

Date: 10/27/20

*Interim Meeting in Lieu of 2020 Fall National Meeting
Virtual Meeting*

SURPLUS LINES (C) TASK FORCE

Wednesday, November 18, 2020

2:30 p.m. ET / 1:30 p.m. CT / 12:30 p.m. MT / 11:30 a.m. PT

ROLL CALL

James J. Donelon, Chair	Louisiana	Sharon P. Clark	Kentucky
Larry D. Deiter, Vice Chair	South Dakota	Kathleen A. Birrane	Maryland
Lori K. Wing-Heier	Alaska	Barbara D. Richardson	Nevada
Alan McClain	Arkansas	Mike Causey	North Carolina
Ricardo Lara	California	Glen Mulready	Oklahoma
Michael Conway	Colorado	Jessica K. Altman	Pennsylvania
David Altmaier	Florida	Raymond G. Farmer	South Carolina
Dafne M. Shimizu	Guam	Kent Sullivan	Texas
Dean L. Cameron	Idaho	Mike Kreidler	Washington
Robert H. Muriel	Illinois	Jeff Rude	Wyoming
Vicki Schmidt	Kansas		

NAIC Support Staff: Andy Daleo/Bob Schump

AGENDA

1. Consider Adoption of its Summer National Meeting Minutes Attachment One
—*Commissioner James J. Donelon (LA)*
2. Consider Adoption of the Report of the Surplus Lines (C) Working Group
—*Stewart Guerin (LA)*
3. Discuss the *Nonadmitted Insurance Model Act* (#870) Drafting Group Findings Regarding the Review of Model #870—*Commissioner James J. Donelon (LA)* Attachment Two
4. Discuss a Memorandum on the Trust Agreement for Alien Excess or Surplus Lines Insurers Attachment Three
—*Dan Schelp (NAIC)*
5. Discuss Any Other Matters Brought Before the Task Force
—*Commissioner James J. Donelon (LA)*
6. Adjournment

Draft Pending Adoption

Draft: 8/21/20

Surplus Lines (C) Task Force
Virtual Summer National Meeting
August 5, 2020

The Surplus Lines (C) Task Force met via conference call Aug. 5, 2020. The following Task Force members participated: James J. Donelon, Chair, and Stewart Guerin (LA); Larry D. Deiter, Vice Chair (SD); Lori K. Wing-Heier represented by David Phifer (AK); Alan McClain represented by William Lacy (AR); Ricardo Lara represented by Kim Hudson (CA); Michael Conway represented by Rolf Kaumann (CO); David Altmaier represented by Virginia Christy (FL); Dean L. Cameron represented by Eric Fletcher (ID); Robert H. Muriel represented by Marcy Savage (IL); Vicki Schmidt represented by Heather Droge (KS); Sharon P. Clark represented by DJ Wasson (KY); Kathleen A. Birrane represented by Todd Switzer (MD); Mike Causey represented by Fred Fuller (NC); Barbara D. Richardson and Gennady Stolyarov (NV); Glen Mulready represented by Eli Snowbarger (OK); Raymond G. Farmer represented by Ryan Basnett (SC); Mike Kreidler represented by Jeff Baughman (WA); Jeff Rude and Donna Stewart (WY). Also participating was: Robert Wake (ME).

1. Adopted its 2019 Fall National Meeting Minutes

Mr. Fletcher made a motion, seconded by Mr. Baughman, to adopt the Task Force's Dec. 7, 2019, minutes (*see NAIC Proceedings – Fall 2019, Surplus Lines (C) Task Force*). The motion passed unanimously.

2. Adopted the Report of the Surplus Lines (C) Working Group

Mr. Guerin reported that since the 2019 Fall National Meeting, the Surplus Lines (C) Working Group met Dec. 18, 2019; March 10; and June 29 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings.

During these meetings, the Working Group heard a summary of eight applications for admission to the *Quarterly Listing of Alien Insurers*. All eight of the applying companies were discussed, and seven applicants were admitted to the listing.

Mr. Guerin updated the Task Force that on May 6, NAIC staff sent out a COVID-19 survey to the quarterly listed insurers and syndicates. The survey addressed equity market impact, writings exposed to COVID-19 claims, and claims status. Mr. Guerin indicated that survey responses would be analyzed in conjunction with the annual renewal analysis that staff completes.

Mr. Kaumann made a motion, seconded by Mr. Hudson, to adopt the report of the Working Group. The motion passed unanimously.

3. Adopted its 2021 Proposed Charges

Commissioner Donelon stated that the 2021 proposed charges for the Task Force and Surplus Lines (C) Working Group contained non-substantive changes compared to the 2020 charges.

Ms. Droge made a motion, seconded by Mr. Stolyarov, to adopt the Task Force's 2021 proposed charges. The motion passed unanimously.

4. Discussed Model #870

Commissioner Donelon referenced a March 16 NAIC staff memorandum on the *Nonadmitted Insurance Model Act* (#870). He stated that Model #870 was last modified in 2002, and it has not been updated since the passage of the Nonadmitted and Reinsurance Reform Act (NRRA) in 2010. He asked for a discussion as to whether Model #870 should be reviewed and brought up to date with current standards. He instructed Andy Daleo (NAIC) to provide a summary of the memorandum and supporting materials.

Mr. Daleo stated that NAIC staff completed a cursory review of Model #870 in March 2020 that led to the topic's inclusion on the agenda. He stated that Model #870 came into existence as a result of the compilation of three previous NAIC surplus lines models that date back to 1983—the Unauthorized Insurers Model Act, the Model Surplus Lines Law, and the Model Nonadmitted Insurance Act. He indicated that Model #870 was adopted in the third quarter of 1994, and it has been adopted by 31 states.

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Mr. Daleo stated that the most recent activity regarding Model #870 was on Oct. 11, 2011, following the implementation of the NRRA. He indicated that Model #870 was not modified; however, a *Nonadmitted Insurance Reform Sample Bulletin* (Bulletin) was released to state insurance departments following its adoption by the Executive (EX) Committee and Plenary, and it was subsequently distributed to state insurance departments. He summarized that the Bulletin outlined the nationwide regulatory changes that affected the placement of nonadmitted insurance, and it included the scope of the NRRA, the implementation of the “Home State” policy, licensure requirements for brokers, diligent search requirements, and eligibility requirements for nonadmitted insurers.

Mr. Daleo commented that the Task Force should consider one of three options:

- **Model Law Request** – Direct staff to develop a model law request for consideration at the next national meeting.
- **Develop a Drafting Group** – The drafting group would produce a summary document that outlines the significant updates to modernize Model #870 and present a recommendation to the Task Force at a future national meeting.
- **No Action** – Do not amend Model #870 and rely on the Bulletin for guidance.

Mr. Stolyarov supported pursuing Model #870 amendments, with a caveat to limit revisions only to update the sections affected by the NRRA. He stated that most states have revised their statutes to conform to the NRRA, so whatever revisions are made to Model #870 should be of a nature that is compatible with the actions that the states have already taken.

Bob Woody (American Property Casualty Insurance Association—APCIA) stated that his members do not have any objections to updating Model #870 to conform with the standards included in the NRRA. However, he expressed reservations to a model law request before knowing the exact portions of Model #870 that would be changed. He said his members would be more comfortable with the option two to develop a drafting group.

Keri Kish (Wholesale & Specialty Insurance Association—WSIA) stated that most states have accepted the NRRA in regulations. She said only two states have not accepted the NRRA, but they have issued declarations and bulletins and made comments that they recognize that the NRRA supersedes state laws. She offered her organization’s assistance in providing information as to what the states are currently doing from a regulatory perspective.

Jeff Klein (McIntyre & Lemon PLLC) agreed that option two to develop a drafting group would best conform to the consensus of opinions previously expressed. He said an outline of the areas of Model #870 to be amended would be appropriate.

Commissioner Donelon indicated that he also favored a drafting group. He asked Task Force members their preference on the three options. Mr. Hudson, Ms. Droge, Mr. Baughman and Mr. Kelly all voiced support for the development of a drafting group. Commissioner Donelon said that support constituted consensus, and he will discuss with Mr. Daleo and Director Deiter on how to proceed.

5. Discussed a Blanks Proposal Regarding Home State Direct Premiums Written

Commissioner Donelon reminded the Task Force that this proposal regarding the reporting of “Home State” direct premiums written was introduced at the 2019 Fall National Meeting, where discussion was halted due to time constraints. He stated that he would like to come to a consensus during this meeting on whether to refer the proposal to the Blanks (E) Working Group. He stated that if a referral is made to the Working Group, all technical details should be resolved by the Task Force, explaining that the Working Group will not discuss the technical issues.

Commissioner Donelon summarized that the proposal was exposed for a 45-day public comment period ending Oct. 10, 2019. He stated that comment letters were received from three interested parties, which were discussed at the 2019 Fall National Meeting. Further, he stated that several states commented that this Blanks proposal would provide a means for an insurance department to arrive at an estimate of surplus lines premium taxes and allow the states to better reconcile taxes collected.

Commissioner Donelon agreed that the proposal is not a perfect solution for the problem of reconciling surplus lines premiums taxes. He said it has been several years since Louisiana last conducted an audit of a surplus lines broker. However, audits performed pre- and post-NRRA discovered only a slight difference between what was reported by the broker compared to the audit.

Director Deiter said South Dakota utilizes the Florida Surplus Lines Service Office to track its nonadmitted premiums, but he understands that this may not be a viable option for some states with limited resources.

Draft Pending Adoption

Mr. Wake said Maine's tax department sought his advice on this issue last year because it thought the proposed Schedule T section would benefit Maine's tax collection efforts. He commented that the big question relates to the degree of burden this would be for the companies. He said the industry analysis of surplus lines taxes prepared by WSIA showed a minimal variance between their best aggregate guess and the aggregate guess provided by current reporting. However, he stated that the important point was not in the aggregate variance but what was occurring in each state.

Commissioner Donelon agreed, but he added that he did not see how the proposal would come close to solving the problem of creating a more efficient tax system for surplus lines.

Mr. Stolyarov said he is concerned that the proposal may cause confusion in how it would address the distinction between surplus lines premium and independently procured nonadmitted insurance. He indicated that in Nevada, surplus lines premiums are reported to the Nevada Surplus Lines Association (NSLA), whereas independently procured premiums are reported to the Department of Taxation. He said he is concerned that the proposed reporting by insurers might combine the two types of nonadmitted insurance premiums.

Mr. Wake stated that the industry had not persuaded him that there is not a problem, but industry had persuaded him that this proposal does not appear to be a solution worth pursuing.

John Meetz (WSIA) summarized his organization's analysis of surplus lines premium taxes. He offered that there will always be differences between premium reported by carriers and the taxable transaction revenue reported by brokers. He stated that those differences will be caused by the timing of reporting, additional fees collected as part of the transaction, non-taxable premiums that brokers have no incentive to report, and the effect of cancellations and mid-term endorsements. Based on these differences, he said the reporting by carriers of "Home State" surplus lines premiums would be burdensome to carriers, state insurance regulators, and brokers.

Ms. Stewart suggested that if the Schedule T proposal was implemented, the Task Force would consider drafting a memorandum to the states noting the information that would be available in the new supplement and explaining some of the differences between "Home State" premium reporting by carriers and the surplus lines reporting by brokers.

Mr. Woody added that a joint trades letter submitted by the APCIA, the National Association of Mutual Insurance Companies (NAMIC), and the Council of Insurance Agents & Brokers (CIAB) opposes the Blanks proposal.

Commissioner Donelon stated that from the comments made, there does not appear to be consensus in favor of advancing the proposal.

Mr. Hudson made a motion, seconded by Director Deiter, to table the proposal. The motion passed unanimously.

Having no further business, the Surplus Lines (C) Task Force adjourned.

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Date: November 1, 2020

To: Surplus Lines (C) Task Force

From: NAIC Staff

RE: Nonadmitted Insurance Model Act (#870)

Background

The current NAIC *Nonadmitted Insurance Model Act #870* was adopted in 1994 to combine three NAIC models that date as far back as 1969: 1) Unauthorized Insurers Model Act; 2) Model Surplus Lines Law; and 3) Model Nonadmitted Insurance Act. Since adoption of Model 870 on Sept. 18, 1994, the NAIC has amended it on the following dates: 1) Dec. 16, 1996; 2) March 18, 1998; 3) Dec. 6, 1999; and 4) Sept. 10, 2002. The 2002 modifications resulted from the passage by Congress of the Gramm-Leach-Bliley Act. Currently, 31 states have adopted Model 870.

Activity

The most recent activity regarding Model 870 related to the Nonadmitted and Reinsurance Reform Act (NRRA) of 2010. Model 870 was not modified as a result of the implementation of the NRRA. On October 11, 2011, the *Nonadmitted Insurance Reform Sample Bulletin*, which was distributed to the state insurance departments, was adopted by Executive/Plenary. The Bulletin outlined federally mandated regulatory changes that impact the placement of nonadmitted insurance. Specifically, the Bulletin addressed the scope of the NRRA, the application of "Home State" for purposes of jurisdictional authority and paying premium tax, licensure requirements for brokers, diligent search requirements, and eligibility requirements for nonadmitted insurers.

During the implementation of the NRRA, the Surplus Lines (C) Task Force and NAIC staff were working on state tax allocation proposals. The leading proposals were the Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT), which pre-dated the NRRA, and the Nonadmitted Insurance Multi-State Agreement (NIMA), developed by the Task Force in response to the NRRA. SLIMPACT failed to achieve the ten states needed to become operative. The NIMA clearinghouse operated for only a few years before NIMA was dissolved in 2016. With the focus on achieving a system of tax allocation before the NRRA deadline in July 2012, the decision was made to draft the Bulletin rather than amend Model 870.

Summer National Meeting Charge and Drafting Group

During the NAIC Summer Virtual Meeting of the Task Force, the Chair, directed staff to develop a drafting group to produce a summary document that outlines significant updates needed to modernize Model #870 and present a recommendation to the Task Force at a future NAIC National Meeting.

The Drafting Group consisted of; Tom Travis (LA), Jeff Baughman (WA), Eli Snowbarger (OK) along with Andy Daleo (NAIC) and Dan Schelp (NAIC). The Drafting Group met on September 30 and October 27, 2020. As a result of those meetings, the Drafting Group outlined comments within the *Nonadmitted Insurance Model Act #870* (Attached).

NAIC Model Laws, Regulations, Guidelines and Other Resources—June 2002

NONADMITTED INSURANCE MODEL ACT

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Section 1. Short Title

This Act shall be known and may be cited as “The **Nonadmitted Insurance Act**.”

