



Draft date: 11/22/22

*2022 Fall National Meeting
Tampa, Florida*

SURPLUS LINES (C) TASK FORCE

Monday, December 12, 2022

3:30 – 4:30 p.m.

JW Marriott—HB Plant Ballroom A–D—Level 2

ROLL CALL

James J. Donelon, Chair	Louisiana	Gary D. Anderson	Massachusetts
Larry D. Deiter, Vice Chair	South Dakota	Mike Chaney	Mississippi
Mark Fowler	Alabama	Troy Downing	Montana
Lori K. Wing-Heier	Alaska	Edward M. Deleon Guerrero	N. Mariana Islands
Peni Itula Sapini Teo	American Samoa	Barbara D. Richardson	Nevada
Ricardo Lara	California	Mike Causey	North Carolina
Michael Conway	Colorado	Jon Godfread	North Dakota
David Altmaier	Florida	Michael Humphreys	Pennsylvania
Michelle B. Santos	Guam	Elizabeth Kelleher-Dwyer	Rhode Island
Colin M. Hayashida	Hawaii	Michael Wise	South Carolina
Dean L. Cameron	Idaho	Carter Lawrence	Tennessee
Doug Ommen	Iowa	Cassie Brown	Texas
Vicki Schmidt	Kansas	Mike Kreidler	Washington
Kathleen A. Birrane	Maryland		

NAIC Support Staff: Andy Daleo

AGENDA

1. Consider Adoption of its Oct. 17 and May 23 Minutes Attachment One
—*Commissioner James J. Donelon (LA)*
2. Consider Adoption of the Report of the Surplus Lines (C) Working Group, Attachment Two
Including the International Insurers Department (IID) Plan of Operation
—*Stewart Guerin (LA)*
3. Discuss Comments Received on the Draft *Nonadmitted Insurance Model Act* Attachment Three
(#870)—*Commissioner James J. Donelon (LA)*
4. Discuss Any Other Matters Brought Before the Task Force
—*Commissioner James J. Donelon (LA)*
5. Adjournment

Draft: 10/27/22

Surplus Lines (C) Task Force
Virtual Meeting
October 17, 2022

The Surplus Lines (C) Task Force met Oct. 17, 2022. The following Task Force members participated: James J. Donelon, Chair, Stewart Guerin, and Tom Travis (LA); Larry D. Deiter, Vice Chair and Charlene Squires-Keller (SD); Lori K. Wing-Heier represented by Rebecca Nesheim (AK); Mark Fowler represented by Willard Smith (AL); Ricardo Lara represented by Libio Latimer (CA); Michael Conway represented by Rolf Kaumann (CO); David Altmaier represented by Robert Ballard (FL); Colin M. Hayashida represented by Martha Im (HI); Doug Ommen represented by Kim Cross (IA); Vicki Schmidt represented by Marcia Kramer (KS); Gary D. Anderson represented by James A. McCarthy (MA); Kathleen A. Birrane represented by Erin Nickles (MD); Troy Downing represented by Bob Biskupiak (MT); Mike Causey represented by Hasije Harris (NC); Jon Godfread represented by Chris Aufenthie (ND); Barbara D. Richardson (NV); Michael Humphreys represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Patrick Smock (RI); Michael Wise represented by Rachel Moore (SC); Carter Lawrence (TN); Cassie Brown represented by Amy Garcia (TX); and Mike Kreidler represented by Jeff Baughman (WA).

1. Adopted its Spring National Meeting Minutes

Director Deiter made a motion, seconded by Mr. Baughman, to adopt the Task Force's May 23 minutes (see *NAIC Proceedings – Summer 2022, 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 Spring National Meeting, the Surplus Lines (C) Working Group met on Sept. 15 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings, to discuss three applications seeking approval for listing on the NAIC *Quarterly Listing of Alien Insurers*, and all three applications were approved.

Mr. Kaumann made a motion, seconded by Mr. Baughman, to adopt the report of the Surplus Lines (C) Working Group. The motion passed unanimously.

3. Adopted its 2023 Proposed Charges

Commissioner Donelon stated that the 2023 proposed charges (Attachment __) for the Task Force and Surplus Lines (C) Working Group did not contain any changes compared to the 2022 charges.

Mr. Kaumann made a motion, seconded by Mr. Baughman, to adopt the 2023 Surplus Lines (C) Task Force and Surplus Lines (C) Working Group charges. The motion passed unanimously.

4. Discussed Comments Received on the Draft Model #870

Commissioner Donelon indicated that the *Nonadmitted Insurance Model Act (#870)* Drafting Group will provide an update on its work on Model #870. He stated that during the Spring National Meeting, the Task Force exposed the draft model for a 60-day public comment period ending July 21. As a result of that exposure, he summarized that the call materials (Attachment __) included four parts: 1) a memorandum from the Drafting Group; 2) an Excel comment matrix; 3) a red-lined draft of Model #870; and 4) comment letters.

Commissioner Donelon asked Mr. Travis to provide an update on the Drafting Group's activities. Mr. Travis summarized that the exposure of Model #870 resulted in 10 comment letters that covered 27 comments. He stated that the 27 comments received boiled down to seven issues that he would cover. He stated that the first comment was with regard to references throughout the model regarding domestic surplus lines insurers (DSLII). He indicated that given not all states have adopted DSLII legislation, the Drafting Group reviewed these references and ensured all DSLII references were marked as optional. Mr. Travis indicated that the definition of "exempt commercial purchaser" was amended to reflect the July 21, 2010, starting date to begin the five-year cycle regarding the consumer price index adjustment. Next, Mr. Travis indicated that the definition for "taxable premiums" was modified to include the statement, "Premium on property risk or exposure that is properly allocated to federal or international waters or is under the jurisdiction of a foreign government is not taxable in this state." Next, he summarized that the definition for "surplus lines insurance" was edited to remove "property/casualty" (P/C) given there are other types of coverages being provided, such as accident and health (A&H).

Mr. Travis stated that the most significant number of comments received on Model #870 were related to the method of taxation of unaffiliated groups within the definition of "home state." He summarized that most comments indicated that since the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA) remains silent on the determination of the home state for unaffiliated group policies. He said guidance should either be eliminated from Model #870 or clarified to indicate that the home state of the unaffiliated group policy is the home state of the group policyholder.

Mr. Travis said that the Drafting Group modified the definition of "home state" to allow for two options. The first option allows for a single payment of tax (if paid from its own funds) to the home state of the group policyholder where its principal place of business is located or where 100% of the insured risk is located. If 100% of the premium is not paid from its own funds, the home state is determined for each member based on its principal place of business or the location of the risk. He said that the second option allows for the single payment of tax to the home state of the unaffiliated group based on its principal place of business or the state with the greatest percent of taxable premium for the insurance contract.

Mr. Meetz said that offering two options—one that treats the home state at the member level and one that treats the home state at the group level—does not seem to be the best way to achieve uniformity considering these two options on are in conflict with each other. He said that these are mutually exclusive options. Mr. Meetz said that he would like to see these options in a drafting note rather than memorialize them in the text itself. He commented that treating the home state at the group level is the best way to handle the issue.

