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COMPLIANCE WITH THE NONADMITTED AND REINSURANCE REFORM ACT OF 2010

The purpose of this bulletin is to outline nationwide and Nevada-specific regulatory changes that will affect the placement of nonadmitted insurance in Nevada. The Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), *15 U.S.C. § 8201, et seq.*, provides that only an insured's "Home State" may require the payment of premium tax for nonadmitted insurance. Moreover, the NRRA subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured's Home 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 such insured. *15 U.S.C. § 8202(a), (b).* "Nonadmitted insurance," as defined in *15 U.S.C. § 8206(9)*, applies only to property and casualty insurance (excluding workers' compensation).

The NRRA becomes effective on July 21, 2011. To achieve Nevada's compliance with the NRRA, on June 13, 2011, Governor Brian Sandoval signed into law Senate Bill 289 ("SB 289"), which took immediate effect. The following information regarding the NRRA and SB 289 is provided for the benefit of insurers, brokers, insureds, and the Nevada Surplus Lines Association ("NSLA").

PROVISIONS OF THE NRRA

Scope

The NRRA states that "the placement of nonadmitted insurance is subject to the statutory and regulatory requirements solely of the insured's home state" and that the NRRA "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 U.S.C. § 8202.*

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 such 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 offered by insurers authorized in a state. In some circumstances, an insured may seek to purchase insurance covering property or risks located in Nevada from an insurer that is authorized to do business in Nevada, but not the insured's Home State. In such a case, the placement remains subject to all Nevada laws and should not be considered to be nonadmitted insurance in Nevada.

Home State

Nevada is the insured's Home State if the insured maintains its principal place of business in Nevada or, in the case of an individual, the individual's principal residence is in Nevada. If Nevada is considered the insured's Home State, Nevada's requirements regarding the placement of nonadmitted insurance business will apply. If, however, Nevada is the insured's Home State, but 100% of the insured risk is located outside of Nevada, then the insured's Home State for the purposes of the NRRA's applicability is the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

Effective Date

New and renewal policies with an effective date prior to July 21, 2011, will be subject to the laws and regulations of Nevada and other jurisdictions, in force as of the policy effective date, depending upon how the risk exposure is allocated between or among those jurisdictions. These laws will also apply to any modification of that policy during the policy period, including all endorsements (i.e. risk and premium-bearing endorsements), installment payments and premium audits. New and renewal policies with an effective date on or after July 21, 2011, and any modifications thereto, will be subject only to the laws and regulations of Nevada, if Nevada is the Home State of the insured.

Allocation and Payment of Premium Tax

As of July 21, 2011, the NRRA permits only the insured's Home State to require the payment of premium tax for nonadmitted insurance. For Nevada, this change became effective June 13, 2011.

It is the intent of the Division to issue additional bulletins if and when Nevada begins participating in a multi-state clearinghouse or tax-sharing arrangement. Until additional bulletins are issued, the Nevada nonadmitted premium tax rate (3.5% + 0.4% stamping fee to the NSLA) should be applied to new and renewal policies with an effective date on or after June 13, 2011, only when Nevada is the insured's Home State.

License Requirements for 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 placement. If Nevada is the insured's Home State, the surplus-lines broker must be licensed in Nevada.

Eligibility Requirements for Nonadmitted Insurers

The NRRA restricts the eligibility requirements a state may impose on nonadmitted insurers. See *15 U.S.C. § 8204*. For nonadmitted insurers domiciled in a U.S. jurisdiction, a surplus lines broker is permitted to place nonadmitted insurance with such insurers provided they are authorized to write such business in their state of domicile and maintain minimum capital and

surplus of $15 million or the minimum capital and surplus requirements pursuant to NRS 680A.120, whichever is greater.

An insurer possessing less than the minimum required capital and surplus may still be eligible for placement of nonadmitted insurance if there has been an affirmative finding of acceptability by the Commissioner. The finding must be based upon such factors as the quality of management, capital and surplus of any parent company, company underwriting profit and investment-income trends, market availability, and company record and reputation within the industry. The Commissioner may not make an affirmative finding of acceptability when the nonadmitted insurer's combined capital and surplus is less than $4.5 million.

For nonadmitted insurers domiciled outside the United States, a surplus lines broker may place nonadmitted insurance business with such insurers provided the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners ("NAIC"). If an alien insurer is not included on the NAIC list, the previously existing eligibility standards as set forth in NRS 685A.070 continue to apply.

PROVISIONS OF SB 289

How Insurance May Be Procured in the Nonadmitted Market

SB 289 allows an insured to procure insurance directly from a nonadmitted insurer as well as through a surplus lines broker. Additionally, a surplus lines broker is not required to make a diligent effort (See NRS 685A.040 as amended by SB 289) to place coverage in the admitted market if:

1. The insured is an "exempt commercial purchaser" as defined in SB 289;
2. The broker has disclosed to the exempt commercial purchaser that insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and
3. The exempt commercial purchaser has subsequently requested in writing that the surplus lines broker procure or place such insurance with a nonadmitted insurer.

The report required pursuant to NRS 685A.050, setting forth the facts from which it may be determined that a risk is eligible for export, is now required only when Nevada is the Home State of the risk. The report, in addition to being submitted to the NSLA, must be kept in the surplus lines broker's office and open to inspection by the Commissioner for five years after issuance of the coverage to which it relates. These revisions only apply to the *initial* report that addresses whether a risk is eligible for export. The requirements in NRS 685.060 pertaining to a *memorandum* of coverage remain unchanged.

Premium Tax Filings

NRS 680B.040 has been amended to now require that insureds who independently procure insurance in the nonadmitted market must submit premium tax information as directed by the Commissioner. Therefore, instead of submitting the premium tax information to the Department of Taxation, the Commissioner now requires that filing of such information for Nevada-only risks must be made to the NSLA. The premium tax filings for independently procured insurance must now only be made quarterly, within 45 days after the end of each quarter.

Additionally, and until further notice, premium tax information filings for multi-state risks for which Nevada is the Home State, must also be made to the NSLA.

The annual statement of surplus lines transactions filed by a surplus lines broker pursuant to NRS 685A.170, is no longer required, as that statute was repealed.

Eligible Insurers

NRS 685A.070 has also been amended by SB 289 to alter or eliminate requirements for an insurer to be eligible to accept surplus lines risks. These requirements are now preempted by the NRRA. These changes are described as follows:

1. A trust fund is no longer required as a condition of eligibility for insurance exchanges established pursuant to the laws of any state.
2. An insurer is no longer required to have established a reputation for financial integrity and satisfactory practices in underwriting and handling claims.
3. The requirement that a foreign insurer be authorized in its state of domicile is restricted to risks for which Nevada is the home state of the insured.
4. The authorization for the Commissioner to compile a restricted list of eligible surplus lines insurers, in which insurers must pay a fee to be included, has been removed.

DEFINITIONS

The NRRA sets forth the following definitions relevant to Nevada's implementation of its requirements:

"**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. *15 U.S.C. § 8206(12).*

"**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 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 sub-items (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. *15 U.S.C. § 8206(13).*

"**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. *15 U.S.C. § 8206(15).*

"**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. *15 U.S.C. § 8206(16).*

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