AgriBusiness® Division **Agent Product Advisory**

Date: August 9, 2023

From: Dan Mersch, Product Management Team

To: Great American AgriBusiness® Agents

Subject: **Commercial Excess Policy product – “Excess Policy”**

The purpose of this Product Advisory is to inform you that our *Commercial Excess Policy* form **EXS 0001** (see attached) will be replacing our two umbrella products – the AgriGuard® *Farm Catastrophe Liability Coverage Form* and the Protector *Commercial Umbrella Coverage Form*.

The *Commercial Excess Policy* product (“Excess Policy” for short) consists of the main coverage form EXS 0001 plus all the endorsements that would be shown on the *Forms & Endorsements Schedule* UMX 6002. Like the AgriGuard®, the Excess Policy can be Packaged on APK, DPK, AGB, and APG policies, or it can be written Monoline on an EXC policy.

Before detailing further components of the Excess Policy, here are some important points and dates to know regarding its initial implementation:

A. As your accounts come up for renewal, we will mail an advance *Notice of Policy Conditional Renewal* to all your insureds with expiring umbrella coverage. This will begin the week of **August 14th**.

B. These notices will be sent each month throughout 2023 and 2024 until all your insureds have been notified.

C. You will receive a copy of every advance notice going out to your insureds.

D. The Excess Policy will be available for all New and Renewal policies effective **November 1st**.

E. The Excess Policy will be available in all Canadian provinces and all States *except* CA, FL, NY, OR, and VA.

F. The States of CA, FL, NY, OR, and VA will be available after their respective insurance departments grant approval, upon which we will notify you of the implementation details for those five States.

The following are the key differences of the Excess Policy that are described in the *Notice of Policy Conditional Renewal:*

1. **Reduction in Limit** – The expiring umbrella coverages contain a separate Products-Completed Operations Aggregate Limit of Insurance. The Excess Policy does <u>not</u> have a separate Products-Completed Operations Aggregate Limit of Insurance. Therefore, a claim involving products or completed operations will only reduce the General Aggregate Limit of Insurance shown in the Declarations and will <u>not</u> reduce a separate Products-C/O Aggregate Limit of Insurance. (See attached Declarations Page).

2. **Reduction in Coverage – New Exclusions** – The expiring umbrella coverages or underlying insurance may not contain the following exclusions shown on the Excess Policy – which may result in a potential reduction in coverage:
   - Antitrust, Restraint of Trade, Unfair Competition or Similar Law or Regulation
   - Engineers, Architects or Surveyors Professional Liability
   - Failure to Supply
   - Perfluoroalkyl or Polyfluoroalkyl Substances (PFAS)

3. **Reduction in Coverage – Revised Exclusion** – The following exclusion in the Excess Policy is more restrictive than that contained in the expiring umbrella coverages or underlying insurance:
   - Abuse or Molestation – Abuse will include any actual, threatened, or alleged act, error, omission, conduct, or misconduct, that a claim or suit alleges to be, or to constitute, any form of abuse under any applicable state or federal statute or regulation; and will include sexual behavior, sexual conduct or misconduct, sexual assault, sexual battery, sexual abuse, or sexual molestation, as well as non-sexual assault, non-sexual battery, or non-sexual abuse.

4. **Following Form Coverage** – Most of our expiring umbrella policies and coverages already contain following form language or endorsements – so essentially our Umbrella product has historically functioned more like an Excess product than a true Umbrella. To paraphrase the Insuring Agreement of the EXS 0001 … *Subject to the terms, conditions, definitions and exclusions of the Excess Policy, the coverage provided by the Excess Policy will follow the scheduled underlying insurance. In no event will the Excess Policy provide broader coverage in any respect than is provided in any underlying insurance.*

If an exposure is <u>excluded</u> in the Underlying, then it is excluded in the Excess Policy – the Underlying exclusion will follow into the Excess. However, if an exposure is <u>covered</u> in the Underlying, then it is only *possibly* covered in the Excess Policy. Why "possibly covered"? Because as the Insuring Agreement states, coverage provided by the Excess Policy is subject to all the exclusions of the Excess Policy.

For example, the following exposures shown below may have coverage (even if just limited coverage) provided by the Underlying forms shown on the Left, but *<u>no</u>* coverage in the Excess Policy because of the exclusions shown on the Right:

Exposure	**Underlying Coverage Form**	**Excess Policy Exclusion**
Abuse or Molestation	CG 8565	EXS 2105
Aircraft Spraying Crop Dusting	AL7435, AL7451	UMX 2006
Animal Waste	AL7659, AL7665	UMX 8004
Chemical Drift	AL7403, AL7450	UMX 2019
Equine CCC	CM 7734	EXS 2013
Equine Professional Services	AL7554, AL7619, AL7620, AL7623	UMX 8002
Fungi Spores or Mold	AL7490, AL7583	UMX 2046
*Liquor	CG 0033	*EXS 2052
Product Recall	AL 7527	EXS 2064
Security Breach	AL 7643	EXS 2001
Seedmen's E&O	AL7568, CG8754	UMX 2040

** Except for Liquor Liability, all the above Excess Policy exclusions will automatically attach to the Excess Policy.*

FOLLOWING ARE EXPLANATIONS OF SOME KEY EXCESS POLICY FORMS:

Pollution – Exclusion **C. Pollution** contained in the **EXS 0001** is a total pollution exclusion which eliminates any underlying Pollution coverage from going into the Excess. To clarify that the pollutant "waste" includes animal waste, the mandatory *Natural Fertilizer and Animal Waste Exclusion* **UMX 8004** is utilized to specifically exclude this exposure.