Mr. Wake said that the Task Force could include the favored option and within a drafting note include the second as an option. He said that if there is not a consensus for option 1 or 2, this appears to be a good draft proposal. He said that the point of the two options is that there are two appropriate ways to handle the matter. Mr. Latimer commented that if the Task Force were to explore the definition of "home state" for unaffiliated groups, it should do so separately from the revisions to Model #870 because there are differing opinions on the issue. Further, he said a rush to a definition could result in unintended consequences and problems. He said that option 2 does not solve things since further options are not possible or permissible and that it boxes states into those two options.

Timothy Grant (Lloyd's America) commented that he would be comfortable removing unaffiliate groups from the definition. He stated that the purpose of a model is to ensure consistency and uniformity across states. Skip Myers (National Risk Retention Association) indicated there is not a consensus and that these options may have the effect of a state law modifying federal law. He stated that the options should be eliminated from the text and put into a footnote. Mr. Meetz commented that with the two options, there could be one state that uses one method and another state that uses the other method, and then there are two states with a claim for the same tax

revenue. Mr. Wake commented that anything other than a 51-state consensus will lead to the same undesirable outcome that two states could be claiming the same tax revenue. Mr. Wake said that this is one issue that the U.S. Congress, while drafting the NRRRA, punted back to the states, deliberately leaving it unresolved.

Mr. Travis said that regarding diligent search requirements, a slight modification was made for more flexibility given the varying degree of diligent search requirements from state to state. Mr. Travis indicated that several comments were received on Section 9(H)—Service of Process, specifically related to the arbitration clause. The comments indicated that arbitration of insurance contracts should be fully negotiable, including the location of the proceedings. The Drafting Group discussed this issue and determined that the Task Force should discuss and provide its opinion on the matter.

Commissioner Donelon asked those who commented to provide their thoughts on the arbitration clause. John Meetz (Wholesale & Specialty Insurance Association—WSIA) commented that the arbitration provision should be fully negotiable and that the two parties may have a desire to conduct arbitration in a state that benefits both parties. Further, Mr. Meetz commented that the way Model #870 is currently drafted does not make sense from a home state perspective. He stated that there could be arbitration in a state where the risk is located while the principal place of business is not in that state.

Commissioner Richardson said that in Nevada, there are multimillion dollar personal lines policies written and that a contract being fully negotiable is concerning given the power differential. He questioned whether this was considered when proposing fully negotiable contracts. Mr. Meetz indicated that following discussion with WSIA members, personal lines contract negotiation is not out of state. He indicated that a drafting note could be added indicating the personal versus commercial lines negotiation.

Mr. Baughman said that in Washington, they see a lot of 100% Washington risk policies being arbitrated in another state, such as New York, which seems to be the choice of the insurer. Mr. Baughman stated that he does not object to it being written into the policy that way because he knows that if the risk is in Washington, a court in Washington will rule over it. Mr. McKenney commented that careful drafting with regard to negotiated arbitration clauses is important because arbitration should not take place in a state far away. Mr. Wake commented that it is common that large, sophisticated parties negotiate arbitration based on their preferred forum rather than where the party or risk are located. Mr. Wake commented that there may be room to compromise allowing exempt commercial purchasers to negotiate the arbitration. Otherwise, it has to be the home state.

Sabrina Miesowitz (Lloyd's America) indicated that Lloyd's America would support the designation of the home state for personal lines policies. She said that the draft is not clear, that she supports modifying the language to clarify, and that she supports Mr. Wake's compromise. Gary Sullivan (American Property Casualty Insurance Association—APCIA) said the APCIA commented that the parties must mutually agree to conduct the arbitration dispute resolution elsewhere.

Following a brief discussion, Commissioner Donelon directed the Drafting Group to broaden the arbitration within Section 9(H)—Service of Process language regarding negotiation and location of proceedings and revisit the definition of "home state" before posting draft Model #870 for a 30-day public comment period.

5. Heard an Update on Surplus Lines Industry Results

Mr. Daleo summarized the year-end 2021 surplus lines industry results. His summary included details on the entities that were included on the NAIC *Quarterly Listing of Alien Insurers* and the U.S. domiciled surplus lines insurers. He covered overall writings and trends and the collateralized exposure of alien insurers. Mr. Daleo also summarized the surplus lines market related to cybersecurity and flood exposure (Attachment ___). Following his

summary, Commissioner Donelon indicated that the results of the industry would be posted to the Surplus Lines (C) Working Group web page.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/C CMTE/SLTF/2022 Fall NM/SLTF Minutes Oct 2022.docx

Draft: 5/26/22

Surplus Lines (C) Task Force
Virtual Meeting
May 23, 2022

The Surplus Lines (C) Task Force met May 23, 2022. The following Task Force members participated: James J. Donelon, Chair, Stewart Guerin, and Tom Travis (LA); Larry D. Deiter, Vice Chair, represented by Charlene Squires-Keller (SD); Lori K. Wing-Heier represented by Sian Ng-Ashcraft (AK); Jim L. Ridling represented by Jimmy Gunn (AL); Ricardo Lara represented by Libio Latimer (CA); Michael Conway represented by Rolf Kaumann (CO); David Altmaier represented by Robert Ballard (FL); Colin M. Hayashida represented by Martha Im (HI); Doug Ommen represented by Kim Cross (IA); Dean L. Cameron represented by Randy Pipal (ID); Vicki Schmidt represented by Marcia Kramer (KS); Gary D. Anderson represented by James A. McCarthy (MA); Kathleen A. Birrane represented by Robert Baron (MD); Mike Chaney represented by Ryan Blakeney (MS); Troy Downing represented by Sharon Richetti (MT); Mike Causey represented by Hasije Harris (NC); Jon Godfread represented by Janelle Middlestead (ND); Barbara D. Richardson represented by Gennady Stolyarov (NV); Michael Humphreys represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Michael Wise represented by Rachel Moore (SC); Carter Lawrence represented by Trey Hancock (TN); Cassie Brown represented by Jamie Walker (TX); and Mike Kreidler represented by Jeff Baughman (WA).

1. Adopted its 2021 Fall National Meeting Minutes

Mr. Pipal made a motion, seconded by Mr. Baughman, to adopt the Task Force's Nov. 29, 2021, minutes (see *NAIC Proceedings – Fall 2021, 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 2021 Fall National Meeting, the Surplus Lines (C) Working Group met Dec. 20, 2021, and March 24 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings, to discuss 10 applications seeking approval for listing on the NAIC *Quarterly Listing of Alien Insurers*, and all 10 applications were approved.

Mr. Kaumann made a motion, seconded by Mr. Baron, to adopt the report of the Surplus Lines (C) Working Group. The motion passed unanimously.

