FROM THE CHIEF EXECUTIVE

IUA OF LONDON

INTERNATIONAL UNDERWRITING ASSOCIATION

9 December 2013

1) Office of the Comptroller of the Currency
   12 CFR Parts 22,172
   Docket ID OCC-2013-0015
   RIN 1557-AD67

2) Federal Reserve System
   12 CFR Part 208
   Regulation H, Docket No. R-1462
   ROM 7100 AE-00

3) Federal Deposit Insurance Corporation
   12 CFR Parts 339, 391
   RIN 3064-AE03

4) Farm Credit Administration
   12 CFR Part 614
   RIN 3052-AC93

5) National Credit Union Administration
   12 CFR Part 760
   RIN 3133-AE18

THE WORLD OF INSURANCE

Dear Sirs:

Comments on Joint Notice of Proposed Rulemaking Re: "Loans in Areas Having Special Flood Hazards"

Summary

Twenty IUA members are eligible to underwrite surplus lines insurance nationwide. Our comments primarily address the subject of private flood insurance (see Section 100239 of the Act) and notifications to borrowers of the availability of private flood insurance. We urge the Agencies to amend their proposed rules to more explicitly recognize the unique procedures and features of the surplus lines insurance marketplace. One of the hallmarks of the surplus lines market is "freedom of rate and form" – today, state regulators do not approve or review rates and policy forms that surplus lines insurers use. With respect to the "safe harbour" proposed by the Agencies, having state regulators begin to review surplus lines insurance policies to confirm that surplus lines insurers' contract forms meet NFIP standards would not be our preferred solution. Using one or more private market experts on insurance contract wordings would be preferable and would, we believe, promote uniform national results. Second, state surplus lines insurance laws all require that buyers use specially-licensed surplus lines brokers to place risks with surplus lines insurers.

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The Agencies' proposed Regulations (and, importantly, the revised notice form in Appendix A "Notice of special flood hazards and availability of Federal disaster relief assistance") ought to be amended to recognize the central role that brokers play in the surplus lines market by adding phrases such as: "or, for non-residential commercial policies, through a surplus lines broker licensed in your state."

The IUA

The International Underwriting Association of London (IUA) is a trade association that represents half of the London Insurance Market. Member companies operate in the City of London, literally within steps of the Lloyd's trading floor. Most of the world's large insurance companies have subsidiaries that are active within Lloyd's or in the wider London Insurance Market or both. The IUA represents 40 insurance companies, 11 of them owned ultimately by U.S. insurance groups. For more information, including a list of IUA members, please visit www.iua.co.uk.

The IUA's members write a substantial amount of U.S. business - a mix of insurance and reinsurance, and varying in amount as market conditions change. For 2012 the IUA's statistics indicate that members wrote a total of £2.495 billion (approximately $4.74 billion) of "North American" business - most of that for U.S. business.

Much of the U.S. insurance business that IUA members write is so-called "surplus lines" business. This is not a specific kind, type or class of business, rather it is a placement mechanism that allows specially-licensed brokers to "export" hard-to-place risks to un-licensed ("non-admitted") insurers that are approved either by one "domiciliary" U.S. state or by the National Association of Insurance Commissioners' (NAIC) International Insurers Department (IID). The U.S. surplus lines brokers must file affidavits of unsuccessful but diligent searches and when they do "export" a risk to a surplus lines insurer, the broker must report the risk to the "home state" of the buyer and pay the appropriate state premium tax (typically 3 to 5% of the gross premium). The U.S. surplus lines insurance market is roughly $35 billion in premiums annually. This is approximately 14 or 15% of the U.S. commercial insurance market.

Non-U.S. insurers on the NAIC/IID list (available at www.naic.org) number approximately 78 Lloyd's syndicates and 60 insurance companies. Twenty IUA members are NAIC/IID-listed.

Comments - The Surplus Lines Insurance Market

As noted above, "surplus lines" is not a type or class or "line" of insurance; rather, the term "surplus lines" refers to a placement mechanism, found in remarkably similar insurance law provisions in all states and territories. The mechanism exists because the market and regulators understand that fully licensed or admitted (or authorized) insurers simply will not write certain risks or that they will not write them in certain market conditions. Owners of wind and flood exposed properties are classic candidates to purchase surplus lines insurance. Furthermore, today many owners of both residential and commercial properties that are exposed to the risk of flooding are buying excess (of NFIP limits) flood insurance from surplus lines insurers.

