



**THE SURPLUS LINE ASSOCIATION  
OF CALIFORNIA**

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July 18, 2011

**Notice to the Membership**

**Re: California Implementation of the Federal Non-admitted and Reinsurance Reform Act  
("NRRA") of 2010**

The Non-Admitted and Reinsurance Reform Act was signed into law by President Barack Obama on July 21, 2010, as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The bill, which includes language to standardize the reporting, allocation, and payment of non-admitted insurance premium tax on multi-state risks, will take effect July 21, 2011. In response, the California Legislature has passed, and on July 15, the Governor signed NRRA conforming legislation in Assembly Bill (AB) 315 (Solorio).

Enclosed is a restatement of the June 21 SLA memorandum that was previously distributed. This is the current guidance available on how NRRA applies in California. Please also note the California disclosure notices (D-1 & D-2) forms were revised by AB 315. The forms are also enclosed.

We expect in the coming days that the California Department of Insurance will issue a bulletin to provide final guidance on NRRA and California AB 315. The bulletin will be distributed by the SLA to all California Surplus Line Brokers as soon as it becomes available.

Theodore M. Pierce  
Executive Director

TP/dk  
Attachment

To: SLA Members

From: Ted Pierce, Executive Director

Re: California Implementation of the Federal Non-admitted and Reinsurance Reform Act (“NRRA”) of 2010

Date: July 15, 2011

**This information is provided by the Surplus Line Association (“SLA”) in its capacity as a trade association and is not provided on behalf of the California Department of Insurance (“CDI”) nor by the SLA in its capacity as the CDI’s advisory organization. This information should not be considered legal or tax advice; it is recommended that surplus line brokers seek professional legal and tax advice on these important matters.**

### NRRA

The Non-Admitted and Reinsurance Reform Act was signed into law by President Barack Obama on July 21, 2010, as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The bill, which includes language to standardize the reporting, allocation and payment of non-admitted insurance premium tax on multi-state risks, will take effect July 21, 2011. In response, the California Legislature has passed and the Governor has signed NRRA conforming legislation in AB 315 (Soloria) which becomes effective on July 21, 2011.

### CALIFORNIA CONFORMING LEGISLATION

When the NRRA and operative provisions of AB 315 become effective on 7/21/11, brokers should determine which state law applies to their multi-state insurance transactions:

1. Is the placement on a single state risk or a multi-state risk?
  - a. If the exposure is in only one state, the laws and regulations of that state apply.
2. If the exposure is in more than one state, determine whether the insured is a business entity or an individual.
  - a. If the insured is a business entity, home state is where the insured maintains its principal place of business.
  - b. If the insured is an individual, home state is where the insured maintains his or her principal residence.
3. However, if **none** of the insured risk is located in the state where the insured maintains its principal place of business or, in the case of an individual, his/her principal residence, the home state for the purposes of that placement is the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

4. If more than one insured from an affiliated group is named insured on a single non-admitted insurance contract, the home state for that placement is the home state of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

It is recommended that brokers keep adequate records of this information.

### INSURER ELIGIBILITY IN CALIFORNIA

AB 315 amends the existing insurer eligibility requirements for California home state placements to conform with NRRA as follows:

1. Foreign non-admitted insurers (US-domiciled) must be licensed or authorized to write the type of insurance in their domiciliary jurisdiction and maintain a minimum of \$45,000,000 in capital and surplus to be eligible to write non-admitted insurance in California; and
2. Alien non-admitted insurers (non-US-domiciled) listed on the International Insurance Department's Quarterly Listing of Alien Insurers, maintained by the National Association of Insurance Commissioners, are eligible to write non-admitted insurance in California.

The California conforming legislation repeals the List of Eligible Surplus Line Insurers ("LES LI") and replaces it with the List of Approved Surplus Line Insurers ("LAS LI"), which is a voluntary list of approved insurers. The requirements for LAS LI approval are substantially similar to those for the current LES LI list. Insurers on the LES LI on July 20, 2011 will remain on the LAS LI beginning July 21, 2011. Insurers wishing to remain on the LAS LI will be required to continue to file all the documents mandated in the current CIC 1765.1(c) and pay the appropriate filing fees.