3. Discussed and Exposed the Draft Model #870

Commissioner Donelon stated that last summer, the *Nonadmitted Insurance Model Act (#870)* drafting group was formed, following approval in the spring, to begin working on Model #870. He asked Andy Daleo (NAIC) to provide a summary of the drafting group's activities. Mr. Daleo indicated that the drafting group consisted of participants from Colorado, Illinois, Louisiana, Texas, and Washington. He stated that the drafting group met Sept. 28, 2021; Oct. 20, 2021; Nov. 4, 2021; and Dec. 1, 2021. Further, he indicated that the drafting group met Jan. 10 and May 3 in regulator-to-regulator session to discuss administrative tasks. He stated that during the open calls, the drafting group discussed each section of Model #870 and worked through a revision-marked version that resulted in the current draft. He stated that many comments were received as shown in the Excel matrix within the materials. Following Mr. Daleo's comments Commissioner Donelon asked Mr. Travis to provide a summary of the primary revisions to Model #870. Mr. Travis commented that all the comments within the Excel matrix were addressed by the drafting group. Further, he indicated that the last column of the comment matrix provides details on how each of the comments were addressed. He indicated that the most significant work completed was to bring Model #870 in compliance with the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Nonadmitted and

Reinsurance Reform Act of 2010 (NRRRA). He stated that the most notable edits were regarding the “Home State” taxation provision. He commented that the drafting group spent a considerable amount of time discussing “Home State” determination of unaffiliated groups, given that the NRRRA remained silent on the issue. He indicated that the drafting group integrated text into Model #870, and it believed it provided a good framework to address the issue. He also stated that the drafting group added optional sections on domestic surplus lines insurers to address the increasing number of states that have adopted this legislation. He stated that given that the Task Force developed the *Guideline on Nonadmitted Accident and Health Coverages* (#1860), reference to it was included below the “Surplus Lines Insurance” definition. He also indicated that Section 2–Definitions was significantly enhanced by adding additional key definitions such as Control, Exempt Commercial Purchaser, and Home State. He stated that the drafting group believes its work is substantially complete, and it turned Model #870 over to the Task force and requested a 60-day public exposure.

Commissioner Donelon requested a motion to expose the draft Model #870 for a 45-day public comment period ending July 6. Mr. Baughman made a motion, seconded by Mr. Kaumann, to expose the draft Model #870 for a 45-day public comment period ending July 6. The motion passed unanimously.

John Meetz (Wholesale & Specialty Insurance Association—WSIA) asked whether the comment period was for a 60-day period, as indicated by Mr. Travis, or a 45-day period, as stated in the motion. Following a brief discussion, Commissioner Donelon requested a revised motion to expose the draft Model #870 for a 60-day public comment period ending July 21. Mr. Baughman made a motion, seconded by Mr. Baron, to expose the draft Model #870 for a 60-day public comment period ending July 21. The motion passed unanimously.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/C CMTE/SLTF/2022 Fall NM/SLTF Minutes May 2022.docx

Draft: 12/7/22

Surplus Lines (C) Working Group
Virtual Meeting
December 7, 2022

The Surplus Lines (C) Working Group of the Surplus Lines (C) Task Force met Dec. 7, 2022. The following Working Group members participated: Stewart Guerin, Chair (LA); Eli Snowbarger, Vice Chair (OK); David Phifer (AK); Michelle Lo (CA); Rolf Kaumann (CO); Robert Ballard (FL); Scott Sanders (GA); Marcy Savage (IL); John Turchi (MA); William Leach (NJ); Jose Joseph (NY); Amy Garcia (TX); and Steve Drutz (WA).

1. Discussed Comments Received and Adopted the IID Plan of Operation

Andy Daleo (NAIC) summarized the eight comments received on the proposed changes to the NAIC *International Insurers Department (IID) Plan of Operation* (Plan of Operation) (Attachment ___) and the proposed resolutions.

Daleo summarized comments submitted by Thomas Dawson (McDermott Will & Emery) (on behalf of the International Underwriting Association of London [IUA]) and Timothy Grant (Lloyd's America) that commented on the removal of language in the introduction regarding the function of the Property and Casualty Insurance (C) Committee as the group that hears appeals for applications not approved by the Working Group. Daleo explained that the language was struck because appeals are covered within a separate section of the Plan of Operation. Further, he indicated that there is no objection to restoring the text in the introduction.

Daleo indicated that another comment was received from Grant regarding a statement struck within the introduction that indicated that the Surplus Lines (C) Working Group provides the final approval decision on applications. Daleo stated that there is no objection to restoring that language to the introduction. Daleo indicated Dawson (on behalf of Associated Electric & Gas Insurance Services – AEGIS) submitted a proposal to eliminate the U.S. trust fund requirements as a core requirement as outlined in Section II.B of the Plan of Operation. Daleo indicated that trust funds are in place to ensure protections for U.S. policyholders purchasing coverages from non-U.S. insurers that are not regulated by the U.S. solvency framework. He further highlighted that given these policies are within the non-admitted market, other than the trust fund requirement, there is no other solvency backstop in place. Therefore, Daleo did not recommend any action on this proposal. Guerin commented the elimination of the U.S. fund requirement was outside the scope of the Surplus Lines (C) Working Group as it is a policy issue. Daleo indicated that Dawson (on behalf of the IUA) requested the U.S. trust fund cap not be increased as it had been increased in 2013 and again in 2018. Daleo agreed, given the recent increases, that the trust fund cap should remain at \$250 million.

Daleo summarized another comment submitted by Dawson (on the behalf of the IUA) that suggested that the language regarding allowed trust fund assets in the Plan of Operation be synced up with the language in the Trust Fund for Alien Excess or Surplus Lines Insurers. Daleo indicated that he did not have any concerns with syncing the language. Daleo indicated that Grant submitted a comment to add the words “provide an illustrative example” following the definition of “wet marine and transportation” because the definition may be determined by state law as opposed to the *Nonadmitted Insurance Model Act* (#870). Daleo had no objections to his suggestion. Daleo indicated that Dawson (on behalf of the IUA) submitted a comment that requested a clarification on the U.S. Branch Office language provided in Section II.D of the Plan of Operation. Daleo stated that this section clearly indicates that if an insurer is a U.S. Branch it cannot be on the *Quarterly Listing of Alien Insurers*. Therefore, Daleo recommended no further action.

Dawson indicated that the IUA's comment regarding the U.S. Branch Office was related to the removal of “office” from the title and body of the text within Section II.D. Guerin asked the Working Group if it had concerns with the

amendment. There were no objections and the amendment was accepted. Dawson also indicated that he appreciated the comments regarding the proposal to eliminate the U.S. Trust Fund requirements, and given the Working Group Chair indicated that the comment is a policy issue that would be addressed at the Surplus Lines (C) Task Force level, Dawson indicated he would discuss in that forum.

Kaumann made a motion seconded by Snowbarger, to adopt the Plan of Operation (Attachment). The motion passed unanimously.

Having no further business, the Surplus Lines (C) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/ C CMTE/2022_Fall/SLTF/SLWG/ SLWG minutes Dec 7

NAIC

International Insurers Department Plan of Operation

Approved by NAIC Executive/
Plenary on ~~X/5/2022~~¹⁹

NAIC Contacts

Andy Daleo, Senior Manager – P/C Domestic and

International Property/Casualty Financial Analysis Manager ~~Robert~~



Table of Contents

Background 3

Introduction 3

I. Application Process 4

II. Core Requirements and Guidelines for Inclusion on the Quarterly Listing 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. Process for Reconsideration of an Application Rejection 8

IV. Ongoing Quarterly Listing Eligibility 8

 A. Core Areas of ~~I~~nsurer Compliance 8

 B. IID Annual and Ongoing Analysis of Quarterly Listed Insurers 9

 C. Examination of Insurer 9

V. De-listing 9

VI. Process for Reconsideration of De-listing 10

VII. Communication 10

VIII. Voluntary Termination from the Quarterly Listing

~~VIII~~-IX. Confidentiality 10

~~IX~~-X. Amendment to the Plan 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) provides details on the standards and processes ~~which that~~ Insurers must meet to gain and maintain inclusion on the *Quarterly Listing of Alien Insurers* (Quarterly Listing). The Plan ~~that follows~~ provides a description of the roles NAIC staff and selected state regulators perform in the oversight of alien Insurers writing surplus lines business in the U.S.