Section 2. Purpose—Necessity for Regulation

This Act shall be liberally construed and applied to promote its underlying purposes which include:

- A. Protecting persons seeking insurance in this state;
- B. Permitting surplus lines insurance to be placed with reputable and financially sound nonadmitted insurers and exported from this state pursuant to this Act;
- C. Establishing a system of regulation which will permit orderly access to surplus lines insurance in this state and encourage admitted insurers to provide new and innovative types of insurance available to consumers in this state;
- D. Providing a system through which persons may purchase insurance other than surplus lines insurance, from nonadmitted insurers pursuant to this Act;
- E. Protecting revenues of this state; and
- F. Providing a system pursuant to this Act which subjects nonadmitted insurance activities in this state to the jurisdiction of the insurance commissioner and state and federal courts in suits by or on behalf of the state.

Section 3. Definitions

As used in this Act:

- A. “Admitted insurer” means an insurer licensed to do an insurance business in this state.
- B. ~~“Capital,” as used in the financial requirements of Section 5, means funds paid in for stock or other evidence of ownership.~~
- C. “Commissioner” means the insurance commissioner of [insert name of state] , or the commissioner’s deputies or staff, or the Commissioner, Director or Superintendent of Insurance in any other state.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term “commissioner” appears.

Commented [Model 8701]: Based on the NRRA definition of nonadmitted insurance consider revising name to: “The Surplus Lines and Nonadmitted Insurance Act.”

Commented [Model 8702]: Consider the extent to which surplus lines and other unauthorized insurance is subject to legislative and administrative jurisdiction as well as judicial jurisdiction.

Commented [Model 8703]: Conform definitions to NRRA definitions and consider adding NRRA definitions such as, non-admitted domestic SPL insurer, affiliated/unaffiliated groups as well as several other definitions.

Commented [Model 8704]: Review the definitions to ensure the list is complete. The domicile state’s definition is used in Section 5 and adopted by reference in the NRRA.

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- D. “Eligible surplus lines insurer” means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance pursuant to Section 5 of this Act.
- E. “Export” means to place surplus lines insurance with a nonadmitted insurer.
- F. “Foreign decree” means any decree or order in equity of a court located in any United States jurisdiction, including a federal court of the United States, against any person engaging in the transaction of insurance in this state.
- G. “Insurer” means any person, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, insurance exchange syndicate, fraternal benefit society, and any other legal entity engaged in the business of insurance.
- H. “Kind of insurance” means one of the types of insurance required to be reported in the annual statement which must be filed with the commissioner by admitted insurers.
- I. “Nonadmitted insurer” means an insurer not licensed to do an insurance business in this state.
- J. “Person” means any natural person or other entity, including, but not limited to, individuals, partnerships, associations, trusts or corporations.
- K. “Policy” or “contract” means any contract of insurance, including but not limited to annuities, indemnity, medical or hospital service, workers’ compensation, fidelity or suretyship.
- L. “Reciprocal state” means a state that has enacted provisions substantially similar to:
- (1) Sections 5F, 5I(5), 5Q(10), 5R(4) and Section 6; and
 - (2) The allocation schedule and reporting form contained in [cite the regulation on surplus lines taxation].
- M. “Surplus,” as used in the financial requirements of Section 5, means funds over and above liabilities and capital of the company for the protection of policyholders.
- N. “Surplus lines insurance” means any property and casualty insurance in this state on properties, risks or exposures, located or to be performed in this state, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, pursuant to Section 5 of this Act.
- Drafting Note:** If a state chooses to adopt the alternative Section 5B, this definition of “surplus lines insurance” should be consistent with the acceptable coverage listed in Section 5B. States may choose to extend the definition of “surplus lines insurance” beyond property/casualty insurance.
- O. “Surplus lines licensee” means an individual, firm or corporation licensed under Section 5 of this Act to place insurance on properties, risks or exposures located or to be performed in this state with nonadmitted insurers eligible to accept such insurance.
- P. “Transaction of insurance”
- (1) For purposes of this Act, any of the following acts in this state effected by mail or otherwise by a nonadmitted insurer or by any person acting with the actual or apparent authority of the insurer, on behalf of the insurer, is deemed to constitute the transaction of an insurance business in or from this state:
 - (a) The making of or proposing to make, as an insurer, an insurance contract;
 - (b) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;

Commented [Model 8705]: Consider how Domestic Surplus Lines Insurers (DSLIs) fit into the structure.

Commented [Model 8706]: Consider incorporating the A&H Guideline into the Model.

Commented [Model 8707]: Consider rewording, “risk or exposure arising out of property or activity in this state”

Commented [DAT8]: A uniform definition should be utilized by all states, particularly in sub (1b) and (1h).

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- (c) The taking or receiving of an application for insurance;
 - (d) The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for insurance or any part thereof;
 - (e) The issuance or delivery in this state of contracts of insurance to residents of this state or to persons authorized to do business in this state;
 - (f) The solicitation, negotiation, procurement or effectuation of insurance or renewals thereof;
 - (g) The dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, the fixing of rates or investigation or adjustment of claims or losses or the transaction of matters subsequent to effectuation of the contract and arising out of it, or any other manner of representing or assisting a person or insurer in the transaction of risks with respect to properties, risks or exposures located or to be performed in this state;
 - (h) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance;
 - (i) The offering of insurance or the transacting of insurance business; or
 - (j) Offering an agreement or contract which purports to alter, amend or void coverage of an insurance contract.
- (2) The provisions of this subsection shall not operate to prohibit employees, officers, directors or partners of a commercial insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of the employer, provided that the person's compensation is not based on buying insurance.
 - (3) The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered or issued for delivery or takes effect.

Drafting Note: States may need to alter this subsection to reflect their decision as to whether they intend to permit citizens to directly purchase coverage within the state from a nonadmitted insurer, or if self-procurement of coverage will be permitted only when it occurs outside the state. States electing to allow direct procurement will need to insert an appropriate exemption in Section 4A of this Act. Additionally, states should consider whether the preceding definition of "transaction of insurance" is consistent with other statutory definitions of this phrase in the state. Finally, states may want to consider whether group insurance purchases or the maintenance of insurance books and records in this state should fall within the scope of the definition of "transaction of insurance."

Commented [Model 8709]: Examine the issue of self-procurement regarding in-state, out-of-state, and out-of-U.S. jurisdiction for placement and taxation.

Q. "Type of insurance" means coverage afforded under the particular policy that is being placed.

R. "Wet marine and transportation insurance" means:

- (1) Insurance upon vessels, crafts, hulls and other interests in them or with relation to them;
- (2) Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;
- (3) Insurance of freight and disbursements pertaining to a subject of insurance within the scope of this subsection; and

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- (4) Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any incidental delays, transshipment, or reshipment; provided, however, that insurance of personal property and interests therein shall not be considered wet marine and transportation insurance if the property has:
- (a) Been transported solely by land; or
 - (b) Reached its final destination as specified in the bill of lading or other shipping document; or
 - (c) The insured no longer has an insurable interest in the property.

Comment: The language added in 1994 to the end of the definition of “wet marine and transportation insurance” (Subparagraphs 4(a), 4(b), and 4(c)) is intended to clarify the scope of the definition, which ultimately affects the exemption of certain risks from this Act. The 1994 amendments address current regulatory concerns and concerns raised by those who drafted the 1983 amendments to the Model Surplus Lines Law. The 1983 drafters wrote: “Several [drafters] felt the term ‘storage’ should not appear in... [the wet marine definition] to ensure that warehousemen and other types of insurance covering risks of storage are not interpreted to be within the purview of this definition. The term ‘delays’ is sufficiently broad to cover temporary storage while in the course of transit.”

Drafting Note: In addition to the definitions provided in this section, individual states may wish to consider adopting definitions for “agent,” “broker” or “producer” in a manner consistent with its other laws. Additionally, states may want to cross-reference the definition of “insurance” as it appears elsewhere in the state insurance code. The definition of insurance should reach illegal unauthorized activities.

Section 4. Placement of Insurance Business

- A. An insurer shall not engage in the transaction of insurance unless authorized by a license in force pursuant to the laws of this state, or exempted by this Act or otherwise exempted by the insurance laws of this state.
- B. A person shall not engage in a transaction of insurance or shall in this state directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, a nonadmitted insurer in the solicitation, negotiation, procurement or effectuation of insurance, or renewals thereof, or forwarding of applications, or delivery of policies or contracts or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist the insurer in the transaction of insurance.
- C. A person who represents or aids a nonadmitted insurer in violation of this section shall be subject to the penalties set forth in Section 7 of this Act. No insurance contract entered into in violation of this section shall preclude the insured from enforcing his rights under the contract in accordance with the terms and provisions of the contract of insurance and the laws of this state, to the same degree those rights would have been enforceable had the contract been lawfully procured.
- D. If the nonadmitted insurer fails to pay a claim or loss within the provisions of the insurance contract and the laws of this state, a person who assisted or in any manner aided directly or indirectly in the procurement of the insurance contract, shall be liable to the insured for the full amount under the provisions of the insurance contract.
- E. Section 4B or 4D shall not apply to a person in regard to an insured who independently procures insurance as provided under Section 6. This section shall not apply to a person, properly licensed as an agent or broker in this state who, for a fee and pursuant to a written agreement, is engaged solely to offer to the insured advice, counsel or opinion, or service with respect to the benefits, advantages or disadvantages promised under any proposed or in-force policy of insurance if the person does not, directly or indirectly, participate in the solicitation, negotiation or procurement of insurance on behalf of the insured;

Drafting Note: If a state collects tax on unlicensed transactions which violate this Act, it may consider imposing liability for payment of those taxes on persons who violate this Act by assisting in the procurement of nonadmitted insurance.

Drafting Note: Some states permit other licensed professionals to engage in these activities as provided in their insurance statutes or other state statutes. Those states may want to amend Section 4E to include those professionals, to the extent they act within the scope of their licenses.

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F. This section shall not apply to a person acting in material compliance with the insurance laws of this state in the placement of the types of insurance identified in Paragraphs (1), (2), (3) and (4) below:

- (1) Surplus lines insurance as provided in Section 5. For the purposes of this subsection, a licensee shall be deemed to be in material compliance with the insurance laws of this state, unless the licensee committed a violation of Section 5 that proximately caused loss to the insured;
- (2) Transactions for which a certificate of authority to do business is not required of an insurer under the insurance laws of this state;

Drafting Note: A number of states exempt from licensing and premium taxation nonprofit educational insurers insuring only nonprofit educational institutions and their employees. Some states require certificates of authority while others require licensing, and the appropriate language should be used in Paragraph (2) above. Additionally, some states may want to consider adding language to establish an option of allowing persons to file for an exemption with the Department of Insurance.

- (3) Reinsurance provided that, unless the commissioner waives the requirements of this subsection:
 - (a) The assuming insurer is authorized to do an insurance or reinsurance business by its domiciliary jurisdiction and is authorized to write the type of reinsurance in its domiciliary jurisdiction; and
 - (b) The assuming insurer satisfies all legal requirements for such reinsurance in the state of domicile of the ceding insurer;
- (4) The property and operation of railroads or aircraft engaged in interstate or foreign commerce, wet marine and transportation insurance;
- (5) Transactions subsequent to issuance of a policy not covering properties, risks or exposures located, or to be performed in this state at the time of issuance, and lawfully solicited, written or delivered outside this state.

Drafting Note: States may also wish to consider exempting from Section 4A of this Act self-procured insurance or industrial insurance purchased by a sophisticated buyer who does not necessarily require the same regulatory protections as an average insurance buyer. Additionally, some states allow other insurance transactions with nonadmitted insurers. Examples include certain aviation and railroad risks. Other states may want to narrow the scope of the exemptions above or reserve the right to approve exemptions on a case-by-case basis.

Section 5. Surplus Lines Insurance

A. Surplus lines insurance may be placed by a surplus lines licensee if:

- (1) Each insurer is an eligible surplus lines insurer; and
- (2) Each insurer is authorized to write the type of insurance in its domiciliary jurisdiction; and
- (3) The full amount or type of insurance cannot be obtained from insurers who are admitted to do business in this state. The full amount or type of insurance may be procured from eligible surplus lines insurers, provided that a diligent search is made among the insurers who are admitted to transact and are actually writing the particular type of insurance in this state if any are writing it; and
- (4) All other requirements of this Act are met.

Drafting Note: States may prefer to reference “kind of insurance” rather than “type of insurance” in Section 5A(3). The term utilized should be defined within the Act.

The diligent search requirement of Section 5A(3) must be satisfied in accordance with the statutes and regulations of the governing state. Such statutes and regulations might vary from state to state in terms of the number of declinations required and the person designated to conduct the search.

Section 5A(3) does not prohibit a regulatory system in which a surplus lines licensee may place with an eligible nonadmitted insurer any coverage listed on a current “export list” maintained by the commissioner. The export list would identify types of insurance for which no admitted market exists. The commissioner may waive the diligent search requirement for any such type of insurance.

Commented [Model 87010]: Consider how to integrate the NRRA “exempt commercial purchaser” rules into this Model.

Commented [Model 87011]: Integrate a subsection on “eligibility criteria or requirements.”

Commented [Model 87012]: First NRRA eligibility criterion for US-based insurers. Must retain.

Commented [DAT13]: Address diligent search given a few states no longer require.

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Drafting Note: Utilizing the “full amount” standard in Section 5A(3) of this Act may have certain market implications. An alternative to this approach would be to require that whatever part of the coverage is attainable through the admitted market be placed in the admitted market and only the excess part of the coverage may be exported.

- B. Subject to Section 5A(3) of this Act, a surplus lines licensee may place any coverage with a nonadmitted insurer eligible to accept the insurance, unless specifically prohibited by the laws of this state.

[Alternative Subsection B]

- [B. Subject to Section 5A(3) of this Act, a surplus lines licensee may place only the following types of coverage with a nonadmitted insurer eligible to accept insurance: {list acceptable coverage}.]

Drafting Note: The two statutory alternatives described in Section 5B represent different regulatory approaches to defining those coverages which may be placed in the nonadmitted market and they would impact the admitted market in different manners.

- C. A surplus lines licensee shall not place coverage with a nonadmitted insurer, unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer:

- (1) Has established satisfactory evidence of good repute and financial integrity; and

- (2) Qualifies under one of the following subparagraphs:

- (a) Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:

- (i) (I) The minimum capital and surplus requirements under the law of this state; or

- (II) \$15,000,000;

Drafting Note: States that have not previously increased capital and surplus requirements may wish to consider implementation of the capital and surplus requirements in this subparagraph in a series of phases over a period of up to three (3) years. In some circumstances, implementation of a \$15,000,000 capital and surplus requirement may represent a dramatic increase over existing requirements. States may wish to allow insurers which are eligible under existing law some period of time to increase their capital and surplus to meet the new standards.

