



Date: 11/29/22

Virtual Meeting

SURPLUS LINES (C) WORKING GROUP

Wednesday, December 7, 2022

2:00 – 3:00 p.m. ET/ 1:00 – 2:00 p.m. CT/ 12:00 – 1:00 p.m. MT/ 11:00 a.m. – 12:00 p.m. PT

ROLL CALL

| | | | |
|----------------------------|------------|---------------|---------------|
| Stewart Guerin, Chair | Louisiana | Marcy Savage | Illinois |
| Eli Snowbarger, Vice Chair | Oklahoma | John Turchi | Massachusetts |
| David Phifer | Alaska | William Leach | New Jersey |
| Michelle Lo | California | Jose Joseph | New York |
| Rolf Kaumann | Colorado | Amy Garcia | Texas |
| Virginia Christy | Florida | Steve Drutz | Washington |
| Scott Sanders | Georgia | | |

NAIC Support Staff: Bree Wilson

AGENDA

1. Discuss Comments Received and Consider Adoption of the *International Insurers Department (IID) Plan of Operation—Stewart Guerin (LA)* Attachment A-E
2. Discuss Any Other Matters Brought Before the Working Group—*Stewart Guerin (LA)*
3. Adjournment

IID Plan of Operation

2022-19

NAIC
International Insurers Department Plan of Operation

Approved by NAIC Executive/
Penalty on 12/31/2021

NAIC Contacts
Andy Daleo, Senior Manager – P/C Domestic and
International Property/Casualty Financial Analysis Manager Robert





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Commented [DAT1]: TOC, to be updated following final draft

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Background

The NAIC has a long history of supporting state insurance departments' regulatory efforts regarding insurers domiciled outside of the United States (alien) participating in the U.S. nonadmitted market. Initially acting only as a repository for alien insurer financial records, the NAIC has transitioned over the years to its present role as the recognized authority for alien insurers (hereafter, Insurer(s) refers to alien domiciled companies and Lloyd's syndicates) seeking approval to write direct surplus lines business in all U.S. states and ~~U.S.~~ territories. The NAIC International Insurers Department (IID) Plan of Operation (Plan) provides details on the standards and processes ~~which that~~ Insurers must meet to gain and maintain inclusion on the *Quarterly Listing of Alien Insurers* (Quarterly Listing). The Plan ~~that follows~~ provides a description of the roles NAIC staff and selected state regulators perform in the oversight of alien Insurers writing surplus lines business in the U.S.

Introduction

The Plan describes how the IID ~~will operate~~ and how Insurers obtain inclusion on the Quarterly Listing. The IID is composed of experienced financial analysts ~~who that~~ review applications and renewal filing documents, prepare written analyses, and provide support to NAIC surplus lines committees and working groups. The IID also includes an Internal Review Committee (Internal Committee) that consists of NAIC directors, managers, attorneys, and analysts. ~~A list of members and any updates thereto is provided to the Working Group.~~ The Internal Committee reviews IID analyses and provides a report of recommendation to the Surplus Lines (C) Working Group (Working Group). The Property and Casualty Insurance (C) Committee is designated the "Appeal Committee" for decisions made by the Working Group, and has no direct involvement in making or approving recommendations regarding alien surplus lines insurers.

The IID functions on behalf of state departments of insurance by maintaining qualifying standards for Insurers domiciled outside of the U.S. seeking eligibility to write direct U.S. surplus lines. Section 524(2)¹ of the 2010 Dodd-Frank Wall Street and Consumer Protection Act recognizes the Quarterly Listing as identifying Insurers for which states may not prohibit brokers from placing or procuring nonadmitted insurance in the U.S. The Quarterly Listing is a public document that is posted on the Publications/Products page of the NAIC website. This list represents includes Insurers that qualify for listing as outlined in *Section II – Core Requirements and Guidelines for Inclusion on the Quarterly Listing*. Modifications to listed companies are summarized within each Quarterly Listing. The Working Group will make the final determination of all Insurer eligibility.

The Working Group provides oversight to the IID and reports to the Surplus Lines (C) Task Force (Task Force), which functions under the NAIC Property and Casualty Insurance (C) Committee. The Working Group is composed of state regulators with experience in financial analysis and surplus lines regulation. The Working Group provides the IID with guidance and expertise relative to applications and renewals as well as regulatory policy and practices with respect to Insurers listed on or seeking inclusion on the Quarterly Listing.

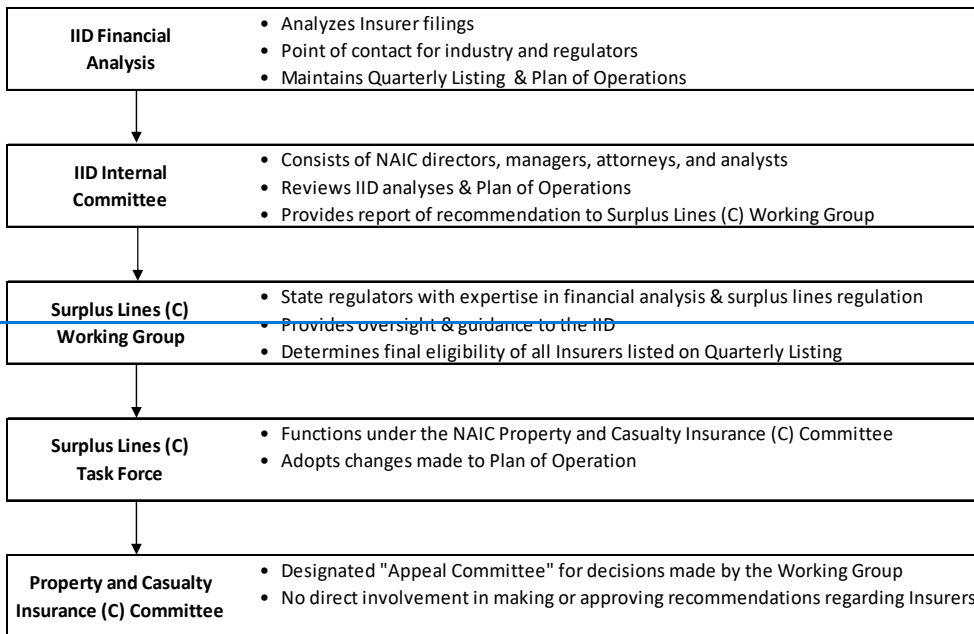
¹ 15 U.S.C. § 8204(2) .