Brokers who wish to use a company that is not on the LAS LI will need to either file on behalf of the insurer or have the non-admitted insurer file the following directly with the CDI:

1. A certificate of capital and surplus issued by the insurer's domiciliary jurisdiction;
2. A certified copy of the insurer's license issued by its domiciliary jurisdiction, plus a certificate of good standing, certificate of compliance, or other equivalent certificate;
3. Information on the insurer's agent for service of process in California;
4. Insurer's principal place of business;
5. Insurer's regulatory disclosure statement that discloses any currently known regulatory actions (including license revocation or suspension or cease and desist order) pending against the insurer or any of its affiliates; and
6. A list of all the California surplus line brokers authorized by the insurer to issue policies in this State on its behalf.

### SLA BROKER FILING PROCEDURES

Pending approval by the California Department of Insurance, the SLA will respond to the new state law by requiring filing brokers to provide a batch coversheet (draft below) indicating if any batch items qualify as an Commercial Insured/Exempt Commercial Purchaser and are therefore exempt from the Diligent Search Report (SL-2). A sample checklist for identifying Commercial Insureds/Exempt Commercial Purchasers is

attached. In addition, the coversheet will indicate if the batch contains any multi-state policies by reporting the percentage of California premium.

### PREMIUM TAX PAYMENT AND FILING

Because NRRA allows only the home state of the insured to impose a tax on non-admitted insurance, AB 315 amends surplus line and independent procurement tax provisions which currently require a tax only on the portion of the premium allocated to risks in California. Instead, the California law will require a tax on the entire premium (100%), regardless of where the risk is located, when California is the home state of the insured. Similarly, on multi-state policies in which California is the home state, the stamping fee is to be calculated on 100 percent of the premium, not just the California portion.

Under AB 315, if a new or renewal policy has an effective date on or before July 20, 2011, and is placed on or before July 20, 2011, the provisions of AB 315 do not apply. The same holds true for installments, cancellations, and endorsements effective after July 20, 2011 on those same policies, so long as the policy extensions do not exceed an aggregate of 90 days in a 12 month period. These transition rules are intended to address the July 21, 2011, effective date of NRRA, and will remain in effect only until October 18, 2012, at which time all policies and endorsements must comply with AB 315, regardless of the original effective date. Examples are attached.

Surplus Line Brokers are required, under AB 315, to provide data on tax allocations relative to multi-state policies in the annual premium tax filing beginning with the filing due March 1, 2012. The Commissioner of Insurance can waive this requirement. If that option is exercised, the SLA will report back to you. The SLA is seeking additional clarification as to the extent of the data and the applicable policies required in the filing for the 2011 transition year, and will advise you of its findings.

The NRRA grants the insured's home state exclusive authority to regulate and tax surplus lines insurance that includes multi-jurisdictional boundaries. Additionally, the tax sharing provision of NRRA empowers the states to enter into a multi-state agreement for the purpose of creating national or uniform standards regarding the collection, allocation, and distribution of multi-state premium taxes. If a state chooses to enter a more formal interstate compact, the compacting states would additionally be empowered to establish uniform standards for insurer eligibility. Should California enter into a compact, additional information and guidance will follow.

### AB 315 EFFECTIVE DATE EXAMPLES:

Note: In all examples, it is assumed California is the home state.

