AAMGA
American Association of Managing General Agents

150 South Warner Road | Suite 156
King of Prussia, PA 19406
ph 610.225.1999 | fax 610.225.1996
www.aamga.org

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Mr. John Bauer, Esq.
Chief Counsel, Regulatory Affairs
National Association of Insurance Commissioners
2301 McGee, Suite 800
Kansas City, MO 64108-2604

Honorable James J. Donelon
Commissioner
LA Department of Insurance
P.O. Box 94214
Baton Rouge, LA 70804

Re: ***Comments on the Non-Admitted Insurance Compact Draft***

Dear Commissioner Donelon and Mr. Bauer:

Thank you for affording the opportunity to industry and interested groups to comment, and continue the dialog with you in respect of the best way forward on the National Association of Insurance Commissioners (NAIC) Non-Admitted Insurance Compact Draft. The AAMGA and its colleagues in the excess and surplus lines insurance industry appreciate the NAIC's desire to work with those who will be undertaking the day-to-day implementation of the Non-Admitted and Reinsurance Reform Act (NRRA), and responsible for ensuring the benefits contained within the federal legislation and law are realized in the form of greater efficiencies and uniformity in this unique segment of the insurance marketplace.

Executive Summary

Uniformity. Consistency. Certainty. These are the three concepts which excess and surplus lines insurance agents, brokers and companies – and the United States Congress – have acknowledged as being the drivers of a more efficient and accountable framework in which taxes can be paid on premiums for multi-state risks placed in the excess and surplus lines market. The legislative drafters of the NRRA on the US House of Representatives Financial Services Subcommittee worked intentionally with industry to provide a simple, collaborative solution to the issues of surplus lines tax payments on multi-state risks – not adding further burdensome and bureaucratic procedures to further complicate the process.

The AAMGA continues to urge the adoption of SLIMPACT as the mechanism by which to implement the legislative intent and industry efficiencies and assurances set forth in the NRRA. We respectfully urge the NAIC Surplus Lines Implementation Task Force to recommend the adoption of SLIMPACT to the Plenary Committee, and look forward to working with our colleagues in having the Compact passed and implemented by the States. In the interim, we offer the following comments to the current version of the Compact and the issues raised by the Task Force.

During the recent telephone conferences between the NAIC Surplus Lines Implementation Task Force members and industry, additional issues have arisen in working toward a final implementation of the NRRA's initiatives. The AAMGA provides its comments to these issues, as discussed, below.

1. Single, Blended Tax Rate per State

During its meeting on October 5, 2010, a majority of the NAIC Task Force members voted in favor of the states being required to supply a blended tax rate to the commission for all lines of business. This will allow the clearinghouse to properly and effectively perform its functions. Subsequent discussions raised during the October 12, 2010 meeting questioned the efficacy of the blended rate.

The AAMGA supports the single, blended tax rate requirement to be implemented by the states for several reasons:

(a) It will achieve the Congressional intent, and the industry's need to have a uniform system by which to pay surplus line premium taxes on multi-state risks.
(b) It will further the ability of surplus line agents and brokers to impose a consistent, blended tax on all risks for a particular state across all lines of business.
(c) It will provide an efficient framework without added bureaucracies and uncertainties.
(d) It will ensure a fair and equitable distribution mechanism is established for the proper and accurate payment, receipt and allocation of surplus line premium taxes.
(e) It will provide policyholders access to insurance products and solutions in the stable surplus lines market, with the protections and ability to plan, budget and pay premium taxes across the respective multi-state enterprises being insured.
(f) It is the only way the clearinghouse can reach an operational status in the time frame allotted, and continue to operate with the requite mandate of consistency.

Should the Task Force not adopt the blended tax rate requirement, the AAMGA, with all due respect, will not be able to support any "solution" that would increase the burden on the insureds, and the surplus line agents, brokers and companies, in the gathering of information and the performance of calculations to support the variety of fees and taxes imposed.

The unification of a tax allocation system simply will not work if each of the Several States applies is able to indiscriminately apply a different percentage tax to different lines of business being written. Moreover, anything other than a blended rate will cause additional legal and regulatory issues as new risks emerge.

The voting members of the Compacting Commission must be the ones to resolve these situations uniformly as they arise.

Imposing anything other than a single blended rate on a single policy for all lines of business flies in the face of the NRRA's legislative mandate to achieve and implement simplification, uniformity, certainty and consistency on the taxation of multi-state risks placed in the surplus lines insurance market.

2. Inclusion of Stamping Office Fees in the Single, Blended Tax Rate

The AAMGA stands beside the state stamping and surplus line service offices throughout the U.S., and we will not withdraw or interfere with their preferences in regard to this issue.