The following [tablechart](#) provides a [high-level](#) summary of the key NAIC [IID](#) workflow: ~~process as it relates to Alien Insurers appearing on the Quarterly Listing that write direct surplus lines premiums in the U.S.~~

| | |
|--|---|
| <p style="text-align: center;">IID</p> | <ul style="list-style-type: none"> • Analyzes and monitors Quarterly Listing insurer financial filings; • Work directly with regulators and insurers; • Maintains Quarterly Listing, IIDfile System, and resources available to the insurers; and • Recommends modificationrevisions and enhancements to the <i>Nonadmitted Insurance Model Act</i> (#870), IID Plan of Operation, and other surplus lines documentations. |
| <p style="text-align: center;">IID Internal Committee</p> | <ul style="list-style-type: none"> • Consists of NAIC directors, senior managers, attorneys, and analysts; • Reviews application and renewal analyses and provides recommendations to the Surplus Lines (C) Working Group; and • Reviews recommended initial changes to IID documentation, such as the Plan of Operation for approval by the Working Group and Task Force.; • Provides recommendations to the Surplus Lines Working Group. |
| <p style="text-align: center;">Surplus Lines (C) Working Group</p> | <ul style="list-style-type: none"> • Consists of experienced surplus lines surplus lines regulators; • Maintains and drafts new guidance within the IID Plan of OperationProvides oversight and guidance to the IID; and • Reviews and considers appropriate decisions regarding applications for admittance to the Quarterly Listing; and • Provides a forum for surplus lines-related discussion. Determines final eligibility of insurers on the Quarterly Listing. |
| <p style="text-align: center;">Surplus Lines (C) Task Force</p> | <ul style="list-style-type: none"> • Provides oversight for the work produced within the Surplus Lines (C) Working Group; • Provides a forum for discussion of current and emerging surplus lines-related issues and topics of public policy and determines appropriate regulatory response and action; • Reviews and analyzes quantitative and qualitative data on U.S. domestic and alien surplus lines industry results and trends; |



| | |
|--|---|
| | <ul style="list-style-type: none"> • <u>Monitors federal legislation related to the surplus lines market and ensures all interested parties remain apprised; and</u> • <u>Develops or amends relevant NAIC model laws, regulations and/or guidelines.</u> |
| <u>Property and Casualty Insurance (C) Committee</u> | <ul style="list-style-type: none"> • <u>Monitors the activities of the Surplus Lines (C) Task Force. Handles any appeals regarding decisions made within the Surplus Lines (C) Working Group</u> |



I. Application Process

An Insurer planning to write U.S. surplus lines ~~and requesting via inclusion admittance to~~ the Quarterly Listing will first register ~~at within~~ OPTins[®]. OPTins[®] is an electronic filing and payment system ~~designed utilized~~ for filing alien surplus lines applications. ~~Following registration, an Insurer will complete and upload download the IID an application and populate all required information and as well as compile all other required documents indicated as required for listing. Additionally, a comprehensive list of required filings can be found is available within in the "Renewal Application Filing Memo" within the "Related Documents" tab available on the Working Group webpage. Also, through~~ OPTins[®], the applicant will remit ~~all required filings along with~~ a non-refundable electronic payment in the amount indicated ~~in the Application and Renewal Filing Memo Application and Renewal Filing Memo Application Filing Memo & Instructions in the Schedule of Fees, a separate document found on the Working Group's webpage and within~~ OPTins[®]. The ~~application~~ fee is used



~~to cover~~ the cost of processing and evaluating the Insurer's application ~~for inclusion on the Quarterly Listing. The Insurer will find a comprehensive list of required filings within the Application Filing Memo & Instructions document. This document as well as other resources can also be found within the "Documents" tab on the Surplus Lines (C) Working Group webpage. At the time the application is submitted, the Insurer agrees to provide additional information as may be requested by the IID. The IID will contact the applicant's domiciliary regulator to inquire about the Insurer's current standing.~~

~~The Quarterly Listing is published on January 1, April 1, July 1, and October 1. A complete application must be received submitted no fewer than 90 days in advance of the publication date in which the Insurer applies to be listed. If the application is received submitted fewer than 90 days prior to the intended publication date, it will not be considered until the following quarterly publication release.~~

~~The IID will review and evaluate the information submitted by the Insurers requesting seeking inclusion admittance to on the Quarterly Listing. The IID will evaluate whether the Insurer meets or does not meet the standards set forth in Section II - Core Requirements and Guidelines for Inclusion on the Quarterly Listing, and will present the application to the Internal Committee to determine a recommendation. The IID may contact the Insurer for additional information or to seek clarification of any concerns during its review of the application. If all questions and/or concerns (e.g., receipt of required documents and IID requested explanations and supporting documentation) are not resolved within a six-months of the application submission date, the application may be rejected and a letter informing the Insurer of the decision will be issued. Refer to Section III - Process for Reconsideration of an Application Rejection. Following completion of the review, the IID will meet with the Internal Committee to discuss the evaluation and determine a recommendation. The Internal Committee's recommendation will be presented its recommendation to the Working Group for consideration. Following determination by the Working Group, a letter detailing approval or denial will be sent to the Insurer by the IID.~~

~~If the Insurer is approved, an approval letter will be sent. The IID will provide notice to an applicant of the application determination a minimum of ten calendar days in advance of the listing date. Subsequently, if approved, the IID will include and the Insurer will be included in the next Quarterly Listing. The Insurer must establish the required trust fund (See Section II.B, U.S. Trust Fund) prior to being admitted to the Quarterly Listing. Further, the IID must receive the trust balance report detailing the trust fund holdings.~~

~~The Quarterly Listing is published on January 1st, April 1st, July 1st, and October 1st. A complete application must be received no fewer than 90 days in advance of the publication date in which the Insurer applies to be listed. If the application is received fewer than 90 days prior to the intended publication date, it will not be considered until the following quarterly publication release. The IID will provide notice to an applicant of the application determination a minimum of ten calendar days in advance of the intended listing date.~~

~~The IID reserves the right to ask questions, make comments, or seek clarification of any concerns during its review of the Insurer's applications. If all questions and/or concerns (e.g., receipt of required documents and IID requested explanations and supporting documentation) are not resolved within a six-month period of the initial application submission date, the application will be rejected and a letter informing the Insurer of the decision will be issued. Refer to Section III - Process for Reconsideration of an Application Rejection. All application fees are non-refundable.~~

II. Core Requirements and Guidelines for Inclusion on the Quarterly Listing

A. Shareholders' Equity Funds (See Lloyd's Notation below)

A minimum shareholders' equity amount of \$5045.0 million must be maintained on a continuous basis. ~~During the course of an IID analysis, it will be evaluated whether Sshareholders' equity will be evaluated~~

Commented [DAT2]: The last adjustment to minimum equity was on January 1, 2013. Per the U.S. Bureau of Labor Statistics, the CPI increased 21.2% since 2013.

The IID proposes an 11.1% increase in the minimum shareholders equity. The proposed increase is effective immediately for new applications and effective 6/30/2023 for currently Quarterly Listing insurers.