- (ii) The requirements of Subparagraph (a)(i) may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry. In no event shall the commissioner make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than \$4,500,000; or

- (b) In the case of an insurance exchange created by the laws of a state other than this state:

- (i) The syndicates of the exchange shall maintain under terms acceptable to the commissioner capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than \$75,000,000 in the aggregate; and

- (ii) The exchange shall maintain under terms acceptable to the commissioner not less than fifty percent (50%) of the policyholder surplus of each syndicate in a custodial account accessible to the exchange or its domiciliary commissioner in the event of insolvency or impairment of the individual syndicate; and

- (iii) In addition, each individual syndicate to be eligible to accept surplus lines insurance placements from this state shall meet either of the following requirements:

Commented [DAT14]: Since the original model was drafted in 2002, these financial requirements may need to be updated.

Commented [Model 87015]: Consider modification

Commented [Model 87016]: Second NRRA eligibility criterion for U.S.-based insurers. For alien insurers, address the Quarterly Listing and its NRRA designation as the eligibility authority for aliens.

Commented [Model 87017]: The section of the Model is not referenced as eligibility criteria and is inconsistent with the NRRA. It is recommended that this section be deleted.

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- (I) ~~For insurance exchanges which maintain funds in an amount of not less than \$15,000,000 for the protection of all exchange policyholders, the syndicate shall maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of the domiciliary jurisdiction, of not less than \$5,000,000; or~~
- (II) ~~For insurance exchanges which do not maintain funds in an amount of not less than \$15,000,000 for the protection of all exchange policyholders, the syndicate shall maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than the minimum capital and surplus requirements under the laws of its domiciliary jurisdiction or \$15,000,000, whichever is greater; or~~

Drafting Note: Some states may want to cross-reference statutory provisions in their own states which provide a grandfather clause for syndicates established with a lower capital and surplus requirement:

- (e) ~~In the case of a Lloyd's plan or other similar group of insurers, which consists of unincorporated individual insurers, or a combination of both unincorporated and incorporated insurers:~~
 - (i) ~~The plan or group maintains a trust fund that shall consist of a trustee account representing the group's liabilities attributable to business written in the United States; and~~
 - (ii) ~~In addition, the group shall establish and maintain in trust a surplus in the amount of \$100,000,000; which shall be available for the benefit of United States surplus lines policyholders of any member of the group.~~
 - (iii) ~~The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.~~
 - (iv) ~~The trust funds shall be maintained in an irrevocable trust account in the United States in a qualified financial institution, consisting 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 this state and, in addition, the trust required by item (ii) of this paragraph shall satisfy the requirements of the Standard Trust Agreement required for listing with the National Association of Insurance Commissioners (NAIC) International Insurers Department; or~~
- (d) ~~In the case of a group of incorporated insurers under common administration, which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to this time, and which submits to this state's authority to examine its books and records and bears the expense of the examination:~~
 - (i) ~~The group shall maintain an aggregate policyholders' surplus of \$10,000,000,000; and~~
 - (ii) ~~The group shall maintain in trust a surplus in the amount of \$100,000,000; which shall be available for the benefit of United States surplus lines policyholders of any member of the group; and~~
 - (iii) ~~Each insurer shall individually maintain capital and surplus of not less than \$25,000,000 per company.~~

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- (iv) ~~The trust funds shall satisfy the requirements of the Standard Trust Agreement requirement for listing with the NAIC International Insurers Department, and shall be maintained in an irrevocable trust account in the United States in a qualified financial institution, and 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 this state.~~
- (v) ~~Additionally, each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant; or~~
- (e) ~~Except for an exchange or plan complying with Subparagraph (b), (c) or (d), an insurer not domiciled in one of the United States or its territories shall satisfy the capital and surplus requirements of Subsection C(2)(a) of this section and shall have in force a trust fund of not less than the greater of:~~
 - (i) ~~\$5,400,000; or~~
 - (ii) ~~Thirty percent (30%) of the United States surplus lines gross liabilities, excluding aviation, wet marine and transportation insurance liabilities, not to exceed \$60,000,000, to be determined annually on the basis of accounting practices and procedures substantially equivalent to those promulgated by this state, as of December 31 next preceding the date of determination, where:~~
 - (I) ~~The liabilities are maintained in an irrevocable trust account in the United States in a qualified financial institution, on behalf of U.S. policyholders consisting of cash, securities, letters of credit or other investments of substantially the same character and quality as those which are eligible investments pursuant to [cite insurance investment law] for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state. The trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall satisfy the requirements of the Standard Trust Agreement required for listing with the NAIC International Insurers Department; and~~
 - (II) ~~The insurer may request approval from the commissioner to use the trust fund to pay valid surplus lines claims; provided, however, that the balance of the trust fund is never less than the greater of \$5,400,000 or thirty percent (30%) of the insurer's current gross U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance liabilities; and~~
 - (III) ~~In calculating the trust fund amount required by this subsection, credit shall be given for surplus lines deposits separately required and maintained for a particular state or U.S. territory, not to exceed the amount of the insurer's loss and loss adjustment reserves in the particular state or territory;~~

Drafting Note: The commissioner may wish to establish the authority to set a higher level on a case-by-case basis.

- (f) ~~An insurer or group of insurers meeting the requirements to do a surplus lines business in this state at the effective date of this law shall have two (2) years from the date of enactment to meet the requirements of Subparagraph (e), as follows:~~

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Year Following Enactment	Trust Fund Requirement
1	15% of U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maximum of \$30,000,000
2	30% of U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maximum of \$60,000,000.

(g) The commissioner shall have the authority to adjust, in response to inflation, the trust fund amounts required by Subparagraph (e).

(3) In addition to all of the other requirements of this subsection, an insurer not domiciled in the United States or its territories shall be listed by the NAIC International Insurers Department. The commissioner may waive the requirement in Paragraph (3) or the requirements of Section 5C(2)(e)(ii) may be satisfied by an insurer's possessing less than the trust fund amount specified in Section 5C(2)(e)(ii) upon an affirmative finding of acceptability by the commissioner if the commissioner is satisfied that the placement of insurance with the insurer is necessary and will not be detrimental to the public and the policyholder. In determining whether business may be placed with the insurer, the commissioner may consider such factors as:

(a) The interests of the public and policyholders;

(b) The length of time the insurer has been authorized in its domiciliary jurisdiction and elsewhere;

(c) Unavailability of particular coverages from authorized insurers or unauthorized insurers meeting the requirements of this section;

(d) The size of the company as measured by its assets, capital and surplus, reserves, premium writings, insurance in force or other appropriate criteria;

(e) The kinds of business the company writes, its net exposure and the extent to which the company's business is diversified among several lines of insurance and geographic locations; and

(f) The past and projected trend in the size of the company's capital and surplus considering such factors as premium growth, operating history, loss and expense ratios, or other appropriate criteria; and

(4) Has caused to be provided to the commissioner a copy of its current annual statement certified by the insurer and an actuarial opinion as to the adequacy of, and methodology used to determine, the insurer's loss reserves. The statement shall be provided at the same time it is provided to the insurer's domicile, but in no event more than eight (8) months after the close of the period reported upon, and shall be certified as a true and correct copy by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile and certified by a senior officer of the nonadmitted insurer as a true and correct copy of the statement filed with the regulatory authority in the domicile of the nonadmitted insurer. In the case of an insurance exchange qualifying under Paragraph (2)(b) of this subsection, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported; and

Drafting Note: The following paragraph is for use by those states which desire to adopt a "white list" for determining the eligibility of nonadmitted insurers to write surplus lines insurance:

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- (5) ~~In addition to meeting the requirements in Paragraphs (1) to (4) of this subsection an insurer shall be an eligible surplus lines insurer if it appears on the most recent list of eligible surplus lines insurers published by the commissioner from time to time but at least semi-annually. Nothing in this paragraph shall require the commissioner to place or maintain the name of any nonadmitted insurer on the list of eligible surplus lines insurers.~~
- (6) ~~Notwithstanding Section 5A, only that portion of any risk eligible for export for which the full amount of coverage is not procurable from listed eligible surplus lines insurers may be placed with any other nonadmitted insurer which does not appear on the list of eligible surplus lines insurers published by the commissioner pursuant to Paragraph (5) of this subsection but nonetheless meets the requirements set forth in Sections 5C(1) and 5C(2) and any regulations of the commissioner. The surplus lines licensee seeking to provide coverage through an unlisted nonadmitted insurer shall make a filing specifying the amounts and percentages of each risk to be placed, and naming the nonadmitted insurers with which placement is intended. Within [insert number] days after placing the coverage, the surplus lines licensee shall also send written notice to the insured or the producing broker that the insurance, or a portion thereof, has been placed with the nonadmitted insurer.~~

D. Insurance procured under this section shall be valid and enforceable as to all parties.

E. **Withdrawal of Eligibility as a Surplus Lines Insurer**

If at any time the commissioner has reason to believe that a surplus lines insurer:

- (1) ~~Is in unsound financial condition or has acted in an untrustworthy manner;~~
- (2) No longer meets standards set forth in Section 5C of this Act;
- (3) ~~Has willfully violated the laws of this state; or~~
- (4) ~~Does not conduct a proper claims practice.~~

~~The commissioner may declare it ineligible. The commissioner shall promptly mail notice of all such declarations to each surplus lines licensee or surplus lines advisory organization, for distribution to all surplus lines licensees.~~

Drafting Note: Individual states should consider whether such declarations of ineligibility are appropriate in view of the state's other due process and administrative procedure requirements.

F. **Surplus Lines Tax**

- (1) In addition to the full amount of gross premiums charged by the insurer for the insurance, every person licensed pursuant to Section 5H of this Act shall collect and pay to the commissioner a sum equal to [insert number] percent of the gross premiums charged, less any return premiums, for surplus lines insurance provided by the licensee pursuant to the license. Where the insurance covers properties, risks or exposures located or to be performed both in and out of this state, the sum payable shall be computed on that portion of the gross premiums allocated to this state pursuant to Paragraph (4) of this subsection less the amount of gross premiums allocated to this state and returned to the insured. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker, if any. The surplus lines licensee is prohibited from rebating, for any reason, any part of the tax.
- (2) At the time of filing the [insert monthly, quarterly, annual] report as set forth in Subsection R of this section, each surplus lines licensee shall pay the premium tax due for the policies written during the period covered by the report.

Commented [Model 87018]: Except for (2), these constitute additional eligibility criteria contrary to NRRA 524(1)/15 USC 8204(1). Consider drafting a voluntary whitelist provision as an option for states.

Commented [Model 87019]: Conform section to home state taxation and address self-procurement from non-eligible, nonadmitted insurers.

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- (3) ~~If a surplus lines policy procured through a surplus lines licensee covers properties, risks or exposures only partially located or to be performed in this state, the tax due shall be computed on the portions of the premiums which are attributable to the properties, risks or exposures located or to be performed in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state shall be considered written on properties, risks or exposures located or to be performed in this state, except premiums which are properly allocated or apportioned and reported as taxable premiums of a reciprocal state. In no event shall the tax payable to this state be less than the tax due pursuant to Paragraph (4) of this subsection; provided, however, in the event that the amount of tax due under this provision is less than \$50 in any jurisdiction, it shall be payable in the jurisdiction in which the affidavit required in Subsection K of this section is filed. The commissioner shall, at least annually furnish to the commissioner of a reciprocal state, as defined in Section 3L, a copy of all filings reporting an allocation of taxes as required by this subsection.~~
- (4) ~~In determining the amount of gross premiums taxable in this state for a placement of surplus lines insurance covering properties, risks or exposures only partially located or to be performed in this state, the tax due shall be computed on the portions of the premiums which are attributable to properties, risks or exposures located or to be performed in this state and which relates to the kinds of insurance being placed as determined by reference to an allocation schedule duly promulgated in a regulation by the commissioner.~~
- (a) ~~—— If a policy covers more than one classification:~~
- (i) ~~—— For any portion of the coverage identified by a classification on the Allocation Schedule, the tax shall be computed by using the Allocation Schedule for the corresponding portion of the premium;~~
- (ii) ~~—— For any portion of the coverage not identified by a classification on the Allocation Schedule, the tax shall be computed by using an alternative equitable method of allocation for the property or risk;~~
- (iii) ~~—— For any portion of the coverage where the premium is indivisible, the tax shall be computed by using the method of allocation which pertains to the classification describing the predominant coverage.~~
- (b) ~~—— If the information provided by the surplus lines licensee is insufficient to substantiate the method of allocation used by the surplus lines licensee, or if the commissioner determines that the licensee's method is incorrect, the commissioner shall determine the equitable and appropriate amount of tax due to this state as follows:~~
- (i) ~~—— By use of the Allocation Schedule where the risk is appropriately identified in the schedule;~~
- (ii) ~~—— Where the Allocation Schedule does not identify a classification appropriate to the coverage, the commissioner may give significant weight to documented evidence of the underwriting bases and other criteria used by the insurer. The commissioner may also consider other available information to the extent sufficient and relevant, including the percentage of the insured's physical assets in this state, the percentage of the insured's sales in this state, the percentage of income or resources derived from this state, and the amount of premium tax paid to another jurisdiction for the policy.~~

Commented [Model 87020]: With home state taxation there is no need for allocation of premium for tax purposes.

Drafting Note: Subparagraph (b) above may be included in the Act or in a separate regulation at the option of the state. It is highly recommended that the model Allocation Schedule and reporting form be adopted by regulation in conjunction with the adoption of the above language. In order for the model law to work effectively, the allocation schedules used by the states should be as uniform as possible.

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G. Collection of Tax

If the tax owed by a surplus lines licensee under this section has been collected and is not paid within the time prescribed, the same shall be recoverable in a suit brought by the commissioner against the surplus lines licensee and the surety on the bond filed under Subsection H of this section. The commissioner may charge interest at the rate of [insert number] percent per year for the unpaid tax.

H. Surplus Lines Licenses

- (1) A person shall not procure a contract of surplus lines insurance with a nonadmitted insurer unless the person possesses a current surplus lines insurance license issued by the commissioner.
- (2) The commissioner may issue a surplus lines license to a qualified holder of a current property and casualty agent's or broker's or general agent's license but only when the broker or agent has:
 - (a) Remitted the \$[insert amount] annual fee to the commissioner;
 - (b) Submitted a completed license application on a form supplied by the commissioner;
 - (c) Passed a qualifying examination approved by the commissioner, except that all holders of a license prior to the effective date of this Act shall be deemed to have passed such an examination;
 - (d) In the case of a resident agent, filed with the commissioner, and continues to maintain during the term of the license, in force and unimpaired, a bond in favor of this state in the penal sum of \$[insert amount] aggregate liability, with corporate sureties approved by the commissioner. The bond shall be conditioned that the surplus lines licensee will conduct business in accordance with the provisions of this Act and will promptly remit the taxes as provided by law. No bond shall be terminated unless at least thirty (30) days prior written notice is given to the licensee and commissioner;

Drafting note: Under Public Law No. 106-102 (the "Gramm-Leach-Bliley Act"), it is believed that a requirement for a nonresident agent to file a bond may contravene the reciprocity provisions. The requirement for a resident agent to file a bond would not, seemingly, contravene these provisions, and there may be methodologies whereby such resident bonds could become reciprocal between states. Some states have expressed concern that their bonding requirements constitute important consumer protections, and that elimination of these simply to comply with Gramm-Leach-Bliley may result in unintended consequences, and a lack of control over possibly unscrupulous nonresident agents.

