



# National Association of Professional Surplus Lines Offices, Ltd.

200 N.E. 54<sup>th</sup> Street • Suite 200 • Kansas City, MO 64118 • 816/741-3910 • Fax 816/741-5409

www.napslo.org

Richard M. Bouhan  
Executive Director

## Dewey & LeBoeuf NRRA Broker Protocol

The Nonadmitted and Reinsurance Reform Act (the “NRRA”) was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. When the NRRA takes effect as expected on July 21, 2011, surplus lines brokers will benefit from various nationwide reforms that are intended to streamline excess and surplus lines regulation and provide uniformity to address state to state inconsistencies. *At the request of NAPSLO, Dewey & LeBoeuf LLP has developed this general “Broker Protocol” on regulatory compliance around the United States once the NRRA reforms are in place which NAPSLO offers to its members.*<sup>1</sup>

***On and after July 21, 2011, surplus lines brokers should comply with the NRRA reforms as outlined below. This applies to the placement of both multi-state and single state risks***

### Exclusive Home State Regulation of Surplus Lines Placements

Brokers placing surplus lines policies must comply only with the placement requirements of the Home State ([definition linked here](#)). Specifically, brokers:

- Need only be licensed for surplus lines in the insured's Home State to sell, solicit or negotiate surplus lines insurance.
  - May wish to obtain legal advice regarding the broker's specific licensing structure such as regarding resident and non-resident licensing; and.
  - Must continue to follow state producer licensing laws for admitted business because those rules are not affected by the NRRA.
- Must ensure that a diligent search has been conducted, and the required affidavit submitted, under the laws of the insured’s Home State, unless the insured qualifies as an "exempt commercial policyholder" ([definition linked here](#)), in which case a diligent search is not required.
- Must provide only the disclosure/disclaimer (i.e., regarding the insurer’s unauthorized status and lack of guaranty fund protection, etc.) required by the insured's Home State.
- Must place surplus lines insurance with insurers that are eligible in the insured's Home State which can impose only the following requirements (unless the states adopt nationwide uniform eligibility requirements, which they have not done to date):
  - U.S. domestic insurers must be authorized in their state of domicile and satisfy minimum capital and surplus of \$15 million or a greater amount if the state requires.
  - Non-U.S. insurers on the quarterly listing maintained by the NAIC's International Insurers Department (IID) are automatically eligible.
- Must continue to satisfy a broker's general liability standards for determining that insurers are financially sound and able to pay claims.
- Must comply with all other placement requirements of the insured's Home State, such as any regulation of policy fees or surplus lines broker premium trust accounts.

### Exclusive Home State Taxation of Surplus Lines Premiums

Surplus lines brokers must pay premium tax only as required by the insured's Home State. Specifically, brokers:

- Must comply with the tax payment and premium reporting requirements of the insured's Home State, including if the Home State has enacted a new multi-state tax sharing system by law.
- Should consult with NAPSLO if the Home State requests that brokers pay tax directly to other states or provide a report on multi-state risks more frequently than annually because such more frequent reporting is not permitted by the NRRA.

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<sup>1</sup> *This Broker Protocol is intended as a guidance only and is not a substitute for particularized legal and/or tax advice regarding specific facts or circumstances analyzed in light of applicable laws, regulations and regulatory policies. Neither Dewey & LeBoeuf nor NAPSLO accepts any responsibility for losses claimed to result from reliance on this Broker Protocol. This guidance is not legal advice, and your use of the guidance does not make you a client of Dewey & LeBoeuf. It is possible that a regulator or taxing authority in a given jurisdiction may take a different position than the guidance as expressed herein. Members should consult their own legal counsel and/or tax advisor for advice or contact NAPSLO for further guidance or a referral to legal counsel and/or a tax advisor.*