first quarterly reports that included business placed under NRRA allocation provisions, which became effective on July 21, 2011.⁹ We compared the total written premium in these reports to the total written premium in reports for the third quarter of 2010. We noted that the reported premiums for the quarter ended September 30, 2011 (\$80.6 million) were \$5.2 million, or 6.9%, more than reported premiums for the same quarter in 2010 (\$75.4 million). While this modest increase, which would equate to \$156,000 of premium tax, suggests that Maryland's premium tax revenue has not declined under the current Home State approach, these early results may not be predictive of a full year's activity. Until at least a full year's data is available, we believe it is premature to draw conclusions about the extent to which the State's nonadmitted insurance premium taxes are being impacted by the NRRA.

⁹ Thus these reports included placements from July 1, 2011 through July 20, 2011 allocated under the pre-NRRA provisions, plus placements from July 21, 2011 through September 30, 2011 allocated under the NRRA's Home State provisions.

Finding 3 The impact on Maryland's approximately \$10 million of annual nonadmitted insurance premium tax revenue from collecting and retaining taxes under the NRRA's Home State provisions cannot be determined with certainty at this time. Brokers of nonadmitted insurance generally have not maintained the data needed to determine the impact. Respondents to our survey of nonadmitted insurance brokers, who paid approximately \$4.4 million of premium taxes during calendar year 2010, indicated that Maryland would have collected premium taxes totaling at least \$3.9 million from this subset of surplus lines brokers had the premiums been allocated under the NRRA's Home State provisions, plus an additional, indeterminable amount from multi-state risks. It was unclear whether allocating these premiums would have resulted in the State collecting more or less premium tax revenue than the \$4.4 million it collected from these brokers under pre-NRRA provisions. Because brokers generally did not capture information relating to each insured's Home State prior to July 21, 2011, our survey results may not be indicative of the actual impact of the Home State approach.

Quarterly reports filed with the MIA summarizing surplus lines placements from July 1, 2011 through September 30, 2011 suggest that Maryland's premium tax revenue has not declined under the current Home State approach, but these results also may not be predictive of a full year's activity. The impact of the current Home State approach on Maryland's premium tax revenue will remain uncertain at least until we have data from a full year of operating under the NRRA's Home State provisions.

Finding 4 At this time, insufficient information exists to determine if it would be beneficial to Maryland, from a premium tax revenue perspective, to adopt either NIMA or SLIMPACT.

V. Guidance from Congress and Interested Organizations

Chapters 520 and 521 require that this study include a review of any relevant guidance from Congress, the National Council of Insurance Legislators, the Council of State Governments, the National Council of State Legislators, the National Association of Insurance Commissioners, and members of the nonadmitted insurance industry. In the course of our research, we identified no guidance from Congress or the aforementioned entities regarding the impact of the NRRA on nonadmitted insurance premium tax revenues. Nor have we identified any relevant guidance, statistics, or information published by industry.

We note that the implementation of the NRRA was discussed, among other issues, at a hearing on "Insurance Oversight: Policy Implications for U.S. Consumers, Businesses and Jobs" before the House of Representatives, Subcommittee on Insurance,

Housing, and Community Opportunity on July 28, 2011. Both the NAIC and NCOIL, along with representatives of the nonadmitted insurance industry, testified at the hearing about the states' attempts to implement the NRRA and the two approaches currently being proposed to seek uniformity. The witnesses were asked, among other things, about whether it was possible to, "harmonize the two different models, NIMA and SLIMPACT..." and also about the issue of allocation of premiums for casualty insurance placements between states (the two models allocate these premiums differently, resulting in a lack of uniformity). To both of these questions, the NAIC and NCOIL indicated a willingness to engage in further discussions. To the issue of harmonization, Iowa Insurance Commissioner and President of the NAIC Susan E. Voss stated that, "I think you will see, down the road, as states begin to look more fully at this, you will see some more discussions between us."¹⁰

Finding 5 Guidance from Congress, interested organizations, and industry relating to the impact of the NRRA on premium taxes is unavailable at this time.

VI. NRRA Implementation Actions Taken by the Insurance Commissioner

The Insurance Commissioner has taken several additional steps to implement Chapters 520 and 521, which conformed Maryland's nonadmitted insurance laws to federal law. First, on September 1, 2011 the Insurance Commissioner issued a Bulletin to all nonadmitted insurers, brokers of nonadmitted insurance and insureds who directly procure nonadmitted insurance, entitled *Implementation of Federal Nonadmitted Reinsurance Reform Act in Maryland* (See **Attachment E**). The Bulletin explained the provisions of the NRRA and how Maryland's laws implement them. A follow-up Bulletin entitled *Revised Procedures to the Payment of Premium Receipts Tax on Nonadmitted Insurance in Maryland* (See **Attachment F**) was issued on November 9, 2011. That Bulletin explained revisions to Maryland's premium tax payment procedures. Furthermore, the MIA has published proposed amendments to its regulations related to nonadmitted insurance that would conform those regulations to the provisions of Chapters 520 and 521.¹¹ In determining how best to proceed with implementing Chapters 520 and 521, the MIA has worked closely with representatives of Maryland's nonadmitted insurance broker community.

¹⁰ Transcript of Hearing on "Insurance Oversight: Policy Implications for U.S. Consumers, Businesses and Jobs," Thursday, July 28, 2011, House of Representatives, Subcommittee on Insurance, Housing and Community Opportunity, Committee on Financial Services, Washington, DC, page 35.

¹¹ The proposed amendments to COMAR 31.03.06 were published in the Maryland Register on December 2, 2011. The proposed regulations remain open for public comment until January 3, 2012. See 38:25 Md. R. 1667-1669 (December 2, 2011) for the proposed amendments.

VII. Conclusion

The states have not reached a consensus on how to implement the uniform nationwide requirements, forms, and procedures for the reporting, payment, collection and allocation of premium taxes to the states intended by Congress under the NRRA. While 21 states have adopted either NIMA or SLIMPACT, the majority of states still are evaluating how best to proceed. The MIA surveyed brokers in an effort to assess the impact that the NRRA would have on Maryland's approximately \$10 million of annual nonadmitted insurance premium tax revenue, but brokers lacked the data necessary to determine the impact with any certainty. Quarterly reports filed with the MIA summarizing surplus lines placements from July 1, 2011 through September 30, 2011, suggest that premium tax revenue will not decline under the current Home State approach. However, these results are very preliminary and may not be predictive of a full year's activity. In conclusion, insufficient information exists at this time to determine what impact the NRRA's Home State approach will have on Maryland's nonadmitted insurance premium tax revenue.

"Sec. 314. Covered agreements.
"Sec. 315. Continuing in office."

Subtitle B—State-Based Insurance Reform

Nonadmitted and
Reinsurance
Reform Act
of 2010.
15 USC 8201
note.

SEC. 511. SHORT TITLE.

This subtitle may be cited as the "Nonadmitted and Reinsurance Reform Act of 2010".

SEC. 512. EFFECTIVE DATE.

Except as otherwise specifically provided in this subtitle, this subtitle shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this subtitle.

15 USC 8201
note.

PART I—NONADMITTED INSURANCE

SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

15 USC 8201.

(a) HOME STATE'S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

Applicability.

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this subtitle, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.—To facilitate the payment of premium taxes among the States, an insured's home State may require surplus lines brokers and insureds who

have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

15 USC 8202.

SEC. 522. REGULATION OF NONADMITTED INSURANCE BY INSURED'S HOME STATE.

(a) **HOME STATE AUTHORITY.**—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) **BROKER LICENSING.**—No State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) **ENFORCEMENT PROVISION.**—With respect to section 521 and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) **WORKERS' COMPENSATION EXCEPTION.**—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

15 USC 8203.

Time period.

SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATABASE.

After the expiration of the 2-year period beginning on the date of the enactment of this subtitle, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

15 USC 8204.

SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 521(b) of this subtitle that include alternative nationwide uniform eligibility requirements; or

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL PURCHASERS. 15 USC 8205.

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance 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 the broker to procure or place such insurance from a nonadmitted insurer.

Written request.

SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MARKET.

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this part on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

(b) **CONTENTS.**—The study shall determine and analyze—

(1) the change in the size and market share of the nonadmitted insurance market and in the number of insurance companies and insurance holding companies providing such business in the 18-month period that begins upon the effective date of this subtitle;

(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the nonadmitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and nonadmitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided under such policies, and whether such coverage is available in the admitted insurance market.

(c) **CONSULTATION WITH NAIC.**—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) **REPORT.**—The Comptroller General shall complete the study under this section and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the findings of the study not later than 30 months after the effective date of this subtitle.

SEC. 527. DEFINITIONS.

For purposes of this part, the following definitions shall apply:

15 USC 8206.

(1) **ADMITTED INSURER.**—The term “admitted insurer” means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) **AFFILIATE.**—The term “affiliate” means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) **AFFILIATED GROUP.**—The term “affiliated group” means any group of entities that are all affiliated.

(4) **CONTROL.**—An entity has “control” over another entity if—

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) **EXEMPT COMMERCIAL PURCHASER.**—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 1 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.

Effective dates.

(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.

(6) **HOME STATE.**—

(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 1 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.

(7) **INDEPENDENTLY PROCURED INSURANCE.**—The term "independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.

(8) **NAIC.**—The term "NAIC" means the National Association of Insurance Commissioners or any successor entity.

(9) **NONADMITTED INSURANCE.**—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.

(10) **NON-ADMITTED INSURANCE MODEL ACT.**—The term "Non-Admitted Insurance Model Act" means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) **NONADMITTED INSURER.**—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)).

(12) **PREMIUM TAX.**—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.

(13) **QUALIFIED RISK MANAGER.**—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 7 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 1 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.

(14) REINSURANCE.—The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(15) SURPLUS LINES BROKER.—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.

(16) STATE.—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.

PART II—REINSURANCE**SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS.** 15 USC 8221.

(a) **CREDIT FOR REINSURANCE.**—If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) **ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.**—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this part; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

SEC. 532. REGULATION OF REINSURER SOLVENCY.

15 USC 8222.

(a) **DOMICILIARY STATE REGULATION.**—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) **NONDOMICILIARY STATES.**—

(1) **LIMITATION ON FINANCIAL INFORMATION REQUIREMENTS.**—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) **RECEIPT OF INFORMATION.**—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

SEC. 533. DEFINITIONS.

15 USC 8223.

For purposes of this part, the following definitions shall apply:

(1) **CEDING INSURER.**—The term “ceding insurer” means an insurer that purchases reinsurance.

(2) **DOMICILIARY STATE.**—The terms “State of domicile” and “domiciliary State” mean, with respect to an insurer or

reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

(3) NAIC.—The term “NAIC” means the National Association of Insurance Commissioners or any successor entity.

(4) REINSURANCE.—The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(5) REINSURER.—

(A) IN GENERAL.—The term “reinsurer” means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) DETERMINATION.—A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

(6) STATE.—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.

PART III—RULE OF CONSTRUCTION

15 USC 8231.

SEC. 541. RULE OF CONSTRUCTION.

Nothing in this subtitle or the amendments made by this subtitle shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this subtitle and any amendments to this subtitle and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

15 USC 8232.

SEC. 542. SEVERABILITY.

If any section or subsection of this subtitle, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this subtitle, and the application of the provision to any other person or circumstance, shall not be affected.

Bank and
Savings
Association
Holding
Company and
Depository
Institution
Regulatory
Improvements
Act of 2010.
12 USC 1811
note.

TITLE VI—IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

SEC. 601. SHORT TITLE.

This title may be cited as the “Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010”.

12 USC 1815
note.

SEC. 602. DEFINITION.