The requirements to do so? First, a licensed surplus lines broker, a specialist, must be used. That broker is responsible for selecting appropriate eligible surplus lines brokers, negotiating the terms and conditions of the coverage for the unique needs and requirements of the buyer and then handling regulatory reporting and remittance of state premium taxes.

Second, the surplus lines insurer must be eligible to operate in this segment of the market. Most (approximately 73%) of the "capacity" in the $35 billion surplus lines market is supplied by U.S. domestic insurers, many of them subsidiaries of large U.S. insurance groups. In 2012, Lloyd's of London syndicates wrote 18% of the nation's aggregate surplus lines premium. Other non-U.S. insurers accounted for almost 8% of the market in 2012. (See A.M. Best's Special Report/Segment Review on U.S. Surplus Lines (September 23, 2013) at pp. 2-3) Based on A.M. Best statistics, there are roughly 250-300 insurers active in the surplus lines market. Also according to A.M. Best, the "impairment experience" of surplus lines insurers is slightly better than for "admitted" carriers over the past 35 years. As noted above, 20 IUA member companies are listed by the NAIC/IID. Lloyd's Syndicates and non-U.S. company insurers can obtain eligibility in all states and territories by becoming listed on the Quarterly Listing of Alien Insurers maintained by the IID (see §524(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank Act").

As mentioned in the Summary above, one of the hallmarks of the surplus lines mechanism in all states is freedom of rate and form. State insurance laws do not require either surplus lines brokers or surplus lines insurers to obtain approval for rates or policy forms, either prior to or after a risk has been placed. State regulators therefore have little exposure to or knowledge of the terms and conditions of policy forms being used in the surplus lines market. While there is substantial commonality among policy forms in use (in large part because these forms respond to buyer needs/preferences as well as to judicial construction/interpretation of policy terms and conditions), there are nevertheless differences from insurer to insurer and from contract to contract as insurers respond to the specific requirements of buyers and to changing market conditions.

Against this market and regulatory framework backdrop, we offer some technical suggestions to help the Agencies tailor the proposed regulations to the surplus lines marketplace.

Comments - OCC
§22.2 Definitions
(h)(1)(ii) "Private Flood Insurance"

We urge the OCC to explicitly recognize §524(2) of the Dodd-Frank Act in this definition, so that it reads:

"Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the state or jurisdiction where the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage or listed by the International Insurers Department (IID) (or successor) of the National Association of Insurance Commissioners (NAIC) pursuant to Section 524(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act."

§22.3(c)(2) "Safe Harbour"

As described above, state insurance regulators have no history of regulating rates and forms used in the surplus lines market. It is possible, perhaps inevitable, that state regulators would reach different conclusions when reviewing unfamiliar surplus lines forms. We think further consultation on the Safe Harbour concept with the surplus lines industry is warranted. While we favour the Safe Harbour concept, it should also be constructed so that it works with existing market regulations, practices and procedures.

§22.9(b)(4) "Notice of special flood hazards and availability of Federal disaster relief assistance".

We suggest adding "or, for non-residential commercial property, through a licensed surplus lines broker."

Appendix A – Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance.

In the paragraph headed "Availability of Private Flood Insurance Coverage," we urge the OCC to add the following language at the end of the second sentence: "Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP either directly from such insurers or their agents or, for non-residential commercial property, through a licensed surplus lines broker."

Federal Reserve System
§208.25(b) Definitions:
(8)(i)(B) "Private Flood Insurance"

We urge the Federal Reserve to explicitly recognize §524(2) of the Dodd-Frank Act in this definition, so that it reads:

"Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the state or jurisdiction where the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage or listed by the International Insurers Department (IID) (or successor) of the National Association of Insurance Commissioners (NAIC) pursuant to Section 524(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act."

§208.25(c)(3)(ii) "Safe Harbour"

As described above, state insurance regulators have no history of regulating rates and forms used in the surplus lines market. It is possible, perhaps inevitable, that state regulators would reach different conclusions when reviewing unfamiliar surplus lines forms. We think further consultation on the Safe Harbour concept with the surplus lines industry is warranted. While we favour the Safe Harbour concept, it should also be constructed so that it works with existing market regulations, practices and procedures.

§208.25(i)(1)(iv) "Notice of special flood hazards and availability of Federal disaster relief assistance".

We suggest adding "or, for non-residential commercial property, through a licensed surplus lines broker."

Appendix A – Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance.