~~to determine if it~~ is adequate given the Insurer's risk profile. ~~In the evaluation of the adequacy of shareholders' equity,~~ The following key factors may be considered by the IID:

- Operating history and trends;
- Quality and diversification of assets;
- Mix of business and geographic diversification;
- Gross insurance leverage;
- Reinsurance program and quality of reinsurers;
- Gross reserve leverage;
- Cash flow and liquidity;
- Access to capital;
- Dividend and/or upstream funding history; and
- Other ~~relevant~~ factors deemed relevant to the review.

If there is a determination that shareholders' equity is inadequate based on the analysis of the Insurer's risk profile, an equity requirement above the minimum amount of ~~\$5045.0~~ million may be required. Or, the Insurer may be subject to additional ongoing reporting (e.g., monthly and/or quarterly reporting).

Lloyd's Notation

In lieu of individual shareholders' equity, Lloyd's syndicates are required to report a U.S. trust fund of not less than ~~\$100.0~~ million available for the benefit of all Lloyd's U.S. surplus lines policyholders. In addition, a review of the Funds at Lloyd's (member assets) is considered.

B. U.S. Trust Fund

The purpose for establishing a trust fund is to provide additional assurance that U.S. policyholders are protected. The trust fund must consist of cash, securities, or an acceptable evergreen letter of credit, together or combination at an appropriate level, deposited with a trustee for the benefit of U.S. policyholders. ~~The trust fund must consist of cash deposited with the trustee, securities, or an acceptable letter of credit on behalf of U.S. policyholders at an appropriate level.~~ Regarding the composition of the trust fund, credit will be allowed only for (i) securities readily marketable on a regulated U.S. securities exchange, or (ii) securities assigned a rating designation on the NAIC Securities Valuation Office List of Investment Securities as defined in the Purposes and Procedures Manual of the NAIC Investment Analysis Office, or (iii) investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in the state where the Trust is principally administered; those securities designated by the NAIC's Securities Valuation Office. An acceptable letter of credit is defined as clean, unconditional, irrevocable, evergreen, and issued ~~or confirmed~~ by a qualified U.S. financial institution.

In establishing its trust fund, ~~an insurance company~~ the Insurer must maintain such fund at, and enter into an agreement with, a qualified U.S. financial institution. The agreement must contain provisions consistent with the IID model document, Trust Agreement for Alien Excess or Surplus Lines Insurers. ~~In no case may a trust agreement have an expiration date of less than five years from the date the Insurer notifies the trustee of its intention to terminate the trust fund.~~ For purposes of complying with the trust fund requirement as well as the Lloyd's United States Situs Excess or Surplus Lines Trust Deed, a qualified U.S. financial institution:

- Is organized or (in the case of a U.S. branch office of a foreign banking organization) licensed under the laws of the U.S. or any state thereof;
- A national bank, state bank, or trust company which is adequately capitalized and qualified to accept securities as determined by the standards adopted by the U.S. banking regulators and regulated by



state banking laws or a member of the Federal Reserve system; and

- Has been granted authority to operate with trust powers, if such qualified U.S. financial institution is to act as the fiduciary of the trust fund.

Determining the Trust Fund Level

~~In the case of an insurance company, for business written on or after January 1, 1998, the trust fund minimum amount will be based on the U.S. gross surplus lines liabilities (i.e., gross reserve for unpaid losses for case and IBNR + gross reserve for unpaid loss adjustment expenses) or the direct nonadmitted U.S. liabilities~~ excluding liabilities arising from aviation, ocean marine, and transportation insurance ~~(NAIC Nonadmitted Insurance Model Act (#870), Section 3 – Definitions, Wet Marine and Transportation Insurance, provides an illustrative example), and direct placements procurement. The calculation of the required trust fund minimum balance is as follows:~~

Trust Fund Calculation

- 30% of ~~any U.S. gross liabilities amount up to the first \$200.0 million, plus~~
- 25% of ~~U.S. gross liabilities any amount up to the next greater than \$200 million and up to \$500.0 million, plus~~
- 20% of ~~U.S. gross liabilities any amount up to the next greater than \$500 million and up to \$1500.0 million, plus~~
- 15% of ~~U.S. gross liabilities any amount in excess of \$1.0 billion~~

In no event will the required trust fund minimum amount, despite the calculation above, be less than ~~\$5.46.5 million~~ or in excess of ~~\$250 million.~~

~~As described above, the trust fund minimum liabilities will be determined no less than verified annually through the review of the U.S. gross liabilities reported within the loss reserve certification and reported to the trustee and the IID no later than June 30th of each year. The opining actuary who opines on the liabilities must be a member of a recognized professional actuarial body. Additionally, per the Trust Agreement for Alien Excess or Surplus Lines Insurers, Section 2.13b, the trustee is required to provide a trust balance report no later than 30 days post quarter end, to the IID. The trust balance report should include sufficient details on the assets held in trust and meet the required minimum balance. Based on the review of the trust balance report, any shortage in the balance must be remedied within 15 days of notification to the Insurer.~~

In the case of Lloyd's syndicates, for the total of all years of account, the trust fund minimum amount for each syndicate will be based on the syndicate's gross U.S. surplus lines liabilities using the Trust Fund Calculation above.

In extenuating situations (e.g., potential legal action on exposures not yet included within gross loss reserves) there may be a need to require a trust fund balance that is greater than the normal trust fund calculation based on the Insurer's risk profile. The IID will consider the following factors in determining an appropriate trust fund level:

- The types and amounts of ~~coverage premiums which that~~ the Insurer writes or proposes to write in the U.S.;
- The ~~type and~~ valuation ~~of the assets that compose the trust fund may be adjusted for any~~ questionable balances; and
- The terms and conditions as outlined within the trust agreement.

Commented [ATD3]: The last increase in the trust fund minimum was in December 1996. Per the U.S. Bureau of Labor Statistics the CPI increased over 87% since December 1996.

The IID proposes an increase of 20% to the minimum trust fund balance and trust fund cap. The proposed increase is effective immediately for new applications and effective 6/30/2023 for currently Quarterly Listing insurers.



Process for Reconsideration of a Trust Fund Level

In the event of a determination that a trust fund balance greater than the calculated minimum level is appropriate, a written request for reconsideration may be submitted if the Insurer objects to the determination. ~~In order to~~To request reconsideration, ~~all~~the following criteria must be met:

- The request must be received by the IID within 30 days of the date on the trust fund adjustment letter;
- The request must be in letter format and signed by an officer of the Insurer; and
- The request must include a comprehensive rationale for disagreement with regard to the determined trust fund level.