For purposes of this title, a company is a “commercial firm” if the annual gross revenues derived by the company and all of its affiliates from activities that are financial in nature (as defined

Summarized Comparison of NIMA and SLIMPACT

	NIMA	SLIMPACT
Full name of Agreement	Nonadmitted Insurance Multi-State Agreement	Surplus Lines Insurance Multi-State Compliance Compact
Name of organization recommending it	NAIC	NCOIL/ CSG/ NCSL
Type of agreement	Agreement	Compact
Method of joining	Participating State signs the agreement (representing that it has the legal authority to do so). States may need legislation in order to sign it.	The Compact requires legislative enactment of the actual Compact before a state may participate.
Type of governance	No separate establishment of a governance structure. The Participating States will agree to a "plan of operation" relating to the establishment of the Clearinghouse - to ensure the Clearinghouse and its computer software systems are capable of meeting the requirements of the Agreement.	Creation of the Surplus Lines Insurance Multi-State Compliance Compact Commission ("the Commission").
Powers of the governance structure	The "plan of operation" will address the operation of the Clearinghouse.	Power to adopt mandatory Rules relating to: Allocation formulas, clearinghouse transaction data, establishing foreign insurer eligibility requirements, a uniform policyholder notice, to bring legal actions, issue subpoenas, maintain offices, hire, borrow, accept donations and grants, establish budget, etc.
State Participation	States would sign on as "Participating States." Participating States agree: <ul style="list-style-type: none"> • to implement nationwide uniform requirements relating to forms and procedures to facilitated NIMA, • allocate among the applicable Participating States the premium taxes required by an insured's Home State; • work collaboratively and in a timely manner toward implementation of NIRA; • and establish and utilize the Clearinghouse. 	<ul style="list-style-type: none"> • States would sign on as "Compacting States" with one vote to each member. • Compacting States would participate in the governance of the Commission in accordance with the Bylaws. The Bylaws would prescribe the conduct of the Commission (personnel policies, code of ethics, establishing procedures for election of officers, establish procedures for meetings, etc.). • SLIMPACT also provides for a number of committees: executive, operations, legislative and advisory. <ul style="list-style-type: none"> ♦The executive and operations committees will be made up of individuals who have extensive experience and or employment in the Surplus Lines Insurance business including but not limited to executives and attorneys employed by Surplus Lines Insurers, Surplus Lines Licensees, Law Firms, state insurance Departments and or State Stamping Offices. ♦The legislative committee will be comprised of state legislators or their designees.

Actions	The Participating States will create a "plan of operation" (agreed to by a majority of Participating States) to direct the operation of the Clearinghouse.	The Commission will promulgate Rules pursuant to a rulemaking process. Not later than 30 days after a Rule is promulgated, any person may file a petition for judicial review of the Rule.
Clearinghouse	Each Participating State will work towards the establishment of a Clearinghouse. Each Participating State also agrees to contract directly with the Clearinghouse to provide the services that are the subject of this agreement (with no material variations in the terms of that contract).	To be determined by the Commission as a mandatory rule.
Allocation, Allocation Formula, transaction data	Made part of the Agreement agreed upon by the Participating States.	To be determined by the Commission as a mandatory rule(s).
Tax rate /stamping fee	Each Participating State agrees to establish one tax rate, encompassing any applicable taxes, fees, and assessments that apply to nonadmitted insurance. Where a home state has a stamping office, the stamping office may impose a stamping fee in addition to the tax.	Each Compacting State must establish one single rate of taxation and no other tax, fee assessment or other charge is permitted. If there is a stamping office, those fees may be charged as a separate, additional cost unless such fees are incorporated into a state's single rate of taxation.
Role of stamping office	A Home State with a stamping office may require the initial submission of transaction data, premium taxes and fees with the stamping office of that State.	The Home State has the obligation by itself, through a designated agent, surplus lines stamping or service office, to collect clearinghouse transaction data from brokers and from insureds for independently procured insurance, where applicable, for reporting to the clearinghouse.
Binding effect	The terms of this Agreement are binding upon the Participating States. Each Participating State agrees to abide by the applicable laws, regulations, and statutes concerning confidentiality and nondisclosure of information to the extent required or allowed by law.	Any law or regulation regarding Non-Admitted Insurance of Multi-State Risks that is contrary to Rules of the Commission is preempted with respect to the following: Clearinghouse transaction data requirements, allocation formula, collection requirements, premium tax payment time frames and Rules concerning the dissemination of data among the Compacting States, exclusive compliance with surplus lines law of the Home State, etc.
Tax filings / reporting	Each Participating State agrees that, when it is the Home State, it shall require tax filings and payments quarterly.	Each Compacting State and Contracting State shall require Premium Tax payments either annually, semi-annually, or quarterly.
Enforcement	The Home State agrees to enforce, to the extent permitted by the Home State's laws, enforcement of the following: unpaid tax, interest due, and applicable penalties.	The Commission may bring and prosecute legal proceedings or actions in the name of the Commission – providing that the standing of any State insurance department to sue or be sued shall not be affected. The Commission has the power to issue subpoenas requiring production of evidence but it is not empowered to demand or subpoena the records from nonadmitted insurers.

Disputes	Participating States agree to use best efforts to reach consensus. If the dispute can't be settled, the affected Participating States agree to try mediation before litigation, etc.	Compacting States may have a determination of the Commission appealed to a review panel appointed by the Commission. The Commission may also reconsider decisions. Before a Member may bring an action, the Commission shall attempt to resolve disputes between two or more Compacting States. The Commission shall also issue Rules relating to alternative dispute resolution procedures for such disputes.
Fee	Each Participating State agrees to authorize the Clearinghouse to collect a reasonable fee payable by the insured.	The Commission shall collect a fee payable by the insured to cover its annual budget.
Effective	Agreement becomes effective the 1 st day after the conclusion of the calendar quarter in which it is executed by at least two Participating States.	Upon legislative enactment of the compact into law by two Compacting States. The Commission shall become effective for the purposes of adopting Rules, and creating the Clearinghouse, upon the adoption by ten Compacting States and Contracting States or when the Compacting States and Contracting States represent greater than 40% of the surplus lines premium volume.
Termination / default	60 days written notice to the Clearinghouse to withdraw from the Agreement. If a Participating State defaults in the performance of its obligations, the defaulting state shall be suspended from the effective date of the default. Reinstatement following termination requires renewed execution of the Agreement.	A Compacting State may withdraw from the compact by enacting a statute specifically repealing the statute which enacted the compact into law. If the Commission suspends a Compacting State (for a default under the Compact that is not cured), the Compact requires that the reinstatement can only occur upon reenactment of the Compact.

NONADMITTED INSURANCE MULTI-STATE AGREEMENT (NIMA)

WHEREAS, the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), which was incorporated into the Dodd-Frank Wall Street Reform and Consumer Protection Act, provides that only an insured's "Home State" may require a premium tax payment for Nonadmitted Insurance; and

WHEREAS, the NRRA authorizes States to enter into a compact or otherwise establish procedures to allocate among the States the Nonadmitted Insurance premium taxes;

NOW, THEREFORE, in consideration of the foregoing, the Participating States that are signatories hereto, do freely and voluntarily enter into this Agreement under the following terms and conditions:

PART I

Purpose

The purposes of this Agreement, through means of joint and cooperative action among the Participating States, are to:

1. Facilitate the payment and allocation of premium taxes on Nonadmitted Insurance for Multi-State Risks among the Participating States in accordance with the premium tax allocation method and formula contained in the Annexes attached to this Agreement and based on the rates established by each Participating State.
2. Require nationwide uniform requirements, forms and procedures that facilitate the reporting, payment, collection and allocation of premium taxes for Nonadmitted Insurance for Multi-State Risks as contemplated by the NRRA.
3. Coordinate reporting of premium taxes and transaction data on Multi-State Risks among Participating States.
4. Establish a Clearinghouse to facilitate the receipt and distribution of premium taxes and transaction data related to Nonadmitted Insurance of Multi-State Risks.

PART II

Definitions

5. For purposes of this Agreement, the following definitions shall apply:
 - a. "**Agreement**" means this Nonadmitted Insurance Multi-State Agreement (NIMA), entered into by the Participating States pursuant to Section 521(b)(1) of the NRRA.
 - b. "**Admitted Insurer**" means, with respect to a State, an insurer that is licensed to transact the business of insurance in such State.

c. **"Clearinghouse"** means the entity established pursuant to this Agreement to facilitate the receipt and distribution of premium taxes and transaction data related to Nonadmitted Insurance.

d. **"Home State"** means,

(1) In General.—Except as provided in paragraphs (2) through (5), the term "Home State" means, with respect to an insured—

(A) 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

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

(2) "Principal place of business" means, with respect to determining the Home State of the insured, (a) the State where the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities; or (b) if the insured's high-level officers direct, control and coordinate the business activities in more than one State, the State in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or (c) if the insured maintains its headquarters or the insured's high-level officers direct, control and coordinate the business activities outside any State, the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(3) "Principal residence" means, with respect to determining the Home State of the insured, (a) the State where the insured resides for the greatest number of days during a calendar year; or (b) if the insured's principal residence is located outside any State, the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(4) 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 paragraph (1) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(5) Group Insurance. When the group policyholder pays 100% of the premium from its own funds, the term "Home State" means the Home State, as determined pursuant to subparagraph (A) of paragraph (1) of this subsection, of the group policyholder. When the group policyholder does not pay 100% of the premium from its own funds, the term "Home State" means the Home State, as determined pursuant to subparagraph (A) of paragraph (1) of this subsection, of the group member.

e. **"Independently Procured Insurance"** means insurance procured by an insured directly from a Nonadmitted Insurer as permitted by the laws of the Home State.

f. **"Licensed"** means, with respect to an insurer, authorization to transact the business of insurance by a license, certificate of authority, charter, or otherwise.

g. **"Multi-State Risk"** means a risk covered by a Nonadmitted Insurer with insured exposures in more than one State.

h. **"Nonadmitted Insurance"** means any Property and Casualty Insurance permitted in a State to be placed directly or through a Surplus Lines Licensee with a Nonadmitted Insurer eligible to accept such insurance. For purposes of this Agreement, Nonadmitted Insurance includes Independently Procured Insurance and Surplus Lines Insurance.

i. **"Nonadmitted Insurer"** means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State, but shall 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)).

j. **"Non-Participating State"** means any State that has not executed this Agreement.

k. **"Participating State"** means any State that has executed this Agreement and that has not withdrawn or defaulted pursuant to Part VII.

l. **"Property and Casualty Insurance"** means any kind of insurance on property, fidelity and surety insurance, or liability insurance, but does not mean title insurance, workers' compensation insurance, or any insurance on the life of a person, including life insurance, annuities, accident and health insurance, or disability insurance.

m. **"Single-State Risk"** means a risk with insured exposures in only one State.

n. **"Surplus Lines Insurance"** means insurance procured by a Surplus Lines Licensee from a Surplus Lines Insurer as permitted under the law of the Home State; for purposes of this Agreement, "Surplus Lines" shall also mean excess line as may be defined by applicable State law.

o. **"Surplus Lines Insurer"** means a Nonadmitted Insurer permitted under the law of the Home State to accept business from a Surplus Lines Licensee.

p. **"Surplus Lines Licensee"** means an individual, firm or corporation that is licensed in a State to sell, solicit or negotiate insurance, including the agent of record on a Nonadmitted Insurance policy, on properties, risks or exposures located or to be performed in a State with Nonadmitted Insurers.

6. In this Agreement, unless otherwise specified, words or expressions used in this Agreement have the same meaning as in the Nonadmitted and Reinsurance Reform Act of 2010.

7. The following are the Annexes that are attached to, and that form an integral part of, this Agreement: **Annex A** - Nonadmitted Insurance Premium Tax Allocation Schedule; **Annex B** - Allocation Formula; and **Exhibit 1** - Information Required to be Submitted by the Broker or Insured via the Clearinghouse Web Portal.

PART III

Implementation

8. The Participating State, as signatory herein, represents that it has the legal authority necessary to enter into this Agreement for the purposes stated in the Agreement, including the allocation among the other Participating States of applicable Nonadmitted Insurance premium taxes and the use of the designated Clearinghouse for the facilitation of the payment and distribution of such premium taxes.
9. Pursuant to the terms of this Agreement, each Participating State agrees to:
 - a. implement nationwide uniform requirements, forms and procedures that facilitate the reporting, payment, collection and allocation of premium taxes for Nonadmitted Insurance for Multi-State Risks;
 - b. allocate among the applicable Participating States the Nonadmitted Insurance premium taxes required by an insured's Home State as described herein;
 - c. work collaboratively and in a timely manner towards the imposition of NRRRA's Nonadmitted Insurance premium tax reforms by July 21, 2011; and
 - d. establish and utilize a Clearinghouse to facilitate the receipt, allocation, and distribution of the payment of Nonadmitted Insurance premium taxes to the Participating States.

