

2019

NAIC

International Insurers Department Plan of Operation

Approved by NAIC Executive/
Plenary on 8/5/2019

NAIC Contacts

Andy Daleo, Senior Property/Casualty Financial Analysis Manager

Robert Schump, Surplus Lines & Information Services Program Manager



Table of Contents

<u>Background</u>	3
<u>Introduction</u>	3
I. <u>Application Process</u>	4
II. <u>Core Requirements and Guidelines for Inclusion on the Quarterly Listing</u>	5
A. Shareholders' Equity Funds	5
B. U.S. Trust Fund	5
C. Ethics and Integrity	7
D. U.S. Branch Office	7
E. Lloyd's Incidental Syndicates	7
F. Lloyd's Sovereign Governmental Syndicate Ownership	8
III. <u>Process for Reconsideration of an Application Rejection</u>	8
IV. <u>Ongoing Quarterly Listing Eligibility</u>	8
A. Core Areas of insurer Compliance	8
B. IID Annual and Ongoing Analysis of Quarterly Listed Insurers	9
C. Examination of Insurer	9
V. <u>De-listing</u>	9
VI. <u>Process for Reconsideration of De-listing</u>	10
VII. <u>Communication</u>	10
VIII. <u>Confidentiality</u>	10
IX. <u>Amendment to the Plan</u>	10

Background

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

Introduction

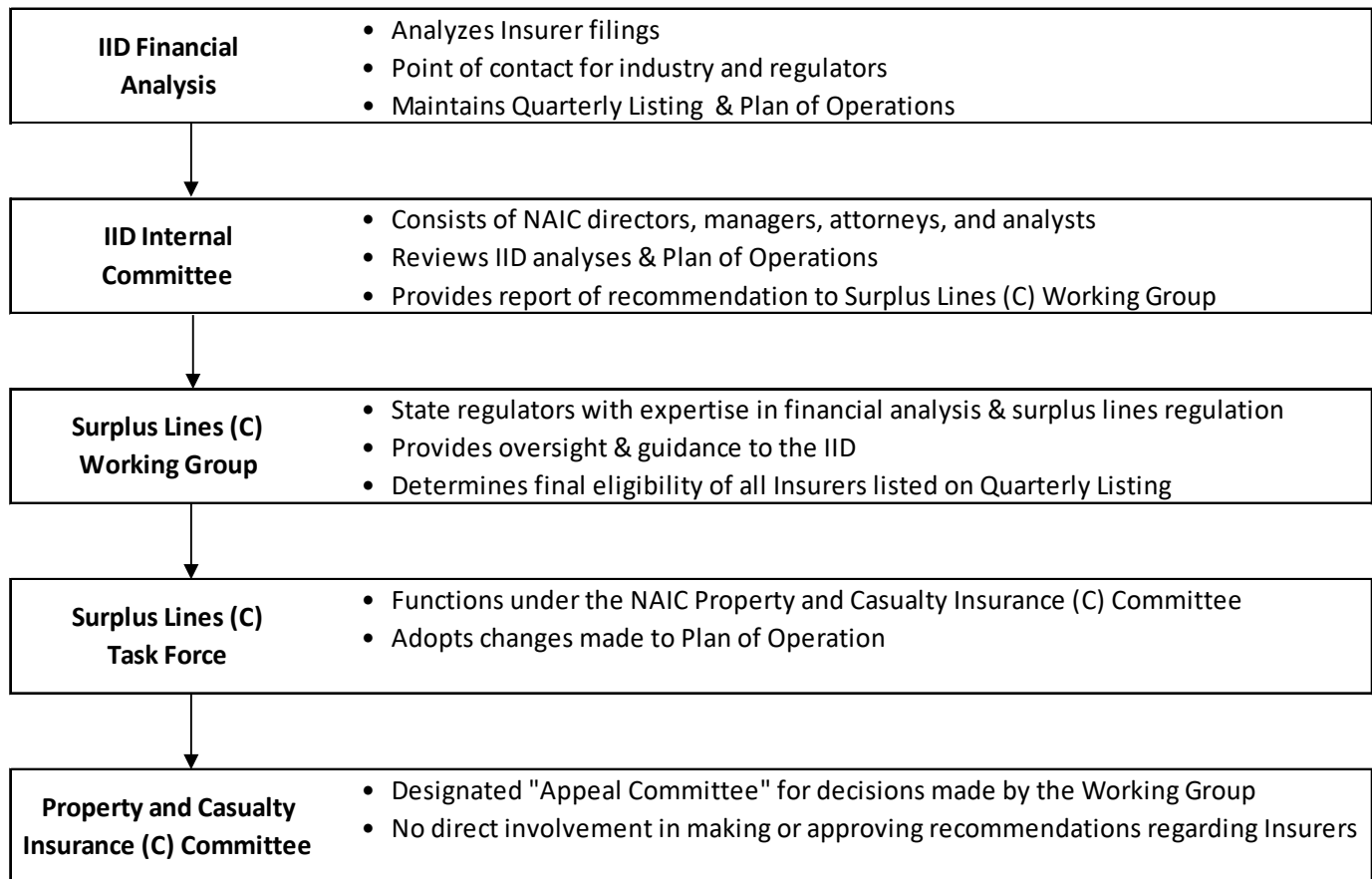
The Plan describes how the IID will operate and how Insurers obtain inclusion on the Quarterly Listing. The IID is composed of experienced financial analysts who review applications and renewal filing documents, prepare written analyses, and provide support to NAIC surplus lines committees and working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

