Dixon Hughes Advisory Bulletin | August 5, 2010

Dodd-Frank Wall Street Reform and Consumer Protection Act

While the Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law on July 21, 2010, mainly focuses on banks and similar financial institutions, included in the 2,000 plus page law are two provisions that affect the insurance industry. The first provision is entitled the Federal Insurance Office Act of 2010 and will set up an office to advise federal authorities on insurance matters, prepare reports and analysis on the insurance industry and give some limited pre-emption power over state laws that affect international insurance arrangements. The second provision is called the Nonadmitted and Reinsurance Reform Act of 2010. In regards to nonadmitted insurance, this act will prohibit any state other than the home state of the policyholder from charging a premium tax on the policy and authorizes states to establish procedures to allocate the premium taxes paid to a policyholder's home state. The provision also gives conditions under which brokers representing exempt commercial insurance buyers can approach the surplus lines market directly without first seeking insurance from admitted insurers. The measure also addresses reinsurance regulation. It makes a reinsurer's state of domicile — if accredited by the NAIC regarding solvency or substantially similar solvency requirement — the sole regulator for solvency for the reinsurer. In addition, the law provides that if the state of domicile of a ceding insurer is accredited by the NAIC regarding solvency, or has substantially similar solvency requirements and recognizes credit for reinsurance for the insurer's ceded risk, then no other state can deny such credit for reinsurance.

As mentioned above the Dodd-Frank Act includes the Federal Insurance Office Act of 2010 which requires the Department of the Treasury to create the Federal Insurance Office (FIO) and for the Secretary of the Treasury to appoint a Director for the FIO. The FIO would have the authority to:

1. Monitor all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the U.S. financial system

2. Monitor the extent to which traditionally underserved communities, consumers, minorities and low to moderate-income persons have access to affordable insurance products in regards to all lines of insurance other than health insurance

3. Recommend that an insurer, including the affiliates of the insurer, as an entity be subject to regulation as a nonbank financial company to the Dodd-Frank Wall Street Reform and Consumer Protection Act

4. Assist the Secretary of the Treasury in administering the Terrorism Insurance Program established under the Terrorism Risk Insurance Act of 2002

5. Coordinate federal efforts and develop federal policy on aspects of international insurance matters and assisting in negotiating covered agreements on said insurance matters with foreign authorities

6. To determine whether state insurance measures are preempted by covered agreements with foreign authorities

7. To consult with states regarding insurance matters of national and international importance

The FIO will also make annual reports to Congress starting September 30, 2011 on the preemption of inconsistent state insurance measures related to covered agreements and report on the insurance industry including a study on how to modernize and improve the system of insurance regulation in the U.S. The study will look at both state regulation and potential federal regulation of the insurance industry (except health insurance). Additional reports describing the breadth and scope of the global reinsurance market and the critical role such a market plays in supporting insurance in the U.S. will be required in 2012 and in 2013 a report describing the impact of the Nonadmitted

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and Reinsurance Act of 2010 on the ability of state regulators to access reinsurance information for regulated companies in their jurisdiction will be issued.

The other major portion of the law that impacts the insurance industry is the Nonadmitted and Reinsurance Reform Act of 2010. The first part of this act is related to state regulation of nonadmitted insurance, while the second part deals with state authority over reinsurance.

In regards to nonadmitted insurance the act provides that upon the expiration of the year ending on July 21, 2011 that no other state other than the home state of the insured policyholder may require any premium tax payment for nonadmitted insurance. In addition, Congress intends that each state adopt a nationwide standard, such as an interstate compact, that would provide for a more uniform reporting, payment, collection and allocation of premium taxes for nonadmitted insurance. To facilitate the payment of premium taxes among the states, the act authorizes the policyholder's home state to request the annual filing of a nonadmitted insurance tax allocation report that details nonadmitted premium attributable to properties, risks or exposures located in each state. The report would be filed by surplus lines brokers and insureds who have independently procured insurance or by a person authorized by the insured to act as its agent.

In addition, with the exception of workers compensation insurance, the act states that the placement of nonadmitted insurance will be subject to the statutory and regulatory requirements solely of the policyholder's home state and no state other than an insured's home state may require a surplus line broker to be licensed in order to sell, solicit or negotiate nonadmitted insurance to insured.