Introduction

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

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

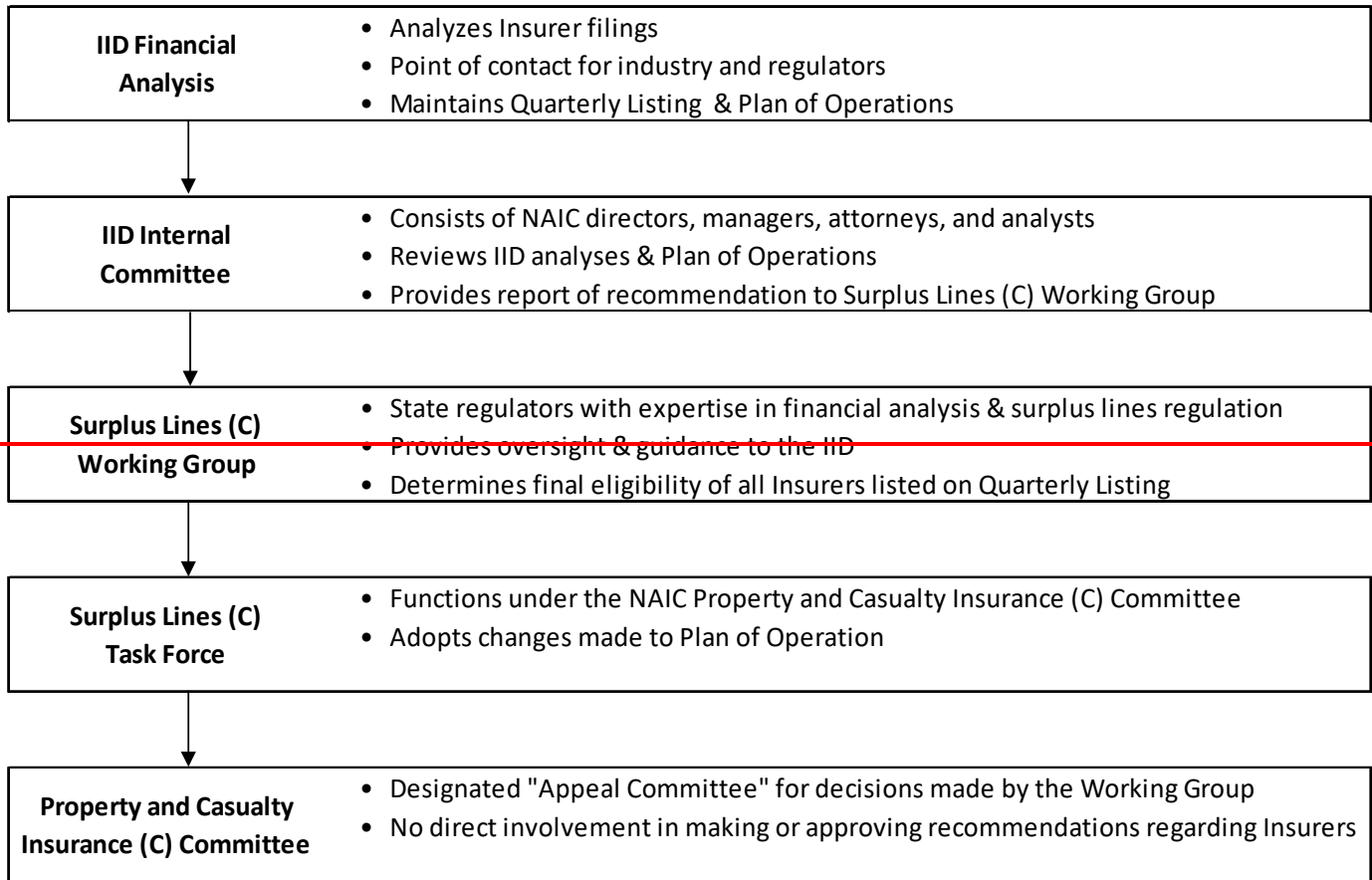
The Working Group provides oversight to the IID and reports to the Surplus Lines (C) Task Force (Task Force), which functions under the NAIC Property and Casualty Insurance (C) Committee. The Working Group is composed of state regulators with experience in financial analysis and surplus lines regulation.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

¹ 15 U.S.C. § 8204(2) .

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

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

	<ul style="list-style-type: none"> • 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.
Property and Casualty Insurance (C) Committee	<ul style="list-style-type: none"> • Monitors the activities of the Surplus Lines (C) Task Force. 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 ~~and requesting via inclusion admittance to~~ on the Quarterly Listing will first register ~~at within~~ [OPTins[®]](#). OPTins[®] is an electronic filing and payment system ~~designed~~ [utilized](#) for [filing alien](#) surplus lines [applications](#). ~~Following registration, an Insurer will complete and upload download the IID an application and populate all required information and as well as compile all other required documents indicated as required for listing. Additionally, a comprehensive list of required filings can be found is available within in the "Renewal Application Filing Memo" within the "Related Documents" tab available on the Working Group webpage. Also, through~~ [OPTins[®]](#), the applicant will remit [all required filings along with](#) a non-refundable electronic payment in the amount indicated ~~in the Application and Renewal Filing Memo Application and Renewal Filing Memo Application Filing Memo & Instructions in the Schedule of Fees, a separate document found on the Working Group's webpage and within~~ [OPTins[®]](#). The [application](#) fee is used

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

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

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

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

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

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

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

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

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

to determine if it is adequate given the Insurer's risk profile. ~~In the evaluation of the adequacy of shareholders' equity, t~~The following key factors may be considered by the IID:

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

If there is a determination that shareholders' equity is inadequate based on the analysis of the Insurer's risk profile, an equity requirement above the minimum amount of \$~~50~~45.0 million may be required. Or, the Insurer may be subject to additional ongoing reporting (e.g., monthly and/or quarterly reporting).

Lloyd's Notation

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

B. U.S. Trust Fund

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

In establishing its trust fund, ~~an insurance company~~ the Insurer must maintain such fund at, and enter into an agreement with, a qualified U.S. financial institution. The agreement must contain provisions consistent with the IID model document, Trust Agreement for Alien Excess or Surplus Lines Insurers. ~~In no case may a trust agreement have an expiration date of less than five years from the date the Insurer notifies the trustee of its intention to terminate the trust fund.~~ For purposes of complying with the trust fund requirement as well as the Lloyd's U.~~S~~nited 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, t~~The trust fund minimum amount will be based on the U.S. gross surplus lines liabilities (i.e., gross reserve for unpaid losses for case and IBNR + gross reserve for unpaid loss adjustment expenses) ~~or the direct nonadmitted U.S. liabilities~~ excluding liabilities arising from aviation, ocean marine, and transportation insurance (NAIC *Nonadmitted Insurance Model Act* (#870), Section 3 – Definitions, *Wet Marine and Transportation Insurance*, provides an illustrative example), and direct ~~placements~~ procurement. The calculation of the required trust fund minimum balance is as follows:

Trust Fund Calculation

- 30% of ~~any U.S. gross liabilities~~ amount up to ~~the first~~ \$200.0 million, plus
- 25% of U.S. gross liabilities ~~any amount up to the next~~ greater than \$200 million and up to ~~\$5300.0~~ \$500.0 million, plus
- 20% of U.S. gross liabilities ~~any amount up to the next~~ greater than \$500 million and up to ~~\$1500.0 m~~ \$1.5 billion, plus
- 15% of U.S. gross liabilities ~~any amount~~ in excess of \$1.0 billion

In no event will the required trust fund minimum amount, despite the calculation above, be less than ~~\$5.4~~ 6.5 million or in excess of \$250 million.