1. Policy effective 12/20/10. Additional insured ("A/I") Endorsement<sup>1</sup> effective 7/19/11. Because the policy was placed and effective prior to 7/21/11, and the endorsement was effective prior to 10/18/12, AB 315 does not apply to either the policy or the endorsement.
2. Policy effective 1/23/11. A/I Endorsement effective 8/13/11. Because the policy was placed and effective prior to 7/21/11, and the endorsement was effective prior to 10/18/12, AB 315 does not apply to either the policy or the endorsement.
3. Policy effective 7/1/11. Cancelled 12/1/11. Because the policy was placed and effective prior to 7/21/11, and the cancellation was effective prior to 10/18/12, AB 315 does not apply to either the policy or the cancellation/return premium.
4. Policy effective 7/19/11 but bound with the carrier on 7/21/11. A/I Endorsement effective 8/13/11. Because the placement was made after AB 315 took effect, AB 315 applies to both the policy and the endorsement.
5. Policy effective 7/1/11. Two (2) month Policy Extension effective 7/1/12. Because the policy was placed and effective prior to 7/21/11, and the extension expiration date was within 90 days of the original policy expiration date, the extension is treated as a regular endorsement. AB 315 does not apply to either the policy or the endorsement.
6. Policy effective 7/1/11. Four (4) month Policy Extension effective 7/1/12. Because the policy was placed and effective prior to 7/21/11, AB 315 does not apply to the policy, but because the extension expiration date exceeds 90 days from the original policy expiration date, the extension is treated as a separate placement. AB 315 does apply to the endorsement.
7. Policy effective 7/23/11. A/I Endorsement effective 9/22/11. Because the policy was effective after AB 315 took effect, AB 315 applies to both the policy and the endorsement.
8. Three (3) year policy effective 12/20/10. A/I Endorsement effective 11/12/12. Because the policy was placed and effective prior to 7/21/11, AB 315 does not apply to the policy, but because the endorsement was effective after 10/18/12, AB 315 does apply to the endorsement.
9. Open-ended policy effective 7/1/11. A/I Endorsement effective 11/12/12. Because the policy was placed and effective prior to 7/21/11, AB 315 does not apply to the policy, but because the endorsement was effective after 10/18/12, AB 315 does apply to the endorsement.
10. Open-ended policy effective 7/1/11. Premiums invoiced in quarterly installments. Because the policy was placed and effective prior to 7/21/11, AB 315 does not apply to the policy. As long as the installments are invoiced before 10/18/12, AB 315 does not apply to the installments either. AB 315 will apply to any installments invoiced on or after 10/18/12.

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<sup>1</sup> A/I endorsement is used as an example of a policy change, premium bearing, endorsement. Return premiums would be subject to the same rules.

CALIFORNIA SLA FILING DRAFT COVERSHEET

DATE OF SUBMISSION: April 1, 2011

BROKER NAME: AAAA Insurance Brokers, Inc.

BROKER NUMBER: 1234

<u>ECP</u>	<u>Insured Name</u>	<u>Type</u>	<u>Policy No.</u>	<u>Premium</u>	<u>Stamp Fee</u>	<u>Taxes</u>	<u>Invoice Date</u>	<u>% CA</u>
<input checked="" type="checkbox"/>	ABC Equipment	New	XF10003	5,125.50	12.82	153.75	1/1/11	20%
<input type="checkbox"/>	Dover Corp.	Renewal	A745999	1,100.00	2.75	33	2/4/11	100%
<input type="checkbox"/>	Pine, Inc.	Endt	TRX54738	3,100.00	7.75	93	12/31/10	100%
TOTALS				9,325.50	23.32	279.75		

**Submitted by: Sarah Clark (415) 555-1680**

CALIFORNIA COMMERCIAL INSURED/EXEMPT COMMERCIAL PURCHASER

SAMPLE CHECKLIST

**Commercial Insured/Exempt Commercial Purchaser Qualifications Checklist**

Under the NRRRA, the surplus line broker does not need to perform a diligent search if the insured qualifies as an Exempt Commercial Purchaser. To determine whether the insured meets the NRRRA definition of an Exempt Commercial Purchaser, please review the following checklist. If the insured meets all three requirements, a diligent search does not need to be performed.

Requirement 1: Employs or retains a qualified risk manager (refer to definition below)

Requirement 2: Paid an aggregate nationwide property & casualty premium of at least \$100,000 in the immediately preceding 12 months.

