



The U.S. Federal Nonadmitted and Reinsurance Reform Act of 2010 (the “NRRA”) and Circular Letter No. 9 (2011): Conforming Amendments to the New York Insurance Law

August 2011

The NRRA was signed into law on July 21 2010 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act to modify regulation of excess and surplus lines insurance in the States⁴. The NRRA imposes the following significant changes:

- Grants the home state of the insured exclusive authority to require and collect premium tax payments for nonadmitted insurance and to regulate the placement of nonadmitted insurance, including any regulation requiring that an excess lines broker be licensed to sell, solicit or negotiate nonadmitted insurance;²
- Permits the states to enter into a compact or similar agreement to allocate premium tax among themselves once collected by the home state. States that do not enter such an agreement are prohibited from imposing eligibility requirements for nonadmitted insurers;
- Requires the states to participate in a national producer database by July 21 2012, or prohibits them from collecting any fees relating to licensing excess lines brokers;
- Allows excess lines brokers to procure or place nonadmitted insurance for an insured that is an exempt commercial purchaser (“ECP”) without conducting a due diligence search as to the availability of such insurance with an admitted insurer, so long as the broker discloses to the ECP that such insurance may or may not be available by an admitted insurer and the ECP requests in writing that it wants insurance from a nonadmitted insurer³; and
- Requires the states to permit excess line brokers to place nonadmitted insurance with a nonadmitted insurer domiciled outside the U.S. if such insurer is listed on the quarterly listing of alien insurers maintained by the International Insurers Department of the NAIC.

New York Insurance Laws: Chapter 61 of the Laws of 2011

The New York Legislature amended the regulation of nonadmitted insurance under Chapter 61 of the Laws of 2011, which was signed into law by Governor Cuomo in March of this year, effective July 21, 2011. Chapter 61 addresses some gaps in NRRA by, among other things, defining “principal place of business” and “principal residence”, as well as signifying the home state for group insurance policies. Chapter 61 clarifies these points under New York Insurance Law (NYIL:) § 2101:

NYIL § 2101(x)(4) defines “principal place of business” as the state where the insured maintains its headquarters and where the insured’s high-level officers direct, control, and coordinate the business activities; or if the insured’s high-level

¹ The NRRA applies only to property/casualty insurance and, among other lines, specifically excludes workers’ compensation insurance.

² The NRRA defines “home state” as: (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% of the insured risk is located outside such state, then the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

³ The NRRA defines an “exempt commercial purchaser” as any person purchasing commercial insurance that (A) employs or retains a qualified risk manager to negotiate coverage, (B) has paid aggregate nationwide commercial property and casualty insurance premium of more than \$100,000 during the past 12 months, and (C) either has a net worth in excess of \$20M, generates annual revenues over \$50M, employs more than 500 full-time employees, is a not-for-profit organization, or is a municipality with a population greater than 50,000 people.

officers act in more than one state, or if the insured's principal place of business is located outside any state, then the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

NYIL § 2101 (x)(5) defines "principal residence" as the state where the individual resides for the greatest number of days during a calendar year, or if the principal residence is outside any state, then the state where the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

NYIL 2101(x)(3) defines "insured's home state" and subparagraph (D) provides that for a group insurance policy, including for purchasing groups, where the group policyholder pays the entire premium from its own funds, the home state is the state where the principal place of business or principal residence of the group policyholder is located. Where the policyholder does not pay the full premium, the home state is the state where the principal place of business or principal residence of the group member is located.

Insurance Companies: Chapter 61 also defines "property/casualty insurance" to make clear what lines of insurance business fall under the scope of the NRRRA specifically excluding life insurance, annuities, accident and health insurance, workers' compensation and employers' liability insurance, title insurance, and salary protection insurance. It should be noted that while Chapter 61 outlines the types of insurance subject to the NRRRA, it does not affect the kinds of insurance that can be written in the excess lines market. This means that salary protection insurance, which was eligible to be written as excess lines insurance prior to the NRRRA, may still be written as such, however it is not subject to the NRRRA or conforming changes under Chapter 61.⁴

Brokers: In order to comply with NRRRA, Chapter 61 amends NYIL § 2102(a)(1), removing the requirement that excess line brokers be licensed as such in New York where the home state of the insured is not New York and the broker is licensed in the home state of the insured (even where the policy is negotiated and the covered property is located in the state). Similarly, the definitions of insurance broker and insurance producer have also been amended to exclude persons that are not residents of New York so long as the home state of the insured is not New York and the broker is licensed in the home state.⁵

Chapter 61 incorporates the more lenient requirements for placing insurance for an ECP under NYIL § 2118(b)(3)(F). This section applies only where the insured is an ECP at the time of placement of insurance and also provides that the excess lines broker is responsible for verifying the insured's ECP status.

Tax: NRRRA's premium tax allocation provisions are implemented by deleting the allocation formulas previously provided under NYIL § 9102 and removing all cross references to this section, since all premium taxes under excess line insurance policies will be payable to New York when it is the home state of the insured. Corresponding changes have been made in Article 33-A of the Tax Law and also became effective on July 21, 2011. New York has not yet entered into a compact or similar arrangement with other states as permitted by the NRRRA to determine procedures for allocation of premium taxes, and as yet has no publicly announced plans to do so.

If you have any questions or require assistance, please contact Robert Ansehl in our New York office at 212.710.3970; robert.ansehl@clydeco.us or Susan Lee at 212.710.3931; susan.lee@clydeco.us.

Further information

For further information please contact:



Robert Ansehl
robert.ansehl@clydeco.us



Susan Lee
susan.lee@clydeco.us

The Chrysler Building
405 Lexington Avenue
New York
New York 10174
United States

Tel: +212 710 3900
Fax: +212 710 3950

Further advice should be taken before relying on the contents of this summary. Clyde & Co LLP accepts no responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this summary.

No part of this summary may be used, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, reading or otherwise without the prior permission of Clyde & Co LLP.

Clyde & Co LLP is a limited liability partnership registered in England and Wales. Regulated by the Solicitors Regulation Authority.

⁴ Neither the NRRRA nor Chapter 61 amendments have any effect on insurance offered by insurers licensed or authorized to do business in New York.

⁵ Both amendments require that the broker sell, solicit or negotiate property/casualty insurance only for an insurer not authorized to do business in New York. Further, as regards the requirement that the states participate in a national producer database in order to continue collecting licensing fees, New York plans to do so by the prescribed deadline of July 21, 2012.