The IID functions on behalf of state departments of insurance by maintaining qualifying standards for Insurers domiciled outside of the U.S. seeking eligibility to write direct 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 [Products](#) page of the NAIC website. This list includes Insurers that qualify for listing as outlined in *Section II – Core Requirements and Guidelines for Inclusion on the Quarterly Listing*. Modifications to listed companies are summarized within each Quarterly Listing. The Working Group will make the final determination of all Insurer eligibility.

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

¹ 15 U.S.C. § 8204(2).

The following chart provides a high-level summary of the key NAIC workflow process as it relates to Alien Insurers appearing on the Quarterly Listing that write direct surplus lines premiums in the U.S.



I. Application Process

An Insurer planning to write U.S. surplus lines and requesting inclusion on the Quarterly Listing will first register at [OPTins®](#). OPTins® is an electronic filing and payment system designed for surplus lines. Following registration, an Insurer will complete and upload an application and all other documents indicated as required for listing. Additionally, a comprehensive list of required filings can be found within the “Related Documents” tab available on the [Working Group](#) webpage. Also, through OPTins®, the applicant will remit a non-refundable electronic payment in the amount indicated in the Schedule of Fees, a separate document found on the Working Group’s webpage and within OPTins®. The fee is used to cover the cost of processing and evaluating the Insurer’s application for inclusion on the Quarterly Listing. At the time the application is submitted, the Insurer agrees to provide additional information as may be requested by the IID. The IID will contact the applicant’s domiciliary regulator to inquire about the Insurer’s current standing.

The IID will review and evaluate the information submitted by Insurers requesting inclusion on the Quarterly Listing. The IID evaluates whether the Insurer meets or does not meet the standards set forth in *Section II - Core Requirements and Guidelines for Inclusion on the Quarterly Listing* and will present the application to the Internal Committee to determine a recommendation. The Internal

Committee's recommendation will be presented to the Working Group for consideration. Following determination by the Working Group, a letter detailing approval or denial will be sent to the Insurer. Subsequently, if approved, the IID will include the Insurer in the next Quarterly Listing.

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

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

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

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

A minimum shareholders' equity amount of \$45.0 million must be maintained on a continuous basis. During the course of an IID analysis, it will be evaluated whether shareholders' equity is adequate given the risk profile. In the evaluation of the adequacy of shareholders' equity, the following key factors may be considered by the IID:

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

If there is a determination that shareholders' equity is inadequate based on the analysis of the risk profile, equity above the minimum amount of \$45.0 million may be required.

Lloyd's Notation

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

B. U.S. Trust Fund

The purpose for establishing a trust fund is to provide additional assurance that U.S.

policyholders are protected. The trust fund must consist of cash deposited with the trustee, securities, or an acceptable letter of credit on behalf of U.S. policyholders at an appropriate level. Regarding the composition of the trust fund, credit will be allowed only for securities readily marketable on a regulated U.S. securities exchange or those securities designated by the NAIC's Securities Valuation Office. An acceptable letter of credit is defined as clean, unconditional, irrevocable, and issued or confirmed by a qualified U.S. financial institution.