Other Mandatory Exclusions – In addition to UMX 8004 other exclusions which can never be removed from the Excess Policy are:

- *Engineers, Architects or Surveyors Professional* **UMX 2056** (new)
- *Nuclear, Biological or Chemical (NBC)* **UMX 2058**
- *Perflouroalkyl Polyflouroalkyl Substances (PFAS)* **EXS 2103** (new)
- *Punitive or Exemplary Damages* **UMX 2070**

Automatically Attached Exclusions – The following exclusions are attached to all Excess Policies to prevent underlying coverage from going into the Excess:

- *Abuse or Molestation* **EXS 2105** – This is more restrictive than the expiring exclusion, as previously mentioned on page 2 of this Advisory.
- *Access or Disclosure of Confidential or Personal Information* **EXS 2001**
- *Aircraft Dusting or Spraying* **UMX 2006**
- *Antitrust, Restraint of Trade, Unfair Competition or Similar Law* **UMX 2008** (new)
- *Care, Custody or Control – Real or Personal Property* **EXS 2013** – This excludes coverage for all CCC exposures including any possible Equine CCC coverage.
- *Chemical Drift Liability* **UMX 2019**
- *Equine Professional Damages* **UMX 8002** – This will appear on all accounts, with or without equine exposure.
- *Failure to Supply* **UMX 2041** (new)
- *Fungi, Mold or Spores* **UMX 2046**
- *Product Recall* **EXS 2064**
- *Seedmen's Errors and Omissions* **UMX 2040**

Uninsured/Underinsured Motorist – The *UM-UIM Exclusion* **EXS 2065** will also automatically attach to all Excess Policies. It can only be removed if Excess UM-UIM Coverage is required and/or requested for vehicles licensed or principally garaged in the five states of FL, LA, NH, WV, and VT. In states where Excess UM/UIM is required to be offered, the *Excess UM-UIM Coverage* **EXS 4032** will attach with a $1,000,000 Limit of Insurance shown in the Schedule. *NOTE*: If an underlying Auto policy does cover a known vehicle(s) in the states of LA, NH, WV, or VT, *and* Excess UM-UIM Coverage is not rejected, then the Excess Policy limit cannot exceed $1,000,000.

Liquor Liability – The *Liquor Liability Exclusion* **EXS 2052** eliminates all liability associated with liquor including host liquor liability. This exclusion will be attached if the underlying policy contains the *Liquor Liability Coverage Form* CG 0033, and it will prevent that coverage from going into the Excess. Without this exclusion being added, the standard Liquor Liability exclusion which is built into the underlying AL 7403 or CG 0001 will follow into the Excess.

Automobile Liability – If no underlying Auto policy is scheduled on the Excess Policy, then the *Automobile Liability Exclusion* **EXS 2010** will attach in order to remove any liability associated with any auto.

Terrorism for Farm & Ranch accounts (*not* subject to TRIA) – Any underlying Terrorism exclusion or underlying Terrorism coverage will simply follow into the Excess Policy. There are no Excess forms to select. Also, the *Nuclear, Biological or Chemical Exclusion* **UMX 2058** will automatically attach where it is approved for use.

Terrorism for Commercial accounts (subject to TRIA) – When required by statute, we provide coverage for Certified Acts of Terrorism on non-hazardous accounts at no premium charge. *TRIA Disclosure* form **UMX 1014** will attach to policies that have underlying TRIA coverage. Additional UMX forms will then automatically attach. Also, the *Nuclear, Biological or Chemical Exclusion* **UMX 2058** will automatically attach where it is approved for use.

Professional Liability Exclusions – The underlying Professional exclusions of the *Farm Liability Coverage Form* or the *CGL Coverage Form* will follow into the Excess.

Designated Exclusions – Any Underlying exclusion will follow into the Excess. Underwriting will only select the *Designated Exclusion* **UMX 2026** if an exposure (other than Professional) is covered in the Underlying and we want to exclude that exposure from the Excess layers (and a specific exclusion like those on page 3 of this Advisory does not already exist). Underwriting then chooses the appropriate category and describes the exposure being excluded on the UMX 2026.

Variable Forms and Manuscript Endorsements – Any Underlying variable form or manuscript endorsement will follow into the Excess.

Notice to Policyholders – The policy stuffer *Notice to Policyholders* **SDM-1201** will contain the same information that is contained in the advance notice to your insureds, and it will automatically attach upon renewal.

If you have any questions regarding this Product Advisory, please contact your AgriBusiness® Division Underwriter.