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NAIC International Insurers Department Plan of Operation

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Background

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

Introduction

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

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

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

¹ 15 U.S.C. § 8204(2).

The following table provides a summary of the key NAIC IID workflow:

<p>IID</p>	<ul style="list-style-type: none"> Analyzes and monitors Quarterly Listing insurer financial filings; Maintains Quarterly Listing, IIDfile System, and resources available to the insurers; and Recommends revisions and enhancements to the <i>Nonadmitted Insurance Model Act</i> (#870), IID Plan of Operation, and other surplus lines documentation.
<p>IID Internal Committee</p>	<ul style="list-style-type: none"> Consists of NAIC directors, senior managers, attorneys, and analysts; Reviews application and renewal analyses and provides recommendations to the Surplus Lines (C) Working Group; and Reviews recommended changes to IID documentation, such as the Plan of Operation.
<p>Surplus Lines (C) Working Group</p>	<ul style="list-style-type: none"> Consists of experienced surplus lines regulators; Maintains and drafts new guidance within the IID Plan of Operation; Reviews and considers appropriate decisions regarding applications for admittance to the Quarterly Listing; Provides a forum for surplus lines-related discussion; and Determines final eligibility of insurers on the Quarterly Listing.
<p>Surplus Lines (C) Task Force</p>	<ul style="list-style-type: none"> Provides oversight for the work produced within the Surplus Lines (C) Working Group; Provides a forum for discussion of current and emerging surplus lines-related issues and topics of public policy and determines appropriate regulatory response and action; Reviews and analyzes quantitative and qualitative data on U.S. domestic and alien surplus lines industry results and trends; Monitors federal legislation related to the surplus lines market and ensures all interested parties remain apprised; and Develops or amends relevant NAIC model laws, regulations and/or guidelines.
<p>Property and Casualty Insurance (C) Committee</p>	<ul style="list-style-type: none"> Monitors the activities of the Surplus Lines (C) Task Force; and Handles any appeals regarding decisions made within the Surplus Lines (C) Working Group.

I. Application Process

An Insurer planning to write U.S. surplus lines via admittance to the Quarterly Listing will first register with [OPTins](#). [OPTins](#) is an electronic filing and payment system utilized for filing alien surplus lines applications. Through [OPTins](#), the applicant will remit all required filings along with a non-refundable electronic payment in the amount indicated in the [Application Filing Memo & Instructions](#). The application fee covers the cost of processing and evaluating the Insurer's application. The Insurer will find a comprehensive list of required filings within the [Application Filing Memo & Instructions](#) document. This document as well as other resources can also be found within the "Documents" tab on the [Surplus Lines \(C\) Working Group](#) webpage.

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

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

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

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

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

A minimum shareholders' equity amount of \$50.0 million must be maintained on a continuous basis. Shareholders' equity will be evaluated to determine if it is adequate given the Insurer's risk profile. The following key factors may be considered by the IID:

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

If there is a determination that shareholders' equity is inadequate based on the analysis of the Insurer's risk profile, an equity requirement above the minimum amount of \$50 million may be required. Or, the Insurer may be subject to additional ongoing reporting (e.g., monthly and/or quarterly reporting).

Lloyd's Notation

In lieu of individual shareholders' equity, Lloyd's syndicates are required to report a U.S. trust fund of not less than \$100 million available for the benefit of all Lloyd's U.S. surplus lines policyholders. In addition, a review of the Funds at Lloyd's (member assets) is considered.

B. U.S. Trust Fund

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

In establishing its trust fund, the Insurer must maintain such fund at, and enter into an agreement with, a qualified U.S. financial institution. The agreement must contain provisions consistent with the IID model document, [Trust Agreement for Alien Excess or Surplus Lines Insurers](#). For purposes of complying with the trust fund requirement as well as the Lloyd's U.S. Situs Excess or Surplus Lines Trust Deed, a qualified U.S. financial institution:

- Is organized or (in the case of a U.S. branch office of a foreign banking organization) licensed under the laws of the U.S. or any state thereof;
- A national bank, state bank, or trust company which is adequately capitalized and qualified to accept securities as determined by the standards adopted by the U.S. banking regulators and regulated by state banking laws or a member of the Federal Reserve system; and
- Has been granted authority to operate with trust powers, if such qualified U.S. financial institution is to act as the fiduciary of the trust fund.

Determining the Trust Fund Level

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

- 30% of U.S. gross liabilities up to \$200 million, plus
- 25% of U.S. gross liabilities greater than \$200 million and up to \$500 million, plus
- 20% of U.S. gross liabilities greater than \$500 million and up to \$1 billion, plus
- 15% of U.S. gross liabilities in excess of \$1 billion

In no event will the required trust fund minimum amount, despite the calculation above, be less than \$6.5 million or in excess of \$250 million.

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

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

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

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

Process for Reconsideration of a Trust Fund Level

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

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

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

C. Ethics and Integrity

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

D. U.S. Branch

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

E. Lloyd's Incidental Syndicates

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

F. Insurers or Lloyd's Sovereign Government Syndicate Ownership

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

III. Process for Reconsideration of an Application Rejection

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

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

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

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

IV. Ongoing Quarterly Listing Eligibility

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

A. Core Areas of Insurer Compliance

Annual Renewal Filing

All insurers/syndicates listed within the Quarterly Listing on June 30 of the renewal year are required to remit an annual fee and file an annual renewal package and must upload all required renewal filing documents to [OPTins](#) by June 30. A comprehensive list of required filings can be found within the [Renewal](#)

[Filing Memo & Instructions](#). Filings submitted subsequent to June 30 will be subject to late fees as defined within the [Renewal Filing Memo & Instructions](#). If an Insurer fails to submit its annual renewal filing by July 31, it may be subject to de-listing.

Notification of Change in Control and Re-Application

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

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

If the Quarterly Listed Insurer's equity has declined or is expected to decline by 10% or more compared to the most recent year-end or dropped below the minimum standard described in *Section II.A - Shareholders' Equity Funds*, it must notify the IID immediately with a detailed explanation of the decline and a plan describing the resolution. Failure to provide timely notification may result in delisting as described in *Section V – De-Listing*. If an Insurer is unable to increase equity to the required minimum level within 15 business days of notification, it may be subject to de-listing.

Trust Fund Monitoring

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

B. IID Annual and Ongoing Analysis of Quarterly Listed Insurers

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

C. Examination of Insurer

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

V. De-listing

When the IID determines an Insurer is not in compliance with the Plan and/or the trust fund requirements or poses solvency concerns, the IID may present an analysis of the Insurer to the Internal Committee to determine a recommendation for consideration by the Working Group. Upon determination of non-compliance and/or solvency concerns by the Working Group, the Insurer will be de-listed and notified via letter.

VI. Process for Reconsideration of De-listing

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

- The request must be received by the IID within 30 days of the date on the de-listing letter;

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

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

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

VII. Communication

All communication and information, including financial statements, audit reports, trust fund documents, and other supporting documentation must be submitted in English and uploaded to [OPTins](#).

VIII. Voluntary Termination from the Quarterly Listing

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

IX. Confidentiality

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

X. Amendment to the Plan

The Working Group will consider proposals submitted to the IID for modifications to the Plan. All proposals will be considered during open conference calls or meetings of the Working Group throughout the year. A proposal must be complete and concise and include relevant supporting documentation. Proposals exposed and adopted by the Working Group would become effective following adoption by the [Surplus Lines \(C\) Task Force](#) and the [Property and Casualty Insurance \(C\) Committee](#).