The IID will evaluate the appeal with consideration given to the information provided within the request letter and ~~all such~~the information will be presented to the Working Group to determine a recommendation. The Working Group's recommendation will then be presented at a regulator-only Appeal Committee meeting for consideration. A representative of the Working Group and the Insurer will be allowed to ~~present~~participate. Following review and a determination by the Appeal Committee, the IID will ~~be instructed to send a letter~~to the Insurer ~~and a letter~~detailing approval or denial of the request.

C. Ethics and Integrity

Insurer management will have a proven and demonstrable track record of relevant experience, competence, and integrity. Biographical affidavits will be considered as one source for assessing the presence of these attributes. Following the original required biographical affidavit submission, new or materially modified affidavits (e.g., changes in the suitability of an officer) should be uploaded to OPTins[®] within 30 days of any known amendments, or where applicable within 30 days of approval of any new key director or officer by the Insurer's domestic regulator, ~~whichever is later~~.

D. U.S. Branch Office

An Insurer formed with an existing U.S. branch office is prohibited from applying for inclusion on the Quarterly Listing, and Insurers currently included on the Quarterly Listing will be de-listed if a U.S. branch office is established.

E. Lloyd's Incidental Syndicates

A Lloyd's incidental syndicate is formed as a portion of the host syndicate. The incidental syndicate is subject to the same capital setting and business plan as the host syndicate. Lloyd's incidental syndicates are permitted to apply for inclusion on the Quarterly Listing under the condition that they establish a separate Lloyd's U.S. Situs Excess or Surplus Lines Trust Deed and commit to annual reporting under its incidental syndicate number.

F. Insurers or Lloyd's Sovereign Government Syndicate Ownership

An insurer -or Lloyd's syndicate ~~that has a~~(member or managing agent) that is partially or wholly owned (directly or indirectly) or controlled (financially or otherwise) by a sovereign government that applies for inclusion on the Quarterly Listing, must sign and attest to various conditions as outlined within a set of required supplemental filings ~~approved by the Working Group~~. The sovereign ownership ~~must~~may not encompass a U.S. sanctioned country per the U.S. Department of Treasury's Office of Foreign Assets Control.

III. Process for Reconsideration of an Application Rejection



In the event of an application rejection, a written request for reconsideration may be submitted if the Insurer wishes to contest the determination. To request reconsideration, all the following criteria must be met:

- The request must be received by the IID within 30 days of the date on the rejection letter;
- The request must be in letter format and signed by an officer of the Insurer; and
- Each of ~~the rejection letter issues must be addressed with detailed explanations~~ and supporting documentation.

The IID will re-evaluate the application with consideration given to the information provided ~~within by the Insurer~~ ~~the request letter~~ and all ~~such~~ information will be presented to the Working Group to determine a recommendation. The Working Group's recommendation will be presented at a regulator-only Appeal Committee meeting for consideration. A representative of the Working Group and the ~~rejected~~ applicant will be allowed to ~~present~~ ~~participate~~. Following review and a determination by the Appeal Committee, the IID will ~~be instructed to send to the Insurer~~ a letter detailing approval or denial of the request.

If an Insurer does not submit a reconsideration letter within 30 days of the date on the rejection letter, any request for reconsideration is considered waived and the Insurer will be required to submit a new application along with the ~~appropriate application~~ fee and all required supporting documentation.

IV. Ongoing Quarterly Listing Eligibility

Insurers included on the Quarterly Listing are subject to ongoing review, which includes annual and interim compliance and qualitative and quantitative analysis.

A. Core Areas of Insurer Compliance

Annual Renewal Filing

All ~~insurers/syndicates listed within the Quarterly Listing~~ ~~Insurers on June 30 of the renewal year~~ are required to ~~remit an annual fee and~~ file an annual renewal package and must upload all required renewal filing documents to OPTins[®] by June 30th. A comprehensive list of required filings can be found within the ~~Renewal Filing Memo "Related Documents" tab available on the Working Group webpage~~. Filings submitted subsequent to June 30th will be subject to late fees as defined within the ~~Renewal Filing Memo Schedule of Fees on the NAIC website~~. If an Insurer fails to submit its annual renewal filing by July 31st, it ~~will~~ ~~may~~ be subject to de-listing.

Notification of Change of Control and Re-Application and/or Merger of Insurer

~~Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person.~~ In the event of a change of control and/or merger, the Insurer must provide notice ~~30~~ ~~15~~ days prior to the effective date of the transaction. The Insurer must reapply within 45 days following the effective date of the change of control and/or merger of the Insurer to maintain its listing. Failure to provide timely notice and/or re-application may result in de-listing ~~and/or late fees applied per the same guidelines as defined within the Schedule of Fees for annual renewals~~.

Notification of Decline in Equity (Does not apply to Lloyd's Syndicates)

If ~~an~~ ~~the~~ ~~Quarterly Listed~~ Insurer's equity has declined or is expected to decline by 10% or ~~greater~~ ~~more~~ compared to the most recent ~~annual year-end or~~ ~~dropped below the minimum standard described in Section II.A - Shareholders' Equity Funds~~ ~~filing~~, it must notify the IID immediately ~~with a detailed explanation of the decline and a plan describing the resolution~~. ~~If shareholders' equity has dropped below the minimum standard described in Section II.A - Shareholders' Equity Funds, the Insurer must~~

~~immediately inform the IID. Failure to provide timely notice-notification may result in delisting as described in Section V – De-Listing will result in late fees, as defined within the Schedule of Fees.~~ If an Insurer is unable to increase equity to the required minimum level within 15 business days ~~of notification~~, it ~~will~~ may be subject to de-listing.

Trust Fund Monitoring

~~An~~ The Quarterly Listed Insurer is required to monitor the trust fund balance and any impact of market fluctuations on the balance to ensure that it meets the minimum balance required ~~amount and takes market fluctuations into consideration~~. The IID ~~will periodically performs a quarterly~~ review of the market value of each Insurer's U.S. trust fund based on the filing of the trust fund balance report from the trustee to ensure that it continues to meet the required minimum balance.

B. IID Annual and Ongoing Analysis of Quarterly Listed Insurers

The IID analyzes ~~submitted annual renewal and interim filing~~ Insurer ~~documentations on an annual and ongoing basis. The IID and~~ may request additional information as a result of ~~that~~ the analysis. If an Insurer fails to file all additional requested information within the specified timeframe, it may be subject to de-listing. ~~Following~~ Upon completion of the overall analysis process, the Insurer will be ~~recommended~~ referred to the Working Group for renewal or de-listing. Following review and a determination by the Working Group, a letter will be sent to the Insurer.

C. Examination of Insurer

The IID may recommend that an Insurer submit to a special examination of its affairs to verify continuing compliance. If the Working Group approves the recommendation, the ~~Insurer~~ will be required ~~agree~~ to submit to a special examination and pay all expenses or ~~it~~ will be de-listed.