In the paragraph headed "Availability of Private Flood Insurance Coverage" at the end of the second sentence, we urge the Federal Reserve to add the following language.

"Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP either directly from such insurers or their agents or, for non-residential commercial property, through a licensed surplus lines broker."

FDIC
§339.2(i) Definitions
(1)(B) "Private Flood Insurance"

We urge the FDIC to explicitly recognize §524(2) of the Dodd-Frank Act in this definition, so that it reads:

"Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the state or jurisdiction where the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage or listed by the International Insurers Department (IID) (or successor) of the National Association of Insurance Commissioners (NAIC) pursuant to Section 524(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act."

§339.3(c)(2) "Safe Harbour"

As described above, state insurance regulators have no history of regulating rates and forms used in the surplus lines market. It is possible, perhaps inevitable, that state regulators would reach different conclusions when reviewing unfamiliar surplus lines forms. We think further consultation on the Safe Harbour concept with the surplus lines industry is warranted. While we favour the Safe Harbour concept, it should also be constructed so that it works with existing market regulations, practices and procedures.

§339.9(b)(3) "Notice of special flood hazards and availability of Federal disaster relief assistance"

We suggest adding "or, for non-residential commercial property, through a licensed surplus lines broker."

Appendix A – Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance.

In the paragraph headed "Availability of Private Flood Insurance Coverage," we urge the FDIC to add the following language at the end of the second sentence :
"Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP either directly from such insurers or their agents or, for non-residential commercial property, through a licensed surplus lines broker."

Farm Credit Administration
§614.4925 Definitions
(i)(1)(ii) "Private flood insurance"

We urge the FCA to explicitly recognize §524(2) of the Dodd-Frank Act in this definition, so that it reads:

"Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the state or jurisdiction where the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage or listed by the International Insurers Department (IID) (or successor) of the National Association of Insurance Commissioners (NAIC) pursuant to Section 524(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act."

§614.4930(c)(2) "Safe Harbour"

As described above, state insurance regulators have no history of regulating rates and forms used in the surplus lines market. It is possible, perhaps inevitable, that state regulators would reach different conclusions when reviewing unfamiliar surplus lines forms. We think further consultation on the Safe Harbour concept with the surplus lines industry is warranted. While we favour the Safe Harbour concept, it should also be constructed so that it works with existing market regulations, practices and procedures.

§614.4955(b)(4) "Notice of special flood hazards and availability of Federal disaster relief assistance".
We suggest adding "or, for non-residential commercial property, through a licensed surplus lines broker."

Appendix A – Sample of Form Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance.

In the paragraph headed "Availability of Private Flood Insurance Coverage," we urge the FCA to add the following language at the end of the second sentence:
"Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP either directly from such insurers or their agents or, for non-residential commercial property, through a licensed surplus lines broker."

National Credit Union Administration
§760.2 Definitions
(i)(1)(ii) "Private flood insurance"

We urge the NCUA to explicitly recognize §524(2) of the Dodd-Frank Act in this definition, so that it reads:

"Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the state or jurisdiction where the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage or listed by the International Insurers Department (IID) (or successor) of the National Association of Insurance Commissioners (NAIC) pursuant to Section 524(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act."

§760.3(c)(2) "Safe Harbour"

As described above, state insurance regulators have no history of regulating rates and forms used in the surplus lines market. It is possible, perhaps inevitable, that state regulators would reach different conclusions when reviewing unfamiliar surplus lines forms. We think further consultation on the Safe Harbour concept with the surplus lines industry is warranted. While we favour the Safe Harbour concept, it should also be constructed so that it works with existing market regulations, practices and procedures.

§760.9(b)(4) "Notice of special flood hazards and availability of Federal disaster relief assistance".

We suggest adding "or, for non-residential commercial property, through a licensed surplus lines broker."
Appendix A – Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance.

In the paragraph headed "Availability of Private Flood Insurance Coverage," we urge the NCUA to add the following language at the end of the second sentence: "Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP either directly from such insurers or their agents or, for non-residential commercial property, through a licensed surplus lines broker."

We thank the Agencies again for the opportunity to comment on the Proposed Regulations. If any Agency has any questions or needs additional information, please do not hesitate to contact me or the IUA's U.S. insurance regulatory counsel, Thomas M. Dawson of Drinker Biddle & Reath LLP (thomas.dawson@dbr.com; 212-248-3160).

Yours sincerely,

D J Matcham
Chief Executive

IUA OF LONDON
INTERNATIONAL UNDERWRITING ASSOCIATION