- (e) If a resident, established and continues to maintain an office in this state; and
 - (f) Designated the commissioner as agent for service of process, thereby designating the commissioner to be the licensee's true and lawful attorney upon whom may be served all lawful process in a proceeding instituted by or on behalf of an insured or beneficiary arising out of any contract of insurance, and shall signify its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon the licensee.
- (3) A nonresident person shall receive a nonresident surplus lines license if:
 - (a) The person is currently licensed as a surplus lines licensee and in good standing in his or her home state;
 - (b) The person has submitted the proper request for licensure and has paid the fees required by [insert appropriate reference to state law or regulation];
 - (c) The person has submitted or transmitted to the insurance commissioner the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed Uniform Application; and

Commented [Model 87021]: Work with the Producer Licensing (D) Task Force on this issue/subsection and subsection I. Consider implementation of the newly adopted A&H Guideline.

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- (d) The person's home state awards nonresident surplus lines licenses to residents of this state on the same basis.

Drafting Note: In accordance with Public Law No. 106-102 (the "Gramm-Leach-Bliley Act") states should not require any additional attachments to the Uniform Application or impose any other conditions on applicants that exceed the information requested within the Uniform Application.

- (4) The insurance commissioner may verify the person's licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.
- (5) A nonresident surplus lines licensee who moves from one state to another state or a resident surplus lines licensee who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. No fee or license application is required.
- (6) The insurance commissioner shall waive any requirements for a nonresident surplus lines license applicant with a valid license from his or her home state, except the requirements imposed by this subsection, if the applicant's home state awards nonresident surplus lines licenses to residents of this state on the same basis.
- (7) Each surplus lines license shall expire on [insert date] of each year, and an application for renewal shall be filed before [insert date] of each year upon payment of the annual fee and compliance with other provisions of this section. A surplus lines licensee who fails to apply for renewal of the license before [insert date] shall pay a penalty of \$[insert amount] and be subject to penalties provided by law before the license will be renewed.

Drafting Note: States may wish to reference their specific licensing statutes in this section.

Drafting Note: Some states allow surplus lines licensees to hold binding authorities on behalf of eligible surplus lines insurers. States which allow such binding authorities might want to establish minimum standards for the related agreements. In addition, states might want to consider requiring surplus lines licensees with such binding authorities to submit the related agreements to state regulators for review and approval.

I. Suspension, Revocation or Nonrenewal of Surplus Lines Licensee's License

The commissioner may suspend, revoke or refuse to renew the license of a surplus lines licensee after notice and hearing as provided under the applicable provision of this state's laws upon one or more of the following grounds:

- (1) Removal of the resident surplus lines licensee's office from this state;
- (2) Removal of the resident surplus lines licensee's office accounts and records from this state during the period during which the accounts and records are required to be maintained under Subsection Q of this section;
- (3) Closing of the surplus lines licensee's office for a period of more than thirty (30) business days, unless permission is granted by the commissioner;
- (4) Failure to make and file required reports;
- (5) Failure to transmit required tax on surplus lines premiums to this state or a reciprocal state to which a tax is owing;
- (6) Failure to maintain required bond;
- (7) Violation of any provision of this Act; or
- (8) For any cause for which an insurance license could be denied, revoked, suspended or renewal refused under Sections [insert applicable citation].

Commented [Model 87022]: Consider redrafting given the NRRA provision (Section 523) regarding the requirements to participate in NAIC National Producer Database.

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J. Actions Against Eligible Surplus Lines Insurers Transacting Surplus Lines Business

- (1) An eligible surplus lines insurer may be sued upon a cause of action arising in this state under a surplus lines insurance contract made by it or evidence of insurance issued or delivered by the surplus lines licensee. A policy issued by the eligible surplus lines insurer shall contain a provision stating the substance of this section and designating the person to whom the commissioner shall mail process.
- (2) The remedies provided in this section are in addition to any other methods provided by law for service of process upon insurers.

K. Duty to File Evidence of Insurance and Affidavits

Within [insert number] days after the placing of any surplus lines insurance, each producing broker shall execute and each surplus lines licensee shall execute where appropriate, and file a written report regarding the insurance which shall be kept confidential by the commissioner, including the following:

- (1) The name and address of the insured;
- (2) The identity of the insurer or insurers;
- (3) A description of the subject and location of the risk;
- (4) The amount of premium charged for the insurance;
- (5) Such other pertinent information as the commissioner may reasonably require; and
- (6) An affidavit on a standardized form promulgated by the commissioner, as to the diligent efforts to place the coverage with admitted insurers and the results of that effort. The affidavit shall be open to public inspection. The affidavit shall affirm that the insured was expressly advised in writing prior to placement of the insurance that:
 - (a) The surplus lines insurer with whom the insurance was to be placed is not licensed in this state and is not subject to its supervision; and
 - (b) In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

Drafting Note: Surplus lines licensees will frequently communicate with the insured through a producing broker rather than communicate with the insured directly. In preparing affidavit forms, states may wish to recognize that, as a result of communications passing through the producing broker, the surplus lines licensee may not be in a position to affirm, based upon personal knowledge, that the insured received from the producing broker the written information required by this subsection.

L. Surplus Lines Advisory Organizations

- (1) There is hereby created a nonprofit association to be known as the [insert name]. All surplus lines licensees shall be deemed to be members of the association. The association shall perform its functions under the plan of operation established pursuant to Paragraph (3) of this subsection and must exercise its powers through a board of directors established under Paragraph (2) of this subsection. The association shall be supervised by the commissioner. The association shall be authorized and have the duty to:

Drafting Note: The preceding paragraph provides that all surplus lines licensees are “deemed” to be members of the association. Some states, however, may choose not to establish a surplus lines advisory organization; in those states Subsection L would not be necessary.

- (a) Receive, record, and subject to Subparagraph (b) of this paragraph, stamp all surplus lines insurance documents which surplus lines brokers are required to file with the association pursuant to the plan of operation;

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Drafting Note: Subparagraph (a) of this paragraph authorizes the association to receive, record and stamp all surplus lines documents which must be submitted to the association pursuant to the plan of operation. Documents to be submitted to the association for stamping are likely to vary by state.

- (b) Refuse to stamp submitted insurance documents, if the association determines that a nonadmitted insurer does not meet minimum state financial standards of eligibility, or the commissioner orders the association not to stamp insurance documents pursuant to Paragraph (9) of this subsection. The association shall notify the commissioner and provide an explanation for any refusal to stamp submitted insurance documents other than a refusal based upon the order of the commissioner;
 - (c) Prepare and deliver annually to each licensee and to the commissioner a report regarding surplus lines business. The report shall include a delineation of the classes of business procured during the preceding calendar year, in the form the board of directors prescribes;
 - (d) Encourage compliance by its members with the surplus lines law of this state and the rules and regulations of the commissioner relative to surplus lines insurance;
 - (e) Communicate with organizations of agents, brokers and admitted insurers with respect to the proper use of the surplus lines market;
 - (f) Employ and retain persons as necessary to carry out the duties of the association;
 - (g) Borrow money as necessary to effect the purposes of the association;
 - (h) Enter contracts as necessary to effect the purposes of the association; and
 - (i) Provide such other services to its members as are incidental or related to the purposes of the association.
- (2) The association shall function through a board of directors elected by the association members, and officers who shall be elected by the board of directors.
- (a) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The plan of operation shall provide for the election of a board of directors by the members of the association from its membership. The plan of operation shall fix the manner of voting and may weigh each member's vote to reflect the annual surplus lines insurance premium written by the member.
 - (b) The board of directors shall elect officers as provided for in the plan of operation.
- (3) The association shall establish a plan of operation. The plan of operation shall provide for the formation, operation and governance of the association. The plan and any amendments shall be effective upon approval by the commissioner, which shall not be unreasonably withheld or delayed. All association members shall comply with the plan of operation or any amendments to it. Failure to comply with the plan of operation or any amendments shall constitute a violation of the insurance law and the commissioner may issue an order requiring discontinuance of the violation.
- (4) The association shall file with the commissioner:
- (a) A copy of its plan of operation and any amendments to it;
 - (b) A current list of its members revised at least annually;

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- (c) The name and address of a resident of this state upon whom notices or orders of the commissioner or processes issued at the direction of the commissioner may be served; and
 - (d) An agreement that the commissioner may examine the association in accordance with the provisions of Paragraph (5) of this subsection.
- (5) The commissioner shall, at least once in [insert number] years, make or cause to be made an examination of the association. The reasonable cost of an examination shall be paid by the association upon presentation to it by the commissioner of a detailed account of each cost. The officers, managers, agents, and employees of the association may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. The commissioner shall furnish a copy of the examination report to the association and shall notify the association that it may request a hearing within thirty (30) days on the report or on any facts or recommendations contained in it. If the commissioner finds the association to be in violation of this section, the commissioner may issue an order requiring the discontinuance of the violation. A director may be removed from the association's board of directors by the commissioner for cause, stated in writing, after an opportunity has been given to the director to be heard.
- (6) There shall be no liability on the part of and no causes of action of any nature shall arise against the association, its directors, officers, agents or employees for any action taken or omitted by them in the performance of their powers and duties under this section, absent gross negligence or willful misconduct.
- (7) Within [insert number] days after a surplus lines policy is procured, a licensee shall submit to the association for recording and stamping all documents which surplus lines brokers are required to file with the association. Every insurance document submitted to the association pursuant to this subsection shall set forth:
- (a) The name and address of the insured;
 - (b) The gross premium charged;
 - (c) The name of the nonadmitted insurer; and
 - (d) The class of insurance procured.

Drafting Note: The appropriate time limits for submitting documents required for stamping will vary by state.

- (8) It shall be unlawful for an insurance agent, broker or surplus lines broker to deliver in this state any insurance document which surplus lines brokers are required to file with the association unless the insurance document is stamped by the association or is exempt from such requirements. However, a licensee's failure to comply with the requirements of this subsection shall not affect the validity of the coverage.
- (9) The services performed by the association shall be funded by a stamping fee assessed for each premium-bearing document submitted to the association. The stamping fee shall be established by the board of directors of the association from time to time. The stamping fee shall be paid by the insured.
- (10) The commissioner may declare a nonadmitted insurer ineligible and order the association not to stamp insurance documents issued by the nonadmitted insurer and issue any other appropriate order.

Commented [Model 87023]: Consider refinements regarding current state regulation (i.e., stamping offices).

M. Evidence of the Insurance and Subsequent Changes to the Insurance

- (1) Upon placing surplus lines insurance, the surplus lines licensee shall promptly deliver to the insured or the producing broker the policy, or if the policy is not then available, a certificate as described in Paragraph (4) of this subsection, cover note, binder or other evidence of insurance. The certificate described in Paragraph (4) of this subsection, cover note, binder or other evidence of insurance shall be executed by the surplus lines licensee and shall show the description and location of the subject of the insurance, coverages including any material limitations other than those in standard forms, a general description of the coverages of the insurance, the premium and rate charged and taxes to be collected from the insured, and the name and address of the insured and surplus lines insurer or insurers and proportion of the entire risk assumed by each, and the name of the surplus lines licensee and the licensee's license number.
- (2) A surplus lines licensee shall not issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by any eligible surplus lines insurer, or a nonadmitted insurer pursuant to Section 5C(4), unless the licensee has authority from the insurer to cause the risk to be insured, or has received information from the insurer in the regular course of business that the insurance has been granted.
- (3) If, after delivery of any evidence of insurance, there is any change in the identity of the insurers, or the proportion of the risk assumed by any insurer, or any other material change in coverage as stated in the surplus lines licensee's original evidence of insurance, or in any other material as to the insurance coverage so evidenced, the surplus lines licensee shall promptly issue and deliver to the insured or the original producing broker an appropriate substitute for, or endorsement of the original document, accurately showing the current status of the coverage and the insurers responsible for the coverage.
- (4) As soon as reasonably possible after the placement of the insurance, the surplus lines licensee shall deliver a copy of the policy or, if not available, a certificate of insurance to the insured or producing broker to replace any evidence of insurance previously issued. Each certificate or policy of insurance shall contain or have attached a complete record of all policy insuring agreements, conditions, exclusions, clauses, endorsements or any other material facts that would regularly be included in the policy.
- (5) A surplus lines licensee who fails to comply with the requirements of this subsection shall be subject to the penalties provided in this Act.
- (6) The surplus lines licensee shall give the following consumer notice to every person applying for insurance with a nonadmitted insurer. The notice shall be printed in 16-point type on a separate document affixed to the application. The applicant shall sign and date a copy of the notice to acknowledge receiving it. The surplus lines licensee shall maintain the signed notice in its file for a period of five (5) years from expiration of the policy. The surplus lines licensee shall tender a copy of the signed notice to the insured at the time of delivery of each policy the licensee transacts with a nonadmitted insurer. The copy shall be a separate document affixed to the policy.

Notice: 1. An insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. These companies are called "nonadmitted" or "surplus lines" insurers. 2. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. 3. These insurers generally do not participate in insurance guaranty funds created by state law. These guaranty funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised. 4. Some states maintain lists of approved or eligible surplus lines insurers and surplus lines brokers may use only insurers on the lists. Some states issue orders that particular surplus lines insurers can not be used. 5. For additional information about the above matters and about the insurer, you should ask questions of your insurance agent, broker or surplus lines broker. You may also contact your insurance department consumer help line."

Commented [Model 87024]: Revise based on current state requirements.

Nonadmitted Insurance Model Act

Drafting Note: This notice is intended to inform personal lines customers and smaller commercial risks of the nature of the coverage they are purchasing. A state may wish to add language to this statute providing that this notice need not be given to commercial risks meeting defined criteria for size and insurance expertise.

N. Licensee's Duty to Notify Insured

- (1) No contract of insurance placed by a surplus lines licensee under this Act shall be binding upon the insured and no premium charged shall be due and payable until the surplus lines licensee or the producing broker shall have notified the insured in writing, in a form acceptable to the commissioner, a copy of which shall be maintained by the licensee or the producing broker with the records of the contract and available for possible examination, that:
 - (a) The insurer with which the licensee places the insurance is not licensed by this state and is not subject to its supervision; and
 - (b) In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.
- (2) Nothing herein contained shall nullify any agreement by any insurer to provide insurance.