V. De-listing

~~The IID will review and evaluate information obtained from, but not limited to, industry sources, rating agencies, insurer websites and notices regarding equity depletion, annual renewal filing documents, and trust fund levels. When the IID determines an Insurer is not in compliance with the Plan and/or the trust fund requirements and/or poses solvency concerns, the IID may present an analysis of the Insurer to the Internal Committee to determine a de-listing recommendation. The Internal Committee's recommendation will be for consideration by presented to~~ the Working Group. Upon determination of non-compliance and/or solvency concerns by the Working Group, the Insurer will be de-listed and notified via letter.

VI. Process for Reconsideration of De-listing

In the event of de-listing, a written request for reconsideration may be submitted if the Insurer elects to challenge the determination. To request reconsideration, all the following criteria must be met:

- The request must be received by the IID within 30 days of the date on the de-listing letter;
- The request must be in letter format and signed by an officer of the Insurer; and
- Each of the de-listing letter issues must be addressed with detailed explanations and supporting documentation.

The IID will review the letter response and will present its evaluation to the Working Group for its recommendation. The Working Group's recommendation will be presented at a regulator-only Appeal Committee meeting for consideration. A representative of the Working Group and the de-listed Insurer will be allowed to present. Following review and a determination by the Appeal Committee, the IID will ~~be instructed to send to the Insurer~~ a letter detailing approval or denial of the request.

If an Insurer does not submit a reconsideration letter within 30 days of the date on the de-listing letter, any request for reconsideration is considered waived and the Insurer will be required to submit a new application along with the ~~appropriate application~~ fee and all required supporting documentation, ~~to be readmitted to the Quarterly Listing.~~

VII. Communication

All communication and information, including financial statements, audit reports, trust fund documents, and other supporting documentation must be submitted in English ~~and delivered~~ ~~uploaded to OPTins electronically.~~

VIII. Voluntary Termination from the Quarterly Listing

An Insurer that wishes to voluntarily terminate from the Quarterly Listing may do so by sending a letter to the IID that requests termination along with the effective date of the termination. Following termination from the Quarterly Listing, the Insurer must continue to comply with the requirements outlined within the Trust Agreement for Alien Excess or Surplus Lines Insurers.

VIII-X. Confidentiality

The IID will treat as confidential any non-public information submitted by an Insurer and for which confidential treatment is clearly requested. The IID is not aware of any state or federal statutes that provide additional protection for information submitted to it. By submitting information to the IID, the Insurer acknowledges that the IID will share ~~any~~ such information with ~~any~~ state insurance ~~department~~ regulators ~~upon request~~, as well as ~~other~~ NAIC staff ~~members~~ who participate in the review of applications ~~and renewals~~. Additionally, in the event the IID or NAIC is served with a subpoena, motion, order, or other legal process requiring the production of such information or testimony related thereto, the NAIC will make best efforts to inform the Insurer of such third-party request in order to afford the Insurer an opportunity to take whatever action it deems appropriate to protect the confidentiality of its information. The Insurer acknowledges the NAIC may comply with the request and any order compelling compliance with such request.

IX-X. Amendment to the Plan

The Working Group will consider proposals submitted to ~~the~~ IID for modifications to the Plan. All proposals will be considered during open conference calls or meetings of the Working Group throughout the year. ~~The A~~ proposal must be complete and concise and include ~~any~~ relevant supporting document~~ations~~. Proposals exposed and adopted by the Working Group would become effective following adoption by the Surplus Lines (C) Task Force ~~and Casualty Insurance (C) Committee during its next scheduled meeting.~~ ~~For complete details regarding the amendment process, refer to the Working Group's webpage.~~

International Insurers Department Plan of Operation
Exposure Draft Comments
November 2022

