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NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Memorandum

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TO: Commissioner Jim Donelon, Chair

FROM: Edward Simpson, Manager – International Insurers Department

DATE: September 4, 2008

SUBJECT: Definition of Home State

The Nonadmitted and Reinsurance Reform Act (NRRA) mandates that premium taxes on a multi-state surplus lines policy be collected by one, and only one, state that is designated to be the "home state." Thereafter the taxes are expected to be shared among the states on an equitable basis. While the NRRA provides a definition of home state, some regulators have observed that the bill's language as currently written lacks precision or is written in such a manner as to pose regulatory obstacles.

After considering comments from state regulators, including members of the Surplus Lines Task Force, the NAIC Government Relations Leadership Council arrived at a definition it felt addressed the concerns of the states. This definition and the logic of its construction, along with other critiques of the bill, were submitted in a letter to the Senate sponsors of the bill. The Council's comments and suggested definition of "home state" were as follows:

"The definition of 'Home State' is critical since it establishes the sole regulator for a given transaction. The current definition is a reasonable approach for many circumstances, but many transactions would be compromised by the current language. For example, if an individual's principal residence is New York State, but she owns a vacation home on Block Island insured under a surplus lines policy, the regulator for the surplus lines policy would be New York. In this instance, Rhode Island should be the regulator. If Rhode Island previously acted to prevent homeowner's coverage from being purchased in the surplus lines market (due to the existence of a "FAIR Plan" or "wind pool," for example), the Rhode Island property owner could circumvent that restriction if New York does not have a similar prohibition. In the commercial world, if a large company headquartered in Denver seeks to insure its facilities along the Gulf Coast, that company may need to resort to the surplus lines market. As currently defined, even if the policy exclusively covered risks in Louisiana or Mississippi, Colorado would remain the sole regulator. Insurance regulation is strongest and most effective when endowed with local understanding and enforcement. To this end, the [following]includes language to identify the most appropriate regulator while preserving the single state framework of the NRRA."

Definition of home state as contained in the bill:

The term ‘‘home State’’ means the State in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence

Definition of home state as recommended by the GRLC:

The term ‘‘home State’’ means *either*:
(A) the State in which *a majority of the insured's officers report to work a majority of work days and where the insured's primary financial books and records are maintained* or, in the case of an individual, the individual’s principal residence; *or*
(B) if 100 percent of the insured risk is located out of the “home State” as defined in (A), the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated

(Note: NAIC suggested amendments are in italics)