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NIMA losing members, trend expected to continue

Withdrawal of three states casts doubt on arrangement

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Three states' withdrawal from the Nonadmitted Insurance Multi-State Agreement has raised the question of whether there will be a clearinghouse arrangement to collect and distribute surplus lines premium taxes.

Alaska, Connecticut and Mississippi this month filed their intent to withdraw from NIMA, citing operational, administrative and technological challenges, a trend experts say is expected to continue with other states.

Rival clearinghouse plans have been developed in response to the Nonadmitted and Reinsurance Reform Act, which is part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and

took effect July 21, 2011.

The law stipulates, among other things, that only the home state of a policyholder can collect premium taxes. It requires state legislatures to approve a method to allocate the taxes to other states where the surplus lines coverage was in effect.

In addition to Alaska, Connecticut and Mississippi's intent to withdraw from NIMA, the Nebraska Department of Insurance withdrew in January, also citing administrative difficulties. With the three states' withdrawal, that would leave the number of participating states at eight.

Despite the recent dropouts, the NIMA arrangement is scheduled to become operational on July 1, said Jack McDermott, director of communications for the Florida Office of Insurance Regulation, which also houses the NIMA website and signature documents for members.

“We are hopeful that, over time, other states will see NIMA's success in providing the technical support to report, collect and allocate surplus lines tax consistent with federal law, and will make a decision to join the agreement at a later point in time,” he said.

States, though, are increasingly weighing the costs of participating in the compacts against increased tax revenues they might receive, experts say.

“Upon careful review and consideration of newly captured information, I do not believe that our data shows that Mississippi would receive any significant additional tax revenue by participating in the tax-sharing arrangement under NIMA,” Mississippi Insurance Commissioner Mike Chaney said in a statement.

“We have been encouraging the states now for sometime to carefully study the cost-benefit of tax sharing,” said Brady Kelly, executive director of the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices Ltd.

While NIMA is supported by the National Assn. of Insurance Commissioners, NAPSLO supports a rival approach, the Surplus Lines Insurance Multi-State Compliance Compact.

SLIMPACT, which has nine member states and has yet to be implemented, is required by its legislation to have 10 member states to become operational, Mr. Kelly said. As states' legislative sessions have adjourned, the earliest SLIMPACT could be operational is July 2013.

“The interest in compacts is waning among states,” said Mark R. Goodman, a Chicago-based partner at law firm Freeborn & Peters L.L.P.

“It's accurate to think that this is part of a trend,” he said, noting that no new states have joined NIMA or SLIMPACT. “The number of states and the interest in these compacts may have hit a zenith and is now waning.”

In a statement last week, the Council of Insurance Agents & Brokers said states should retain 100% of surplus lines premiums, noting that NIMA requires excessive data submission by brokers.

“The clearinghouse and allocation agreements make much more sense if a critical mass of jurisdictions—large and small—buy into them,” said Joel Wood, Washington-based senior vp of government affairs at the council. “That's just not happening, and I don't see any momentum among the large states to join.”

“It's probably no secret that very few brokers were big fans of NIMA to start with,” said Robert J. Greenebaum, executive vp and casualty practice group leader at Swett & Crawford Group Inc. in Chicago, noting that the (NIMA) compact would impose huge compliance on brokers with no real benefits to the participant states.

“Currently, the tax allocation methodology of NIMA presents us with a number of difficulties and the lack of clear guidance from NIMA with regards to its clearinghouse requirements will make compliance difficult for surplus lines brokers as early as July 1, 2012,” said James Drinkwater, president of AmWINS Group Inc.'s brokerage division in New York.

Mike Johnston, executive vp for CRC Insurance Services Inc. in Birmingham, Ala., said the NIMA proposition is well outside the intended NRRA law where states decide how to allocate the tax among themselves.

“There was no mandate to have a clearinghouse,” he said. “NIMA has taken NRRA, which was supposed to be simple and cost-effective, and they have turned it into something that is complicated and not cost-effective.”

Richard A. Brown, San Francisco-based insurance regulatory attorney that specializes in surplus lines regulation, said states prefer a home state taxation method.

“There seems to be no appetite for states to join NIMA or SLIMPACT,” he said. “It appears that the states that have taken a look at the economics have concluded that they are better off to adopt 100% home state taxation at the home state's tax rate.”

Home state taxation, Mr. Brown said, is simple for states and brokers to calculate and easy to reconcile for premium tax audits. “It's almost a no-brainer,” Mr. Brown said.