| Ref | Commenter | Date of Ltr. | Section | Comment | Proposed Action |
|-----|--|--------------|----------------------|--|---|
| 1 | International Underwriting Association of London (IUA) | 11/21/2022 | Introduction | <p>Appeals Process and Role of the “C” Committee—as has been the case for a number of years, the IID listing process includes an appellate procedure that provides for review of listing decisions by an NAIC body—the “C” Committee that has no direct role in listing decisions. It appears that the appellate function will no longer be handled by the “C” Committee but we are uncertain how or which entity or body within the NAIC will handle appeals in the future. Our strong preference would be for appeals to be heard by an NAIC entity or body that has had no involvement, direct or indirect, in initial decision-making. That is simply good administrative law practice.</p> | <p>Although Appeals are covered within Section III, the references within the Introduction have been restored (Pages 3 & 5).</p> |
| 2 | Underwriters at Lloyd’s, London (Lloyd’s) | 11/21/2022 | Introduction | <p>In this spirit of good governance and clear procedures, Lloyd’s has some concerns as to what was intended with respect to the Appeal Committee. For many years, the Property and Casualty Insurance (C) Committee has served as the designated appeal committee for decisions by the Surplus Lines Working Group. The IID Plan of Operations explains that this is because the C Committee “has no direct involvement in making or approving recommendations regarding alien surplus lines insurers.” However, the proposed revisions remove language on pages 3 and 5 which sets forth that the C Committee handles appeals of decisions made by the Working Group. Lloyd’s is unclear as to whether the Working Group seeks to eliminate the Appeal Committee because later references to the Appeal Committee were retained in the proposed revisions on pages 9, 10, and 11. These retained references to the Appeal Committee maintain the existing process whereby the Appeal Committee can hear appeals of trust fund level determinations, application rejections, and de-listing decisions. Lloyd’s encourages the Working Group to clarify its intention with respect to the Appeal Committee.</p> <p>For the avoidance of doubt, Lloyd’s strongly supports maintaining the C Committee as the designated Appeal Committee, just as our market did in 2018 when this same Working Group considered – but decided against – removing it. The current Plan clearly indicates that the appeals process was set up in its current form to provide an objective second opinion. Eliminating the current Appeal Committee seems to go against good governance principles and, in our view, significantly weakens the application review framework. Lloyd’s has always worked well with the IID, the Working Group, and its predecessor the Surplus Lines Financial Analysis Working Group. History shows that appeals do not arise often. However, Lloyd’s believes that it is crucial for the IID Plan of Operations to retain an appeals process that provides the ability to appeal outside the IID and the Working Group, if necessary. Given the infrequency with which the appeals process is used, we do not believe that it will create any significant burden on the C Committee if it continues to review appeals. We would strongly recommend that the proposed revisions retain the existing language specifying that appeal decisions will be made by the C Committee.</p> | |
| 3 | Underwriters at Lloyd’s, London (Lloyd’s) | 11/21/2022 | Introduction | <p>In a similar vein of good governance and clear procedures, it is important that all concerned parties understand where final decision making authority rests. The proposed revisions eliminate a bullet point which confirms that the Surplus Lines Working Group “determines final eligibility of insurers on the Quarterly Listing.” The draft replaced this deletion with vaguer language stating that the Working Group “reviews and considers appropriate decisions regarding applications for admittance to the Quarterly Listing.” In Lloyd’s view, a party reading the IID Plan of Operations for the first time might not deduce from this language that final decision making authority sits with the Working Group. For this reason, Lloyd’s respectfully suggests retaining the existing language which more clearly conveys that, barring an appeal, the Surplus Lines Working Group determines the final eligibility of insurers on the Quarterly listing.</p> | <p>There is no objection to maintaining the statement (Page 4).</p> |
| 4 | Associated Electric & Gas Insurance Services Ltd (AEGIS) | 11/21/2022 | II.B U.S. Trust Fund | <p>AEGIS’ primary comment on the Plan of Operation is that it is no longer necessary to require listed companies to maintain the U.S. trust funds. As you are aware, the trust fund requirement was first established in the 1960s by the Non-Admitted Insurers Information Office (“NAIIO”). At that time, financial and corporate information about non-U.S. insurers was not easily available –hence the designation of the “information office” in the NAIIO name. Information sharing between and among regulators in different countries was limited and accounting standards were far from uniform. A substantial U.S. trust fund requirement served as a substitute for comprehensive financial information about listed companies, thus providing a measure of comfort to state regulators, the NAIC/NAIIO, and insureds as to the solvency of the non-admitted insurers. Today, that comfort can be found in the multi-decade solvency record of IID-listed insurers, in the comprehensive annual financial reporting that has long been required of all IID-listed insurers, and in U.S. regulators’ acceptance of and familiarity with solvency regulation in certain qualified and reciprocal jurisdictions in which most IID-listed insurers are domiciled.</p> <p>In 2017, the U.S. and EU agreed to eliminate reinsurance collateral for highly-capitalized reinsurers domiciled in any EU member state. The NAIC subsequently added Bermuda, Japan and Switzerland as reciprocal jurisdictions for the purposes of collateral elimination. Currently, all U.S. jurisdictions have agreed to eliminate reinsurance collateral for qualifying non-U.S. reinsurers domiciled in the EU, UK, Bermuda, Japan and Switzerland. The NAIC should take a consistent approach with the alien non-admitted insurers on its list, who are almost identically situated to alien reinsurers, and it should require a trust fund from an insurer only after a determination that it is necessary. AEGIS is not, however, suggesting that trust funds are never appropriate for listed companies or that the IID should not have the discretion to require a listed company to maintain a trust fund if it determines that to be appropriate condition to listing.</p> | <p>No Action Recommended.</p> <p>Rationale: The trust funds are in place to ensure protections for U.S. policyholders purchasing coverages within the non-admitted market from non-U.S. insurers that are not regulated by the U.S. solvency framework. These non-standard policies are not guided by rates and forms and in many cases are deemed higher risk. Further, given these policies are written by non-U.S. entities and within the the nonadmitted market, other than the trust fund requirement, there is no other solvency backstop in place, such as the guaranty fund.</p> |
| 5 | International Underwriting Association of London (IUA) | 11/21/2022 | II.B U.S. Trust Fund | <p>Trust Fund Cap of \$300 Million—the IUA notes that this would be the third increase in the amount of the cap since it was increased to \$150 million in 2013 and then to \$250 million in 2018. As you will recall, the IUA was fully engaged in the 20 year process to reduce reinsurance collateral funding requirements from 100% of cedent liabilities to today’s zero collateral regime for reciprocal reinsurers domiciled in the EU, UK, Bermuda, Japan and Switzerland. The IUA urges the NAIC to rethink the need for yet another substantial increase in the trust fund cap in light of the reductions in reinsurance collateral—particularly in relation to business that falls within the categories of “large commercial, wholesale and specialty” business that is at the core of the portfolios of business that IUA members write.</p> | <p>Given the 2018 increase in the trust fund cap, the cap be maintained at \$250 million (Page 8).</p> |

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| <p>6 International Underwriting Association of London (IUA)</p> | <p>11/21/2022 II.B.U.S. Trust Fund</p> | <p>Trust Fund Investments—We note the redrafting of Section II. B. of the Plan of Operation regarding acceptable trust fund assets:</p> <p>“Regarding the composition of the trust fund, credit will be allowed only for securities readily marketable on a regulated U.S. securities exchange or securities assigned a rating designation on the NAIC Securities Valuation Office List of Investment Securities as defined in the Purposes and Procedures Manual of the NAIC Investment Analysis Office.”</p> <p>Compare this language with what is in the standard form trust deed (Section 2.7) that every listed insurer must execute:</p> <p>“The Trust Fund Minimum Amount must consist of cash, Readily Marketable Securities or Letters of Credit issued by a Qualified U.S. Financial Institution. Trust Fund amounts in excess of the Trust Fund Minimum Amount shall consist of cash, securities, letters of credit or investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in the state where the Trust is principally administered.”</p> <p>The IUA believes it would be appropriate to add the highlighted language to the existing text, as follows:</p> <p>“Regarding the composition of the trust fund, credit will be allowed only for (i) securities readily marketable on a regulated U.S. securities exchange, (ii) securities assigned a rating designation on the NAIC Securities Valuation Office List of Investment Securities as defined in the Purposes and Procedures Manual of the NAIC Investment Analysis Office, or (iii) investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in the state where the Trust is principally administered.”</p> | <p>No concerns with syncing the language up with the Trust Agreement for Alien Excess or Surplus Lines Insurers (Page 7).</p> |
| <p>7 Underwriters at Lloyd's, London (Lloyd's)</p> | <p>11/21/2022 II.B.U.S. Trust Fund</p> | <p>Lloyd's noted that a reference to the Nonadmitted Model Insurance Act's definition of wet marine and transportation insurance was added to the section on trust fund level determinations on page 8. While Lloyd's has no objection to the reference to this model, in practice, what falls within wet marine and transportation exemptions will always be determined by the relevant state law, which may or may not align with the NAIC model. The illustrative nature of this parenthetical reference to an NAIC model could be conveyed by simply adding the words "provides an illustrative example" at the end of the parenthetical.</p> | <p>No concerns with adding, "provides and illustrative example" (Page 8).</p> |
| <p>8 International Underwriting Association of London (IUA)</p> | <p>11/21/2022 II.D. Insurer U.S. Branch Office</p> | <p>Insurer Branch Offices—in Section II. D. we see the proposed addition of the word "Insurer" before "U.S. Branch Office" heading. We are not certain whether anyone else has commented on this provision in the past but the IUA has a number of members that have established offices in the U.S. Doing so comes with U.S. Federal income tax consequences but for commercial reasons a number of members have done so. What they have not done, however, is to form a U.S. Branch and have it licensed as an insurer through a "port-of-entry" state. That was what we have always understood to be the undesirable outcome for an "alien" IID-listed surplus lines insurer, i.e. to be both "admitted" and surplus lines eligible in the same state. We would urge Staff to clarify this in Section II. D. and we would be happy to help with necessary revisions</p> | <p>No Action Taken</p> <p>The current language clearly addresses the restriction regarding U.S. branch offices (Page 9).</p> |