Drafting Note: To ensure the meaningfulness of the notice required by this subsection, the commissioner might want to establish criteria related to readability, type-face and type-size of the notice.

O. Effect of Payment to Surplus Lines Licensee

A payment of premium to a surplus lines licensee acting for a person other than itself in procuring, continuing or renewing any policy of insurance procured under this section shall be deemed to be payment to the insurer, whatever conditions or stipulations may be inserted in the policy or contract notwithstanding.

P. Surplus Lines Licensees May Accept Business from Other Producers

A surplus lines licensee may originate surplus lines insurance or accept such insurance from any other producing broker duly licensed as to the kinds of insurance involved, and the surplus lines licensee may compensate the producing broker for the business.

Q. Records of Surplus Lines Licensee

Each surplus lines licensee shall keep in this state a full and true record of each surplus lines insurance contract placed by or through the licensee, including a copy of the policy, certificate, cover note or other evidence of insurance showing each of the following items applicable:

- (1) Amount of the insurance, risks and perils insured;
- (2) Brief description of the property insured and its location;
- (3) Gross premium charged;
- (4) Any return premium paid;
- (5) Rate of premium charged upon the several items of property;
- (6) Effective date and terms of the contract;
- (7) Name and address of the insured;
- (8) Name and address of the insurer;

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- (9) Amount of tax and other sums to be collected from the insured;
- (10) Allocation of taxes by state as referred to in Subsection F of this section; and
- (11) Identity of the producing broker, any confirming correspondence from the insurer or its representative, and the application.

The record of each contract shall be kept open at all reasonable times to examination by the commissioner without notice for a period not less than five (5) years following termination of the contract. In lieu of maintaining offices in this state, each nonresident surplus lines licensee shall make available to the commissioner any and all records that the commissioner deems necessary for examination.

Drafting Note: States may wish to extend the five-year period prescribed for open access to insurance records because of the long-term nature of this business.

R. Reports—Summary of Exported Business

On or before the end of the month following each [insert month, quarter, year], each surplus lines licensee shall file with the commissioner, on forms prescribed by the commissioner, a verified report in duplicate of all surplus lines insurance transacted during the preceding period, showing:

- (1) Aggregate gross premiums written;
- (2) Aggregate return premiums;
- (3) Amount of aggregate tax remitted to this state; and
- (4) Amount of aggregate tax due or remitted to each other state for which an allocation is made pursuant to Subsection F of this section.

Drafting Note: States desiring to have taxes remitted annually may call for more frequent detailed listing of business.

Section 6. Insurance Independently Procured—Duty to Report and Pay Tax

- A. Each insured in this state who procures or continues or renews insurance with a nonadmitted insurer on properties, risks or exposures located or to be performed in whole or in part in this state, other than insurance procured through a surplus lines licensee, shall, within [insert number] days after the date the insurance was so procured, continued or renewed, file a written report with the commissioner, upon forms prescribed by the commissioner, showing the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged, and additional pertinent information reasonably requested by the commissioner.

For the purposes of this subsection, properties, risks or exposures only partially located or to be performed in this state, which are covered under a multi-state policy placed by a surplus lines licensee in another state, shall be deemed to be insurance independently procured unless the insurer is an admitted insurer.

Drafting Note: Subsection A may need to be revised in those states exempting from taxation insurance procured by nonprofit educational institutions and their employers, from nonprofit educational insurers.

- B. Gross premiums charged for the insurance, less any return premiums, are subject to a tax at the rate of [insert number] percent. At the time of filing the report required in Subsection A of this section, the insured shall pay the tax to the commissioner, who shall transmit the same for distribution as provided in this Act.

Drafting Note: Existing state laws and procedures may require that the tax report be forwarded to another state agency, such as the Department of the Treasury, rather than to the commissioner. In addition, some states may require the tax to be paid on a periodic basis (e.g. annually) rather than at the time of the filing required by Subsection A. Subsections A and B may need to be revised in these states.

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- C. If an independently procured policy covers properties, risks or exposures only partially located or to be performed in this state, the tax payable shall be computed on the portion of the premium properly attributable to the properties, risks or exposures located or to be performed in this state, as set forth in Sections 5F(3) and 5F(4) of this Act.
- D. Delinquent taxes hereunder shall bear interest at the rate of [insert number] percent per year.
- E. This section does not abrogate or modify, and shall not be construed or deemed to abrogate or modify any other provision of this Act.

Section 7. Penalties

- A. A person who in this state represents or aids a nonadmitted insurer in violation of this Act may be found guilty of a criminal act and subject to a fine not in excess of \$[insert amount].

Drafting Note: Some states might want to specify “misdemeanor” or “felony” rather than “criminal act” in Section 7A.

- B. In addition to any other penalty provided herein or otherwise provided by law, including any suspension, revocation or refusal to renew a license, any person, firm, association or corporation violating any provision of this Act shall be liable to a civil penalty not exceeding \$[insert amount] for the first offense, and not exceeding \$[insert amount] for each succeeding offense.
- C. The above penalties are not exclusive remedies. Penalties may also be assessed under [insert citation to trade practices and fraud statute] of the insurance code of this state.

Section 8. Violations

Whenever the commissioner believes, from evidence satisfactory to him or her, that a person is violating or about to violate the provisions of this Act, the commissioner may cause a complaint to be filed in the [insert appropriate court] Court for restitution and to enjoin and restrain the person from continuing the violation or engaging in or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order of judgment awarding such preliminary or final injunctive relief and restitution as in its judgment is proper.

Section 9. Service of Process

- A. Any act of transacting insurance by an unauthorized person or a nonadmitted insurer is equivalent to and shall constitute an irrevocable appointment by the unauthorized person or insurer, binding upon it, its executor or administrator, or successor in interest of the [insert title of appropriate state official] or his or her successor in office, to be the true and lawful attorney of the unauthorized person or insurer upon whom may be served all lawful process in any action, suit or proceeding in any court by the commissioner or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the commissioner and which arises out of transacting insurance in this state by the unauthorized person or insurer. Any act of transacting insurance in this state by a nonadmitted insurer shall signify its acceptance of its agreement that any lawful process in such court action, suit or proceeding and any notice, order, pleading or process in such administrative proceeding before the commissioner so served shall be of the same legal force and validity as personal service of process in this state upon the unauthorized person or insurer.
- B. Service of process in the action shall be made by delivering to and leaving with the [insert title of appropriate state official], or some person in apparent charge of the office, two (2) copies thereof and by payment to the [insert title of appropriate state official] of the fee prescribed by law. Service upon the [insert title of appropriate state official] as attorney shall be service upon the principal.

Drafting Note: Existing state laws and procedures may require that service of process be made upon either the commissioner or another state official.

Commented [Model 87025]: Home state taxation under the NRRA applies to certain self-procured insurance. It may be easier to have all nonadmitted insurance use home state taxation with separate report forms for brokers and self-procurers. Consider clarifying that the rules apply to any non-P&C insurance that is placed in the nonadmitted market.

Commented [DAT26]: Consider surveying the states to develop specific guidance.

Commented [DAT27]: Consider surveying the states to develop specific guidance.

NAIC Model Laws, Regulations, Guidelines and Other Resources—June 2002

- C. The [insert title of appropriate state official] shall forward by certified mail one of the copies of the process or notice, order, pleading or process in proceedings before the commissioner to the defendant in the court proceeding or to whom the notice, order, pleading or process in the administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on the commissioner which shall show the day and hour of service. Service is sufficient, provided:
- (1) Notice of service and a copy of the court process or the notice, order, pleading or process in the administrative proceeding are sent within ten (10) days by certified mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the commissioner in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading or process in the administrative proceeding is addressed or directed at the last known principal place of business of the defendant in the court or administrative proceeding; and
 - (2) The defendant's receipt or receipts issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff's attorney in a court proceeding or of the commissioner in an administrative proceeding, showing compliance are filed with the clerk of the court in which the action, suit or proceeding is pending or with the commissioner in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond, or within such further time as the court or commissioner may allow.
- D. A plaintiff shall not be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process or notice, order, pleading or process in proceedings before the commissioner is served under this section until the expiration of forty-five (45) days from the date of filing of the affidavit of compliance.
- E. Nothing in this section shall limit or affect the right to serve any process, notice, order or demand upon any person or insurer in any other manner now or hereafter permitted by law.
- F. Each nonadmitted insurer assuming insurance in this state, or relative to property, risks or exposures located or to be performed in this state, shall be deemed to have subjected itself to this Act.
- G. Notwithstanding conditions or stipulations in the policy or contract, a nonadmitted insurer may be sued upon any cause of action arising in this state, or relative to property, risks or exposures located or to be performed in this state, under any insurance contract made by it.
- H. Notwithstanding conditions or stipulations in the policy or contract, a nonadmitted insurer subject to arbitration or other alternative dispute resolution mechanism arising in this state or relative to property, risks or exposures located or to be performed in this state under an insurance contract made by it shall conduct the arbitration or other alternative dispute resolution mechanism in this state.

Drafting Note: Provisions of a state's constitution, statutes, regulations, and public policy may necessitate amendment of the prior subsection.

- I. A policy or contract issued by the nonadmitted insurer or one which is otherwise valid and contains a condition or provision not in compliance with the requirements of this Act is not thereby rendered invalid but shall be construed and applied in accordance with the conditions and provisions which would have applied had the policy or contract been issued or delivered in full compliance with this Act.

Section 10. Legal or Administrative Procedures

- A. Before any nonadmitted insurer files or causes to be filed any pleading in any court action, suit or proceeding or in any notice, order, pleading or process in an administrative proceeding before the commissioner instituted against the person or insurer, by services made as provided in this Act, the insurer shall either:

Commented [DAT28]: Consider surveying the states to develop specific guidance.

Nonadmitted Insurance Model Act

- (1) Deposit with the clerk of the court in which the action, suit or proceeding is pending, or with the Commissioner of Insurance in administrative proceedings before the commissioner, cash or securities, or file with the clerk or commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in the action or administrative proceeding; or
 - (2) Procure a certificate of authority to transact the business of insurance in this state. In considering the application of an insurer for a certificate of authority, for the purposes of this paragraph the commissioner need not assert the provisions of [insert sections of insurance laws relating to retaliation] against the insurer with respect to its application if the commissioner determines that the company would otherwise comply with the requirements for a certificate of authority.
- B. The Commissioner of Insurance, in any administrative proceeding in which service is made as provided in this Act, may in the commissioner's discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of Subsection A of this section and to defend the action.
- C. Nothing in Subsection A of this section shall be construed to prevent a nonadmitted insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in this Act, on the ground that the nonadmitted insurer has not done any of the acts enumerated in the pleadings.
- D. Nothing in Subsection A of this section shall apply to placements of insurance which were lawful in the state in which the placement took place and which were not unlawful placements under the laws of this state. Without limiting the generality of the foregoing, nothing in Subsection A shall apply to a placement made pursuant to Section 5 of this Act.

Section 11. Enforcement

The commissioner shall have the authority to proceed in the courts of this state or any other United States jurisdiction to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner of Insurance.

A. **Filing and Status of Foreign Decrees**

A copy of a foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any [insert proper court] Court of this state. The clerk, upon verifying with the commissioner that the decree or order qualifies as a "foreign decree" shall treat the foreign decree in the same manner as a decree of a [insert proper court] Court of this state. A foreign decree so filed has the same effect and shall be deemed a decree of a [insert proper court] Court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a decree of a [insert proper court] Court of this state and may be enforced or satisfied in like manner.

B. **Notice of Filing**

- (1) At the time of the filing of the foreign decree, the plaintiff shall make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant.
- (2) Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the commissioner of this state and shall make a note of the mailing in the docket. In addition, the plaintiff may mail a notice of the filing of the foreign decree to the defendant and to the commissioner of this state and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the plaintiff has been filed.

Commented [DAT29]: Consider surveying the states to develop specific guidance.

NAIC Model Laws, Regulations, Guidelines and Other Resources—June 2002

- (3) No execution or other process for enforcement of a foreign decree filed hereunder shall issue until thirty (30) days after the date the decree is filed.

Drafting Note: This section presumes that the commissioner has authority to proceed without the cooperation of the state's attorney general. Governing state laws might require that a person other than the commissioner or the attorney general serve as the plaintiff. The title of that person shall be substituted for "commissioner" or "plaintiff" in Section 11 whenever required by state law.

C. Stay of the Foreign Decree

- (1) If the defendant shows the [insert proper court] Court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.
- (2) If the defendant shows the [insert proper court] Court any ground upon which enforcement of a decree of any [insert proper court] Court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

- D. It shall be the policy of this state that the insurance commissioner shall cooperate with regulatory officials in other United States jurisdictions to the greatest degree reasonably practicable in enforcing lawfully issued orders of such other officials subject to public policy and the insurance laws of the state. Without limiting the generality of the foregoing, the commissioner may enforce an order lawfully issued by other officials provided the order does not violate the laws or public policy of this state.

Section 12. Suits by Nonadmitted Insurers

A nonadmitted insurer may not commence or maintain an action in law or equity, including arbitration or any other dispute resolution mechanism, in this state to enforce any right arising out of any insurance transaction except with respect to:

- A. Claims under policies lawfully written in this state;
- B. Liquidation of assets and liabilities of the insurer (other than collection of new premium), resulting from its former authorized operations in this state;
- C. Transactions subsequent to issuance of a policy not covering domestic risks at the time of issuance, and lawfully procured under the laws of the jurisdiction where the transaction took place;
- D. Surplus lines insurance placed by a licensee under authority of Section 5 of this Act;
- E. Reinsurance placed under the authority of [insert citations of state's reinsurance intermediary act and other reinsurance laws];
- F. The continuation and servicing of life insurance, health insurance policies or annuity contracts remaining in force as to residents of this state where the formerly authorized insurer has withdrawn from the state and is not transacting new insurance in the state;
- G. Servicing of policies written by an admitted insurer in a state to which the insured has moved but in which the company does not have a certificate of authority until the term expires;
- H. Claims under policies covering wet marine and transportation insurance;
- I. Placements of insurance which were lawful in the jurisdiction in which the transaction took place and which were not unlawful placements under the laws of this state.

Drafting Note: Provisions of a state's constitution, statutes, regulations, and public policy may necessitate amendment of the opening paragraph of this section.

Nonadmitted Insurance Model Act

Section 13. Separability of Provisions

If any provisions of this Act, or the application of the provision to any person or circumstance, shall be held invalid, the remainder of the Act and the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 14. Effective Date

This Act shall take effect [insert appropriate date].