PART IV

Collection and Allocation Procedures

10. The Clearinghouse will operate pursuant to a plan of operation, to be agreed upon by two-thirds of the Participating States, to ensure that the Clearinghouse and its computer software system are capable of meeting the requirements of this Agreement.
11. Each Participating State agrees to use the Clearinghouse for all Multi-State Risks for which that state is the Home State. Except as otherwise provided, each Participating State agrees to require Surplus Lines Licensees and insureds who independently procure insurance to utilize the Clearinghouse for the reporting and payment of Nonadmitted Insurance premium taxes for all Multi-State Risks for which that state is the Home State. This Agreement shall not require a State to treat any Property and Casualty Insurance as Nonadmitted Insurance where the laws of the State do not provide such treatment. Further, each Participating State may, at its discretion, agree to use the Clearinghouse for any Single-State Risks or non-Property and Casualty Insurance risks for which that state is the Home State.
12. Each Participating State agrees to contract with the Clearinghouse to provide the services that are the subject of this Agreement. There shall be no material variations in the terms of each Participating State's contract with the Clearinghouse and each such contract shall include, but not be limited to, terms prohibiting the Clearinghouse from lobbying, accepting gifts or donations, political activity of any kind, or conflicts of interest, and shall include terms requiring confidentiality of information received by or provided to the Clearinghouse.

13. Each Participating State agrees to require the payment of taxes, fees and assessments when the Participating State is the Home State as follows: (a) as determined by the Home State on the portion of the premium allocated to the Home State based on Annex A and Annex B; (b) specified by each Participating State on the portion of the premium allocated to that State based on Annex A and Annex B; and (c) determined by the Home State on any portion of the premium not allocated under subsections (a) and (b) of this section. Each Participating State agrees to establish one tax rate, encompassing any applicable taxes, fees and assessments, that applies to Nonadmitted Insurance; provided, however, that nothing shall require a Participating State to impose a tax on any kind of insurance for which the State presently does not have an obligation to tax or has allowed an exemption; and further provided that, where a Home State utilizes a surplus lines stamping office, the stamping office may, in accordance with the laws of that State, impose stamping fees in addition to the tax.

14. Each Participating State shall give notice to the Clearinghouse of any changes to its statewide Nonadmitted Insurance premium tax rate and any statewide assessments at least 90 days prior to the effective date of such changes. The Clearinghouse will send notice of any changes to all of the Participating States via electronic mail to the designated contact of each Participating State.

15. Each Participating State agrees to authorize the Clearinghouse, when the Participating State is the Home State, to collect a reasonable fee, to be established by contract between the Participating State and the Clearinghouse, payable by the insured directly or through a Surplus Lines Licensee on each transaction processed through the Clearinghouse to cover the cost of the operations and activities of the Clearinghouse. If the Home State has a stamping office, this fee shall be in addition to the service fee that is received by the stamping office.

16. No Participating State, other than the Home State, may require a Surplus Lines Licensee to submit data, reports or insurance documentation to a stamping office of that State. A Home State with a stamping office may require the initial submission of transaction data, premium taxes and fees with the stamping office of that State provided the State agrees by contract with the Clearinghouse to forward relevant transaction data, premium taxes and fees to the Clearinghouse for distribution to other Participating States.

17. Except as otherwise provided, each Participating State agrees to require, by statute or rule, for those policies of Nonadmitted Insurance where that State is the Home State and for which the payment of Nonadmitted Insurance premium taxes is due, that the Surplus Lines Licensee or insured who independently procures insurance shall forward such payments and related information based on Annex A and Annex B to the Clearinghouse for deposit in the Clearinghouse account. Each Participating State agrees to require that the payment of Nonadmitted Insurance premium taxes will be accompanied by transaction data consistent with Exhibit 1. After the Clearinghouse has collected and reconciled the payments, the appropriate amount will be deposited into each Participating State's depository account at the banking institution selected by the Participating State. With respect to the depository accounts of the Participating States, the Clearinghouse shall only have the authority to transfer premium taxes collected and on deposit in the Clearinghouse account into the depository account of the Participating States.

18. For those policies of Nonadmitted Insurance where transaction data consistent with Exhibit 1 is submitted prior to the payment of Nonadmitted Insurance premium taxes, each Participating State agrees that the accounting of taxes due will be tracked by the Clearinghouse, and the payment thereof will be handled by the Clearinghouse. Each Participating State agrees to require the Surplus Lines Licensee or insured who independently procures insurance, as applicable, to submit information based on Annex A and Annex B. The Clearinghouse will assess the allocated premium based upon each Participating

State's statewide Nonadmitted Insurance tax rate and statewide assessments for each Participating State with exposure. At the end of the reporting period, the Clearinghouse will allocate the amount collected on behalf of the Home State to all other Participating States and net the amounts owed to or from each of the States. The netting of taxes will be based on the actual amount collected.

19. The Clearinghouse will report to the Participating States, Surplus Lines Licensees and insureds who independently procure insurance, within 15 days of the quarterly premium tax filing and payment dates set forth in section 20 of this Part, all premium taxes owed to each of the Participating States for the preceding quarter, the dates upon which payment of such premium taxes are due, and the method through which they were paid to the Clearinghouse.

20. Each Participating State agrees that, when it is the Home State, it shall require tax filings and payments quarterly utilizing the following dates only: February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30.

21. The Home State agrees to enforce, if necessary and to the extent allowed by the laws of the Home State, any of the following: unpaid tax; interest due; and applicable penalties. The Home State will follow the calculation of these amounts and the methods of collection governed by the laws of the Home State and the plan of operation adopted pursuant to this Agreement.

PART V

Dispute Resolution

22. Each Participating State agrees to exercise best efforts to reach consensus in respect to disputed issues arising on matters governed by this Agreement.

23. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the affected Participating States agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. A dispute involving one or more Participating States or the Clearinghouse is a dispute arising out of or relating to this Agreement for purposes of this Part.

PART VI

Participating States, Effective Date and Amendment

24. Any State is eligible to become a Participating State. This Agreement shall become effective and binding as of the first day after the conclusion of the calendar quarter in which the Agreement is executed by the duly authorized representative of at least two (2) Participating States. Thereafter, it shall become effective and binding as to any other Participating State as of the first day after the conclusion of the calendar quarter in which such State executes this Agreement.

25. Amendments may be proposed by any of the Participating States under this Agreement. The amendment shall become effective after two-thirds of the Participating States agree in writing to accept the amendment.

PART VII

Withdrawal, Default and Dissolution

26. Withdrawal

a. Once effective, this Agreement shall continue in force and remain binding upon each and every Participating State, provided that a Participating State may withdraw from the Agreement ("Withdrawing State") by providing 60 days' written notice to the Clearinghouse, which shall provide advance written notice to all Participating States and facilitate public notice of the State's withdrawal from the Agreement.

b. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

27. Default

a. If any Participating State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Agreement, the Defaulting State shall be suspended from the effective date of default. The grounds for default include, but are not limited to, failure of a Participating State to perform its obligations or responsibilities as required by this Agreement.

b. Reinstatement following termination of any Participating State requires renewed execution of the Agreement.

28. Dissolution of Agreement

a. The Agreement dissolves effective upon the date of the withdrawal or default of the Participating State that reduces membership in the Agreement to one Participating State.

b. Upon the dissolution of this Agreement, the Agreement becomes null and void and shall be of no further force or effect.

PART VIII

Severability and Construction

29. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of this Agreement shall be enforceable.

30. The provisions of this Agreement shall be liberally construed to effectuate its purposes.

31. Throughout this Agreement, the use of the singular shall include the plural and vice-versa. The headings and captions of parts, sections, subsections, paragraphs and sub-paragraphs used in this Agreement are for convenience only and shall be ignored in construing the substantive provisions of this Agreement.

PART IX

Binding Effect of Agreement and Other Laws

32. The terms of this Agreement, and the procedures to be established as amendments to this Agreement, are binding upon the Participating States, except as otherwise may be provided herein.

33. Each Participating State agrees to abide by the applicable laws, regulations, and statutes concerning confidentiality and nondisclosure of information to the extent required or allowed by law. This Agreement neither abrogates nor supersedes applicable Participating State laws respecting confidentiality, trade secrets and proprietary information.

PART X

Miscellaneous

34. This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which taken together will constitute one and the same instrument. Counterparts may be executed either by hard copy or electronically, or by facsimile, and the Participating States shall accept any signatures received by electronic mail or facsimile as original signatures of the Participating State. The Participating State will promptly forward to the other Participating States and the Clearinghouse a signed copy of this Agreement.

35. By entering into this Agreement, a Participating State is not deemed to surrender or abandon any of the powers, rights, privileges or authorities vested in it under its State constitution, statutes, acts, or otherwise, or to impair any of such powers, rights, privileges or authorities.

36. This Agreement, including all Annexes and the Exhibit attached, constitutes the entire agreement between the Participating States with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings between the Participating States with respect to that subject matter.

37. After execution of this Agreement, each Participating State will do, or cause to be done, all acts as the other Participating States may reasonably require from time to time for the purpose of giving effect to this Agreement and each Participating State will use reasonable efforts, and take all steps as may be reasonably within that Participating State's power, to implement to its full extent the provisions of this Agreement.

[SIGNATURE OF STATE OFFICIAL]

ANNEX A
Nonadmitted Insurance Premium Tax Allocation Schedule

This Annex to the Agreement sets forth the provisions governing the method of tax allocation for Multi-State Risks, as specified in Part III. If the allocation schedule does not identify a classification appropriate to the property or risk being insured, then the Surplus Lines Licensee, or an insured who independently procures insurance, consistently shall use an alternative method of equitable allocation across similar types of insurance policies and contracts, and shall maintain for at least five years, documented evidence of the bases and other criteria used by the Surplus Lines Licensee or insured who independently procures insurance in order to substantiate the method.

EXPOSURE ALLOCATION METHODOLOGY

MAJOR COVERAGE	COVERAGE TYPE	INCLUDING	*ALLOCATION BASIS BY STATE
PROPERTY	<p>ALL PROPERTY UNLESS MORE SPECIFICALLY DESCRIBED ELSEWHERE</p> <p>INCLUDES BOTH REAL AND PERSONAL PROPERTY, GLASS, CROP, ANIMALS, RESIDUAL VALUE</p>	<p>ALL RISK INCLUDING LEAKAGE OF SPRINKLERS, EXPLOSION, RIOT & CIVIL COMMOTION, EARTHQUAKE, BLANKET FORM, WATER DAMAGE, BUSINESS INTERRUPTION, TIME ELEMENT OR SIMILAR TIME VALUE COVERAGE, FIRE AND EXCESS OF LOSS</p>	<p>TIV (TIV= PD + BI) TOTAL INSURED VALUE = PHYSICAL DAMAGE + BUSINESS INTERRUPTION</p>
	AVIATION	PHYSICAL DAMAGE, ALL OTHERS	TIV
	BOILER & MACHINERY	DIRECT, CONSEQUENTIAL, ENGINE & MACHINERY, ALL OTHERS	TIV
	INLAND MARINE	FINE ARTS DEALERS, JEWELERS BLOCK, FURRIERS BLOCK, BUSINESS & PERSONAL FLOATER, BUILDERS RISK, ALL OTHER NON APPEARANCE & ABANDONMENT	TIV
	INLAND MARINE	MOTOR TRUCK CARGO	GARAGE LOCATION
	MOTOR VEHICLE PHYSICAL DAMAGE		TIV OF MOTOR VEHICLES PRINCIPALLY GARAGED OR PRINCIPALLY USED IN STATES

MAJOR COVERAGE	COVERAGE TYPE	INCLUDING	*ALLOCATION BASIS BY STATE
CASUALTY	GENERAL LIABILITY / UMBRELLA / EXCESS LIABILITY	MANUFACTURERS AND CONTRACTORS	PAYROLL IN STATE
		PREMISES OPERATIONS	SQUARE FOOTAGE OF PREMISES IN STATE
		OWNERS AND CONTRACTORS PROTECTIVE	COST OF CONTRACT IN STATE
		PRODUCTS	SALES IN STATE
		COMPLETED OPERATIONS	RECEIPTS IN STATE
		CHILD CARE	NUMBER OF CHILDREN IN STATE
		CONTRACTUAL	IF "STAND ALONE" POLICY, VALUE OF SALES IN STATE
		RECREATIONAL	AMOUNT OF GATE RECEIPTS IN STATE
		SPECIAL EVENTS	NUMBER OF EVENTS IN STATE
		PROFESSIONAL LIABILITY	NUMBER OF INSURED IN STATE
ERRORS & OMISSIONS (E&O) / PROFESSIONAL LIABILITY		REVENUES (RECEIPTS) OR NUMBER OF PROFESSIONALS BY STATE	
MEDICAL MALPRACTICE	INCLUDES MEDICAL MALPRACTICE FOR INDIVIDUAL HEALTHCARE PROVIDERS OR FACILITIES, I.E. HOSPITALS, NURSING HOMES, PSYCHIATRIC CENTERS	REVENUES (RECEIPTS), NUMBER OF PROFESSIONALS OR BED COUNT BY STATE	