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Thomas Dawson
Partner
tmdawson@mwe.com
+1 212 547 5419



November 21, 2022

VIA EMAIL

bwilson@naic.org

Ms. Bree Wilson
International Insurers Department
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Re: 2022 Draft IID Plan of Operation

Dear Ms. Wilson:

We write on behalf of Associated Electric & Gas Insurance Services Limited (“AEGIS”) (AA-3190004) to submit comments concerning the proposed revisions to the IID's Plan of Operation that were exposed for comment by the Surplus Lines Working Group (“SLWG”) in October 2022 (the “Proposed Plan”). We and AEGIS very much appreciate having the opportunity to submit these comments. We know you and your colleagues are familiar with AEGIS’ financial and business profile so we will not provide a lengthy description, other than to note that we believe that AEGIS is among the larger IID-listed companies.

AEGIS’ primary comment on the Plan of Operation is that it is no longer necessary to require listed companies to maintain the U.S. trust funds. As you are aware, the trust fund requirement was first established in the 1960s by the Non-Admitted Insurers Information Office (“NAIIO”). At that time, financial and corporate information about non-U.S. insurers was not easily available --- hence the designation of the “information office” in the NAIIO name. Information sharing between and among regulators in different countries was limited and accounting standards were far from uniform. A substantial U.S. trust fund requirement served as a substitute for comprehensive financial information about listed companies, thus providing a measure of comfort to state regulators, the NAIC/NAIIO, and insureds as to the solvency of the non-admitted insurers. Today, that comfort can be found in the multi-decade solvency record of IID-listed insurers, in the comprehensive annual financial reporting that has long been required of all IID-listed insurers, and in U.S. regulators’ acceptance of and familiarity with solvency regulation in certain qualified and reciprocal jurisdictions in which most IID-listed insurers are domiciled.

**McDermott
Will & Emery**

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US practice conducted through McDermott Will & Emery LLP.

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For several decades now, the U.S. industry and U.S. regulators have recognized that larger commercial buyers need alternative means to access specialized, complex and high limit coverages. AEGIS is a mutual insurer domiciled in Bermuda that was formed by a group of the largest U.S. energy and utility companies who were unable to obtain the coverage they needed from the admitted commercial market. Since its first appearance on the NAIIO list of July 1, 1978, AEGIS has continued to fulfill that role and currently provides insurance to virtually all investor-owned utilities, and a large portion of the other energy generation and distribution companies, in the United States.

The passage of the Non-admitted and Reinsurance Reform Act (“NRRA”) in 2010 and the entry into force of the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance (the “Covered Agreement”) in 2017 reflect fundamental changes in circumstances and illustrate that the reasons for IID-listed insurers to maintain trust funds have largely been eliminated.

The NRRA represents Congress’ determination that the surplus lines market should be able to more easily provide coverage for larger commercial and municipal purchasers by eliminating diligent search requirements. State regulators and legislators in many states have acted to enhance competition for commercial lines business by adopting commercial lines deregulation rules that enable admitted insurers to write business free of rate and form regulation. Likewise, many states’ property and guaranty fund laws contain net worth limitations that exclude large company participation. Eliminating surplus lines trust funds would further enhance competition that will benefit U.S. commercial insurance buyers.

In 2017, the U.S. and EU agreed to eliminate reinsurance collateral for highly-capitalized reinsurers domiciled in any EU member state.¹ The NAIC subsequently added Bermuda, Japan and Switzerland as reciprocal jurisdictions for the purposes of collateral elimination. Currently, all U.S. jurisdictions have agreed to eliminate reinsurance collateral for qualifying non-U.S. reinsurers domiciled in the EU, UK, Bermuda, Japan and Switzerland. The NAIC should take a consistent approach with the alien non-admitted insurers on its list, who are almost identically situated to alien reinsurers, and it should require a trust fund from an insurer only after a determination that it is necessary.²

¹ Following Brexit, of course, the UK and U.S. governments replicated the Covered Agreement on a bilateral basis.

² AEGIS is not, however, suggesting that trust funds are never appropriate for listed companies or that the IID should not have the discretion to require a listed company to maintain a trust fund if it determines that to be an appropriate condition to listing.

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Thank you for your consideration of our comments regarding the Plan of Operation.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Dawson". The signature is fluid and cursive, with a large, prominent "D" at the end.

Thomas M. Dawson

cc: Mark Walsh, General Counsel, Associated Electric & Gas Insurance Services Limited

mwe.com

Thomas Dawson
Partner
tmdawson@mwe.com
+1 212 547 5419



November 21, 2022

VIA EMAIL

bwilson@naic.org

Ms. Bree Wilson
International Insurers Department
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Re: 2022 Draft IID Plan of Operation

Dear Ms. Wilson:

We write on behalf of the International Underwriting Association of London (“IUA”) the trade association that represents over 70 insurance companies actively writing large commercial, wholesale and specialty coverages worldwide principally from offices within the City of London. In 2021 the aggregate premium volume of business written worldwide by IUA members was approximately £35.6 billion vs. £33.1 billion in 2020. Of the 2021 total, approximately 20% of the market’s business originated in the U.S. and Canada. Approximately half of the IUA membership are currently listed by the NAIC’s International Insurers Department (“IID”). The IUA very much appreciates the opportunity to submit comments concerning the proposed revisions to the IID’s Plan of Operation.

While the IUA believes the bulk of the proposed changes to the Plan of Operation are appropriate or unobjectionable, including the proposed increases in minimum capital and surplus as well as to the minimum trust fund amount, IUA members have some concerns, as follows:

- Trust Fund Cap of \$300 Million---the IUA notes that this would be the third increase in the amount of the cap since it was increased to \$150 million in 2013 and then to \$250 million in 2018. As you will recall, the IUA was fully engaged in the 20 year process to reduce reinsurance collateral funding requirements from 100% of ceding liabilities to today’s zero collateral regime for reciprocal reinsurers domiciled in the EU, UK, Bermuda, Japan and Switzerland. The IUA urges the NAIC to rethink the need for yet another substantial increase in the trust fund cap in light of the reductions in reinsurance collateral---particularly in relation to business that falls within the categories of “large commercial, wholesale and specialty” business that is at the core of the portfolios of business that IUA members write.
- Appeals Process and Role of the “C” Committee---as has been the case for a number of years, the IID listing process includes an appellate procedure that provides for review of listing

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decisions by an NAIC body---the “C” Committee that has no direct role in listing decisions. It appears that the appellate function will no longer be handled by the “C” Committee but we are uncertain how or which entity or body within the NAIC will handle appeals in the future. Our strong preference would be for appeals to be heard by an NAIC entity or body that has had no involvement, direct or indirect, in initial decision-making. That is simply good administrative law practice.