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1994 Proc. 3rd Quarter 14, 16-17, 24, 28-46 (adopted).
 1996 Proc. 3rd Quarter 9, 42, 1110, 1168, 1169-1173, 1189-1190 (amended).
 1997 Proc. 4th Quarter 25, 27-28, 1004, 1029 (amended).
 1999 Proc. 3rd Quarter 25, 26, 1080, 1135, 1151-1153 (amended).
 2002 Proc. 2nd Quarter 14, 250-251, 344, 347, 349-350 (amended).

This model draws from and replaces three earlier NAIC models:

Model Surplus Lines Law

1983 Proc. I 6, 36, 834, 900, 913-922 (adopted).
 1985 Proc. II 11, 24, 702, 722, 723-724 (amended).
 1986 Proc. I 9-10, 24, 799, 813, 814-821 (amended).
 1990 Proc. I 6, 30, 840-841, 897-898, 900-901 (amended).
 1991 Proc. I 9, 18, 908, 949, 950, 952-961 (amended and reprinted).

Unauthorized Insurers Model Act

1969 Proc. I 168, 218, 222-227, 271 (adopted).
 1978 Proc. I 13, 15, 348, 350 (amended).
 1990 Proc. II 7, 13-14, 159-160, 187-191 (amended and reprinted).

Model Nonadmitted Insurance Act

1983 Proc. I 6, 36, 834, 899-900, 923-926 (adopted).

REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC's Executive Committee is required. The NAIC's Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is: ☐ New Model Law or ☒ Amendment to Existing Model

1. Name of group to be responsible for drafting the model:

Surplus Lines (C) Task Force

2. NAIC staff support contact information:

Andy Daleo, Senior Financial Analysis Manager (adaleo@naic.org)

Dan Schelp, Chief Counsel, Regulatory Affairs (dschelp@naic.org)

3. Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.

Nonadmitted Insurance Model Act (#870) – See Attached

On August 5, 2020, the Surplus Lines (C) Task Force discussed revisions to Model #870, and directed NAIC staff to form an informal Drafting Group composed of regulators from Louisiana, Oklahoma and Washington to produce a summary document that outlines the significant updates to modernize Model #870 and present a recommendation to the Task Force at a future national meeting. The attached Model #870 contains the Drafting Group's recommendations with respect to modification of Model #870.

4. Does the model law meet the Model Law Criteria? ☒ Yes or ☐ No (Check one)

(If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states? ☒ Yes or ☐ No (Check one)

If yes, please explain why

The *Nonadmitted Insurance Model Act* (#870) has been adopted in 31 states, with other states adopting older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. Every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have surplus lines guidance in place.

The *Nonadmitted and Reinsurance Reform Act* (NRRA) was adopted July 21, 2011, and is contained within the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Act). The NRRA requirements and the mandate of the federal Act create uniformity for the collection of surplus lines tax payments through the implementation of the "Home State" requirement. All states comply with the NRRA's home state tax approach.

Model 870 was not modified because of the implementation of the NRRA. However, on October 11, 2011, a *Nonadmitted Insurance Reform Sample Bulletin* (copy attached) was adopted by Executive/Plenary and subsequently distributed to the state insurance departments. It is important to provide guidance for uniformity among the states in order to ensure compliance with the NRRA.

- b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?

☒ Yes or ☒ No (Check one)

5. What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: Due to the previous adoption of the *Nonadmitted Insurance Reform Sample Bulletin* by the NAIC, there is already uniformity of intent with respect to key areas addressed by the NRRA. The Surplus Lines (C) Task Force should be able to leverage that agreement to quickly and efficiently finish revisions to Model #870.

6. What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: Surplus Lines is an important industry in every state and U.S. Territory, and it is important to provide uniform guidance to the NAIC members to ensure compliance with the federal NRRA.

7. What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: Model #870 is not an accreditation requirement, but as previously stated it is important to provide uniform guidance to the states to ensure compliance with the NRRA.

8. Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?

No

9. Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.

Yes, the proposed revisions to Model #870 are in direct response to the federal NRRA, which would preempt inconsistent state law.



MEMORANDUM

TO: Surplus Lines (C) Task Force

FROM: NAIC Legal Division

DATE: November 3, 2020

RE: NAIC Trust Agreement for Alien Excess or Surplus Lines Insurers

Summary

The current *International Insurers Department Plan of Operation* provides for Core Requirements and Guidelines for Inclusion on the NAIC *Quarterly Listing of Alien Insurers*. Specifically, Section II.B provides the following guidance with respect to the NAIC Trust Agreement for Alien Excess or Surplus Lines Insurers (Attached):

In establishing its trust fund, an insurance company 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.

NAIC staff recently became aware of a situation of a company that was last included on the *Quarterly Listing of Alien Insurers* in 2012 and wanted to terminate its IID Trust Agreement, but was experiencing issues in doing so. The company had no outstanding claims, and had a Statement of Actuarial Opinion showing a \$0.00 reserve, which was based on the assumption that the last policy had expired on March 31, 2013, there had only been one claim during the time period which was now closed and not subject to reopen, and the exposures are property related exposures mainly from catastrophes. The company had also entered into a Loss Portfolio Transfer Contract and Quota Share Reinsurance Agreement which covered 100 percent of the past and future liabilities related to the company's existing business, including surplus lines. However, issues arose regarding the termination of this trust based on the following language contained in the IID Trust Agreement:

2.1 Duration of Trust Fund. The Trust Fund shall be irrevocable and remain in full force and effect for a period of at least five years and may be terminated only upon the occurrence of any of the following events:

(a) The passage of five (5) years from the date of written notice to the Trustee of the termination of the Trust.

(b) The expiration of sixty (60) days after the Company has sent written notice to the Trustee by certified mail return receipt requested that it: (i) has become qualified and licensed to conduct an insurance business in all States where it has direct insurance in force; or, (ii) has entered into an assumption and assignment agreement transferring all liability with respect to all risks covered by this Trust Fund to an insurer licensed to do an insurance business in such states or an insurer listed by the IID.

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Specifically, the company had not given a 5-year notice to the Trustee of the termination of the Trust.

Recommendation

The NAIC Legal Division recommends that the Surplus Lines (C) Task Force consider revisions to the current IID Trust Agreement to provide greater flexibility for the termination of a Trust Agreement in those cases where there are for practical purposes no present or future liabilities to the Trust. Some revisions that might be considered include the following proposed factors:

- A Statement of Actuarial Opinion or report of certified public accountant to the effect that there are no reserves applicable to the Trust;
- The company has taken reasonable steps to insure the payment of present or future claims; e.g., the entry into a 100 percent Quota Share Reinsurance Agreement; or
- Discretion by the IID to provide recommendations to the Trustee on the termination of the Trust based upon unique fact occurrences.

In addition to Section 2.1 of the IID Trust Agreement, the Task Force should also consider any appropriate revisions to Section 2.14 – Trustee’s Duties Upon Termination of Trust Fund. The Task Force may also wish to consider revisions to other sections within the Trust that may require modification, including the following (this should not be considered a complete list of all possible sections that may require update):

- **Article 1 – Definitions.** Several definitions require update and/or deletion. For example, the term “Qualified United States Financial Institution” should match the definition found in the most recent IID Plan of Operation.
- **Article 2.8 – Letters of Credit.** Consider improving language around the use of letters of credit as a trust asset, such as the integration of the term “evergreen” to ensure the letter of credit does not lapse.
- **Article 3.7 – Trustee’s Fees and Expenses.** Review this section and determine whether the stated amounts of \$250,000 or 10% of the value of the trust are still considered to be reasonable under current practices.
- **Use of Certified Mail.** Throughout the document there are numerous references to the use of certified mail in conducting business and in some cases this business may be completed via electronic communications or other means.

Conclusion

The NAIC Legal Division recommends that the Surplus Lines Task Force refer this memorandum to the Surplus Lines Working Group for further consideration and report back to the Task Force at a future meeting.

**NAIC
STANDARD FORM
TRUST AGREEMENT FOR ALIEN EXCESS OR SURPLUS LINES INSURERS**
(As Amended January 1, 2007)

This Agreement, dated _____, effective as of _____ between _____, organized and existing under the _____, its country of domicile and having its head office at _____ (“Company”), and _____, a (banking corporation/national banking association) organized and existing under the laws of _____ (“Trustee”); having its principal offices at _____.

WITNESSETH:

WHEREAS the Company is engaged in the insurance business in its country of domicile and has or will have Policyholders in the United States of America as a result of writing insurance on an excess or surplus lines basis on risks therein; and

WHEREAS the Company desires to establish a trust fund in the United States as security for said Policyholders and Third Party Claimants and to qualify as an eligible or approved excess or surplus lines insurer therein; and

WHEREAS, the Trustee is willing to act as Trustee of such trust fund; and

WHEREAS, the Trustee agrees to administer such trust fund principally from its office in the City of _____ and the State of _____.

NOW, THEREFORE, the Company has transferred to the Trustee cash in U.S. currency, Letters of Credit, Readily Marketable Securities, or any combination thereof, valued at a total of not less than the Trust Fund Minimum Amount as defined in Paragraph 2.7 of this Agreement on the date hereof, receipt of which the Trustee hereby acknowledges and agrees to hold in trust for the uses and on the conditions hereinafter set forth:

ARTICLE 1
DEFINITIONS

The following terms used herein shall, unless the context otherwise requires, have the following meanings:

1.1 “AMERICAN POLICY” means any contract or policy of insurance issued or any agreement to insure made by the Company pursuant to the excess or surplus lines laws of any state, district, territory, commonwealth or possession of the United States in which the Company is not licensed to do an insurance business, provided that such Policies shall not include reinsurance or life insurance.

1.2 “CLAIM” means either or both of the following:

(a) a claim against the Company by a Policyholder, as defined in paragraph 1.9, or Third Party Claimant for a loss under an American Policy excluding punitive or exemplary damages awarded to or against a Policyholder and also excluding any extracontractual obligations not expressly covered by the American Policy (“Loss”) or;

(b) a claim against the Company by a Policyholder for the return of unearned premium (“Unearned Premium”) under an American Policy.

1.3 “DOMICILIARY COMMISSIONER” shall mean the Chief Regulatory Officer for Insurance in any state, territory, district, commonwealth or possession of the United States in which the Trust Fund is principally administered, identified on page one of this Agreement.

1.4 “EFFECTIVE DATE” shall mean the date as of which this Agreement is effective as specified on page one of this Agreement.

1.5 “IID” shall mean the International Insurers Department of the National Association of Insurance Commissioners (“NAIC”).

1.6 “LETTER OF CREDIT” means a clean, unconditional, irrevocable Letter of Credit issued or confirmed by a Qualified United States Financial Institution.

1.7 “MATURED CLAIM” means a Claim which is enforceable against the Trust Fund as provided for in Paragraph 2.3 of this Agreement.

1.8 “NON-DOMICILIARY COMMISSIONER” shall mean the Chief Regulatory Officer for Insurance other than the Domiciliary Commissioner in any state, territory, district, commonwealth or possession of the United States in which the Company has Policyholders and who has provided the Trustee with written notice that he or she requires any notification required to be made to the Domiciliary Commissioner pursuant to this agreement.

1.9 “POLICYHOLDER” for the purposes of this Agreement, shall mean the holder of an American Policy resident or doing business in the United States, and any other persons or associations who are assignees, pledgees, or mortgagees named therein.

1.10 “QUALIFIED UNITED STATES FINANCIAL INSTITUTION” means an institution that:

(a) Is organized and licensed (or in the case of a U.S. office of a foreign banking organization, licensed) under the laws of the United States or any state thereof; and,

(b) Is regulated, supervised and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by the Securities Valuation Office of the NAIC as an acceptable financial institution; and

(d) Has been granted authority to operate with trust powers, if such qualified United States financial institution is to act as the fiduciary of the trust.

1.11 “READILY MARKETABLE SECURITIES” means securities readily marketable on regulated United States national or principal regional security exchanges or those determined by the Securities Valuation Office of the NAIC to warrant an NAIC designation of 1 or 2.

1.12 “RECEIVER” shall mean for purposes of this Agreement, the Domiciliary Commissioner or such other person as may be appointed by a court of competent jurisdiction or designated by the statute of a state, territory, district, commonwealth or possession of the United States.

1.13 “THIRD PARTY CLAIMANT” is one not a party to the insurance contract but having a final judgment against the Company for claims arising from an American Policy.

1.14 “TO TRANSMIT” or “TRANSMITTED” shall mean to send by telex, teletype, facsimile, modem or other similar means of electronic communication

1.15 “TRUST FUND” or “TRUST” means the cash, readily marketable securities and letters of credit, or any combination thereof, in the actual and sole possession of the Trustee and held under the provisions of this Agreement.

1.16 “U.S. REPRESENTATIVE” shall mean the individual or firm designated by the Company or its successor in interest to act on behalf of the company.

ARTICLE 2 THE TRUST

2.1 Duration of Trust Fund. The Trust Fund shall be irrevocable and remain in full force and effect for a period of at least five years and may be terminated only upon the occurrence of any of the following events:

(a) The passage of five (5) years from the date of written notice to the Trustee of the termination of the Trust.

(b) The expiration of sixty (60) days after the Company has sent written notice to the Trustee by certified mail return receipt requested that it: (i) has become qualified and licensed to conduct an insurance business in all States where it has direct insurance in force; or, (ii) has entered into an assumption and assignment agreement transferring all liability with respect to all risks covered by this Trust Fund to an insurer licensed to do an insurance business in such states or an insurer listed by the IID. Such written notice submitted to the Trustee by the Company shall include a list of all states in which the Company has American Policies in force as certified by the Company or U.S. representative.

The Trustee shall notify the IID and the Insurance Commissioners of said States in writing of its receipt of a notice as provided for in Subparagraphs (a) or (b) of this paragraph within thirty (30) days of receipt of such notice from the Company.

2.2 Priority of Payments Out of Trust Fund. The Trust Fund shall be exclusively available first for the payment of all expenditures and fees under Paragraph 3.7 of this Agreement including legal fees and expenses actually incurred by or on behalf of the Trustee in connection with its administration, preservation or conservation of the Trust ("Trustee Priority Claims"); provided, however, that this amount shall not exceed \$250,000 or 10% of the value of the Trust, whichever is less. Any amount in excess of the amount necessary to satisfy Trustee Priority Claims shall be available for the payment of Matured Claims, provided, however, that Losses shall always take priority over Unearned Premium in the payment of Claims so that the Trustee shall pay all Matured Claims for Losses in full prior to payment of any part of a Matured Claim for Unearned Premium. The Trustee shall pay a Matured Claim for Unearned Premium after receipt of a Claim for Losses which has not yet become a Matured Claim for any reason.