MAJOR COVERAGE	COVERAGE TYPE	INCLUDING	*ALLOCATION BASIS BY STATE
CASUALTY (CONT'D)	EMPLOYMENT PRACTICES LIABILITY (EPLI)	EPLI FOR ALL INDUSTRIES	HEADCOUNT BY STATE
	MUNICIPALITIES, PUBLIC AUTHORITIES AND OTHER POLITICAL SUBDIVISIONS		NUMBER OF MUNICIPALITIES, ETC.
	ENVIRONMENTAL IMPAIRMENT		NUMBER OF UNITS OF EXPOSURE
	ASBESTOS ABATEMENT		PAYROLL
	EMPLOYEE/MEMBER BENEFIT PROGRAM		NUMBER OF EMPLOYEES/MEMBERS
	MOTOR VEHICLE	AUTOMOBILE LIABILITY, EXCESS AUTOMOBILE LIABILITY	NUMBER OF MOTOR VEHICLES PRINCIPALLY GARAGED OR PRINCIPALLY USED IN STATES
	RAILROAD PROTECTIVE		MILES OF TRACK IN STATE
MARINE	VESSELS		PRINCIPAL BERTHING LOCATION
	ALL OTHER PROPERTY		TIV
AVIATION	AIRCRAFT	NON-OWNED AIRCRAFT, AIRCRAFT LIABILITY	HANGAR LOCATION
FINANCIAL RISK	DIRECTORS AND OFFICERS LIABILITY	GENERAL PARTNERSHIP LIABILITY	REVENUE GENERATED IN STATE
	SEC LIABILITY	UNAUTHORIZED TRADING	REVENUE GENERATED IN STATE
	KIDNAP & RANSOM		EMPLOYEES
	EXCESS SIPC		REVENUE GENERATED IN STATE
	MORTGAGE IMPAIRMENT		TIV

MAJOR COVERAGE	COVERAGE TYPE	INCLUDING	*ALLOCATION BASIS BY STATE
FINANCIAL RISK (CONT'D)	PATENT INFRINGEMENT		REVENUE GENERATED IN STATE
	SECURITIES	MAIL	TIV
	MEDIA LIABILITY		TIV
	SERVICE CONTRACTS/WARRANTIES		REVENUE GENERATED IN STATE
	TAX OPINION GUARANTEE		REVENUE GENERATED IN STATE
	INTELLECTUAL PROPERTY		REVENUE GENERATED IN STATE
CRIME	CRIME	BLANKET CRIME, FIDELITY BOND, INDIVIDUAL BOND, EMPLOYEE DISHONESTY, FORGERY, THEFT, ROBBERY, BURGLARY, FRAUD	EMPLOYEE COUNT
ACCIDENT AND HEALTH	ACCIDENT AND HEALTH	DISEASE, ACCIDENTAL INJURY OR DEATH, MEDICAL SURGICAL EXPENSES AND INCOME PAYMENTS	LOCATION OF EMPLOYEES OR CORPORATE HEADQUARTERS
CREDIT	CREDIT		VALUE OF INSURED DEBT IN STATE
FIDELITY & SURETY	PERFORMANCE BONDS		TOTAL BOND VALUE OF CONTRACTS IN STATE
	OTHER SURETY BONDS		TOTAL BOND VALUE OF CONTRACTS IN STATE

* U.S. PREMIUM ONLY

ANNEX B
Allocation Formula

For the purposes of this Annex and subject to Parts III, IV, and VII, the Nonadmitted Insurance premium tax revenue for a calendar tax year or for a sub-period of a calendar tax year, as the case may be, is the amount determined by the formula:

Tax Allocation = (Net tax due to each State/net tax due to all States) x Amount collected

Home State Net Taxes = (Taxes collected for the Home State + Taxes due from other Participating States) – Taxes owed to other Participating States

Total Premium Tax to be Collected on Each Multi-State Policy = (Home State's tax rate x Portion of premium allocated to Home State) + (Home State's tax rate x Premium allocated to Non-Participating State if insurer is nonadmitted in that State) + (Participating States' tax rate x Premium allocated to each Participating State if insurer is nonadmitted in that state)

Exhibit 1

**Information Required to be Submitted
By the Broker or Insured via the Clearinghouse Web Portal**

A. Submission Contact

Name

Address

Phone Number

E-mail address

Independently procured policy? (Y/N)

B. Agency/Brokerage Firm Data

State

License Number

Name

Address

Phone Number

C. Agent/Sublicensee or Individual Licensee Data

State

License Number

Name

Office Address

Mailing Address

Phone Number

E-mail Address

D. Billing Contact

Name

Address

E-mail Address

Phone Number

E. Policy Data

Policy Number/Binder Number if Policy Number is not available

Effective Date

Expiration Date

Insured Name

Home State of Insured

F. Transaction Data

NAIC Insurer Code Number(s)

Insurer Name(s)

Total Policy Premium by Insurer(s)

Coverage Code

Tax Status

Transaction Type (New, Renewal or Endorsement)

Allocation among States:

Allocation Method

Premiums Allocated to Each State

1
2 **SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT**

3
4 *Final Version (12-21) of SLIMPACT Model, with Technical & Clarifying Amendments*
5 *regarding Executive Committee.*

6
7 **PREAMBLE**

8
9 **Article I Purposes**

10
11 **Article II Definitions**

12
13 **Article III Establishment of the Commission and Venue**

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15 **Article IV Authority to Establish Mandatory Rules**

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17 **Article V Powers of the Commission**

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19 **Article VI Organization of the Commission**

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21 **Article VII Meetings and Acts of the Commission**

22
23 **Article VIII Rules and Operation Procedures: Rulemaking**
24 **Functions of the Commission**

25
26 **Article IX Commission Records and Enforcement**

27
28 **Article X Dispute Resolution**

29
30 **Article XI Review of Commission Decisions**

31
32 **Article XII Finance**

33
34 **Article XIII Compacting States, Effective Date and Amendment**

35
36 **Article XIV Withdrawal, Default and Termination**

37
38 **Article XV Severability and Construction**

39
40 **Article XVI Binding Effect of Compact and Other Laws**

1
2
3 **PREAMBLE**

4 WHEREAS, with regard to Non-Admitted Insurance policies with risk exposures
5 located in multiple states, the 111th United States Congress, has stipulated in Title
6 V, Subtitle B the Non-Admitted and Reinsurance Reform Act of 2010, of the
7 Dodd-Frank Wall Street Reform and Consumer Protection Act, hereafter, the
8 NRRA, that:

9 (A)The placement of Non-Admitted Insurance shall be subject to the statutory and
10 regulatory requirements solely of the insured's Home State, and

11
12 (B)Any law, regulation, provision, or action of any State that applies or purports to
13 apply to Non-Admitted Insurance sold to, solicited by, or negotiated with an
14 insured whose Home State is another State shall be preempted with respect to such
15 application; except that any State law, rule, or regulation that restricts the
16 placement of workers' compensation insurance or excess insurance for self-funded
17 workers' compensation plans with a Non-Admitted Insurer shall not be preempted.

18
19 WHEREAS, in compliance with NRRA, no State other than the Home State of an
20 insured may require any Premium Tax payment for Non-Admitted Insurance; and
21 no State other than an insured's Home State may require a Surplus Lines Broker to
22 be licensed in order to sell, solicit, or negotiate Non-Admitted Insurance with
23 respect to such insured;

24
25 WHEREAS, the NRRA intends that the States may enter into a compact or
26 otherwise establish procedures to allocate among the States the premium taxes paid
27 to an insured's Home State; and that each State adopt nationwide uniform
28 requirements, forms, and procedures, such as an interstate compact, that provide
29 for the reporting, payment, collection, and allocation of premium taxes for Non-
30 Admitted Insurance;

31
32 WHEREAS, after the expiration of the two-year period beginning on the date of
33 the enactment of the NRRA, a State may not collect any fees relating to licensing
34 of an individual or entity as a Surplus Lines Licensee in the State unless the State
35 has in effect at such time laws or regulations that provide for participation by the
36 State in the national insurance producer database of the NAIC, or any other
37 equivalent uniform national database, for the licensure of Surplus Lines Licensees
38 and the renewal of such licenses;

39

1 WHEREAS, a need exists for a system of regulation that will provide for Surplus
2 Lines Insurance to be placed with reputable and financially sound Non-Admitted
3 Insurers, and that will permit orderly access to Surplus Lines Insurance in this state
4 and encourage insurers to make new and innovative types of insurance available to
5 consumers in this state;

6
7 WHEREAS, protecting the revenue of this state and other Compacting States may
8 be accomplished by facilitating the payment and collection of Premium Tax on
9 Non-Admitted Insurance and providing for allocation of Premium Tax for Non-
10 Admitted Insurance of Multi-State Risks among the States in accordance with
11 Uniform Allocation Formulas;

12
13 WHEREAS, the efficiency of the surplus lines market may be improved by
14 eliminating duplicative and inconsistent tax and regulatory requirements among the
15 States, and by promoting and protecting the interests of Surplus Lines Licensees
16 who assist such insureds and Non-Admitted Insurers, thereby ensuring the
17 continued availability of Non-Admitted Insurance to consumers;

18
19 WHEREAS, regulatory compliance with respect to Non-Admitted Insurance
20 placements may be streamlined by providing for exclusive single-state regulatory
21 compliance for Non-Admitted Insurance of Multi-State Risks, thereby providing
22 certainty regarding such compliance to all persons who have an interest in such
23 transactions, including but not limited to insureds, regulators, Surplus Lines
24 Licensees, other insurance producers, and Surplus Lines Insurers;

25
26 WHEREAS, coordination of regulatory resources and expertise between State
27 insurance departments and other State agencies, as well as State surplus lines
28 stamping offices, with respect to Non-Admitted Insurance will be improved;

29
30 NOW, THEREFORE, in consideration of the foregoing, the State of
31 _____ and the various other States do hereby solemnly covenant and
32 agree, each with the other as follows:

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ARTICLE I

Purpose

The purposes of this Compact are:

1. To implement the express provisions of the NRRA.
2. To protect the Premium Tax revenues of the Compacting States through facilitating the payment and collection of Premium Tax on Non-Admitted Insurance; and to protect the interests of the Compacting States by supporting the continued availability of such insurance to consumers; and to provide for allocation of Premium Tax for Non-Admitted Insurance of Multi-State Risks among the States in accordance with uniform Allocation Formulas to be developed, adopted, and implemented by the Commission.
3. To streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the States; and promote and protect the interest of Surplus Lines Licensees who assist such insureds and Surplus Lines Insurers, thereby ensuring the continued availability of Surplus Lines Insurance to consumers.
4. To streamline regulatory compliance with respect to Non-Admitted Insurance placements by providing for exclusive single-state regulatory compliance for Non-Admitted Insurance of Multi-State Risks, in accordance with Rules to be adopted by the Commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including but not limited to insureds, regulators, Surplus Lines Licensees, other insurance producers, and Surplus Lines Insurers.
5. To establish a Clearinghouse for receipt and dissemination of Premium Tax and Clearinghouse Transaction Data related to Non-Admitted Insurance of Multi-State Risks, in accordance with Rules to be adopted by the Commission.
6. To improve coordination of regulatory resources and expertise between State insurance departments and other State agencies, as well as State surplus lines stamping offices, with respect to Non-Admitted Insurance.

- 1 7. To adopt uniform Rules to provide for Premium Tax payment, reporting,
2 allocation, data collection and dissemination for Non-Admitted Insurance of
3 Multi-State Risks and Single-State Risks, in accordance with Rules to be
4 adopted by the Commission, thereby promoting the overall efficiency of the
5 Non-Admitted Insurance market.
6
- 7 8. To adopt uniform mandatory Rules with respect to regulatory compliance
8 requirements for:
9
- 10 (i) foreign Insurer Eligibility Requirements;
11
12 (ii) surplus lines Policyholder Notices;
13
- 14 9. To establish the Surplus Lines Insurance Multi-State Compliance Compact
15 Commission.
16
- 17 10. To coordinate reporting of Clearinghouse Transaction Data on Non-
18 Admitted Insurance of Multi-State Risks among Compacting States and
19 Contracting States.
20
- 21 11. To perform these and such other related functions as may be consistent with
22 the purposes of the Surplus Lines Insurance Multi-State Compliance
23 Compact.