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

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

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

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

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

C. Ethics and Integrity

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

D. U.S. Branch ~~Office~~

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

E. Lloyd's Incidental Syndicates

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

F. Insurers or Lloyd's Sovereign Government Syndicate Ownership

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

III. Process for Reconsideration of an Application Rejection

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

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

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

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

IV. Ongoing Quarterly Listing Eligibility

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

A. Core Areas of Insurer Compliance

Annual Renewal Filing

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

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

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

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

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

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

Trust Fund Monitoring

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

B. IID Annual and Ongoing Analysis of Quarterly Listed Insurers

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

C. Examination of Insurer

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

V. De-listing

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

VI. Process for Reconsideration of De-listing

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

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

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

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

VII. Communication

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

VIII. Voluntary Termination from the Quarterly Listing

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

VIII.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 ~~any~~ such information with ~~any~~ state insurance department regulators ~~upon request~~, as well as ~~other~~ NAIC staff ~~members~~ who participate in the review of applications and renewals. Additionally, in the event the IID or NAIC is served with a subpoena, motion, order, or other legal process requiring the production of such information or testimony related thereto, the NAIC will make best efforts to inform the Insurer of such third-party request in order to afford the Insurer an opportunity to take whatever action it deems appropriate to protect the confidentiality of its information. The Insurer acknowledges the NAIC may comply with the request and any order compelling compliance with such request.

IX.X. Amendment to the Plan

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

Draft: 10/27/22

Surplus Lines (C) Working Group
Virtual Meeting
October 19, 2022

The Surplus Lines (C) Working Group of the Surplus Lines (C) Task Force met Oct. 19, 2022. The following Working Group members participated: Stewart Guerin, Chair (LA); Eli Snowbarger, Vice Chair (OK); David Phifer (AK); Michelle Lo (CA); Rolf Kaumann (CO); Robert Ballard (FL); Patricia Coppel (GA); John Turchi (MA); Amy Garcia (TX); and Steve Drutz (WA).

1. Discussed Draft Amendments to the NAIC *International Insurers Department (IID) Plan of Operation*

Andy Daleo (NAIC) summarized the proposed changes to the NAIC *International Insurers Department (IID) Plan of Operation* (Plan of Operation) (Attachment ____). Among the proposed changes to the Plan of Operation, the following key changes were highlighted: 1) an enhanced IID workflow table; 2) clarifying language regarding the process to become admitted to the *Quarterly Listing of Alien Insurers* (Quarterly Listing); 3) a proposed increase in the minimum required shareholders equity funds required to be included on the Quarterly Listing to \$50 million; 4) the addition of clarifying language to the U.S. trust funds section in relation to the components of U.S. gross surplus lines liabilities and how the U.S. trust fund is calculated and the verification of the U.S. trust fund; 5) a proposed increase in the U.S. trust fund minimum to \$6.5 million and the cap to \$300 million; 6) the addition of clarifying language to the annual renewals, notification of change in control, and notification of decline of equity sections; and 7) the addition of a new section regarding voluntary termination from the Quarterly Listing.

Thomas M. Dawson (McDermott Will & Emery) asked how many companies would be affected by the increased U.S. trust fund cap of \$300 million. Mr. Daleo indicated that the amendment to the trust fund cap would affect three companies or 4% of the total Quarterly Listed companies. Mr. Guerin asked how many companies would be affected by the increased shareholders' equity requirement to \$50 million. Mr. Daleo responded that one company would be affected by that amendment.

Jeff Hunt (Hunt66 LLC) asked for clarification on the timeline for the amendments to the increases to the required shareholders' equity and U.S. trust fund balances. Mr. Daleo indicated that the new minimum requirements would be effective for new applicants upon adoption while current Quarterly Listed companies would have until June 30, 2023, to implement the required increases.

Mr. Guerin requested the exposure of the draft IID Plan of Operations.

Mr. Kaumann made a motion seconded by Ms. Lo, to expose the draft Plan of Operation for a 30-day public comment period ending November 21, 2022. The motion passed unanimously.

Having no further business, the Surplus Lines (C) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/ C CMTE/2022_Fall/SLTF/SLWG/ SLWG minutes Oct 19

DRAFT 10/27/2022
NONADMITTED INSURANCE MODEL ACT

Table of Contents

Section 1.	Short Title
Section 2.	Purpose—Necessity for Regulation
Section 3.	Definitions
Section 4.	Placement of Insurance Business
Section 5.	Surplus Lines Insurance
Section 6.	Insurance Independently Procured—Duty to Report and Pay Tax
Section 7.	Penalties
Section 8.	Violations
Section 9.	Service of Process
Section 10.	Legal or Administrative Procedures
Section 11.	Enforcement
Section 12.	Suits by Nonadmitted Insurers
Section 13.	Separability of Provisions
Section 14.	Effective Date

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~~ engage in an the business of insurance ~~business~~ in this state.
- B. “Affiliate” means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.
- C. “Affiliated Group” means any group of entities that are all affiliated. “Capital,” as used in the financial requirements of Section 5, means funds paid in for stock or other evidence of ownership.
- D~~E~~. “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.

E. “Control” means with respect to an insured:

- (1) A person either directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or
- (2) The entity controls in any manner the election of a majority of the directors or trustees of the other entity.

F. [OPTIONAL] [~~“Domestic Surplus Lines Insurer” means a surplus lines insurer domiciled in this state, that which may write insurance in this state on as if it were a surplus lines insurer basis domiciled in another state.~~]

G. “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.

H. “Exempt Commercial Purchaser” means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

- (1) The person employs or retains a qualified risk manager to negotiate insurance coverage;:-
- (2) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months and:-
- (3) (a) The person meets at least one+ of the following criteria:
 - (i) The person possesses a net worth in excess of \$20,000,000;:-
 - (ii) The person generates annual revenues in excess of \$50,000,000;:-
 - (iii) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate;:-
 - (iv) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000; or:-
 - (v) The person is a municipality with a population in excess of 50,000 persons.
- (b) Effective on July 21, 2010, every five years-and each fifth January 1 occurring thereafter on January 1st, the amounts in Items (i), (ii), and (iv) of Subparagraph (a) of this Paragraph shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

Drafting Note: This definition of “Exempt Commercial Purchaser” follows the language of the federal Nonadmitted and Reinsurance Reform Act (NRRA). Some states have chosen not to adopt the inflation adjustment. The NRRA uses the term “municipality,” which some states may find limiting. States may choose to use terminology consistent with state law to expand this provision to include counties and other public entities.