2.3 When Claims Become Enforceable Against the Trust. Subject to the payment of Trustee Priority Claims and to the priority of Losses over Unearned Premium, a Claim against the Company shall be enforceable against the Trust Fund when all of the following five conditions have been satisfied:

(a) The Policyholder or Third Party Claimant has obtained a judgment against the Company in any court of competent jurisdiction within the United States of America or has obtained a binding arbitration award in respect of the Company's liability under an American Policy;

(b) Such judgment has become final in the sense that the particular litigation has been concluded, either through failure to appeal within the time permitted therefor or through final disposition of any appeal or appeals that may be taken, the word "appeal" being used herein to include any similar procedure for review permitted by applicable law;

(c) The service upon the Trustee of a certified copy of said judgment, together with such proof as to its finality as the Trustee may reasonably request;

(d) Certified written statements from the Policyholder, Third Party Claimant or their legal counsel stating, without qualification other than with respect to the passage of the time period described in Paragraph 2.3(e) hereof, that the Claim does not include exemplary or punitive damages, what part of the Claim, if any, is for Unearned Premium and that the Policyholder or Third Party Claimant has complied with all of the provisions set forth in Subparagraphs (a), (b), (c) and (d) of this paragraph; and

(e) The expiration of a period of thirty (30) days from the date of the service upon the Trustee of said certified copy of said judgment and all of said proofs without such judgment having been satisfied; provided, however, that in the event that the termination date of the Trust is less

than thirty (30) days following such date of service, the expiration of the period of time equal to the amount of time left before the day before the termination date of the Trust.

A Claim which has satisfied each of the above five conditions shall be deemed to be a Matured Claim. The Trustee shall determine that the above conditions have been met on the basis of the evidence specified above and shall be held harmless in relying upon such evidence in its determination. Such determination shall be conclusive and binding upon all parties. Any Matured Claim shall, subject to Article 4, be paid by the Trustee by check mailed to the address of the Policyholder or Third Party Claimant solely out of the Trust Fund then in its actual and sole possession, without regard to the rights of any other Policyholder, unless the judgment shall be with respect to a Matured Claim for return of Unearned Premium in which case payment by the Trustee shall be made in accordance with the priorities stated above in Paragraph 2.2. The Trustee shall promptly notify the Company in writing of the receipt of a Claim which has been determined by the Trustee to meet conditions (a) through (d) of this paragraph and of the amount thereof. If a Matured Claim would, if paid, reduce the Trust Fund below the Trust Fund Minimum Amount as defined in Paragraph 2.7, or, if the Trustee has received notice that the Company is declared or deemed insolvent as set forth in Paragraph 4.1, then Article 4 shall govern the distribution of the Trust Fund. A Matured Claim which, if paid, would reduce the amount of the Trust Fund below the Trust Fund Minimum Amount shall only be paid in accordance with the provisions of Article 4 of this Agreement. The Trustee shall notify the IID, the Domiciliary Commissioner and the Non-Domiciliary Commissioner within ten (10) days of the Trustee's receipt of any Matured Claim that would reduce the Trust Fund below the Trust Fund Minimum Amount as set forth in Paragraph 2.7. In determining whether payment of a Matured Claim would reduce the amount of the Trust Fund below the Trust Fund Minimum Amount, the Trustee shall rely upon the value of the Trust Fund as established at its most recent valuation as provided for in Paragraph 2.13 of this Agreement.

2.4 Limitations of Policyholder's Source of Recovery. No Policyholder or Third Party Claimant shall have any right of any nature or description under this Agreement to seek to enforce a Claim or otherwise bring an action against the Trustee in respect of any assets of the Trustee or of any assets other than those in the Trust Fund. No Policyholder or Third Party Claimant, even after its Claim has become a Matured Claim, may require an accounting from the Trustee or inquire into the administration of the Trust, question any of the Trustee's acts or omissions or otherwise enforce this Agreement, the sole right of such Policyholder or Third Party Claimant under this Agreement being to receive the amount of its Claim after it has become a Matured Claim from the assets then in the Trust Fund and available for such payment under this Agreement.

2.5 Sale of Trust Assets. Unless otherwise directed in writing by the Company, the Trustee shall retain the specific assets of the Trust Fund. Subject to the terms of this Agreement, at the time a Matured Claim becomes payable by the Trustee from the Trust Fund, payment shall be effected in accordance with the Company's written instructions or, if no such instructions are received by the Trustee at least ten (10) days prior to the expiration of the time period set forth in Paragraph 2.3(e), then as follows: (i) first from any cash in the Trust Fund; (ii) then, from the proceeds of the sale by the Trustee of any or all of the Readily Marketable Securities or other investments (other than Letters of Credit) in the Trust Fund; (iii) then, any other assets or other property in the Trust Fund other than the Letters of Credit; (iv) then, from drawings against any

Letters of Credit. Subject only to the provisions set forth in the previous sentence, the Trustee in its sole discretion, may sell all or part of the Trust Fund, in any order it elects, needed to effect timely payment of any Matured Claims. The Trustee shall not be liable, except as provided by paragraph 3.11, for any loss incurred in the sale of assets or for its selection of the assets to be sold, and shall only be obligated to sell such assets at the market price then available to the Trustee.

2.6 Management of Trust Fund.

The responsibility for making investments of the Trust Fund shall, for the duration of the trust, repose with the Company and unless and until otherwise directed by the Company in writing, the Trustee shall not be required to take any action in regard to investments and property held in the Trust other than to collect the interest and dividends or other sums payable thereon. Unless otherwise requested in writing by the Company, and subject only to the provisions of Paragraph 2.5, the Trustee shall retain any and all assets of the Trust held by it from time to time hereunder, notwithstanding that the same may not be recognized as legal investments for trust funds under the laws of the state where the Trust Fund is administered or other applicable law.

The Trustee shall deposit the assets of the Trust Fund, except to the extent the Trust Fund consists of Letters of Credit, or any part thereof, in one or more such banks (which may include the Trustee) or trust companies in the United States of America, or invest and reinvest the Trust Fund, except to the extent the Trust Fund consists of Letters of Credit, or any part thereof, in any such stocks, bonds and securities as the Company shall direct in writing, notwithstanding that such Investments may not be recognized by the laws of the state where the Trust Fund is administered or other applicable law as legal investments for trust funds.

The Domiciliary Commissioner and the Chief Regulatory Officer for Insurance in any other state, territory, district, commonwealth or possession of the United States where the Company is eligible for excess or surplus lines shall have the right to review the assets in the trust to determine whether such assets are acceptable.

Nothing herein contained is intended to relieve the Company from furnishing investments in the Trust Fund of the quality required by the Surplus Lines or Excess Lines Laws of all states where the Trust Fund is required as a condition of the Company's eligibility. Each investment instruction from the Company shall be a representation by the Company that the investments specified therein meet such conditions and the conditions imposed by the definitions set forth in this Agreement. The Trustee shall also make or change any deposits and sell and dispose of any negotiable assets of the Trust, other than Letters of Credit, by and with the direction in writing of the Company. The Trustee shall be under no duty to give any investment advice to any person in connection with the Trust Fund but shall always, provided the Trustee itself shall have received actual notice thereof, notify the Company as to any rights to conversion, subscription, voting or other rights pertaining to any investments held in the Trust Fund and of any default in the payment of principal or interest. The Company shall have the full, unqualified right to vote and execute consents and to exercise any and all proprietary rights, not inconsistent with this Trust Agreement, with respect to any of the property forming a part of the Trust Fund. All interest, dividends and other income resulting from the investment of the property in the Trust Fund (subject to the Company's obligation to maintain the Trust Fund Minimum Amount and to the Trustee's interests provided herein) shall be the property of the Company. To the extent the Company shall be entitled to receive such income,

Trustee shall collect and pay it to the Company, upon the Company's written instructions, not more frequently than monthly, provided, however, that the Trustee shall have no obligation with respect to the payment of income by the issuer of any security.

2.7 Trust Fund Minimum Amount and Quality. The Company, either directly or through its U.S. representative, shall provide the Trustee with written notice of the minimum amount which the Company is required by law to maintain in the Trust Fund ("Trust Fund Minimum Amount"). The Company may amend the Trust Fund Minimum Amount from time to time by providing the Trustee with advance written notice thereof. In no event, however, may the Trust Fund Minimum Amount be less than the amount determined by the funding provisions contained in Section V. B(i) of the IID Plan of Operation or its successor provision.

If the Company is transacting business in California, the Trust Fund Minimum Amount must consist of cash or readily marketable securities acceptable to the California Insurance Commissioner which are authorized pursuant to Sections 1170 to 1182, inclusive, of the California Insurance Code, and are listed on a regulated United States national or principal regional security exchange, or letters of credit acceptable to the California Insurance Commissioner and issued by a qualified United States financial institution.

If the Company is not transacting business in California, the Trust Fund Minimum Amount must consist of cash, readily marketable securities or letters of credit issued by a qualified United States 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.

2.8 Letters of Credit. In the event that the assets of the Trust Fund consist in whole or in part of a Letter of Credit (which Letter of Credit may be issued by the Trustee or an affiliate in its commercial and not its trust capacity) and said Letter of Credit shall bear a termination date prior to any stated or noticed termination date of the Trust, the Trustee shall, in the absence of notice at least thirty (30) days in advance of any termination of the Letter of Credit that the Letter of Credit will be renewed or extended, draw down and convert such Letter of Credit to cash and hold the same as assets of the Trust Fund pursuant to the terms hereof.

2.9 Contributions to the Trust Fund. The Company may make further contributions to the Trust Fund from time to time which further contributions shall be subject to the terms and conditions hereof.

2.10 Withdrawal of Excess Funds. From time to time the Company may direct the Trustee in writing to pay over to the Company any funds in excess of the Trust Fund Minimum Amount set forth in Paragraph 2.7.

2.11 Trustee's Authority to Hold Investments. Legal title to the assets of the trust shall be vested in the Trustee for the benefit of the Company's American Policyholders and Third Party Claimants

in accordance with the provisions of this Trust. Trustee may hold any investments or other assets thereunder in the name of a nominee. The term “hold” shall include Trustee’s authority to deposit any part or all of the aforesaid property, which consists of securities in registered or unregistered form, at a Federal Reserve Bank under federal book entry procedure, a depository trust company or other centralized securities depository system, whether now or hereafter organized (one or all herein called “CSDS”). All securities in registered form are to be registered in the name of a nominee of Trustee or CSDS.

2.12 Assets of the Trust. Trustee shall be under no duty or obligation to require the Company to make any transfers or payments of additional assets to the Trust and it shall be conclusively presumed that any and all such transfers or payments to Trustee have been properly made.

2.13 Trustee to Certify Trust Assets.

(a) Whenever reasonably required by the Company, but not less often than annually and not more often than quarterly, Trustee shall prepare and submit to the Company a statement of the assets in the Trust and such other information as may be agreed upon between the Company and the Trustee.

(b) Trustee shall promptly certify the existence of the Trust Fund and the assets and their market valuation on the effective date of this instrument and quarterly thereafter, to the IID and the Domiciliary Commissioner. Such notification shall be made within thirty (30) days after the effective date of the end of each calendar quarter.

In addition, Trustee shall certify the existence and most recent value of the Trust Fund whenever so directed by IID, the Company, its U.S. representative, the Domiciliary Commissioner or any Non-Domiciliary Commissioner. Whenever the Trustee in the performance of its duties thereunder shall be required to value the assets of the Trust Fund, it may employ an agent for such valuation and the Company shall reimburse Trustee for any costs or expenses of valuations performed either by the Trustee or such agent. In the absence of the filing in writing with the Trustee by the Company of exceptions to any such statement within sixty (60) days, approval of such statement shall be deemed to have been given; and in such case or upon written approval, the Trustee shall be released, relieved and discharged with respect to all matters set forth in such statement as though such account had been settled in a court of competent jurisdiction in a proceeding where all parties having a beneficial or regulatory interest in the Trust were parties.

2.14 Trustee’s Duties Upon Termination of Trust Fund.

(a) In the event of termination in accordance with Paragraph 2.1, the Company shall appoint either a qualified, certified public accountant or a qualified actuary with the consent of the Trustee, which consent shall not be unreasonably withheld, as auditor and an independent audit shall be made as of the date of such termination of the Trust Fund and the Company’s estimate of the outstanding liability, if any, of the Company for incurred and unpaid losses (both reported and unreported) and Unearned Premium on American Policies issued during the term of the Trust and up to and including the date of termination. The Company shall present to the Trustee such audit report together with a true and correct copy of the auditor’s practicing certificate or equivalent document issued by the authority governing the licensing or conduct of the auditor. If the auditor’s practicing certificate or equivalent document is unavailable, then the Trustee, upon the request of

the Company, shall submit a request for the written approval of the auditor from the Domiciliary Commissioner. Approval of the auditor shall be deemed given if the Domiciliary Commissioner does not object to such auditor in writing to the Company and the trustee within 90 days from the date of delivery of such request. The auditor shall upon the completion of such audit, and from time to time thereafter, at the request of the Trustee, issue a report to the Trustee expressing an opinion on the amount of any such outstanding liability at the date of such termination or at such later date specified in such report. The Trustee shall be protected in acting or relying upon any report of said auditor and shall have the right to retain such assets in the Trust Fund as may be necessary, in the Trustee's sole discretion, and the Trustee shall pay or cause to be paid therefrom the amount of any such Losses in the manner provided in Paragraph 2.3. Upon the termination of the Trust and the payment of any fees and expenses of the Trustee provided for thereunder due and owing, the Trustee shall transfer, pay over and deliver to the Company the income and principal of the Trust's assets then in its actual and sole possession, or the balance thereof then remaining if Losses are to be paid according to the report of the auditor, and such payment, transfer and delivery shall constitute a full, final and sufficient release, discharge and acquittance to the Trustee in respect thereof.

b) No officer of the Trustee shall recognize the audit report of either a certified public accountant or a qualified actuary, nor accept any annual audited financial report if such officer has actual knowledge that such audit report was prepared in whole or in part by any natural person who: (i) has been convicted of fraud, bribery, a violation of the Racketeering, Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law; (ii) has been found to have violated the insurance laws of any state with respect to any previous reports submitted in connection with the aftermath of a trust established for excess or surplus lines eligibility purposes; or (iii) has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed.

2.15 [Optional at the choice of the Company and Trustee] Company May Waive Conditions for Claims Payments. With respect to assets in excess of the Trust Fund Minimum Amount as defined in Paragraph 2.7, the Company may approve the Trustee's payment of any Claim by waiving any or all of the conditions specified in Subparagraphs (a) through (e) of Paragraph 2.3 and directing the Trustee in writing to pay such approved Claim out of the Trust Fund whereupon the Trustee shall forthwith satisfy said Claim out of the Trust Fund without (i) regard to the rights of any other Policyholder and any obligations other than the observance of the priorities of Paragraph 2.2 and of the exceptions set forth in the last subparagraph of Paragraph 2.3; (ii) inquiring into or ascertaining the validity of such Claim or the propriety of such direction; or (iii) seeing to the application of such payment. Nothing herein, however, should be construed to permit the Company to order, or the Trustee to make, payment pursuant to this section if the Trustee is in receipt of a notice of insolvency as referenced in Paragraph 4.2 or if such payment would reduce the trust fund below the Trust Fund Minimum Amount set forth in paragraph 2.7.