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ARTICLE II

Definitions

For purposes of this Compact the following definitions shall apply:

1. "Admitted Insurer" means an insurer that is licensed, or authorized, to transact the business of insurance under the law of the Home State; for purposes of this Compact "Admitted Insurer" shall not include a domestic surplus lines insurer as may be defined by applicable State law.
2. "Affiliate" means with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.
3. "Allocation Formula" means the uniform methods promulgated by the Commission by which insured risk exposures will be apportioned to each State for the purpose of calculating Premium Taxes due.
4. "Bylaws" means those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct.
5. "Clearinghouse" means the Commission's operations involving the acceptance, processing, and dissemination, among the Compacting States, Contracting States, Surplus Lines Licensees, insureds and other persons, of Premium Tax and Clearinghouse Transaction Data for Non-Admitted Insurance of Multi-State Risks, in accordance with this Compact and Rules to be adopted by the Commission.
6. "Clearinghouse Transaction Data" means the information regarding Non-Admitted Insurance of Multi-State Risks required to be reported, accepted, collected, processed, and disseminated by Surplus Lines Licensees for Surplus Lines Insurance and insureds for Independently Procured Insurance under this Compact and Rules to be adopted by the Commission. Clearinghouse Transaction Data includes information related to Single-State Risks if a state elects to have the Clearinghouse collect taxes on Single-State Risks for such state.

- 1 7. "Compacting State" means any State which has enacted this Compact
2 legislation and which has not withdrawn pursuant to Article XIV, Section 1,
3 or been terminated pursuant to Article XIV, Section 2.
4
- 5 8. "Commission" means the "Surplus Lines Insurance Multi-State Compliance
6 Compact Commission" established by this Compact.
7
- 8 9. "Commissioner" means the chief insurance regulatory official of a State
9 including, but not limited to commissioner, superintendent, director or
10 administrator or their designees.
11
- 12 10. "Contracting State" means any State which has not enacted this Compact
13 legislation but has entered into a written contract with the Commission to
14 utilize the services of and fully participate in the Clearinghouse.
15
- 16 11. "Control" An entity has "control" over another entity if:
17 (A) the entity directly or indirectly or acting through 1 or more
18 other persons own, controls, or has the power to vote 25 percent
19 or more of any class of voting securities of the other entity; or
20
21 (B) the entity controls in any manner the election of a majority of
22 the directors or trustees of the other entity.
23
- 24 12. "Home State"
25 (A) IN GENERAL. Except as provided in subparagraph (B), the term "Home
26 State" means, with respect to an insured:
27
28 (i) the State in which an insured maintains its principal place of
29 business or, in the case of an individual, the individual's
30 principal residence; or
31
32 (ii) if 100 percent of the insured risk is located out of the State
33 referred to in subparagraph (A)(i), the State to which the
34 greatest percentage of the insured's taxable premium for that
35 insurance contract is allocated.
36
37 (B) AFFILIATED GROUPS. If more than one insured from an affiliated group
38 are named insureds on a single Non-Admitted Insurance contract, the term
39 "Home State" means the Home State, as determined pursuant to

1 subparagraph (A), of the member of the affiliated group that has the largest
2 percentage of premium attributed to it under such insurance contract.
3

4 13. "Independently Procured Insurance" means insurance procured by an
5 insured directly from a Surplus Lines Insurer or other Non-Admitted Insurer
6 as permitted by the laws of the Home State.
7

8 14. "Insurer Eligibility Requirements" means the criteria, forms and procedures
9 established to qualify as a Surplus Lines Insurer under the law of the Home
10 State provided that such criteria, forms and procedures are consistent with
11 the express provisions of the NRRA on and after July 21, 2011.
12

13 15. "Member" means the person or persons chosen by a Compacting State as its
14 representative or representatives to the Commission provided that each
15 Compacting State shall be limited to one vote.
16

17 16. "Multi-State Risk" means a risk with insured exposures in more than one
18 State.
19

20 17. "Non-Compacting State" means any State which has not adopted this
21 Compact.
22

23 18. "Non-Admitted Insurance" means Surplus Lines Insurance and
24 Independently Procured Insurance.
25

26 19. "Non-Admitted Insurer" means an insurer that is not authorized or admitted
27 to transact the business of insurance under the law of the Home State.
28

29 20. "NRRA" means the Non-Admitted and Reinsurance Reform Act which is
30 Title V, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer
31 Protection Act.
32

33 21. "Policyholder Notice" means the disclosure notice or stamp that is required
34 to be furnished to the applicant or policyholder in connection with a Surplus
35 Lines Insurance placement.
36

37 22. "Premium Tax" means with respect to Non-Admitted Insurance, any tax,
38 fee, assessment, or other charge imposed by a government entity directly or
39 indirectly based on any payment made as consideration for such insurance,

1 including premium deposits, assessments, registration fees, and any other
2 compensation given in consideration for a contract of insurance.

3
4 23. "Principal Place of Business" means with respect to determining the Home
5 State of the insured, the state where the insured maintains its headquarters
6 and where the insured's high-level officers direct, control and coordinate the
7 business activities of the insured.

8
9 24. "Purchasing Group" means any group formed pursuant to the Liability Risk
10 Retention Act which has as one of its purposes the purchase of liability
11 insurance on a group basis, purchases such insurance only for its group
12 members and only to cover their similar or related liability exposure and is
13 composed of members whose businesses or activities are similar or related
14 with respect to the liability to which members are exposed by virtue of any
15 related, similar or common business, trade, product, services, premises or
16 operations and is domiciled in any State.

17
18 25. "Rule" means a statement of general or particular applicability and future
19 effect promulgated by the Commission designed to implement, interpret, or
20 prescribe law or policy or describing the organization, procedure or practice
21 requirements of the Commission which shall have the force and effect of law
22 in the Compacting States.

23
24 26. "Single-State Risk" means a risk with insured exposures in only one State.

25
26 27. "State" means any state, district or territory of the United States of America.

27
28 28. "State Transaction Documentation" means the information required under
29 the laws of the Home State to be filed by Surplus Lines Licensees in order to
30 report Surplus Lines Insurance and verify compliance with surplus lines
31 laws, and by insureds in order to report Independently Procured Insurance.

32
33 29. "Surplus Lines Insurance" means insurance procured by a Surplus Lines
34 Licensee from a Surplus Lines Insurer or other Non-Admitted Insurer as
35 permitted under the law of the Home State; for purposes of this Compact
36 "Surplus Lines Insurance" shall also mean excess lines insurance as may be
37 defined by applicable State law.

38
39 30. "Surplus Lines Insurer" means a Non-Admitted Insurer eligible under the
40 law of the Home State to accept business from a Surplus Lines Licensee; for

1 purposes of this Compact "Surplus Lines Insurer" shall also mean an insurer
2 which is permitted to write Surplus Lines Insurance under the laws of the
3 state where such insurer is domiciled.

4
5 31. "Surplus Lines Licensee" means an individual, firm or corporation licensed
6 under the law of the Home State to place Surplus Lines Insurance.
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ARTICLE III

Establishment of the Commission and Venue

1. The Compacting States hereby create and establish a joint public agency known as the "Surplus Lines Insurance Multi-State Compliance Compact Commission."
2. Pursuant to Article IV, the Commission will have the power to adopt mandatory Rules which establish exclusive Home State authority regarding Non-Admitted Insurance of Multi State Risks, Allocation Formulas, Clearinghouse Transaction Data, a Clearinghouse for receipt and distribution of allocated Premium Tax and Clearinghouse Transaction Data, and uniform rulemaking procedures and Rules for the purpose of financing, administering, operating and enforcing compliance with the provisions of this Compact, its Bylaws and Rules.
3. Pursuant to Article IV, the Commission will have the power to adopt mandatory Rules establishing foreign Insurer Eligibility Requirements and a concise and objective Policyholder Notice regarding the nature of a surplus lines placement.
4. The Commission is a body corporate and politic, and an instrumentality of the Compacting States.
5. The Commission is solely responsible for its liabilities except as otherwise specifically provided in this Compact.
6. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

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ARTICLE IV

Authority to Establish Mandatory Rules

The Commission shall adopt mandatory Rules which establish:

1. Allocation Formulas for each type of Non-Admitted Insurance coverage, which Allocation Formulas must be used by each Compacting State and Contracting State in acquiring Premium Tax and Clearinghouse Transaction Data from Surplus Lines Licensees and insureds for reporting to the Clearinghouse created by the Compact Commission. Such Allocation Formulas will be established with input from Surplus lines Licensees and be based upon readily available data with simplicity and uniformity for the Surplus Line Licensee as a material consideration.
2. Uniform Clearinghouse Transaction Data reporting requirements for all information reported to the Clearinghouse.
3. Methods by which Compacting States and Contracting States require Surplus Lines Licensees and insureds to pay Premium Tax and to report Clearinghouse Transaction Data to the Clearinghouse, including but not limited to processing Clearinghouse Transaction Data through State stamping and service offices, State insurance departments, or other State designated agencies or entities.
4. That Non-Admitted Insurance of Multi-State Risks shall be subject to all of the regulatory compliance requirements of the Home State exclusively. Home State regulatory compliance requirements applicable to Surplus Lines Insurance shall include but not be limited to, (i) person(s) required to be licensed to sell, solicit, or negotiate Surplus Lines Insurance; (ii) Insurer Eligibility Requirements or other approved Non-Admitted Insurer requirements; (iii) Diligent Search; (iv) State Transaction Documentation and Clearinghouse Transaction Data regarding the payment of Premium Tax as set forth in this Compact and Rules to be adopted by the Commission. Home State regulatory compliance requirements applicable to Independently Procured Insurance placements shall include but not be limited to providing State Transaction Documentation and Clearinghouse Transaction Data regarding the payment of Premium Tax as set forth in this Compact and Rules to be adopted by the Commission.

- 1 5. That each Compacting State and Contracting State may charge its own rate
2 of taxation on the premium allocated to such State based on the applicable
3 Allocation Formula provided that the state establishes one single rate of
4 taxation applicable to all Non-Admitted Insurance transactions and no other
5 tax, fee assessment or other charge by any governmental or quasi
6 governmental agency be permitted. Notwithstanding the foregoing,
7 stamping office fees may be charged as a separate, additional cost unless
8 such fees are incorporated into a state's single rate of taxation.
9
- 10 6. That any change in the rate of taxation by any Compacting State or
11 Contracting State be restricted to changes made prospectively on not less
12 than 90 days advance notice to the Compact Commission.
13
- 14 7. That each Compacting State and Contracting State shall require Premium
15 Tax payments either annually, semi-annually, or quarterly utilizing one or
16 more of the following dates only: March 1, June 1, September 1, and
17 December 1.
18
- 19 8. That each Compacting State and Contracting State prohibit any other State
20 agency or political subdivision from requiring Surplus Lines Licensees to
21 provide Clearinghouse Transaction Data and State Transaction
22 Documentation other than to the insurance department or tax officials of the
23 Home State or one single designated agent thereof.
24
- 25 9. The obligation of the Home State by itself, through a designated agent,
26 surplus lines stamping or service office, to collect Clearinghouse
27 Transaction Data from Surplus Line Licensees and from insureds for
28 Independently Procured Insurance, where applicable, for reporting to the
29 Clearinghouse.
30
- 31 10. A method for the Clearinghouse to periodically report to Compacting States,
32 Contracting States, Surplus Lines Licensees and insureds who independently
33 procure insurance, all Premium Taxes owed to each of the Compacting
34 States and Contracting States, the dates upon which payment of such
35 Premium Taxes are due and a method to pay them through the
36 Clearinghouse.
37
- 38 11. That each Surplus Line Licensee is required to be licensed only in the Home
39 State of each insured for whom Surplus Lines Insurance has been procured.
40

