STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Promulgation of Proposed Rules Regarding: Licensing of Administrators, Insurance Continuing Education, Accounting Practices and Procedures, Custodial Agreement Requirements, Surplus Lines Insurance, Life and Health Insurance Guaranty Association, Boilers.	)	**NOTICE OF PROPOSED RULEMAKING** **FILE NO. RU-11-320**

NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES AND NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that the North Dakota Insurance Department will hold a public hearing to address the proposed amendments to the following chapters of the North Dakota Administrative Code:

45-02-03	Licensing of Administrators
45-02-04	Insurance Continuing Education
45-03-15	Accounting Practices and Procedures
45-03-23	Custodial Agreements and the Use of Clearing Corporations
45-09-01	Surplus Lines Insurance
45-11-01	Life and Health Insurance Guaranty Association
45-12-01	Boilers - Definitions
45-12-03	Boilers – General Requirements
45-12-04	Power Boilers – New Installations
45-12-05	Power Boilers – Existing Installations
45-12-09	Heating, Low Pressure, and Hot Water Supply Boilers – Existing Installations
45-12-10	Unfired Pressure Vessels

The hearing will be held at 10:00 a.m., central time, January 10, 2012, in the Red River Room, State Capitol, Bismarck, North Dakota.

The Department proposes amendments to the following administrative rules:

1. N.D. Admin. Code ch. 45-02-03 – Licensing of Administrators. This chapter is being amended to align the requirements for licensing third-party administrators with best practices. The amendments do not require licensees or applicants to do anything new or different in the application or renewal process. There would be no change in fees. Section 45-02-03-04 requiring the submission of Articles of Incorporation or association with the entity's application is repealed. The applicant must file these documents with the North Dakota Secretary of State so they are public records through that office. Similarly, the Department dropped its requirement of filing Articles of Incorporation for producers in 2008. New language is added to Section 45-02-03-06 to spell out that April 30 is the anniversary date for all third-party administrator licensees, and that Certificates of Authority issued after January 1 will not be required to renew until April 30 of the following calendar year.

2. N.D. Admin. Code ch. 45-02-04 – Insurance Continuing Education. The amendments to this rule repeal an outdated provision on continuing education course approval and restore the continuing education exemption for limited lines producers. Repealed subsection 15 of Section 45-02-04-03 is a carryover from the days when continuing education courses were offered in a classroom setting. It requires continuing education providers to notify the Department if they plan to offer a course again after the initial approval. In the current era when much coursework is done online, the Department does not need to track every time the course is offered after initial approval. New Section 45-02-04-09.3 restores language that was inadvertently removed in 2010. It continues the longstanding exemption so that holders of a limited lines license are not required to do continuing education. The "limited lines" are credit, crop hail, bail bonds, legal expense, surety, title, and travel/baggage.

3. N.D. Admin. Code ch. 45-03-15 – Accounting Practices and Procedures. Two sections in this chapter are being amended to update the required Accounting Procedures and Practices Handbook from the 2009 version to the 2011 version.

4. N.D. Admin. Code ch. 45-03-23 – Custodial Agreements. A provision is being added to Section 45-03-23-02 to allow insurers having direct written and assumed premiums of less than $3 million in any calendar year to request an exemption from the requirements for a written agreement with the custodian of the insurer's securities that complies with subsection 2 of that section. The added language requires the insurer to provide a written statement explaining the reasons why the insurer should be exempt from the provisions and requires the Commissioner to find that compliance would constitute a financial or organizational hardship upon the insurer before granting the exemption.

