Insurance Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act

On July 21, 2010, the President signed into law the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the "Act"), which includes provisions relating to the business of insurance.

The Act creates the Federal Insurance Office ("FIO") within the Department of Treasury. The FIO will provide the Congress and the Executive Branch with information on the national insurance marketplace. It is not a federal regulator or supervisor of insurance. Its functions will include monitoring the insurance industry for systemic risk and administering the Terrorism Risk Insurance Program. The FIO will also consult with the states regarding insurance matters and develop federal policy on aspects of international insurance matters, including representing the United States in international insurance meetings. Areas of insurance excluded from the authority of the FIO are health insurance, long-term care insurance which is not part of life or annuity insurance, and crop insurance.

The FIO is also provided with limited authority to preempt a State insurance measure that it determines is inconsistent with international insurance agreements, and may do so only after following a specified process for notice and comment. Such preemption may not extend to state measures governing insurer's rates, premiums, underwriting or sales practices; state coverage requirements for insurance; or the application of state antitrust laws to insurance.

The Act also reforms two key sectors of the commercial insurance market, namely, nonadmitted insurance (also known as "surplus lines" insurance) and reinsurance. These changes will be generally effective 12 months from the enactment of the Act. First, the Act creates a uniform system for nonadmitted insurance premium tax payments which will be based on the home state of the policyholder. In addition, development by the states of a compact for uniform tax allocation is encouraged by the Congress. The Act provides that the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home state, and adopts uniform eligibility requirements for nonadmitted insurers as developed and promulgated by the National Association of Insurance Commissioners in the Non-Admitted Insurance Model Act. The Act allows direct access to the nonadmitted insurance markets by "exempt commercial purchasers", defined as

- a person who employs or retains a "qualified risk manager" to negotiate insurance coverage,
- who has paid aggregate nationwide commercial property and casualty premiums in excess of $100,000 in the preceding 12 months, and
  - who has net worth in excess of $20 million, or
  - generates annual revenues in excess of $50 million, or
  - employs more that 500 full time employees per individual insured or is a member of an affiliated group employing more than 1000 employees, or

- is a not-for-profit or public entity with annual budgeted expenditures of at least $30 million, or
- is a municipality with a population in excess of 50,000 persons.

As to reinsurance, the Act applies to reinsurers that are subject to state regulation and provides for single state regulation for financial solvency and credit for reinsurance. Credit for reinsurance will be determined by the domicile of the ceding insurers (so long as that state is NAIC - accredited or has solvency requirements substantially similar to the requirements necessary for NAIC accreditation). Financial solvency will be determined by the State of domicile of the reinsurer (so long as the State is NAIC - accredited or has financial solvency requirements substantially similar to the requirements needed for NAIC accreditation.)

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Thorn Rosenthal at 212.701.3823 or trosenthal@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; Kathy S. Strom at 202.862.8944 or stromk@cgrdc.com.