

## DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT INSURANCE REGULATION

Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) materially increases the Federal regulatory role in dealing with the insurance industry. Until this new legislation, insurance had been an area of financial services almost entirely regulated by the States.

### Federal Insurance Office

The Act created a Federal Insurance Office (“FIO”) in the Department of Treasury headed by a Director, appointed by the Secretary of the Treasury, with authority over all types of insurance except: health, long-term care and crop insurance. The FIO is to:

- monitor the insurance industry, with authority to gather information and generate industry-related reports.
- identify issues or regulatory gaps that could contribute to a systemic crisis in either the insurance industry or the US financial system.
- monitor the extent to which “underserved communities and consumers” (*i.e.* minorities, low-income persons, etc.) have access to affordable insurance (other than health insurance).
- recommend to the Financial Stability Oversight Council (a panel of regulators created by the Act) which insurers should be designated as non-bank financial companies to be supervised by the Federal Reserve Bank.
- recommend which insurance companies should be subject to stricter standards.
- assist the Secretary in administering the Terrorism Insurance Program.
- coordinate Federal efforts and develop Federal policy on international insurance issues and assist in negotiating bilateral and multilateral international insurance agreements (“covered agreements”).
- determine whether and which state insurance laws are preempted by covered agreements.
- consult with states on insurance issue of national and international importance.
- conduct a study within 18 months of enactment of ways to modernize insurance regulation and make recommendations to Congress.
- “perform such other duties and tasks as may be assigned ... by the Secretary”.

The Director will serve as an advisor to the Financial Stability Oversight Council.

The Director has subpoena power to obtain information from insurers and their affiliates.



Covered agreements must be submitted to Congress prior to execution.

The Congressionally mandated study due within 18 months of enactment is to address:

- systemic risk regulation for insurance.
- capital standards and the appropriate match between capital allocations and liabilities.
- consumer protection regarding insurance products and practices.
- the degree of national uniformity in state insurance regulation.
- gaps in state insurance regulation.
- regulation of insurers and affiliates on a consolidated basis.
- international coordination of insurance regulation.
- a cost/benefit analysis of Federal regulation of insurance.
- the feasibility of Federal regulation of certain insurance lines.
- impact of creating a Federal resolution authority to deal with solvency issues, including:
  - i) impact on State guarantee funds;
  - ii) impact on policy holder protection;
  - iii) impact on life insurance if this involves loss of separate accounts and special statutes; and
  - iv) impact on international competitiveness.

#### Preemptive Reform of State Law Covering Non Admitted (i.e. out of state) Insurers Providing Surplus Line Coverage

The Act gives the home state of the policyholder (the insured) sole authority over the collection and allocation of premium taxes on non-admitted surplus lines insurers. The states, however, are authorized to enter into compacts or similar agreements to create uniform allocation and payment procedures. The National Association of Insurance Commissioners (“NAIC”) is invited to submit a report to Congress after 330 days of the enactment of the Act describing any compacts or similar procedures. The Act states that “Congress intends that each State adopt nationwide uniform requirements, forms and procedures...”

Except for state workers’ compensation insurance requirements, no state other than a policyholder’s home state, may impose regulatory requirements on the placement of non-admitted insurance. Further, no state other than the home state may require a surplus line broker to be licensed in order to sell, solicit or negotiate non-admitted insurance. A state may not impose eligibility requirements on non-admitted insurers domiciled in the U.S. except in accordance with the Non-Admitted Insurance Model Act, unless, the state has adopted other nationwide uniform requirement forms and procedures.

No state may prohibit a surplus lines broker from placing non-admitted insurance or obtaining non-admitted insurance from an insurer domicile outside the U.S. which is listed on the Quarterly Listing of Alien Insurers maintained by NAIC.



A state may not require a surplus lines broker seeking to place non-admitted insurance in that state for an “exempt commercial purchaser” (a purchase of over \$100,000 in premium of coverage employing a qualified risk manager and meeting net worth, revenue and employment numbers or a municipality with over 50,000 residents) to satisfy any state due diligence requirement as to whether the coverage is obtainable from an admitted insurer, IF the broker discloses the possible existence of coverage from an admitted insurer AND the purchaser requests in writing the non-admitted coverage.

After 30 months after enactment the GAO is to consult with the NAIC, study the effects of these changes on size and market share of the non-admitted market and report on the same to Congress.

### Preemptive Reform of Reinsurance

If a ceding insurer’s domiciliary state is NAIC-accredited or has similar financial solvency standards, no other state may deny credit for reinsurance for a ceded risk.

The laws and regulations of any state which is not the domiciliary state of the ceding insurer (except with respect to taxes and assessments) are preemptive to the extent they: (i) restrict the rights of the ceding insurer or assuming insurer to resolve disputes by arbitration; (ii) require that a certain state’s law govern disputes; (iii) attempt to enforce a reinsurance contract on terms different from the express contract provisions; or (iv) otherwise apply that state’s law to reinsurance agreements with ceding insurers not domiciled in that state.

If the domiciliary state of a reinsurer is an NAIC-accredited state or has similar financial solvency standards that domicile state is solely responsible for regulating the solvency of the reinsurer and no other state may require the reinsurer to provide financial information beyond what it files with its domicile state.

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