Requirement 3: Meets **one** of the following:

\_\_\_\_\_ Possesses a net worth in excess of \$20 million, **or**

\_\_\_\_\_ Generates annual revenues over \$50 million, **or**

\_\_\_\_\_ Employs more than 500 full time employees per individual insured, or is a member of an affiliated group employing more than 1,000 employees in the aggregate, **or**

\_\_\_\_\_ Is a non-profit or public entity generating annual budget over \$30 million, **or**

\_\_\_\_\_ Is a municipality with a population in excess of 50,000 persons.

**NRRRA Qualified Risk Manager Definition**

Under the NRRRA, a Qualified Risk Manager must meet all three of the following requirements:

Requirement 1: Must be an employee of, or a third party consultant retained by, a commercial policyholder, **and**

Requirement 2: Provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance, **and**



Requirement 3:

\_\_\_\_\_ 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**

\_\_\_\_\_ three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance, **or**

\_\_\_\_\_ Holds one of the designations below:

\_\_\_\_\_ CPCU or ARM or CRM or RF or any other designation, certification, of license determined by a State Insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management, **or**

\_\_\_\_\_ Has seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and any one of the following designations: CPCU or ARM or CRM or RF or any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competence in risk management, **or**

\_\_\_\_\_ Has at least ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance, **or**

\_\_\_\_\_ 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.



## **NOTICE:**

**1. THE INSURANCE POLICY THAT YOU [HAVE PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED “NONADMITTED” OR “SURPLUS LINE” INSURERS.**

**2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT THAT APPLY TO CALIFORNIA LICENSED INSURERS.**

**3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.**

**4. THE INSURER SHOULD BE LICENSED EITHER AS A FOREIGN INSURER IN ANOTHER STATE IN THE UNITED STATES OR AS A NON-UNITED STATES (ALIEN) INSURER. YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR “SURPLUS LINE” BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: 1-800-927-4357. ASK WHETHER OR NOT THE INSURER IS LICENSED AS A FOREIGN OR NON-UNITED STATES (ALIEN) INSURER AND FOR ADDITIONAL INFORMATION ABOUT THE INSURER. YOU MAY ALSO CONTACT THE NAIC’S INTERNET WEB SITE AT [WWW.NAIC.ORG](http://WWW.NAIC.ORG).**

**5. FOREIGN INSURERS SHOULD BE LICENSED BY A STATE IN THE UNITED STATES AND YOU MAY CONTACT THAT STATE’S DEPARTMENT OF INSURANCE TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.**

**6. FOR NON-UNITED STATES (ALIEN) INSURERS, THE INSURER SHOULD BE LICENSED BY A COUNTRY OUTSIDE OF THE UNITED**

**STATES AND SHOULD BE ON THE NAIC'S INTERNATIONAL INSURERS DEPARTMENT (IID) LISTING OF APPROVED NONADMITTED NON-UNITED STATES INSURERS. ASK YOUR AGENT, BROKER, OR "SURPLUS LINE" BROKER TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.**

**7. CALIFORNIA MAINTAINS A LIST OF APPROVED SURPLUS LINE INSURERS. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST AT THE INTERNET WEB SITE OF THE CALIFORNIA DEPARTMENT OF INSURANCE: WWW.INSURANCE.CA.GOV.**

**8. IF YOU, AS THE APPLICANT, REQUIRED THAT THE INSURANCE POLICY YOU HAVE PURCHASED BE BOUND IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE WITHIN TWO BUSINESS DAYS, AND YOU DID NOT RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS POLICY WITHIN FIVE DAYS OF RECEIVING THIS DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM WILL BE PRORATED AND ANY BROKER'S FEE CHARGED FOR THIS INSURANCE WILL BE RETURNED TO YOU.**

**Date: \_\_\_\_\_**

**Insured: \_\_\_\_\_**

**D-1 (Effective July 21, 2011)**

## **NOTICE:**

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**D-2 (Effective July 21, 2011)**