As stated in the October 8, 2010 letter issued by the Excess Line Association of New York (ELANY), it is the preference that the stamping office fees be separate from the single, blended tax rate applied by the states and that they be applied only for stamping offices where they represent the home state in the transaction. This is the only reasonable and effective solution.

Imposing stamping fees as an additional charge will not present the problems that fire district and windstorm assessments present due to the fact that stamping fees can be determined without the collection of additional data elements such as property addresses and the line of business written. Therefore, the AAMGA finds their exclusion from the single, blended tax rate appropriate and acceptable.

However, the AAMGA will restate its position that no tax, fee, assessment or other charge that will create further burden on the insured or the surplus lines agent or broker with regard to additional calculations or information gathering requirements should be allowed outside the single, blended tax rate applied by the states.

3. Negotiating Ability of Contracting States

The AAMGA firmly believes that a contracting state should have no negotiating ability with the commission with regard to application of the allocation rules or formulas utilized by the commission or clearinghouse.

A contracting state must be under the same rules and regulations of a compacting state. The existence of contracting states is merely to:

(a) supply those states with constitutional issues pertaining to compacts with the opportunity to utilize the clearinghouse and uniform tax allocation system the compact will create, and
(b) afford a contracting state the ability to sever its relationship without legislative enactment if it should become necessary.

The rules under which a contracting state will operate should not be open to negotiation, and they should operate under the same conditions as any compacting state. This will further the assurances of consistency and uniformity.

4. Single-state vs. Multi-State Tax Collection

The AAMGA firmly believes it would be a grave inequity and an oppressive administrative burden to require the diversion of additional tax resources for the those states preferring to handle their single-state risks using their current tax collection mechanisms. The compact is simply a uniform tax collection system that surplus lines agents and brokers will take into account when processing the myriad of policies through their offices. It also does not account for mid-term changes to a policy that can shift the nature of that policy from a single-state risk to a multi-state risk that would raise the question of who is paid on that policy now – the clearinghouse or the state directly?

The AAMGA can only support the one, single solution for the payment of non-admitted taxes, and that is through use of the clearinghouse mechanism. States should not be able to opt out of the system, even for single-state risks. This reasonable position is supported by the NRRA, which makes no distinction between single-state and multi-state policies. In fact, "Multi-", "Multiple", or any variation thereof is not mentioned in the NRRA.

Rather, the NRRA speaks to Non-admitted Insurance as whole; without any separate distinction between single-state and multi-state risks. The separation of tax collection based on single-state and multi-state transactions, or based on any other distinction, is a violation of both the language and intent of the NRRA. Similarly, we believe such a separation would be violative of the very provisions of the Commerce Clause which the NRRA is attempting to give effect.

5. Property & Casualty Lines of Business versus those which are not

The AAMGA agrees with its colleagues at the National Association of Professional Surplus Lines Offices (NAPSLO) in regard to the fact that the October 12, 2010 version of the Compact (as presently worded), does not apply to all surplus lines policies. The surplus lines agents and brokers will have one set of rules for risks categorized as “Property and Casualty” insurance and another set of rules for risks categorized as something other than these.

This is not the legislative intent of the NRRA, nor would this work operationally within the marketplace.

Surplus lines agents and brokers are allowed by some states to write risks, such as disability insurance and excess workers compensation insurance, which are not always categorized as property and casualty insurance in other states. Some of the

states have unique definitions for the various lines of insurance. A "property and casualty" policy in one state is not similarly defined and consistently considered as "property and casualty" insurance in another state.

This prohibition will create a different set of tax rules, forms and procedures for some surplus lines policies. The compact clearinghouse should be allowed to handle surplus lines policies that are legally placed under the laws of the home state. Again, such a variation runs counter to the legislative intent of the NRRA and would face prospective constitutional challenges as violative of the Commerce Clause.

In summary, various aspects of the current draft of the Compact as recently discussed and offered in the NAIC's conference call will, unfortunately, lead to the very disproportionality of establishing, collecting and allocating premium taxes on surplus lines multi-state risks that surplus lines agents and brokers in the industry have been trying to remedy, and which the NRRA seeks to rectify. The NRRA was clear in its legislative intent to streamline the process and calling for a compact to achieve a uniform tax allocation system.

Therefore, the AAMGA respectfully advances the foregoing in response to the NAIC's solicitation of comments from the industry which has evinced an exemplary record of accurate collection and reporting of surplus lines premium taxes. We reiterate our appreciation of being included in the deliberations and decisions of the Task Force and offer to be of whatever assistance we can in finalizing a consistent, uniform and certain compact that will accomplish the protection of policyholders, the needs of the surplus lines industry and the intentions of the Congress and the President in the implementation of the NRRA.

Respectfully submitted,

Bernd G. Heinze
Executive Director