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. For purposes of complying with the trust fund requirement as well as the Lloyd's United States Situs Excess or Surplus Lines Trust Deed, a qualified U.S. financial institution:

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

Determining the Trust Fund Level

In the case of an insurance company, for business written on or after January 1, 1998, the trust fund minimum amount will be based on the U.S. gross surplus lines liabilities or the direct nonadmitted U.S. liabilities excluding liabilities arising from aviation, ocean marine and transportation insurance, and direct placements as follows:

Trust Fund Calculation

- 30% of any amount up to the first \$200.0 million, plus
- 25% of any amount up to the next \$300.0 million, plus
- 20% of any amount up to the next \$500.0 million, plus
- 15% of any amount in excess of \$1.0 billion

In no event will the required trust fund minimum amount, despite the calculation above, be less than \$5.4 million or in excess of \$250 million.

As described above, the liabilities will be determined no less than annually and reported to the trustee and the IID no later than June 30th of each year. The actuary who opines on the liabilities must be a member of a recognized professional actuarial body.

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

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

- The types and amounts of coverage which the Insurer writes or proposes to write in the U.S.;
- The 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. In order to request reconsideration, all the following criteria must be met:

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

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

C. Ethics and Integrity

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

D. U.S. Branch Office

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

E. Lloyd's Incidental Syndicates

A Lloyd's incidental syndicate is formed as a portion of the host syndicate. The incidental

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

F. Lloyd's Sovereign Government Syndicate Ownership

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

III. Process for Reconsideration of an Application Rejection

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

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

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

If an Insurer does not submit a reconsideration letter within 30 days of the date on the rejection letter, any request for reconsideration is considered waived and the Insurer will be required to submit a new application along with the appropriate 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 listed Insurers are required to file an annual renewal package and must upload all required renewal filing documents to OPTins[®] by June 30th. A comprehensive list of required filings can be found within the "Related Documents" tab available on the [Working Group](#) webpage. Filings submitted subsequent to June 30th will be subject to late fees as defined within the Schedule of

Fees on the NAIC website. If an Insurer fails to submit its annual renewal filing by July 31st, it will be subject to de-listing.

Change of Control and/or Merger of Insurer

In the event of a change of control and/or merger, the Insurer must provide notice 15 days prior to the effective date of the transaction. The Insurer must reapply within 45 days following the effective date of the change of control and/or merger of the Insurer to maintain its listing. Failure to provide timely notice and/or re-application may result in de-listing and/or late fees applied per the same guidelines as defined within the Schedule of Fees for annual renewals.

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

If an Insurer's equity has declined or is expected to decline by 10% or greater compared to the most recent annual filing, it must notify the IID immediately. If shareholders' equity has dropped below the minimum standard described in *Section II.A - Shareholders' Equity Funds*, the Insurer must immediately inform the IID. Failure to provide timely notice will result in late fees, as defined within the Schedule of Fees. If an Insurer is unable to increase equity to the required level within 15 business days, it will be subject to de-listing.

Trust Fund Monitoring

An Insurer is required to monitor the trust fund balance to ensure that it meets the minimum amount and takes market fluctuations into consideration. The IID will periodically review the market value of each Insurer's U.S. trust fund to ensure that it continues to meet the required minimum balance.

B. IID Annual and Ongoing Analysis of Quarterly Listed Insurers

The IID analyzes submitted filing documents on an annual and ongoing basis. The IID may request additional information as a result of the analysis. If an Insurer fails to file all additional requested information within the specified timeframe, it may be subject to de-listing. Following the overall analysis process, the Insurer will be recommended 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 agree to submit to a special examination and pay all expenses or will be de-listed.

V. De-listing

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

and/or solvency concerns by the Working Group, the Insurer will be de-listed and notified via letter.

VI. Process for Reconsideration of De-listing

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

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

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

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

VII. Communication

All communication and information, including financial statements, audit reports, trust fund documents, and other supporting documentation must be submitted in English.

VIII. Confidentiality

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

IX. Amendment to the Plan

The Working Group will consider proposals submitted to IID for modifications to the Plan. All proposals will be considered during open conference calls or meetings of the Working Group throughout the year. The proposal must be complete and concise and include any relevant

supporting documents. Proposals exposed and adopted by the Working Group would become effective following adoption by the Surplus Lines (C) Task Force during its next scheduled meeting. For complete details regarding the amendment process, refer to the Working Group's webpage.