- 1 12. That a policy considered to be Surplus Lines Insurance in the insured's
2 Home State shall be considered Surplus Lines Insurance in all Compacting
3 States and Contracting States, and taxed as a Surplus Lines transaction in all
4 states to which a portion of the risk is allocated. Each Compacting State and
5 Contracting State shall require each Surplus Lines Licensee to pay to every
6 other Compacting State and Contracting State Premium Taxes on each
7 Multi-State Risk through the Clearinghouse at such tax rate charged on
8 surplus lines transactions in such other Compacting States and Contracting
9 States on the portion of the risk in each such Compacting State and
10 Contracting State as determined by the applicable uniform Allocation
11 Formula adopted by the Commission. A policy considered to be
12 Independently Procured Insurance in the insured's Home State shall be
13 considered Independently Procured Insurance in all Compacting States and
14 Contracting States. Each Compacting State and Contracting State shall
15 require the insured to pay every other Compacting State and Contracting
16 State the Independently Procured Insurance Premium Tax on each Multi-
17 State Risk through the Clearinghouse pursuant to the uniform Allocation
18 Formula adopted by the Commission.
19
- 20 13. Uniform foreign Insurer Eligibility Requirements as authorized by the
21 NRRA.
22
- 23 14. A uniform Policyholder Notice.
24
- 25 15. Uniform treatment of Purchasing Group Surplus Lines Insurance
26 placements.
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ARTICLE V

Powers of the Commission

The Commission shall have the following powers:

1. To promulgate Rules and operating procedures, pursuant to Article VIII of this Compact, which shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in this Compact;
2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State insurance department to sue or be sued under applicable law shall not be affected;
3. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, provided however, the Commission is not empowered to demand or subpoena records or data from Non-Admitted Insurers;
4. To establish and maintain offices including the creation of a Clearinghouse for the receipt of Premium Tax and Clearinghouse Transaction Data regarding Non-Admitted Insurance of Multi-State Risks, Single-State Risks for states which elect to require Surplus Lines Licensees to pay Premium Tax on Single State Risks through the Clearinghouse and tax reporting forms;
5. To purchase and maintain insurance and bonds;
6. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compacting State or stamping office, pursuant to an open, transparent, objective competitive process and procedure adopted by the Commission;
7. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications, pursuant to an open, transparent, objective competitive process and procedure adopted by the Commission; and to establish the Commission's personnel policies and programs relating to conflicts of

1 interest, rates of compensation and qualifications of personnel, and other
2 related personnel matters;

3
4 8. To accept any and all appropriate donations and grants of money,
5 equipment, supplies, materials and services, and to receive, utilize and
6 dispose of the same; provided that at all times the Commission shall avoid
7 any appearance of impropriety and/or conflict of interest;

8
9 9. To lease, purchase, accept appropriate gifts or donations of, or otherwise to
10 own, hold, improve or use, any property, real, personal or mixed; provided
11 that at all times the Commission shall avoid any appearance of impropriety
12 and/or conflict of interest;

13
14 10. To sell convey, mortgage, pledge, lease, exchange, abandon or otherwise
15 dispose of any property real, personal or mixed;

16
17 11. To provide for tax audit Rules and procedures for the Compacting States
18 with respect to the allocation of Premium Taxes including:

19
20 a. Minimum audit standards, including sampling methods,

21
22 b. Review of internal controls,

23
24 c. Cooperation and sharing of audit responsibilities between Compacting
25 States,

26
27 d. Handling of refunds or credits due to overpayments or improper
28 allocation of Premium Taxes,

29
30 e. Taxpayer records to be reviewed including a minimum retention
31 period,

32
33 f. Authority of Compacting States to review, challenge, or re-audit
34 taxpayer records.

35
36 12. To enforce compliance by Compacting States and Contracting States with
37 Rules, and Bylaws pursuant to the authority set forth in Article XIV;

38
39 13. To provide for dispute resolution among Compacting States and Contracting
40 States;

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- 14. To advise Compacting States and Contracting States on tax-related issues relating to insurers, insureds, Surplus Lines Licensees, agents or brokers domiciled or doing business in Non-Compacting States, consistent with the purposes of this Compact;
- 15. To make available advice and training to those personnel in State stamping offices, State insurance departments or other State departments for record keeping, tax compliance, and tax allocations; and to be a resource for State insurance departments and other State departments;
- 16. To establish a budget and make expenditures;
- 17. To borrow money;
- 18. To appoint and oversee committees, including advisory committees comprised of Members, State insurance regulators, State legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in this Compact and the Bylaws;
- 19. To establish an Executive Committee of not less than seven (7) nor more than fifteen (15) representatives, which shall include officers elected by the Commission and such other representatives as provided for herein and determined by the Bylaws. Representatives of the Executive Committee shall serve a one year term. Representatives of the Executive Committee shall be entitled to one vote each. The Executive Committee shall have the power to act on behalf of the Commission, with the exception of rulemaking, during periods when the Commission is not in session. The Executive Committee shall oversee the day to day activities of the administration of the Compact, including the activities of the Operations Committee created under this Article and compliance and enforcement of the provisions of the Compact, its Bylaws, and Rules, and such other duties as provided herein and as deemed necessary.
- 20. To establish an Operations Committee of not less than seven (7) and not more than fifteen (15) representatives to provide analysis, advice, determinations and recommendations regarding technology, software, and systems integration to be acquired by the Commission and to provide analysis, advice, determinations and recommendations regarding the

1 establishment of mandatory Rules to be adopted to be by the Commission.

2

3 21. To enter into contracts with Contracting States so that Contracting States can
4 utilize the services of and fully participate in the Clearinghouse subject to
5 the terms and conditions set forth in such contracts;

6

7 22. To adopt and use a corporate seal; and

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9 23. To perform such other functions as may be necessary or appropriate to
10 achieve the purposes of this Compact consistent with the State regulation of
11 the business of insurance.

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ARTICLE VI

Organization of the Commission

1. Membership, Voting and Bylaws

- a. Each Compacting State shall have and be limited to one Member. Each State shall determine the qualifications and the method by which it selects a Member and set forth the selection process in the enabling provision of the legislation which enacts this Compact. In the absence of such a provision the Member shall be appointed by the governor of such Compacting State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compacting State wherein the vacancy exists.
- b. Each Member shall be entitled to one (1) vote and shall otherwise have an opportunity to participate in the governance of the Commission in accordance with the Bylaws.
- c. The Commission shall, by a majority vote of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact including, but not limited to:
 - i. Establishing the fiscal year of the Commission;
 - ii. Providing reasonable procedures for holding meetings of the Commission, the Executive Committee, and the Operations Committee;
 - iii. Providing reasonable standards and procedures: (i) for the establishment and meetings of committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;
 - iv. Providing reasonable procedures for calling and conducting meetings of the Commission that consist of a majority of Commission Members, ensuring reasonable advance notice of

1 each such meeting and providing for the right of citizens to
2 attend each such meeting with enumerated exceptions designed
3 to protect the public's interest, the privacy of individuals, and
4 insurers' and Surplus Lines Licensees' proprietary information,
5 including trade secrets. The Commission may meet in camera
6 only after a majority of the entire membership votes to close a
7 meeting *in toto* or in part. As soon as practicable, the
8 Commission must make public: (i) a copy of the vote to close
9 the meeting revealing the vote of each Member with no proxy
10 votes allowed, and (ii) votes taken during such meeting;

11
12 v. Establishing the titles, duties and authority and reasonable
13 procedures for the election of the officers of the Commission;

14
15 vi. Providing reasonable standards and procedures for the
16 establishment of the personnel policies and programs of the
17 Commission. Notwithstanding any civil service or other similar
18 laws of any Compacting State, the Bylaws shall exclusively
19 govern the personnel policies and programs of the Commission;

20
21 vii. Promulgating a code of ethics to address permissible and
22 prohibited activities of Commission Members and employees;

23
24 viii. Providing a mechanism for winding up the operations of the
25 Commission and the equitable disposition of any surplus funds
26 that may exist after the termination of the Compact after the
27 payment and/or reserving of all of its debts and obligations;

28
29 d. The Commission shall publish its Bylaws in a convenient form and
30 file a copy thereof and a copy of any amendment thereto, with the
31 appropriate agency or officer in each of the Compacting States.

32
33 2. Executive Committee, Personnel and Chairperson

34
35 a. An Executive Committee of the Commission ("Executive Committee") shall
36 be established. All actions, of the Executive Committee, including
37 compliance and enforcement are subject to the review and ratification of the
38 Commission as provided in the Bylaws.
39
40

1 The Executive Committee shall have no more than fifteen (15)
2 representatives, or one for each State if there are less than fifteen (15)
3 Compacting States, who shall serve for a term and be established in
4 accordance with the Bylaws.

5
6 b. The Executive Committee shall have such authority and duties as may
7 be set forth in the Bylaws, including but not limited to:

8
9 i. Managing the affairs of the Commission in a manner consistent
10 with the Bylaws and purposes of the Commission;

11
12 ii. Establishing and overseeing an organizational structure within,
13 and appropriate procedures for the Commission to provide for
14 the creation of Rules and operating procedures.

15
16 iii. Overseeing the offices of the Commission; and

17
18 iv. Planning, implementing, and coordinating communications and
19 activities with other State, federal and local government
20 organizations in order to advance the goals of the Commission.

21
22 c. The Commission shall annually elect officers from the Executive
23 Committee, with each having such authority and duties, as may be
24 specified in the Bylaws.

25
26 d. The Executive Committee may, subject to the approval of the
27 Commission, appoint or retain an executive director for such period,
28 upon such terms and conditions and for such compensation as the
29 Commission may deem appropriate. The executive director shall serve
30 as secretary to the Commission, but shall not be a Member of the
31 Commission. The executive director shall hire and supervise such
32 other persons as may be authorized by the Commission.

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1 3. Operations Committee

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3 a. An Operations Committee shall be established. All actions of the
4 Operations Committee are subject to the review and oversight of the
5 Commission and the Executive Committee and must be approved by
6 the Commission. The Executive Committee will accept the
7 determinations and recommendations of the Operations Committee
8 unless good cause is shown why such determinations and
9 recommendations should not be approved. Any disputes as to
10 whether good cause exists to reject any determination or
11 recommendation of the Operations Committee shall be resolved by
12 the majority vote of the Commission.

13
14 The Operations Committee shall have no more than fifteen (15)
15 representatives or one for each State if there are less than fifteen (15)
16 Compacting States, who shall serve for a term and shall be established
17 as set forth in the Bylaws.

18
19 The Operations Committee shall have responsibility for:

- 20
21 i. Evaluating technology requirements for the Clearinghouse,
22 assessing existing systems used by state regulatory agencies
23 and state stamping offices to maximize the efficiency and
24 successful integration of the Clearinghouse technology systems
25 with state and state stamping office technology platforms and to
26 minimize costs to the states, state stamping offices and the
27 Clearinghouse.
28
29 ii. Making recommendations to the Executive Committee based on
30 its analysis and determination of the Clearinghouse technology
31 requirements and compatibility with existing state and state
32 stamping office systems,
33
34 iii. Evaluating the most suitable proposals for adoption as
35 mandatory Rules, assessing such proposals for ease of
36 integration by states, and likelihood of successful
37 implementation and to report to the Executive Committee its
38 determinations and recommendations.
39
40 iv. Such other duties and responsibilities as are delegated to it by

1 the Bylaws, the Executive Committee or the Commission.
2

- 3 b. All representatives of the Operations Committee shall be
4 individuals who have extensive experience and/or employment
5 in the Surplus Lines Insurance business including but not
6 limited to executives and attorneys employed by Surplus Line
7 Insurers, Surplus Line Licensees, Law Firms, State Insurance
8 Departments and/or State stamping offices. Operations
9 Committee representatives from Compacting States which
10 utilize the services of a state stamping office must appoint the
11 Chief Operating Officer or a senior manager of the state
12 stamping office to the Operations Committee.
13

14 4. Legislative and Advisory Committees
15

- 16 a. A legislative committee comprised of State legislators or their
17 designees shall be established to monitor the operations of and make
18 recommendations to, the Commission, including the Executive
19 Committee; provided that the manner of selection and term of any
20 legislative committee member shall be as set forth in the Bylaws.
21 Prior to the adoption by the Commission of any Uniform Standard,
22 revision to the Bylaws, annual budget or other significant matter as
23 may be provided in the Bylaws, the Executive Committee shall
24 consult with and report to the legislative committee.
25
26 b. The Commission may establish additional advisory committees as its
27 Bylaws may provide for the carrying out of its functions.
28

29 5. Corporate Records of the Commission
30

31 The Commission shall maintain its corporate books and records in
32 accordance with the Bylaws.
33

34 6. Qualified Immunity, Defense and Indemnification
35

- 36 a. The Members, officers, executive director, employees and
37 representatives of the Commission, the Executive Committee and any
38 other Committee of the Commission shall be immune from suit and
39 liability, either personally or in their official capacity, for any claim
40 for damage to or loss of property or personal injury or other civil

1 liability caused by or arising out of any actual or alleged act, error or
2 omission that occurred, or that the person against whom the claim is
3 made had a reasonable basis for believing occurred within the scope
4 of Commission employment, duties or responsibilities; provided that
5 nothing in this paragraph shall be construed to protect any such person
6 from suit and/or liability for any damage, loss, injury or liability
7 caused by the intentional or willful or wanton misconduct of that
8 person.

