



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

September 9, 2010

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: **Uniform Surplus Lines Reporting Form Draft:
Guiding Principles for Surplus Lines Reform Implementation**

Dear Commissioner Donelon and Mr. Bauer:

Thank you for affording the opportunity to industry and interested groups to comment on the best way forward on implementing uniform surplus lines tax collection and allocation, now that the Non-Admitted and Reinsurance Reform Act (“NRRA”) provisions within the Dodd-Frank Wall Street Reform and Consumer Protection Act have become law. The American Association of Managing General Agents (“AAMGA”), has been at the forefront of the wholesale insurance distribution industry since 1926. As a result, our member managing general agents, brokers, insurance companies and state stamping and surplus lines offices have developed a unique understanding and expertise in managing the day to day reporting and payment of surplus line premium taxes across the United States.

Executive Summary

Congress has provided the industry with an opportunity to modernize the manner in which the surplus lines taxes on premiums for multi-state risk placements are allocated, collected and distributed. Many stakeholders within this unique segment of the insurance industry identified the need, and advocated for these reforms for many years. While the legislation was pending, industry representatives convened to discuss, draft and develop a consensus solution for implementation of this legislation by the states.

The AAMGA has unequivocally advocated the benefits of, and the need to maintain, state-based insurance regulation. The performance of the state surplus lines and stamping offices have been exemplary, and these offices continue to provide valuable services to consumers, agents, brokers, insurers and regulators. The Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT) is the most appropriate and efficient model to streamline surplus lines tax collection and allocation for this vital segment of the industry. 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.

The AAMGA agrees with and, as a result incorporates herein by reference, the comments submitted by the Excess Line Association of New York (“ELANY”) in respect of the inability of the proposed Uniform Surplus Lines Reporting Form (the “reporting form”) to adequately meet the requirements of the NRRRA. We further believe the reporting form is replete with fundamental flaws. Neither time nor necessary edits will enable the “form” to provide the facility and methodology required. The impetus behind the NRRRA was to provide surplus lines agents, brokers and companies with needed efficiency, uniformity and reliability. If it were even able to be implemented, the reporting form would create more issues than it was designed to solve. For example,

- The form has no web-based interface and does not address the tax allocation formulas to be used to determine the percentage of risk in each state.
- The form is in conflict with the NRRRA’s express provisions pertaining to addressing each state’s separate and distinct tax rate plus other assessments to the portion of the risk and premium allocated to each state.
- The form does not address the issue of uniformity contemplated by the NRRRA, or the issue of differing states having differing rates of taxation for different classes of business, and the application of certain charges to only a portion of the premium for certain classes of business.
- Use of the form without an interstate compact will require each state to become a clearinghouse for the collection of data and taxes for redistribution which, as noted by ELANY’s submission, would add more dedicated personnel, overhead costs, time and resources in order to complete the tax collection, reporting and allocation process – the very kind of costly burdens the NRRRA was designed to reduce.

We appreciate the sense of urgency with which the issue is now being addressed. Speed, however, should not be the driver over the need to assure that the implementation of the NRRRA’s provisions is achieved with the same degree of integrity and professionalism for which this segment of the industry has become known.

The state surplus lines and stamping office managers have provided great leadership on this fundamental issue; one with which they are entrusted daily. SLIMPACT, like the International Fuel Tax Agreement (“IFTA”) raised during the August 30, 2010 conference call, and most state and federal laws, are creatures of dynamic convention – able to adapt to changes as required, but with a fundamentally strong foundation evincing the intention of their purpose to exact uniformity and reliability. This allows business to be efficiently transacted with transparency and accountability.

We also recognize there are outstanding issues that can be addressed to resolve concerns that some states may have in examining the propriety of the Model Act or Guidelines. None of these concerns are new. Yet, they are of a nature that can be resolved to allow this solution to implement the NRRRA’s provisions. For instance:

1. The Definition of "Home State"- It is a threshold requirement that all states agree on a consistent definition of "Home State" so that implementation of the NRRRA can be achieved. The conference call on August 30, 2010 suggested each state could probably "tweak" the definition of "Home State" to fit its current legislation. With respect, that is a recipe for legislative disaster that will not lead to the level of uniformity required to fulfill the purposes of the NRRRA. On the contrary, Article II(11) of SLIMPACT provides a clear and consistent definition, matching the Federal definition of "Home State." Further, the terminology of "principle place of business" included in the definition has already been litigated and recently interpreted by the U.S. Supreme Court in Hertz v. Friend, 130 S. Ct. 1181, 559 US __, 2010 US LEXIS 1897 (Feb. 23, 2010). That Congress intended a compact to be adopted is clear in the language stating, "Congress intends . . . States adopt nationwide uniform requirements, forms and procedures, **such as an interstate compact**, for the reporting, payment, collection and allocation of premium taxes." (emphasis added).
2. Rate of Premium Tax – It was also suggested during the conference call on August 30, 2010, that with regard to premium tax rates, each state should be allowed to retain its own rate and, thereby, remain essentially revenue neutral. Article IV(5) of SLIMPACT provides for each compacting state to "charge its own rate of taxation on the premium allocated to such State based on the applicable Allocation Formula." The use of such an allocation formula would allow the Home State to collect the taxes on the entire premium and apportion them correctly to the other compacting states according to each State's rate. While SLIMPACT does not currently address a state's ability to charge a different tax rate on different classes of business or types of insurance coverage, or account for other charges such as fire district charges, these implementation details can be analyzed and drafted by the surplus lines insurance industry, and incorporated into the compact.
3. Collection Mechanism – Consistent with the AAMGA's prior comments to the Surplus Lines Implementation (EX) Task Force, the AAMGA is in full support of the mechanism provided in SLIMPACT to centralize and simplify the collection of the premium tax. SLIMPACT was drafted so that an electronic state-of-the-art system for agents and brokers could be delivered, while guaranteeing states a fair share of tax revenues on multi-state E&S risks. Any system that requires or could constitute multiple payments of any kind should not be pursued as this offends the intent of Congress in enacting the NRRRA.
4. Staged Implementation – The AAMGA considers a staged implementation as ill-advised. The regulatory framework and mechanisms that need to be created must be consistent and immediately applicable to all states so as to avoid any

confusion. The NRRA was designed to promote efficiency and uniformity at the time of implementation, not in phases. Adjustments in operation can most certainly be addressed as the need arises. However, for the efficiency of agents, brokers, insurers and regulators, the NRRA and SLIMPACT must be implemented across the board consistently.

In conclusion, the AAMGA joins with its colleagues in respectfully urging the NAIC Surplus Lines Implementation (EX) Task Force to forego short sighted, uncertain, incomplete and costly solutions offered by the reporting form, and requests the immediate adoption of SLIMPACT. This will allow our efforts with the National Conference of State Legislators, National Conference of Insurance Legislators, American Legislative Exchange Council and other state based legislative organizations to continue to the next chapter of implementing what we have all worked so hard to achieve.

We will work in concert with our colleagues and members of the Council of Insurance Agents & Brokers, Independent Insurance Agents & Brokers, National Association of Professional Surplus Lines Offices, and others to advance the benefits of SLIMPACT's adoption to our individual state legislators. Over \$30 billion in premiums are transacted within the excess and surplus lines insurance industry each year. We can ill afford to diminish the importance of this objective with anything less than a comprehensive solution that will adequately serve all constituencies of the marketplace.

Thank you for your consideration and the opportunity to share our views. We are prepared to provide additional information and assistance or respond to any further questions the Task Force may have.

Respectfully submitted,



Bernd G. Heinze
Executive Director