EI. “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.~~

J. “Home State,” ~~means~~ with respect to an insured, means:

- (1) The state in which an insured maintains its principal place of business or, in the case of a natural person, the person’s principal place of residence;
- (2) If 100 percent of the insured risk is located out of the state referred to in subpParagraph (1), the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated; or
- (3) If the insured is an affiliated group with more than one member listed as a named insured on a single Nonadmitted Insurance contract, the home state is the home state of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.;~~or~~

~~(4) [Option 1] In the case of an unaffiliated group policy:~~

~~(a) If a group policyholder pays 100% of the premium from its own funds, then the home state is determined according to paragraphs (1) and (2).~~

~~(b) If a group policyholder does not pay 100% of the premium from its own funds, then the home state is determined according to paragraphs (1) and (2) for each member of the group.~~

~~[Option 2] In the case of an unaffiliated group policy, the home state shall be the home state of the group policyholder as determined by the application of paragraphs (1) and (2).~~

Comment: The NRRA definition of “home state” includes Paragraphs (1), (2), and (3). The NRRA definition does not expressly cover unaffiliated groups. States have taken different approaches to the taxation of unaffiliated group policies. Some states tax based on the “Home State” of the group policyholder. Other states tax based on the “Home State” of the group member or certificate holder under the unaffiliated group policy. Some states assess tax on the “Home State” of the person that pays the premium. Not all states have an express provision to address unaffiliated group policies. ~~The Drafting Group could not arrive at language to address each possibility and opted to omit it from the Model. such as risk purchasing groupsmodel language contains two options for addition ofthat areis expressly covering unaffiliated groupstreating the members of such a group as individual insureds for purposes of placement and taxation.~~

~~K. “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.~~

~~K. “Nonadmitted Insurance” means any insurance written on properties, risks or exposures, located or to be performed in this state, by an insurer not licensed to engage in the ~~transaction~~business of insurance in this state [or a dDomestic sSurplus LLines iInsurer].~~

~~L.I. “Nonadmitted Iinsurer” means an insurer not licensed to ~~do an~~engage in the ~~transaction~~business of insurance ~~business~~in this state but does not include a risk retention group pursuant to the federal Liability Risk Retention Act of 1986.~~

~~M.J. “Person” means any natural person or ~~other business~~ entity, including, but not limited to, ~~individuals~~, partnerships, associations, trusts or corporations.”~~

~~N. “Premium” means any payment made as consideration for an insurance contract.~~

~~N.O. “Principal Place of Business” means:~~

~~(1) The state where a person maintains its headquarters and where the person’s high-level officers direct, control, and coordinate the business activities; or~~

~~(2) If the person’s high-level officers direct, control, and coordinate the business activities in more than one state, or if the person’s principal place of business is located outside any state, then it is the state to which the greatest percentage of the person’s taxable premium for that insurance contract is allocated.~~

- P~~Θ~~. “Principal Residence” means:
- (1) The state where the person resides for the greatest number of days during a calendar year; or
 - (2) If the person’s principal residence is located outside any state, the state to which the greatest percentage of the person’s taxable premium for that insurance contract is allocated.
- Q. “State” includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Island, and American Samoa.
- ~~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.~~
- R~~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 an nonadmitted insurer eligible surplus lines insurer ~~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. NAIC.
- S. “Surplus Lines Insurer” means a nonadmitted [or domestic surplus lines] insurer that is eligible to accept the placement of surplus lines insurance pursuant to Section 5 of this Act.
- T~~Θ~~. “Surplus Lines Licensee“ means any person ~~individual, firm or corporation~~ licensed under Section 5 of this Act to place surplus lines insurance ~~on properties, risks or exposures located or to be performed~~ in this state with an nonadmitted insurers eligible surplus lines insurer ~~to accept such insurance~~.
- U. “Taxable Premium” means any premium less return premium that is not otherwise exempt from tax pursuant to this Act. [Optional] [Premium on property risk or exposure that is properly allocated to federal or international waters or is under the jurisdiction of a foreign government is not taxable in this state.]
- V~~S~~. “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;

- (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~~ location 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."

~~WQ. —“Type of insurance” means coverage afforded under the particular policy that is being placed.~~

~~T.~~ “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
- (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 **T**ransaction of **I**nsurance 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 **P**erson shall not directly or indirectly engage in a **T**ransaction of **I**nsurance with or on behalf of ~~or shall in this state directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, a **N**onadmitted **I**nsurer in this state, 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 **P**erson who represents or aids a **N**onadmitted **I**nsurer 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 **N**onadmitted **I**nsurer fails to pay a claim or loss within the provisions of the insurance contract and the laws of this state, a **P**erson 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 **P**erson in regard to an insured who independently procures insurance as provided under Section 6. This section shall not apply to a **P**erson, 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 **P**erson 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 **N**onadmitted **I**nsurance.

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.

- F. This section shall not apply to a **P**erson 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 **L**ines **I**nsurance 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 engage in the business of~~ an insurance or reinsurance ~~business by~~ in 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, ~~W~~et ~~M~~arine and ~~T~~ransportation ~~I~~nsurance;
- (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 ~~N~~onadmitted ~~I~~nsurers. 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 ~~L~~ines ~~I~~nsurance may be placed by a ~~S~~urplus ~~L~~ines ~~L~~icensee if:
- (1) Each insurer is ~~an~~ eligible to write ~~S~~urplus ~~L~~ines ~~I~~nsurance ~~insurer~~; and
- ~~(2) (2) —~~ Each insurer is authorized to write the type of insurance in its domiciliary jurisdiction; and
- (3) ~~Other than for c~~Exempt ~~c~~Commercial ~~p~~Purchasers, ~~t~~he full amount or type of insurance cannot be obtained from insurers who are admitted to ~~do engage in the~~ business ~~of insurance~~ in this state. The full amount or type of insurance may be procured from ~~E~~ligible ~~S~~urplus ~~L~~ines ~~I~~nsurers, 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 Diligent search~~ statutes and regulations ~~might~~ vary from state to state in terms of the number of declinations required and the ~~P~~erson designated to conduct the search. Several states ~~permit surplus lines placement without a diligent search for or without regard to the availability of admitted coverage. States may want to consider changing diligent search requirements in light of electronic transactions.~~ Section 5A(3) does not prohibit a regulatory system in which a ~~S~~urplus ~~L~~ines ~~L~~icensee may place with an eligible ~~N~~onadmitted ~~I~~nsurer any coverage listed on a current “~~E~~xport ~~L~~ist” maintained by the commissioner. The ~~E~~xport 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.

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 an nonadmitted Eligible Surplus Lines Insurer eligible to accept the insurance, unless specifically prohibited by the laws of this state.

[*Alternative Subsection B*]

- [~~C~~B. Subject to Section 5A(3) of this Act, a Surplus Lines Licensee may place only the following types of coverage with an nonadmitted Eligible Surplus Lines 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 Surplus Lines Insurance coverage with a nonadmitted insurer, unless, at the time of placement, the Surplus Lines Licensee has determined that the nonadmitted-insurer:

~~(1) (+) Deleted.~~

~~Has established satisfactory evidence of good repute and financial integrity; and~~

- (2) Qualifies-Is eligible to write Surplus Lines Insurance under one of the following subparagraphs:

(a) For a Nonadmitted Insurer domiciled in another United States jurisdiction, the insurer shall have both of the following:

(i) The authority to write the type of insurance in its domiciliary jurisdiction; and

(ii) Has eCapital and surplus or its equivalent under the laws of its domiciliary jurisdiction whichthat equals the greater of:

(I) ~~—~~ (A) The minimum capital and surplus requirements under the law of this state; or

(B) \$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. Current numbering is retained in this Model to remain consistent with the reference within the NRRA.~~

(II) ~~(i)~~ 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) For a Nonadmitted Insurer domiciled outside the United States, the insurer shall be listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners (NAIC); [or]

~~[(c) — [For an insurer domiciled in this state, the insurer is a Domestic Surplus Lines Insurer.]~~

- ~~(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:~~
 - ~~(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.