9
10 b. The Commission shall defend any Member, officer, executive
11 director, employee or representative of the Commission, the Executive
12 Committee or any other Committee of the Commission in any civil
13 action seeking to impose liability arising out of any actual or alleged
14 act, error or omission that occurred within the scope of Commission
15 employment, duties or responsibilities, or that the person against
16 whom the claim is made had a reasonable basis for believing occurred
17 within the scope of Commission employment, duties or
18 responsibilities; provided that nothing herein shall be construed to
19 prohibit that person from retaining his or her own counsel; and
20 provided further, that the actual or alleged act error or omission did
21 not result from that person's intentional or willful or wanton
22 misconduct.

23
24 c. The Commission shall indemnify and hold harmless any Member,
25 officer, executive director, employee or representative of the
26 Commission, Executive Committee or any other Committee of the
27 Commission for the amount of any settlement or judgment obtained
28 against that person arising out of any actual or alleged act, error or
29 omission that occurred within the scope of Commission employment,
30 duties or responsibilities, or that such person had a reasonable basis
31 for believing occurred within the scope of Commission employment,
32 duties or responsibilities, provided that the actual or alleged act, error
33 or omission did not result from the intentional or willful or wanton
34 misconduct of that person.

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3 **ARTICLE VII**

4 **Meetings and Acts of the Commission**

- 5 1. The Commission shall meet and take such actions as are consistent with the
6 provisions of this Compact and the Bylaws.
7
- 8 2. Each Member of the Commission shall have the right and power to cast a
9 vote to which that Compacting State is entitled and to participate in the
10 business and affairs of the Commission. A Member shall vote in person or
11 by such other means as provided in the Bylaws. The Bylaws may provide for
12 Members' participation in meetings by telephone or other means of
13 communication.
14
- 15 3. The Commission shall meet at least once during each calendar year.
16 Additional meetings shall be held as set forth in the Bylaws.
17
- 18 4. Public notice shall be given of all meetings and all meetings shall be open to
19 the public, except as set forth in the Rules or otherwise provided in the
20 Compact.
21
- 22 5. The Commission shall promulgate Rules concerning its meetings consistent
23 with the principles contained in the "Government in the Sunshine Act," 5
24 U.S.C., Section 552b, as may be amended.
25
- 26 6. The Commission and its committees may close a meeting, or portion thereof,
27 where it determines by majority vote that an open meeting would be likely
28 to:
- 29 a. Relate solely to the Commission's internal personnel practices
30 and procedures;
 - 31
 - 32 b. Disclose matters specifically exempted from disclosure by
33 federal and State statute;
 - 34
 - 35 c. Disclose trade secrets or commercial or financial information
36 which is privileged or confidential;
 - 37
 - 38 d. Involve accusing a person of a crime, or formally censuring a
39 person;
 - 40

- 1 e. Disclose information of a personal nature where disclosure
- 2 would constitute a clearly unwarranted invasion of personal
- 3 privacy;
- 4
- 5 f. Disclose investigative records compiled for law enforcement
- 6 purposes;
- 7
- 8 g. Specifically relate to the Commission's issuance of a subpoena,
- 9 or its participation in a civil action or other legal proceeding.

10

11 7. For a meeting, or portion of a meeting, closed pursuant to this provision, the

12 Commission's legal counsel or designee shall certify that the meeting may

13 be closed and shall reference each relevant exemptive provision. The

14 Commission shall keep minutes which shall fully and clearly describe all

15 matters discussed in a meeting and shall provide a full and accurate

16 summary of actions taken, and the reasons therefore, including a description

17 of the views expressed and the record of a roll call vote. All documents

18 considered in connection with an action shall be identified in such minutes.

19 All minutes and documents of a closed meeting shall remain under seal,

20 subject to release by a majority vote of the Commission.

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ARTICLE VIII

**Rules and Operating Procedures: Rulemaking
Functions of the Commission**

Rulemaking functions of the Commission:

1. Rulemaking Authority.—The Commission shall promulgate reasonable Rules in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force or effect.
2. Rulemaking Procedure.—Rules shall be made pursuant to a rulemaking process that substantially conforms to the “Model State Administrative Procedure Act,” of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Commission.
3. Effective Date - All Rules and amendments, thereto, shall become effective as of the date specified in each Rule, operating procedure or amendment.
4. Not later than thirty (30) days after a Rule is promulgated, any person may file a petition for judicial review of the Rule; provided that the filing of such a petition shall not stay or otherwise prevent the Rule from becoming effective unless the court finds that the Petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Commission consistent with applicable law and shall not find the Rule to be unlawful if the Rule represents a reasonable exercise of the Commission’s authority.

ARTICLE IX
Commission Records and Enforcement

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4 1. The Commission shall promulgate Rules establishing conditions and
5 procedures for public inspection and copying of its information and official
6 records, except such information and records involving the privacy of
7 individuals, insurers, insureds or Surplus Lines Licensee trade secrets. State
8 Transaction Documentation and Clearinghouse Transaction Data collected
9 by the Clearinghouse shall be used for only those purposes expressed in or
10 reasonably implied under the provisions of this Compact and the
11 Commission shall afford this data the broadest protections as permitted by
12 any applicable law for proprietary information, trade secrets or personal
13 data. The Commission may promulgate additional Rules under which it may
14 make available to federal and State agencies, including law enforcement
15 agencies, records and information otherwise exempt from disclosure, and
16 may enter into agreements with such agencies to receive or exchange
17 information or records subject to nondisclosure and confidentiality
18 provisions.
19
- 20 2. Except as to privileged records, data and information, the laws of any
21 Compacting State pertaining to confidentiality or nondisclosure shall not
22 relieve any Compacting State Member of the duty to disclose any relevant
23 records, data or information to the Commission; provided that disclosure to
24 the Commission shall not be deemed to waive or otherwise affect any
25 confidentiality requirement, and further provided that, except as otherwise
26 expressly provided in this Act, the Commission shall not be subject to the
27 Compacting State's laws pertaining to confidentiality and nondisclosure
28 with respect to records, data and information in its possession. Confidential
29 information of the Commission shall remain confidential after such
30 information is provided to any Member, and the Commission shall maintain
31 the confidentiality of any information provided by a member that is
32 confidential under that Member's State Law.
33
- 34 3. The Commission shall monitor Compacting States for compliance with duly
35 adopted Bylaws and Rules. The Commission shall notify any non-complying
36 Compacting State in writing of its noncompliance with Commission Bylaws
37 or Rules. If a non-complying Compacting State fails to remedy its
38 noncompliance within the time specified in the notice of noncompliance, the
39 Compacting State shall be deemed to be in default as set forth in Article
40 XIV.

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ARTICLE X

Dispute Resolution

- 5 1. Before a Member may bring an action in a court of competent jurisdiction
6 for violation of any provision, standard or requirement of the Compact, the
7 Commission shall attempt, upon the request of a Member, to resolve any
8 disputes or other issues that are subject to this Compact and which may arise
9 between two or more Compacting States, Contracting States or Non-
10 Compacting States, and the Commission shall promulgate a Rule providing
11 alternative dispute resolution procedures for such disputes.
12
- 13 2. The Commission shall also provide alternative dispute resolution procedures
14 to resolve any disputes between insureds or Surplus Lines Licensees
15 concerning a tax calculation or allocation or related issues which are the
16 subject of this Compact.
17
- 18 3. Any alternative dispute resolution procedures shall be utilized in
19 circumstances where a dispute arises as to which State constitutes the Home
20 State.
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ARTICLE XI

Review of Commission Decisions

Regarding Commission decisions:

1. Except as necessary for promulgating Rules to fulfill the purposes of this Compact, the Commission shall not have authority to otherwise regulate insurance in the Compacting States.
2. Not later than thirty (30) days after the Commission has given notice of any Rule or Allocation Formula, any third party filer or Compacting State may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate Rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the Commission, in making compliance or tax determinations acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 6.
3. The Commission shall have authority to monitor, review and reconsider Commission decisions upon a finding that the determinations or allocations do not meet the relevant Rule. Where appropriate, the Commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in Section 2 above.

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ARTICLE XII

Finance

- 5 1. The Commission shall pay or provide for the payment of the reasonable
6 expenses of its establishment and organization. To fund the cost of its initial
7 operations the Commission may accept contributions, grants, and other
8 forms of funding from the State stamping offices, Compacting States and
9 other sources.
- 10
11 2. The Commission shall collect a fee payable by the insured directly or
12 through a Surplus Lines Licensee on each transaction processed through the
13 Compact Clearinghouse, to cover the cost of the operations and activities of
14 the Commission and its staff in a total amount sufficient to cover the
15 Commission's annual budget.
- 16
17 3. The Commission's budget for a fiscal year shall not be approved until it has
18 been subject to notice and comment as set forth in Article VIII of this
19 Compact.
- 20
21 4. The Commission shall be regarded as performing essential governmental
22 functions in exercising such powers and functions and in carrying out the
23 provisions of this Compact and of any law relating thereto, and shall not be
24 required to pay any taxes or assessments of any character, levied by any
25 State or political subdivision thereof, upon any of the property used by it for
26 such purposes, or any income or revenue therefrom, including any profit
27 from a sale or exchange.
- 28
29 5. The Commission shall keep complete and accurate accounts of all its
30 internal receipts, including grants and donations, and disbursements for all
31 funds under its control. The internal financial accounts of the Commission
32 shall be subject to the accounting procedures established under its Bylaws.
33 The financial accounts and reports including the system of internal controls
34 and procedures of the Commission shall be audited annually by an
35 independent certified public accountant. Upon the determination of the
36 Commission, but not less frequently than every three (3) years, the review of
37 the independent auditor shall include a management and performance audit
38 of the Commission. The Commission shall make an annual report to the
39 Governor and legislature of the Compacting States, which shall include a
40 report of the independent audit. The Commission's internal accounts shall

1 not be confidential and such materials may be shared with the
2 Commissioner, the controller, or the stamping office of any Compacting
3 State upon request provided, however, that any work papers related to any
4 internal or independent audit and any information regarding the privacy of
5 individuals, and licensees' and insurers' proprietary information, including
6 trade secrets, shall remain confidential.

7
8 6. No Compacting State shall have any claim to or ownership of any property
9 held by or vested in the Commission or to any Commission funds held
10 pursuant to the provisions of this Compact.

11
12 7. The Commission shall not make any political contributions to candidates for
13 elected office, elected officials, political parties nor political action
14 committees. The Commission shall not engage in lobbying except with
15 respect to changes to this Compact.
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ARTICLE XIII

Compacting States, Effective Date and Amendment

1. Any State is eligible to become a Compacting State.
2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by two (2) Compacting States, provided the Commission shall become effective for purposes of adopting Rules, and creating the Clearinghouse when there are a total of ten (10) Compacting States and Contracting States or, alternatively, when there are Compacting States and Contracting States representing greater than forty percent (40%) of the Surplus Lines Insurance premium volume based on records of the percentage of Surplus Lines Insurance premium set forth in Appendix A hereto. Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State. Notwithstanding the foregoing, the Clearinghouse operations and the duty to report Clearinghouse Transaction Data shall begin on the first January 1st or July 1st following the first anniversary of the Commission effective date. For States which join the Compact subsequent to the effective date, a start date for reporting Clearinghouse Transaction Data shall be set by the Commission provided Surplus Lines Licensees and all other interested parties receive not less than 90 days advance notice.
3. Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until all Compacting States enact the amendment into law.