- Insurer Branch Offices---in Section II. D. we see the proposed addition of the word “Insurer” before “U.S. Branch Office” heading. We are not certain whether anyone else has commented on this provision in the past but the IUA has a number of members that have established offices in the U.S. Doing so comes with U.S. Federal income tax consequences but for commercial reasons a number of members have done so. What they have not done, however, is to form a U.S. Branch and have it licensed as an insurer through a “port-of-entry” state. That was what we have always understood to be the undesirable outcome for an “alien” IID-listed surplus lines insurer, i.e. to be both “admitted” and surplus lines eligible in the same state. We would urge Staff to clarify this in Section II. D. and we would be happy to help with necessary revisions
- Trust Fund Investments—We note the redrafting of Section II. B. of the Plan of Operation regarding acceptable trust fund assets:

“Regarding the composition of the trust fund, credit will be allowed only for securities readily marketable on a regulated U.S. securities exchange or securities assigned a rating designation on the NAIC Securities Valuation Office List of Investment Securities as defined in the Purposes and Procedures Manual of the NAIC Investment Analysis Office.”

Compare this language with what is in the standard form trust deed (Section 2.7) that every listed insurer must execute:

“The Trust Fund Minimum Amount must consist of cash, Readily Marketable Securities or Letters of Credit issued by a Qualified U.S. Financial Institution. Trust Fund amounts in excess of the Trust Fund Minimum Amount shall consist of cash, securities, letters of credit or ***investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in the state where the Trust is principally administered.***”

The IUA believes it would be appropriate to add the highlighted language to the existing text, as follows:

“Regarding the composition of the trust fund, credit will be allowed only for (i) securities readily marketable on a regulated U.S. securities exchange, (ii) securities assigned a rating designation on the NAIC Securities Valuation Office List of Investment Securities as defined in the Purposes and Procedures Manual of the NAIC Investment Analysis Office, or (iii) ***investments of substantially the***

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same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in the state where the Trust is principally administered.”

Thank you again on behalf of the IUA for the opportunity to submit these comments and we look forward to further discussions concerning proposed changes to the Plan of Operation.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Dawson", with a long horizontal flourish extending to the right.

Thomas M. Dawson

cc: Helen Dalziel, International Underwriting Association of London (“IUA”)
Dave Matcham, International Underwriting Association of London (“IUA”)
Andrea Best, McDermott Will & Emery, LLP U.K.

Timothy W. Grant
Associate General Counsel

November 21, 2022

Via Email

Mr. Stewart Guerin
Louisiana Department of Insurance
Chair, NAIC Surplus Lines Working Group (“the Working Group”)

Re: Draft Revisions to the NAIC International Insurers Department (“IID”) Plan of Operations

Dear Mr. Guerin:

This comment letter is submitted on behalf of Underwriters at Lloyd’s, London (“Lloyd’s”) in response to the referenced exposure. Lloyd’s is the largest writer of surplus lines insurance in the United States. In 2021, Lloyd’s wrote more than \$13.6 billion in surplus lines premium, encompassing business from all 50 states. We appreciate the opportunity to provide these comments.

Lloyd’s commends the IID and the Working Group on their efforts in recent years to consistently fine-tune and improve upon the IID Plan of Operations. The NAIC process of public exposure, interested party comments, and regulator consideration has undoubtedly produced an enhanced plan. In this spirit of good governance and clear procedures, Lloyd’s has some concerns as to what was intended with respect to the Appeal Committee. For many years, the Property and Casualty Insurance (C) Committee has served as the designated appeal committee for decisions by the Surplus Lines Working Group. The IID Plan of Operations explains that this is because the C Committee “has no direct involvement in making or approving recommendations regarding alien surplus lines insurers.” However, the proposed revisions remove language on pages 3 and 5 which sets forth that the C Committee handles appeals of decisions made by the Working Group. Lloyd’s is unclear as to whether the Working Group seeks to eliminate the Appeal Committee because later references to the Appeal Committee were retained in the proposed revisions on pages 9, 10, and 11. These retained references to the Appeal Committee maintain the existing process whereby the Appeal Committee can hear appeals of trust fund level determinations, application rejections, and de-listing decisions. Lloyd’s encourages the Working Group to clarify its intention with respect to the Appeal Committee.

For the avoidance of doubt, Lloyd’s strongly supports maintaining the C Committee as the designated Appeal Committee, just as our market did in 2018 when this same Working Group considered – but decided against – removing it. The current Plan clearly indicates that the appeals process was set up in its current form to provide an objective second opinion. Eliminating the current Appeal Committee seems to go against good governance principles and, in our view, significantly weakens the application review framework. Lloyd’s has always worked well with the IID, the Working Group, and its predecessor the Surplus Lines Financial Analysis Working Group. History shows that appeals do not arise often. However, Lloyd’s believes that it is crucial for the IID Plan of Operations to retain an appeals process that provides the ability to appeal outside the IID and the Working Group, if necessary. Given the infrequency with which the appeals process is used, we do not believe that it will create any significant burden on the C Committee if it continues to review appeals. We would strongly

Timothy W. Grant
Associate General Counsel

recommend that the proposed revisions retain the existing language specifying that appeal decisions will be made by the C Committee.

In a similar vein of good governance and clear procedures, it is important that all concerned parties understand where final decision making authority rests. The proposed revisions eliminate a bullet point which confirms that the Surplus Lines Working Group “determines final eligibility of insurers on the Quarterly Listing.” The draft replaced this deletion with vaguer language stating that the Working Group “reviews and considers appropriate decisions regarding applications for admittance to the Quarterly Listing.” In Lloyd’s view, a party reading the IID Plan of Operations for the first time might not deduce from this language that final decision making authority sits with the Working Group. For this reason, Lloyd’s respectfully suggests retaining the existing language which more clearly conveys that, barring an appeal, the Surplus Lines Working Group determines the final eligibility of insurers on the Quarterly listing.

Finally, Lloyd’s noted that a reference to the Nonadmitted Model Insurance Act’s definition of wet marine and transportation insurance was added to the section on trust fund level determinations on page 8. While Lloyd’s has no objection to the reference to this model, in practice, what falls within wet marine and transportation exemptions will always be determined by the relevant state law, which may or may not align with the NAIC model. The illustrative nature of this parenthetical reference to an NAIC model could be conveyed by simply adding the words “provides an illustrative example” at the end of the parenthetical.

Lloyd’s appreciates the opportunity to offer these comments and would be glad to discuss them further with the Working Group.

Very truly yours,