The act seeks to set uniform standards for surplus lines eligibility by not allowing a state to impose additional eligibility requirements on nonadmitted insurers domiciled in a U.S. jurisdiction except for those in conformance with such requirements and criteria in the Non-Admitted Insurance Model Act. Also a state may not prohibit a surplus lines broker from placing nonadmitted insurance with a nonadmitted insurer domiciled outside the U.S. if that insurer is listed on the Quarterly Listing of Alien Insurers that is maintained by the International Insurers Department of the NAIC.

Finally, as concerning nonadmitted insurance, the act streamlines the application for nonadmitted insurance for exempt commercial purchasers. In such cases, the state may not require a surplus lines broker to make a due diligence search to determine whether the full amount or type of insurance sought by the exempt commercial purchaser can be obtained from admitted insurers if the broker discloses to the purchaser that such insurance may or may not be available from the admitted market, which may provide greater protection with more regulatory oversight and the exempt commercial purchaser has subsequently requested in writing that the broker place such insurance from nonadmitted insurers. An exempt commercial purchaser is defined by the act as a person purchasing commercial insurance that employs or retains a qualified risk manager to negotiate insurance coverage, paid nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months and meets one of the following criteria:

1. Has a net worth in excess of $20,000,000 (to be adjusted for inflation every 5 years)
2. Generates annual revenues in excess of $50,000,000 (to be adjusted by inflation every 5 years)
3. Employs more than 500 full time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees
4. Is a nonprofit organization or public entity with annual budgeted expenditures of $30,000,000
5. Is a municipality with a population in excess of 50,000 persons

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The act defines a qualified risk manager as an employee or third-party consultant retained by the commercial policyholder who is skilled in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance and who meets one of the following requirements:

1. Has a bachelor's degree in risk management, business administration, finance, economics, or other field determined by the state insurance commissioner or other official to demonstrate minimum competence in risk management **and** has 3 years experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance **or** has a designation as a CPCU or ARM from the American Institute for CPCU/Insurance Institute of America, CRM from the National Alliance for Insurance Education & Research, RIMS Fellow issued by the Global Risk Management Institute, or other allowed by state insurance commissioner or other official to demonstrate minimum competence in risk management

2. Has seven years' experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance **and** has a designation as a CPCU or ARM from the American Institute for CPCU/Insurance Institute of America, CRM from the National Alliance for Insurance Education & Research, RIMS Fellow issued by the Global Risk Management Institute, or other allowed by state insurance commissioner or other official to demonstrate minimum competence in risk management

3. Has 10 years' experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance

4. Has a graduate degree in risk management, business administration, finance, economics, or other field determined by state insurance commissioner or other official to demonstrate minimum competence in risk management

The reinsurance portion of the act deals with the regulation of credit for reinsurance and reinsurance agreements and with the regulation of reinsurer solvency. Under the act, if the state of domicile of a ceding insurer is an NAIC accredited state or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation and recognizes credit for the insurer's ceded risk, then no other state may deny such credit for reinsurance. In addition, all laws, regulations, provisions or other actions of a state that is not the state of domicile of the ceding insurer, except those that govern taxes and assessments on insurance companies or insurance income, are preempted to the extent that they 1) restrict or eliminate the rights of the ceding insurer or assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision does not violate U.S. laws; 2) require that a certain state's law shall govern the reinsurance contract, disputes arising from reinsurance contract or requirements of the reinsurance contract; 3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract; or 4) otherwise apply the laws of the state to reinsurance agreements of ceding insurers not domiciled in that state.

Finally, in regards to reinsurer solvency, the act provides that if the state of domicile of a reinsurer is an NAIC accredited state or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation; such state shall be solely responsible for regulating the financial solvency of the reinsurer. Nondomiciliary states of the reinsurer are permitted under the act to receive a copy of any financial statement filed with the reinsurer's domiciliary state but may not require the reinsurer to provide any additional information other than the information the reinsurer is required to file with its domiciliary state.

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