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ARTICLE XIV

Withdrawal, Default and Termination

1. Withdrawal

- a. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State, provided that a Compacting State may withdraw from the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which enacted the Compact into law.
- b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any tax or compliance determinations approved on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Commission.
- c. The Member of the Withdrawing State shall immediately notify the Executive Committee of the Commission in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.
- d. The Commission shall notify the other Compacting States of the introduction of such legislation within ten (10) days after its receipt of notice thereof.
- e. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. To the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State, the Commission's determinations prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the Withdrawing State, unless formally rescinded by the Commission.
- f. Reinstatement following withdrawal of any Compacting State shall occur upon the effective date of the Withdrawing State reenacting the Compact.

1 2. Default

- 2
- 3 a. If the Commission determines that any Compacting State has at any
- 4 time defaulted ("Defaulting State") in the performance of any of its
- 5 obligations or responsibilities under this Compact, the Bylaws or duly
- 6 promulgated Rules then after notice and hearing as set forth in the
- 7 Bylaws, all rights, privileges and benefits conferred by this Compact
- 8 on the Defaulting State shall be suspended from the effective date of
- 9 default as fixed by the Commission. The grounds for default include,
- 10 but are not limited to, failure of a Compacting State to perform its
- 11 obligations or responsibilities, and any other grounds designated in
- 12 Commission Rules. The Commission shall immediately notify the
- 13 Defaulting State in writing of the Defaulting State's suspension
- 14 pending a cure of the default. The Commission shall stipulate the
- 15 conditions and the time period within which the Defaulting State must
- 16 cure its default. If the Defaulting State fails to cure the default within
- 17 the time period specified by the Commission, the Defaulting State
- 18 shall be terminated from the Compact and all rights, privileges and
- 19 benefits conferred by this Compact shall be terminated from the
- 20 effective date of termination.
- 21
- 22 b. Decisions of the Commission that are issued on the effective date of
- 23 termination shall remain in force in the Defaulting State in the same
- 24 manner as if the Defaulting State had withdrawn voluntarily pursuant
- 25 to Section 1 of this Article.
- 26
- 27 c. Reinstatement following termination of any Compacting State
- 28 requires a reenactment of the Compact.
- 29

30 3. Dissolution of Compact

- 31
- 32 a. The Compact dissolves effective upon the date of the withdrawal or
- 33 default of the Compacting State which reduces membership in the
- 34 Compact to one Compacting State.
- 35
- 36 b. Upon the dissolution of this Compact, the Compact becomes null and
- 37 void and shall have no further force or effect, and the business and
- 38 affairs of the Commission shall be wound up and any surplus funds
- 39 shall be distributed in accordance with the Rules and Bylaws.

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ARTICLE XV

Severability and Construction

1. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.
2. The provisions of this Compact shall be liberally construed to effectuate its purposes.
3. Throughout this Compact the use of the singular shall include the plural and vice-versa.
4. The headings and captions of articles, sections and sub-sections used in this Compact are for convenience only and shall be ignored in construing the substantive provisions of this Compact.

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ARTICLE XVI

Binding Effect of Compact and Other Laws

1. Other Laws

- a. Nothing herein prevents the enforcement of any other law of a Compacting State except as provided in Paragraph b. of this section.

- b. Decisions of the Commission, and any Rules, and any other requirements of the Commission shall constitute the exclusive Rule, or determination applicable to the Compacting States. Any law or regulation regarding Non-Admitted Insurance of Multi-State Risks that is contrary to Rules of the Commission is preempted with respect to the following:
 - (i) Clearinghouse Transaction Data reporting requirements;
 - (ii) Allocation Formula;
 - (iii) Clearinghouse Transaction Data collection requirements;
 - (iv) Premium Tax payment time frames and Rules concerning dissemination of data among the Compacting States for Non-Admitted Insurance of Multi-State Risks and Single-State Risks;
 - (v) Exclusive compliance with surplus lines law of the Home State of the insured;
 - (vi) Rules for reporting to a Clearinghouse for receipt and distribution of Clearinghouse Transaction Data related to Non-Admitted Insurance of Multi-State Risks;
 - (vii) Uniform foreign Insurers Eligibility Requirements;
 - (viii) Uniform Policyholder Notice; and
 - (ix) Uniform treatment of Purchasing Groups procuring Non-Admitted Insurance.

1
2 c. Except as stated in paragraph b, any Rule, Uniform Standard or other
3 requirement of the Commission shall constitute the exclusive
4 provision that a Commissioner may apply to compliance or tax
5 determinations. Notwithstanding the foregoing, no action taken by the
6 Commission shall abrogate or restrict: (i) the access of any person to
7 State courts; (ii) the availability of alternative dispute resolution under
8 Article X of this Compact (iii) remedies available under State law
9 related to breach of contract, tort, or other laws not specifically
10 directed to compliance or tax determinations; (iv) State law relating to
11 the construction of insurance contracts; or (v) the authority of the
12 attorney general of the State, including but not limited to maintaining
13 any actions or proceedings, as authorized by law.
14

15 2. Binding Effect of this Compact

- 16
17 a. All lawful actions of the Commission, including all Rules
18 promulgated by the Commission, are binding upon the Compacting
19 States, except as provided herein.
20
21 b. All agreements between the Commission and the Compacting States
22 are binding in accordance with their terms.
23
24 c. Upon the request of a party to a conflict over the meaning or
25 interpretation of Commission actions, and upon a majority vote of the
26 Compacting States, the Commission may issue advisory opinions
27 regarding the meaning or interpretation in dispute. This provision
28 may be implemented by Rule at the discretion of the Commission.
29
30 d. In the event any provision of this Compact exceeds the constitutional
31 limits imposed on the legislature of any Compacting State, the
32 obligations, duties, powers or jurisdiction sought to be conferred by
33 that provision upon the Commission shall be ineffective as to that
34 State and those obligations duties, powers or jurisdiction shall remain
35 in the Compacting State and shall be exercised by the agency thereof
36 to which those obligations, duties, powers or jurisdiction are delegated
37 by law in effect at the time this Compact becomes effective.
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*Surplus Line Insurance Premiums by State**Appendix A*

State	Premiums based on taxes paid	Share of Total Premiums
Alabama	445,746,000	1.47%
Alaska	89,453,519	0.29%
Arizona	663,703,267	2.18%
Arkansas	201,859,750	0.66%
California	5,622,450,467	18.49%
Colorado	543,781,333	1.79%
Connecticut	329,358,800	1.08%
Delaware	92,835,950	0.31%
Florida	2,660,908,760	8.75%
Georgia	895,643,150	2.95%
Hawaii	232,951,489	0.77%
Idaho	74,202,255	0.24%
Illinois	1,016,504,629	3.34%
Indiana	412,265,320	1.36%
Iowa	135,130,933	0.44%
Kansas	160,279,300	0.53%
Kentucky	167,996,133	0.55%
Louisiana	853,173,280	2.81%
Maine	60,111,200	0.20%
Maryland	434,887,600	1.43%
Massachusetts	708,640,225	2.33%
Michigan	703,357,040	2.31%
Minnesota	393,128,400	1.29%
Mississippi	263,313,175	0.87%
Missouri	404,489,860	1.33%
Montana	64,692,873	0.21%
Nebraska	92,141,167	0.30%
Nevada	354,271,514	1.17%
New Hampshire	102,946,250	0.34%
New Jersey	1,087,994,033	3.58%
New Mexico	67,608,458	0.22%
New York	2,768,618,083	9.11%
North Carolina	514,965,060	1.69%
North Dakota	36,223,943	0.12%
Ohio	342,000,000	1.12%
Oklahoma	319,526,400	1.05%
Oregon	312,702,150	1.03%
Pennsylvania	780,666,667	2.57%
Rhode Island	71,794,067	0.24%
South Carolina	412,489,825	1.36%
South Dakota	38,702,120	0.13%
Tennessee	451,775,240	1.49%
Texas	3,059,170,454	10.06%
Utah	142,593,412	0.47%
Vermont	41,919,433	0.14%

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This Data is 2005 Calendar Year Data excerpted from a study dated February 27, 2007 by

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Mackin & Company.

Virginia	611,530,667	2.01%
Washington	739,932,050	2.43%
West Virginia	130,476,250	0.43%
Wisconsin	248,758,333	0.82%
Wyoming	40,526,967	0.13%
Total	30,400,197,251	100.00%

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This Data is 2005 Calendar Year Data excerpted from a study dated February 27, 2007 by Mackin & Company.

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MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



THERESE M. GOLDSMITH
Commissioner

BETH SAMMIS
KAREN STAKEM HORNIG
Deputy Commissioners

NEIL A. MILLER
Associate Commissioner
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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.

THERESE GOLDSMITH
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.

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MIA BULLETIN 11-31

DATE: November 9, 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: Revised Procedures to the Payment of Premium Receipts Tax on Nonadmitted Insurance in Maryland

On May 19, 2011, Governor O'Malley signed into law Chapters 520 and 521, Acts 2011, which provide for the implementation of the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA")¹ in Maryland and conform Maryland's nonadmitted insurance laws to federal law. Chapters 520 and 521 took effect July 1, 2011.

On September 1, 2011, the Maryland Insurance Administration issued MIA Bulletin 11-26 entitled Implementation of the Federal Nonadmitted Reinsurance Reform Act in Maryland. That Bulletin outlined nationwide regulatory changes made under the NRRA that will affect the placement of nonadmitted insurance on Maryland risks. The purpose of this Bulletin is to provide additional information regarding the process for paying premium receipts taxes on nonadmitted insurance placements under these new laws.²

One of the most significant provisions of the NRRA is the way nonadmitted insurance premiums are to be allocated between states for reporting and tax purposes. While premiums for placements where the risk is located entirely within Maryland continue to be allocated entirely to Maryland for reporting and tax purposes, effective July 21, 2011, the allocation of premiums on

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 "Nonadmitted insurance," as defined in the NRRA, includes both surplus lines and independently procured insurance, but is restricted to property and casualty insurance.

multi-state placements changed. Until July 21, 2011, only the portion of the premium attributable to Maryland risk was allocated to Maryland, and this applied whether or not Maryland was the insured's Home State.³ For policies effective on or after July 21, 2011, if Maryland is the insured's Home State the entire premium is allocated to Maryland.⁴

The Administration has not made any changes to its reporting forms to reflect the change in how premiums on multi-state placements are allocated between states. However, it is expected that surplus lines brokers and persons independently procuring insurance with a nonadmitted insurer will properly allocate premiums and remit the appropriate taxes to Maryland under the laws in effect on the policy effective dates.

Additional Reporting Guidance - Surplus Lines Brokers

In accordance with Title 3, Subtitle 3 of the Insurance Article of the Annotated Code of Maryland, surplus lines brokers are required to make periodic filings with the Administration related to their surplus lines business, and to remit to the Administration the premium receipts taxes they collected on that business. The Administration will not be making any significant changes to its reporting forms and tax payment processes at this time. However, the Administration has made certain changes to make these processes more efficient, as follows:

- We have revised the filing instructions on our web site. Please see these revised instructions at:

<http://www.mdinsurance.state.md.us/sa/docs/documents/insurer/premium-tax/surpluslinesfilinginstructions.doc>

- We are asking all surplus lines brokers to file their Quarterly Affidavits and Premium Receipts Tax Reports electronically rather than in paper form;
- We have added a schedule to the Surplus Lines Quarterly Report to allow reporting of Tax Exempt Premiums (i.e., premiums on risks of the Federal Government, State or political subdivision of Maryland); and

³ The NRRA defines "Home State" as:

(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. (NRRA § 527(6) (15 U.S.C. § 8206(6)).

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

- We have implemented a new Surplus Lines Tax Payment Voucher to be attached to premium receipts tax payments. These forms will allow us to quickly apply tax payments to the proper accounts.

Additional Reporting Guidance – Persons Independently Procuring Insurance

In accordance with Title 4, Subtitle 2 of the Insurance Article, each insured that procures or causes to be procured insurance with a nonadmitted insurance company, other than surplus lines insurance, is required to file with the Administration a report on the insurance procured and remit to the Administration the premium receipts taxes due on that insurance. Chapters 520 and 521 significantly changed the reporting and tax payment deadlines for these procurements. In order to assist insureds in meeting these requirements, we have posted filing instructions on our web site. Linked to those instructions is a revised Report of Independently Procured Insurance with Unauthorized Insurer form to be used in reporting this business. Please see these instructions at:

<http://www.mdinsurance.state.md.us/sa/docs/documents/insurer/premium-tax/independprocurredinsfilinginstructions.doc>

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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By: Signature on original
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