



## NRRA — Not a Surplus Lines Panacea

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On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) was signed into law. While Dodd-Frank was not aimed at insurance companies, it does have a number of provisions that directly impact the insurance and reinsurance industries. Dodd-Frank includes the Non-admitted and Reinsurance Reform Act of 2010 (“NRRA”), which consists of two provisions: one related to surplus lines regulation and another related to credit for reinsurance. Unlike many portions of Dodd-Frank, neither of these two insurance regulatory provisions were aimed at correcting abuses in the insurance/reinsurance industry. Instead, the intent of the NRRA was to simplify regulation in these areas. (In the comments below, the terms “unauthorized insurance” and “surplus line(s) insurance, risks or placements” will be used interchangeably).

For over 30 years the National Association of Insurance Commissioners (“NAIC”) had attempted — without success — to streamline regulation and taxation of multistate, surplus lines placements. After many futile attempts for relief through the NAIC’s process of producing a model act that serves as a template for state insurance code revisions, the surplus lines industry turned to the U.S. Congress. Here, the industry was successful, lobbying Congress to adopt the NRRA.

Key surplus line provisions of the NRRA provide that:

- Placement of non-admitted insurance is subject to regulation and tax only in the insured’s home state.
- Surplus lines insurance broker licensing is required only in insured’s home state.
- “Home state” is the insured’s principal place of business (or principal residence for individuals).
- Limitations are imposed on state eligibility requirements for non-admitted insurers.
  - U.S. domiciled insurers must be licensed in a state and maintain at least \$15 million capital and surplus.
  - Alien insurers must be listed on the NAIC’s (International Insurance Department) Quarterly Listing of Alien Insurers.
- States may enter into a compact or otherwise establish procedures to allocate among the states the surplus lines taxes paid to an insured’s home state.

Initially, the NRRA was celebrated as a federal solution for the complexities involved with multistate, surplus line insurance placements. However, the “devil in the details” has emerged in



two competing schemes: the Non-admitted Insurance Multistate Agreement (“NIMA”), proposed by the NAIC, and the Surplus Lines Insurance Multistate Compliance Compact (SLIMPACT-Lite) advocated by the National Conference of Insurance Legislators (“NCOIL”).

As for NIMA, it was created by the NAIC Surplus Lines Implementation Task Force (the “Task Force”). Immediately upon formation of the Task Force, it was strongly urged by the insurance industry to adopt a scheme based on the Surplus Lines Insurance Multi-State Compliance Compact (“SLIMPACT”), which had already been created by an ad-hoc group of brokers, insurers, trade associations, surplus lines stamping offices and a few regulators. The focus of SLIMPACT is to streamline compliance for a multistate surplus line placement by giving a home state exclusive jurisdiction over regulation and taxation. After intense debate during several telephone conference meetings, it was clear that SLIMPACT had only tepid support among the Task Force members. As a result, the Task Force resolved not to adopt SLIMPACT but to develop a new scheme, NIMA, which would address only the allocation of surplus line taxes based on numerous factors. This action led to unsettling competition where the NAIC advocates adoption of NIMA, while NCOIL, and generally the insurance industry, supports SLIMPACT.

The current score: 12 states have joined NIMA, while nine states have joined SLIMPACT. Neither is operational to date. However, most of the large surplus-line-producing states remain uncommitted to either NIMA or SLIMPACT so that each of these uncommitted states will retain 100 percent of the surplus line tax imposed where they are deemed the home state of insureds under the NRRRA. As unsettled as is the current situation, there could be further shocks if states experience loss of surplus line tax revenue and seek to terminate participation in the allocation scheme to which the tax loss is attributed.

The NRRRA held out the tantalizing prospect of simplification through modest federal preemption of state insurance regulation. However, the NRRRA’s light preemptive touch that permits states the option of entering into an unspecified allocation scheme has produced the current confusing situation that could result in chaos or at least place the surplus lines brokers in the same position that existed prior to the passage of the NRRRA. There have been and will continue to be discussions between NCOIL and the NAIC to agree on one mechanism to address the NRRRA. It remains to be seen if any agreement can be reached and the NRRRA’s promise is realized, but there is no provision or deadline in the NRRRA that would require any agreement.

Keir has participated in the NAIC Surplus Lines Implementation Task Force and also has followed the proceedings at the NAIC and NCOIL regarding implementation of the NRRRA.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the author:

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