- ~~(c) — 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.~~
 - ~~(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:~~

Year	Following	Trust Fund Requirement
Enactment		
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.~~

~~(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 semiannually. 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. The placement of Surplus Lines Insurance shall be subject to the statutory and regulatory requirements solely of the insured’s Home State.

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

FE. Withdrawal of Eligibility as a Surplus Lines Insurer

If at any time the commissioner has reason to believe that a Ssurplus Llines Iinsurer is no longer eligible under Section 5C, ÷

- ~~(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~~the commissioner may after notice and an opportunity for a hearing declare it ineligible. The commissioner shall promptly ~~mail~~publish notice of all such declarations in a timely manner reasonably calculated to reach to each Ssurplus Llines Llicensee 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. Eligibility criteria are independent of other considerations such as compliance with other laws, for example, 18-USC 1033, relating to felons participating in the insurance business.

GF. Surplus Lines Tax

- (1) In addition to the full amount of gross Ppremiums charged by the insurer for the insurance, every Pperson licensed pursuant to Section 5JH of this Act shall collect and pay to the commissioner a sum equal to [insert number] percent of the gross Ppremiums charged, less any return Ppremiums, for Ssurplus Llines Iinsurance 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~~ paid entirely to the Home State of 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 SR of this section, each Surplus Lines Licensee shall pay the Premium tax due for the policies written during the period covered by the report.
- ~~(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.~~

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.

H.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 HI 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~~Surplus Lines Insurer unless the Person possesses a current Surplus Lines Insurance producer license issued by the commissioner.
- (2) The commissioner may issue a resident surplus lines license to a qualified holder of ~~a current underlying~~ property and casualty ~~agent's or broker's or general agent's~~ licenses but only when the ~~broker or agent~~producer 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;~~
 - ~~(cd)~~ 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 or errors and omissions (E&O) policy in favor of this state in the penal sum of \$[insert amount] aggregate liability, with corporate sureties approved by the commissioner. The bond or E&O policy 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 or E&O policy 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.

- ~~(de)~~ 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
- (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.

J. 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 an opportunity for a hearing as provided under the applicable provision of this state's laws for 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;~~
- (17) Violation of any provision of this Act; or
- (28) For any cause for which an insurance license could be denied, revoked, suspended or renewal refused under Sections [insert applicable citation].

KJ. 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.

LK. 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 or the insured is an Exempt Commercial Purchaser. 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.

M. 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 **S**urplus **L**ines **I**nsurance documents which surplus lines brokers are required to file with the association pursuant to the plan of operation;

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;
 - (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 ~~P~~remium charged;
 - (c) The name of the ~~N~~onadmitted ~~I~~nsurer; 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 ~~N~~onadmitted ~~I~~nsurer ineligible and order the association not to stamp insurance documents issued by the ~~N~~onadmitted ~~I~~nsurer and issue any other appropriate order.

~~NM~~. Evidence of the Insurance and Subsequent Changes to the Insurance

- (1) Upon placing ~~S~~urplus ~~L~~ines ~~I~~nsurance, the ~~S~~urplus ~~L~~ines ~~L~~icensee 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 ~~S~~urplus ~~L~~ines ~~L~~icensee 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 ~~P~~remium 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.~~
- (~~5~~6) The Surplus Lines Licensee shall give the following consumer notice to every Person, other than Exempt Commercial Purchasers, 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 "nonadmitted" or "Surplus Lines 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.~~"

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.

ON. 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 [other than a Domestic Surplus Lines 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~~font, and ~~type~~-size of the notice.

P~~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.

Q~~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.

R~~Q~~. Records of Surplus Lines Licensee

(1) 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~~a) Amount of the insurance, risks and perils insured;
- (~~2~~b) Brief description of the property insured and its location;
- (~~3~~c) Gross Premium charged;
- (~~4~~d) Any return Premium paid;
- (~~5~~e) Rate of Premium charged upon the several items of property;
- (~~6~~f) Effective date and terms of the contract;
- (~~7~~g) Name and address of the insured;
- (~~8~~h) Name and address of the insurer;
- (~~9~~i) 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~~j) Identity of the producing broker, any confirming correspondence from the insurer or its representative, and the application.

(2) 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.

S~~R~~. Reports—Summary of Exported Business

On or before the end of the month following each [insert month, quarter, year], each ~~S~~urplus ~~L~~ines ~~L~~icensee shall file with the commissioner, on forms prescribed by the commissioner, a verified report in duplicate of all ~~S~~urplus ~~L~~ines ~~I~~nsurance transacted during the preceding period, showing:

- (1) Aggregate gross ~~P~~remiums written;
- (2) Aggregate return ~~P~~remiums;
- (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.

T. [OPTIONAL] [Domestic Surplus Lines Insurers]

- (1) The commissioner may designate a domestic insurer as a domestic Surplus Lines Insurer upon its application, which shall include, as a minimum, an authorizing resolution of the board of directors and evidence to the commissioner's satisfaction that the insurer has capital and surplus of not less than fifteen million dollars.
- (2) A Domestic Surplus Lines Insurer:
 - (a) Shall be limited in its authority in this state to providing Surplus Lines Insurance.
 - (b) May be authorized to write any type of property and casualty [or accident and health] insurance in this state that may be placed with a Surplus Lines Insurer pursuant to this Subpart.
 - (c) Be subject to the legal and regulatory requirements applicable to domestic insurers, except for theas following:
 - (i) Premium taxes, fees, and assessments applicable to admitted insurance;
 - (ii) ~~Regulation of rates and forms requiring the filing of rates and forms for approval;~~
 - (iii) ~~Assessment or coverage by insurance guaranty funds.~~

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

- A. Each insured whose Home State is in this state who procures, ~~or~~ continues or renews insurance with a ~~N~~onadmitted ~~I~~nsurer ~~on properties, risks or exposures located or to be performed in whole or in part in this state~~, other than insurance procured through a ~~S~~urplus ~~L~~ines ~~L~~icensee, 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 ~~P~~remium 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 multistate 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~~ ~~P~~remiums charged for the insurance, less any return ~~P~~remiums, 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

whose Home State is this state shall pay the tax on all Taxable Premium 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.

~~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.~~

~~C~~D. Delinquent taxes hereunder shall bear interest at the rate of [insert number] percent per year.

~~D~~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 there is evidence satisfactory to 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.

