August 23, 2016

Mr. Doug Ommen
Iowa Insurance Division
Market Regulation Bureau
Two Ruan Center
601 Locust Street, Fourth Floor
Des Moines, IA 50319

Mr. Ommen:

On behalf of the National Association of Professional Surplus Lines Offices (NAPSLO)\(^1\), we are pleased to offer comments on the proposed amendments to Chapter 21, “Requirements for Excess and Surplus Lines, Risk Retention Groups and Purchasing Groups,” Iowa Administrative Code.

NAPSLO is generally supportive of the amendments to Chapter 21 to the extent that they are an attempt to clarify public policy in accordance with Iowa statute and the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA).

NAPSLO has significant concerns and opposes any effort to mandate that an Iowa resident surplus lines insurance producer act as the person upon whom service of process can be made on behalf of the insurer. No other state requires that service of process be made to a resident surplus lines producer for surplus lines insurers and as a result surplus lines producers are not familiar with the procedures necessary after they are served with a subpoena.

Furthermore, under the proposed amendments, producers may be served subpoenas intended for companies on insurance policies that they did not write. Many insurers employ a third party professional representative to serve as the person upon whom service of process is made, this ensures that the

\(^1\) NAPSLO is the professional trade association in the United States representing the surplus lines industry and the wholesale insurance distribution system. NAPSLO is unique in that both surplus lines brokers and surplus lines companies are voting members of the association; thus NAPSLO represents and speaks for the surplus lines wholesale marketplace. Comprised of approximately 400 wholesale broker member firms, 100 surplus lines insurance companies, and 200 associates and services providers to the surplus lines market, our membership operates in over 1,500 offices representing tens of thousands of individual brokers, insurance company professionals, underwriters and other insurance professionals worldwide – all of whom are committed to the wholesale value distribution system and U.S. surplus lines market. NAPSLO wholesale broker members are placing an estimated $35.3 billion in surplus premium and NAPSLO insurance company members are underwriting an estimated $28.0 billion in surplus lines premium, representing 88% and 70%, respectively, of the surplus lines market in the United States.
company is notified in a timely fashion in the event they are served with a subpoena. Under the proposal third party professional representatives would no longer be able to serve in this capacity.

Additionally, while the underlying statute, I.C.A. § 515I.6, requires that a policy or contract issued by a surplus lines insurer designate the person upon whom service of process be made, it does not specify whom that party must be or what credentials they must have. For these reasons we would urge the Iowa Insurance Division to strike everything in Section 21.5(1)(b)(2) after the word “producer.”

Finally, NAPSLO would like to bring to the attention of the Iowa Insurance Division a conflicting provision in the proposed rule 21.2(1). This provision states that, “…the eligible surplus lines insurer shall be liable for the premium tax required by Iowa code Chapter 515I.” While the liability for paying the surplus lines premium tax lies with the insurance company, pursuant to I.C.A. § 515I.3 the obligation to collect and pay the surplus lines premium tax rests with the producer. This dual liability is unique to Iowa from other states and creates an undue burden on the insurance company that they are in no position to influence. The basis for this policy was contained in repealed statute § 515.120. Because of the unique nature of this tax liability and now that no statutory basis for such a policy exists, we strongly encourage the Department to revise the rule to reflect the existing statute and rely on the licensed surplus lines producer as the responsible party.

In the event that changes to the tax liability are not agreed to today, we believe it is important to note that we stand ready to work with the Iowa Insurance Division and other Iowa stakeholders to find a solution to this issue in the future.

Sincerely,

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