5. N.D. Admin. Code ch. 45-09-01 – Surplus Lines Insurance. This rule, including Appendix 1, is being amended as a result of changes made during the North Dakota 2011 legislative session to align with the federal Nonadmitted and Reinsurance Reform Act of 2010. Rule language was updated to clarify that state regulation of surplus lines insurance is regulated solely by the home state of the insured. An

applicant for a North Dakota nonresident surplus lines license must hold a resident license in the home state of the applicant. The language addressing the diligent search of admitted insurance companies was clarified to specify a licensed surplus lines producer must conduct the search, unless the licensed surplus lines producer deems a search conducted by a licensed producer or the insured was sufficient. The diligent search affidavit and report of placement must be submitted to the Insurance Commissioner within 60 days of placement of the surplus lines policy. Language was added specifying April 1 as the date the annual report and premium tax are due.

6. N.D. Admin. Code ch. 45-11-01 – Life and Health Insurance Guaranty Association - Required Notice to Policy Owners. The rule is being amended to update the notice that insurers must give to policy owners regarding the limits of the North Dakota Life and Health Guaranty Association. Changes to the limits were made by 2011 Senate Bill No. 2111 which increased the benefit limits from $100,000 to $300,000 for long-term care and disability insurance; from $100,000 to $500,000 for basic hospital, medical, surgical, and major medical policies; and from $100,000 to $250,000 for annuities, government retirement benefit plans and structured settlement annuities. The Guaranty Association limits for life insurance were not changed. Also, the bill specified that Medicare Part C and Part D policies are not covered by the Guaranty Association; it removes the annual $150 per member cap and the pro rata option for the Association's assessment of its administrative expenses and legal costs under the Class A assessment authority; requires the Guaranty Association to pay interest on a refund due to a member insurer at the rate earned by the Association; and requires the Guaranty Association's plan of operation to add policies and procedures for the removal of directors for cause and to address conflicts of interest.

7. N.D. Admin. Code Article 45-12 (ch. 45-12-01 - Boilers – Definitions, ch. 45-12-03 – Boilers – General Requirements, ch. 45-12-04 - Power Boilers – New Installations, ch. 45-12-05 - Power Boilers – Existing Installations, ch. 45-12-09 - Heating, Low Pressure, and Hot Water Supply Boilers – Existing Installations, and ch. 45-12-10 - Unfired Pressure Vessels). The rules in Article 45-12 are being amended, in part, as a result of changes made during the 2011 legislative session. The definition of A.S.M.E. Code was updated to mean the 2010 edition, the National Board Inspection Code was updated to the 2011 edition, and the American Petroleum Institute Code was updated to the 2006 edition. The term "heating" is being eliminated in the definition of boiler because vessels used for heating liquids other than water when these vessels are separate from processing systems are now classified as pressure vessels and not as boilers by A.S.M.E. and by almost all manufacturers. The removal is an attempt to have the rules brought up to date with what is happening in industry today. Also, this is required by a recent change to the North Dakota Century Code. The fees charged for boiler inspections were updated, some fees were increased and some were eliminated. The rule governing boiler logs was amended to state that logs for hobby boilers must include operating hours, operators, fusible plug installation dates, tests, and apprentice training data. A provision was added to provide that the standard stamping of a Province of Canada may be accepted by the Chief Boiler Inspector and that all superheaters must be constructed to Section I of the A.S.M.E. code. A typographical

error was corrected in chapter 45-12-05. A provision was added to allow a holder of a valid national board "VR" certificate to be among those that may adjust a valve when the operating conditions of a valve are changed so as to require a new spring for a different pressure. A reference to the State Plumbing Code removed the reference to the 2000 edition.

These rules are expected to have an impact in excess of $50,000 on the regulated community.

Any interested person may review the text of the proposed rules at, and written comments concerning the proposed rules may be sent to, the following address: North Dakota Insurance Department, 600 East Boulevard Avenue, 5th Floor, Bismarck, ND 58505. The deadline for submission of written comments is January 20, 2012. A copy of the rules and the regulatory analyses may be reviewed on the Department's website at www.nd.gov/ndins or may be requested by telephoning (701) 328-2440.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the North Dakota Insurance Department at the above telephone number or address at least seven days prior to the public hearing.

DATED this 3 day of November, 2011.

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