

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street
San Francisco, California 94105**

**BULLETIN NO. 2011-2
April 11, 2011**

TO: All Admitted Insurers and Other Interested Persons

**SUBJECT: IMPLEMENTATION OF REINSURANCE PROVISIONS OF THE
FEDERAL NONADMITTED AND REINSURANCE REFORM ACT**

The purpose of this Bulletin is to inform admitted insurers and other interested persons of the initial response by the California Department of Insurance ("Department") to the enactment of provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") relating to reinsurance transactions, in order to provide legal clarity on these matters for the California insurance market.

Introduction

President Barack Obama signed the Dodd-Frank Act on July 21, 2010. Title V of the Dodd-Frank Act includes, as a separate subtitle, the Nonadmitted and Reinsurance Reform Act ("NRRA"). Under its terms, the reinsurance provisions of the NRRA, § 531 *et seq*, will become effective on July 21, 2011.

The NRRA requires that changes be made to the prevailing state-based system governing the regulation of reinsurance. Under the NRRA no state may deny financial statement credit for reinsurance, if the credit is recognized by the ceding insurer's state of domicile. It also provides that the laws of nondomestic states, except those with respect to taxes and assessments on insurance companies, are preempted to the extent they apply to reinsurance agreements. The NRRA further provides that for a defined category of insurers principally engaged in the business of reinsurance (hereafter "Professional Reinsurers"), the state of domicile shall be solely responsible for regulating solvency. Finally, non-domestic states are specifically prohibited from requiring Professional Reinsurers to provide financial information other than the financial information required by their domiciliary states.

The NRRA limits its reinsurance preemption provisions to states that are accredited by the National Association of Insurance Commissioners ("NAIC") or that meet requirements that are "substantially similar" to the NAIC's financial solvency requirements. Currently all states meet this threshold requirement.

The Department intends to pursue any necessary legislation and regulations reconciling California law to the reinsurance provisions of the NRRA in a deliberate and thorough manner, with due consideration to developments at the NAIC and in sister states.

California Law

The Department has undertaken a review of the California Insurance Code ("CIC") and Title 10 § 2303 of the California Code of Regulations ("CCR") to identify key provisions that regulate admitted non-domestic insurers' reinsurance transactions or statutory financial statement credit for ceded reinsurance. The Department acknowledges that this review may not be exhaustive. With respect to any statutes or regulations not specifically addressed below, the Department invites insurers to address any assertions of NRRA preemption to the Department, in writing, for individual analysis.

Key Provisions

Commencing July 1, 2011, the effective date of this Bulletin, the Department intends to exercise its regulatory discretion in the following manner:

1. *CIC § 717(d) and CIC § 700(c)*

Sections 717 and 700(c) reference license requirements for domestic and foreign insurers that operate in California on an admitted basis. Section 717(d) requires the Department to consider an insurer's reinsurance arrangements in deciding whether to grant or continue a certificate of authority to transact insurance in California. Section 700(c), and its implementing regulation, 10 CCR § 2303.15(q), require an admitted insurer to continue to meet the requirements of CIC § 717. In considering reinsurance arrangements under these code Sections, the Department will not deny financial statement credit for reinsurance that has been recognized by a ceding insurer's domestic state regulator.

2. *CIC § 922.6*

Subdivision (b) of this statute, and the implementing regulation found at 10 CCR § 2303.10, provide the Department discretion to disallow financial statement credit claimed by a non-domestic insurer. The Department will not exercise that discretion for reinsurance that has been recognized by a ceding insurer's domestic state regulator. Therefore, the statutory statement credit oversight authority contained in 10 CCR §§ 2303.3, 2303.11, 2303.12, 2303.13 and 2303.19 will be exercised only as regards domestic insurers, pursuant to the Department's reserved discretion in 10 CCR § 2303.1.

3. *CIC § 1011*

Subdivision (c) of this statute gives the Department discretion to conserve any insurer which has entered into certain reinsurance transactions without obtaining the Department's prior consent. The subject reinsurance transactions are defined and the requirements set forth in 10 CCR § 2303.15 (c) through (f.) The Department will not exercise its discretion to conserve a non-

domestic insurer for failure to obtain prior consent to such reinsurance transactions; and, pursuant to its retained discretion in 10 CCR § 2303.1, the Department will not apply the related regulations, 10 CCR § 2303.15 (c) through (f), to non-domestic insurers.

However, non-domestic insurers remain subject to the CIC § 1011(c) provisions regarding prior consent to mergers, consolidations and sale transactions. And, all provisions of CIC § 1011(c) and 10 CCR § 2303.15 remain applicable to domestic insurers.

4. *CIC § 1215.5(b)(3)*

Under CIC § 1215.13, non-domestic insurers meeting the definition of "commercially domiciled insurer" are generally made subject to compliance with the California Insurance Holding Company System Regulatory Act ("HCA") as if they were California domestic insurers. Section 1215.5(b)(3) of the HCA in effect requires prior consent to reinsurance agreements or modifications thereto among affiliated insurers in excess of specified thresholds.