ARTICLE 3 THE TRUSTEE

3.1 Trustee's Qualification. Trustee shall always meet the requirements of Subparagraphs (a),(b), (c)and (d) of Paragraph 1.10.

3.2 Trustee's Duties and Liability. Trustee's duties and responsibilities shall be governed by applicable law and the terms of this Agreement.

The Trustee shall not be liable for any loss to the Trust Fund other than losses caused by its own negligence or willful misconduct. The Company agrees to indemnify and hold harmless the Trustee from and against any and all claims, damages, losses or other payments of any nature whatsoever arising out of the Trustee's performance or nonperformance thereunder, unless such claims, losses, damages or other payments arise as a result of the Trustee's own negligence or willful misconduct.

3.3 Trustee May Rely on Certain Writings. The Trustee shall be entitled to rely upon, be protected, held harmless and deemed to have exercised reasonable due care, if the Trustee relies upon any writing believed by it in good faith to be genuine and to have been signed (whether facsimile or otherwise) or coded or purported to be signed or coded and transmitted, sent or delivered by the proper parties.

3.4 What Constitutes Conclusive Proof for Trustee. If the Trustee deems it necessary or desirable that a matter be proven prior to taking or omitting any action thereunder, such matter, unless other evidence in respect thereof be herein specifically prescribed, may be deemed to be conclusively proven by a statement purported to be executed in the name of the Company or by any of its agents or U.S. representatives designated by it as such in writing to the Trustee and delivered to the Trustee for any such action or omission on its faith thereof; but the Trustee, in its discretion, may instead accept or require such other or additional evidence on the matter as it may deem reasonable, provided that in the event the effect of the action would be to terminate the Trust, the Trustee may rely only on a statement or certification of officers or agents of the Company duly authorized for this purpose.

3.5 What Constitutes Proper Execution for Trustee. Except as otherwise expressly provided in this Agreement, any writing to be furnished by the Company shall be sufficiently executed if signed in the Company's name by such of its officers or other agents or U.S. representative as it may designate in writing to the Trustee, which designation shall continue in effect until changed by subsequent written notice received by the Trustee. With respect to the authority conferred on it, the Trustee may rely on any writing of any such officers or agents.

3.6 Trustee's Reliance on Opinions of its Counsel. The Trustee may consult with counsel selected by it and may rely on said counsel's opinion as complete authority in respect of any action taken or omitted by the Trustee in good faith in accordance with said opinion and the Trustee shall be deemed to have exercised reasonable due care in reliance thereon.

3.7 Trustee's Fees and Expenses. The fees of the Trustee for administering the Trust shall be mutually agreed upon from time to time between the Company and the Trustee.

The fees and all expenses of Trustee, including its counsel fees and expenses and other disbursements incurred in administering, preserving or conserving the Trust, shall be, and the Company hereby irrevocably grants to Trustee, a first priority security interest in and a lien no greater than the lesser of: (i) \$250,000 of the Trust Fund Minimum Amount as defined in

Paragraph 2.7 of this Agreement or, (ii) 10% of the value of the Trust if the value falls below the Trust Fund Minimum Amount specified in Paragraph 2.7. Nothing herein shall limit the right of the Trustee to assert a priority claim in any amount against amounts in excess of the Trust Fund Minimum Amount pursuant to Paragraph 4.5. All amounts to which the Trustee is entitled by reason of this paragraph shall be Trustee Priority Claims for purposes of Paragraph 2.2. Nothing in this Agreement shall be construed as requiring that the Trustee's fees and expenses be satisfied solely from the corpus of the Trust Fund.

3.8 Maintenance and Inspection of Trustee's Records. The Trustee shall keep complete records of the administration of the Trust which may be examined at any time, with reasonable advance notice, by the Domiciliary Commissioner or any Non-Domiciliary Commissioner. Any persons duly authorized by the Company in writing may examine during normal business hours upon ten (10) days written notice to the Trustee. The Company agrees to reimburse the Trustee for any reasonable expenses incurred by the Trustee as a result of any such examination.

3.9 Trustee's Resignation or Removal; Appointment of Successor. Notwithstanding Paragraph 2.1 hereof, the Trustee may resign at any time by sending its notice of resignation by certified mail return receipt requested, to the Company's last known address and to the Domiciliary Commissioner, all Non-Domiciliary Commissioners, and the IID to take effect on the date specified in such notice, but not less than sixty (60) days after the date of such mailing or personal delivery thereof if not mailed, unless the Company shall accept shorter notice as adequate. Trustee or any Successor Trustee may be removed by the Company by sending written notice of such removal by certified mail return receipt requested, to such Trustee's last known address and to the domiciliary Commissioner, all non-domiciliary Commissioners, and the IID, to take effect on the date specified in such notice but not less than sixty (60) days after the date of such mailing or personal delivery thereof if not mailed, unless Trustee accepts shorter notice as adequate; provided that no such removal shall become effective without Trustee's consent until all sums due to it thereunder for its fees and expenses including legal fees and expenses have been paid to it.

The Trust Fund shall be retained by the Trustee who is resigning or who has been removed until payment of its fees and expenses as provided in Paragraph 3.7 and its Successor Trustee has accepted its appointment, at which time the Trustee shall transfer, pay and deliver to the Successor Trustee the assets comprising the Trust Fund as they may be then constituted. If a Successor Trustee has not accepted appointment and the Trustee wishes to be relieved of responsibility thereunder, the Trustee may tender the Trust Fund assets to the Domiciliary Commissioner and, if the Domiciliary Commissioner declines to accept responsibility for Trust Fund assets, the Trustee may deposit the Trust Fund with a court of proper jurisdiction and with regard to such action shall be responsible only for giving notice to the Domiciliary Commissioner, all Non-Domiciliary Commissioners, the IID, the Company and such Policyholders which have notified the Trustee in writing that they have an actual or potential claim against the assets of the Trust Fund. When Funds are accepted by the Domiciliary Commissioner or paid into court, the Trustee's sole remaining responsibility shall be to render a final accounting of the Trust. Copies of the required notice or resignation or removal required by this Paragraph shall also be sent by certified mail return receipt requested, to the IID, the domiciliary Commissioner, and all Non-Domiciliary Commissioners.

3.10 Trustee's Assets. No provision of this Agreement shall require the Trustee to expend or risk its own funds or to otherwise incur any financial liability in the performance of any of its duties thereunder or in the exercise of its rights including, but not limited to, prosecuting, defending or otherwise enforcing any claims by or against the Trust Fund unless and until it has been indemnified for any fees and expenses likely to be incurred thereby.

3.11 Trustee's Liability. The Trustee shall not be liable for any of its actions or omissions thereunder (including any actions taken in accordance with Article 4), except for its own negligence or willful misconduct. If the Trust Fund is funded, in whole or in part, by a letter of credit issued by the Trustee or by an affiliate of the Trustee, the failure of the Trustee to draw against the letter of credit in circumstances where such draw would be required by this Agreement shall be deemed to be negligence and/or willful misconduct for purposes of this paragraph.

ARTICLE 4 INSOLVENCY

4.1 Insolvency of Trust Fund. The Trust Fund shall be deemed insolvent upon the happening of the earlier of the following events:

(a) The Trustee actually receives written notice from the Company, the Company's U.S. representative, the insurance regulatory authority in the Company's jurisdiction of domicile, the domiciliary Commissioner, any Non-Domiciliary Commissioner or the IID, that the Company has been declared insolvent in its country of domicile; or

(b) The expiration of sixty (60) days after the value of the Trust Fund as shown by the most recent valuation of the Trust Fund as provided for in Paragraph 2.13 of this Agreement (i) was reduced below the Trust Fund Minimum Amount as specified in accordance with Paragraph 2.7 or (ii) would be so reduced by the payment of a Matured Claim, whichever of the events described in (i) and (ii) occurs first. If said minimum has been replenished within said sixty (60) day period by or on behalf of the Company to offset any such reduction, notice thereof shall be given by the Trustee to the IID as provided below, and the insolvency shall be deemed cured. Promptly after such actual or anticipated reduction of the value of the Trust Fund, the Trustee shall send notice to the Company of the actual or anticipated reduction and a copy of such notice by certified mail return receipt requested, to the Domiciliary Commissioner, all Non-Domiciliary Commissioners, and the IID.

4.2 Notice of Insolvency.

(a) If declared insolvent in its country of domicile, the Company shall promptly (i) transmit a written notice of this event and (ii) send a certified copy of such declaration by certified mail return receipt requested to the Company's U.S. representative, the trustee, the domiciliary commissioner, all Non-Domiciliary Commissioners and the IID.

(b) If the Trust Fund is deemed insolvent as defined in Paragraph 4.1, the Trustee shall promptly transmit a written notice of this event by certified mail return receipt requested, to the Company, its U.S. representative, the Domiciliary Commissioner, all Non-Domiciliary Commissioners and the IID.

4.3 Transfer of Trust Assets to Domiciliary Commissioner in Event of Insolvency. In the event that the Trust becomes insolvent as specified in Paragraph 4.1 and notwithstanding the provisions of this Article 4 or of any other provision in this Agreement, the Trustee shall comply with an order of the Domiciliary Commissioner or a U.S. court of competent jurisdiction directing the Trustee to transfer to the Domiciliary Commissioner or other designated Receiver all of the assets of the Trust Fund except those assets which are necessary to satisfy the Trustee's Priority Claims as determined in Articles 2.2 and 3.7. The Domiciliary Commissioner or other designated Receiver shall distribute assets transferred from the Trust in compliance with applicable state law.

Compliance with such an order shall relieve the Trustee of all further duties, obligations and liabilities of any kind or description under this Agreement. Nothing in this paragraph shall be construed as relieving the Trustee of any liability under this Agreement for any acts or omissions which occurred prior to the date on which the Trustee transfers the assets of the Trust Fund to the domiciliary Commissioner.

4.4 One-Year Waiting Period After Insolvency. Except in cases where Trust assets have been transferred to the Domiciliary Commissioner as provided for in paragraph 4.3 and unless otherwise ordered by a court of competent jurisdiction, no Claims, other than the Trustee's Priority Claims, shall be paid out of the Trust Fund during the 12-month period ("Waiting Period") commencing on the date the Trustee receives written notice that the Company was declared insolvent in its country of domicile as set forth in Paragraph 4.1(a) or the date the Trustee is required to transmit a notice to the Company pursuant to Paragraph 4.1(b), unless the insolvency has been cured within the sixty (60) day period as provided for in Paragraph 4.1(b), whichever occurs first.

Matured Claims, whether arising prior to or during the Waiting Period, may be filed throughout said period by certified mail return receipt requested.

4.5 Final Distribution of Trust Fund Assets By Trustee. As soon as practicable after the end of the Waiting Period specified in Paragraph 4.4, the Trustee shall distribute the balance of the Trust Fund in accordance with state law.

Trustee Priority Claims shall first be paid out of any amount in the Trust Fund in excess of the Trust Fund Minimum Amount. The Trust Fund Minimum Amount and any amount in excess of the Trust Fund Minimum Amount not needed to satisfy Trustee Priority Claims shall then be distributed among the claimants with Matured Claims.

Such prorated distribution shall be in the ratio which the value of each such Matured Claim bears to such balance.

Any assets remaining in the Trust Fund after all matured claims have been paid in full shall be used to satisfy any outstanding and unpaid Trustee Priority Claims.

Any remaining assets shall be transferred by the Trustee to the Company or its successor in interest.

In performing its duties thereunder the Trustee may retain any person to act on its behalf or assist it as it deems necessary and shall pay the necessary and reasonable compensation and expense of such person thereunder out of the Trust Fund.

ARTICLE 5 MISCELLANEOUS

5.1 Governing Law. This agreement shall be governed by, and construed and enforced in accordance with, the laws of the United States jurisdiction in which the Trust Fund is principally administered as specified on page one of this Agreement.

5.2 Survival of Prior Obligations. Commencing on the Effective Date, this Agreement shall be binding upon the parties hereto and their successors and assigns and shall supersede such prior agreements, except for continuing obligations created by any prior agreements between the parties on the subject matter hereof as to matters arising prior to the Effective Date.

5.3 Procedure to Be Followed in Amending this Agreement.

(a) All amendments to this Agreement shall be in writing and signed by the Company and the Trustee. The Trustee shall have discretion either to give or withhold its consent thereunder and its decision to give or withhold its consent shall be binding and conclusive upon all persons and parties, and in no event shall it incur any liability for any decision made by it thereunder in good faith.

(b) Notwithstanding the provisions of Paragraph (a) of this section, no amendment shall become effective without the IID's prior written consent.

(c) The company shall give written notice of any proposed amendment to all Domiciliary and Non-Domiciliary Commissioners together with a copy of the proposed amendment. If no Non-Domiciliary Commissioner disapproves the proposed amendment within thirty (30) days of receipt of the notice, the amendment shall be effective on the date specified by the Domiciliary Commissioner.

5.4 Notice. The Company shall provide the Trustee with the names and mailing addresses of the manager of the IID, the Domiciliary Commissioner, all Non-Domiciliary Commissioners and the Company's U.S. representative, and shall update this list from time to time as may be necessary to keep the information in the list current. In providing the Notices required under any provision of this Agreement, Trustee may rely upon this list and in doing so shall be protected, held harmless and deemed to have exercised all reasonable due care.

5.5 Partial Invalidity Does Not Invalidate Entire Agreement. If any provision of this Agreement is held invalid or unenforceable, the balance of this Agreement shall be construed and enforced as if such provision had not been inserted herein.

5.6 Interpretation. The use herein of one gender shall be deemed to include the other and the singular the plural, as the context may require.

5.7 Headings and References. The headings herein are for reference only and not for defining any provisions hereof. Reference to this Agreement shall include its amendments, if any. All articles, paragraphs and subparagraphs as well as their subdivisions and abbreviations cited herein refer to this Agreement and its amendments, if any.

5.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which when signed by the Company and the Trustee, shall be deemed to be an original.

IN WITNESS WHEREOF, the Company and the Trustee have caused this Agreement to be duly executed and their corporate seals affixed hereto.

Executed at _____

[Seal] _____ on _____

Attest: _____ By _____
[Name and Title] [Name and Title]

Executed at _____

[Seal] _____ on _____

Attest: _____ By _____
[Name and Title] [Name and Title]

[Notarizations]