Subdivision (b) of CIC § 1215.13 gives discretion to the California Insurance Commissioner ("Commissioner") to exempt commercially domiciled insurers from some or all of these requirements under "circumstances that he or she deems appropriate." The Commissioner intends to exercise that discretion and, commencing July 1, 2011, will deem commercially domiciled insurers to be exempt from compliance with CIC § 1215.5(b)(3).

5. *10 CCR §§ 2303.11 and 2303.12*

These Sections implement CIC § 922.3 and set forth risk transfer requirements to permit statement credit for reinsurance. As explained in Paragraphs 1 and 2 above, the Department will not deny financial statement credit for reinsurance that has been recognized by an insurer's domestic state regulator, and therefore these Sections will apply only to domestic insurers.

6. *10 CCR § 2303.14*

This Section implements CIC § 717(d) and sets forth requirements for contract provisions in reinsurance agreements for which statement credit is claimed, and, where an agreement is nonconforming, gives the Commissioner discretion under specified circumstances to find that the insurer's reinsurance arrangements are materially deficient for purposes of CIC § 717 and 700(c). The Commissioner will not exercise his discretion to make such a finding concerning the reinsurance agreements of a non-domestic insurer.

7. *10 CCR § 2303.15*

Subdivision (b) of this Section implements CIC § 717(d) and gives the Commissioner discretion to find an insurer's reinsurance arrangements materially deficient if the insurer does not retain at least 10% of direct premium written per line of business ceded to a non-affiliate. The Commissioner will not exercise his discretion to make such a finding concerning a non-domestic insurer.

Subdivisions (e) and (f) of this Section implement CIC § 1011(c) and set forth requirements for cessions of 75% or more of direct premium written. For the reasons explained in Paragraph 3 of this Bulletin, Subdivisions (e) and (f) will be applied only to domestic insurers.

Subdivision (f) of this Section (to be applied only to domestic insurers) implements CIC § 1011(c) and conditions the Commissioner's consent for a 100% cession of direct premium written on prospective business to an inter-company pool upon the retrocession of an amount not less than 10% of the direct written premium. Pursuant to the Department's reserved discretion in 10 CCR § 2303.1, the Commissioner will not deny consent for a cession to an admitted affiliate solely on the basis that the agreement does not include a retrocession to or retention by the ceding insurer. As a result, 100% cessions to admitted affiliates will generally be permitted.

Subdivision (g) of this Section implements CIC § 730, which gives the Commissioner discretion to require an examination of any scope or nature. Subdivision (g) is an expression of that discretion and requires certain licensees to submit for prior review certain reinsurance transactions which comprise 50% or more of the licensee's premium or liabilities. Pursuant to the Department's reserved discretion in 10 CCR § 2303.1, examination filings under Subdivision (g) will no longer be required for any insurer.

Subdivision (i) of this Section implements CIC § 717(d) and gives the Commissioner discretion, for agreements filed pursuant to Subdivisions (e) and (g), to require contract provisions as necessary to protect the ceding insurer when specific collateral is not provided for the cession. As explained in Paragraph 3 of this Bulletin, Subdivision (e) will apply only to domestics; and as explained in this Paragraph 7, the Department will no longer require filings under Subdivision (g). Therefore, Subdivision (i) will apply only to domestic insurers.

Subdivision (j) of this Section implements CIC § 1011(c) and states conditions for the Commissioner's consent to agreements filed under Subdivisions (e) and (g), where payments are to be made through a reinsurance intermediary. As explained in Paragraph 3 of this Bulletin, Subdivision (e) will apply only to domestics; and as explained in this Paragraph 7, the Department will no longer require filings under Subdivision (g). Therefore, Subdivision (j) will apply only to domestic insurers.

8. *10 CCR § 2303.19*

This Section states the procedures applicable to a denial of statement credit. As explained in Paragraphs 1 and 2 of this Bulletin, the Department will not deny financial statement credit for reinsurance that has been recognized by an insurer's domestic state regulator.

9. *10 CCR § 2303*

The California Reinsurance Oversight Regulations include many provisions which are not expressly applicable to financial statement credit or reinsurance agreements. Unless a provision is modified by this Bulletin, the provision remains in effect as to all licensees.

Bulletin Effective Date

This Bulletin shall be effective July 1, 2011. Reinsurance transactions executed prior to July 1, 2011 are subject to all CIC and CCR standards and prior approval requirements. Statement credit for ceded reinsurance taken on a financial statement with an “as of” date on or before June 30, 2011 is subject to existing California law.

This Bulletin shall not preclude the acceptance and review of applications voluntarily submitted by admitted, nondomestic insurers. Nothing in this Bulletin restricts the Department’s statutory discretion to consider specific circumstances that may be presented.

Questions regarding this Bulletin may be directed to:

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