- 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 ~~P~~principal ~~P~~place of ~~B~~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 ~~P~~principal ~~P~~place of ~~B~~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 ~~P~~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 ~~P~~person or insurer in any other manner now or hereafter permitted by law.
- F. Each ~~N~~nonadmitted ~~I~~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~~Notwithstanding conditions or stipulations in the policy or contract, a ~~N~~nonadmitted ~~I~~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~~Except with regard to Exempt Commercial Purchasers, n~~Notwithstanding~~ conditions or stipulations in the policy or contract, a ~~N~~nonadmitted ~~I~~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 9-H. States should consider adoption or modification of the prior subsection in light of their own laws on arbitration or other alternative dispute resolution in insurance and commercial transactions.

- I. A policy or contract issued by the ~~N~~nonadmitted ~~I~~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 ~~N~~nonadmitted ~~I~~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 ~~P~~person or insurer, by services made as provided in this Act, the insurer shall either:

- (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 ~~Non~~admitted ~~I~~nsurer 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 ~~Non~~admitted ~~I~~nsurer 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 ~~Home State of the insured 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

- A. 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.~~

~~(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.~~

~~B. 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~~at law or ~~in~~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 placed pursuant to the law of the Home State of the insured~~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 Water 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.

Section 13. Separability/Severability Clause of Provisions

If any provisions of this Act, or the application thereof of the provision to any P person or circumstance, ~~shall is be~~ held invalid, such determination shall not affect the provisions or the remainder of the Act and the applications of this Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are severable 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).

Comments on Proposed Amendments to the Nonadmitted Insurance Act

Bob Wake, Maine Bureau of Insurance

The Exposure Draft contains some language that unnecessarily and inappropriately deregulates surplus lines coverage beyond the scope required by the NRRA. In particular, Proposed Subsection 5(D) raises concerns by declaring: “The placement of Surplus Lines Insurance shall be subject to the statutory and regulatory requirements solely of the insured’s Home State.” Although this language is almost a direct quotation from the NRRA (Dodd-Frank Act § 522(a), codified at 15 U.S.C. 8202(a)), it omits some important exceptions and limitations:

- The quoted language omits the first half of Subsection 522(a), which is “Except as otherwise provided in this section, ...” Subsection 522(d) is a saving clause that creates an exception protecting “any State law, rule, or regulation that restricts the placement of workers’ compensation insurance or excess insurance for self-funded workers’ compensation plans with a nonadmitted insurer.” (As the numbering implies, there are also a (b) and a (c), but those are specific examples of preemption – surplus lines broker licensing and enforcement of preempted laws – not exceptions to preemption.)
- The term used in the NRRA is “nonadmitted insurance,” which is not the same as “Surplus Lines Insurance.” DFA § 527(9), codified at 15 U.S.C. 8206(9),¹ defines that term more broadly to include self-procured insurance, but more important for our purposes, narrows it to include only property and casualty insurance. This means states are still free to regulate life and health coverage based on the situs of the covered risk. As a practical matter, this is likely to be most important when a multi-state group policy is sold as major medical coverage or a substitute for major medical coverage. As the Task Force has discussed in the past, states also have different rules for disability insurance, but this is less problematic because surplus lines disability coverage, where permitted, is normally individual coverage covering a single-state risk.
- The NRRA’s workers’ compensation saving clause doesn’t address other lines of compulsory insurance – in particular, motor vehicle liability. However, the fact that an insurer is allowed to write the coverage and a broker is allowed to sell it does not mean that coverage with no guaranty fund protection must be accepted as satisfying a state’s financial responsibility laws.
- Also, although this is more a matter of style than substance, all This State has the power to do is declare that This State’s laws and regulations do **not** apply (subject to the exceptions and limitations noted above) when This State is **not** the applicable Home State for the policy. For example, if a company based in California wants to buy a surplus lines policy that also covers Massachusetts and Maine risks, Maine does not have the power to declare that California law solely governs the placement of the Massachusetts exposure. Even declaring that California law solely governs the placement of the Maine exposure exceeds our power, except perhaps as a guide to a particularly complex choice-of-law dispute in a Maine court.

On the other hand, to say merely that “This Act does not apply” would go too far in the other direction, because some key provisions of This State’s laws that are preempted by the NRRA might

¹ The numbering is inconsistent because Section 526 is an unallocated provision calling for a GAO study.

be found elsewhere, especially in states where surplus lines taxation is governed by the tax code rather than the insurance code. So I would suggest something along the lines of the following:

- D. If this state is not the insured's Home State, the statutory and regulatory requirements of this state do not apply to the placement of property and casualty coverage, other than workers' compensation insurance and excess workers' compensation insurance, in the Surplus Lines Market. *(Alternatively, if there's a strong desire to track the NRRA language despite the jurisdictional problems, substitute something like "The placement of Surplus Lines Insurance shall be subject to the statutory and regulatory requirements solely of the insured's Home State, with the exception of workers' compensation insurance, excess workers' compensation insurance, and life and health insurance.")*

Drafting Note: This subsection implements the NRRA requirement that with the exception of workers' compensation, the placement of nonadmitted property casualty coverage "shall be subject to the statutory and regulatory requirements solely of the insured's home State." However, permitting the placement of other lines of coverage, such as automobile liability insurance, does not compel states to accept nonadmitted coverage (which has no guaranty fund protection) as sufficient to satisfy state financial responsibility laws.

Also, the current draft of Paragraph 5(N)(5) excludes applicants that are Exempt Commercial Purchasers from the notice requirements. That exception should be deleted. It is a standardized notice, so it is not burdensome for brokers. While some ECPs are very familiar with the differences between the surplus lines market and the admitted market, others are less familiar and could benefit from the reminder at the point of sale. Indeed, the NRRA (DFA § 525(1), codified at 15 U.S.C. 8205(1)) expressly provides that sales to ECPs are not even exempt from state diligent search requirements unless the broker has given some form of notice that the admitted market "may provide greater protection with more regulatory oversight." There is nothing suggesting that the Home State lacks the authority to specify the form of that notice, and as discussed earlier, this paragraph does not apply unless This State is the Home State for the sale.

November 28, 2022

Commissioner Jim Donelon, Chair
Surplus Lines Task Force
National Association of Insurance Commissioners

Re: Non-Admitted Model Act

Dear Commissioner Donelon:

The American Property Casualty Insurance Association (APCIA) appreciates the work of the Model 870 Drafting Group for their revisions to the Nonadmitted Insurance Model Act and would like to thank the Surplus Lines Task Force for the opportunity to comment on the draft. The goals of bringing the Model Act into compliance with the Nonadmitted and Reinsurance Reform Act as well as update the Model after being in place for nearly 20 years are commendable. The majority of updates appear to support these goals.

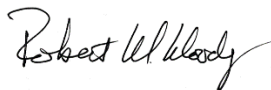
APCIA greatly appreciates the collaborative process undertaken by the Surplus Lines Task Force and Working Group in developing the recently exposed draft Model Law. The suggested edit provided below is intended to add clarity and maximize the insurance purchase experience and benefits.

Arbitration (Section 9(H)). We suggest the Task Force revisit this item. This provision trumps arbitration clauses in insurance policies and provides that nonadmitted insurers must conduct any arbitration or alternative dispute resolution in the state where the insured property, risks, or exposures are located except when the insured qualifies as an Exempt Commercial Purchaser. APCIA reiterates its previous suggestion, and perhaps the best approach, to simply add the phrase, “unless the parties mutually agree to conduct the arbitration or other alternative dispute resolution elsewhere” to the end of the existing language.

Alternatively, APCIA would support allowing the insurer and any commercial policyholder to agree to arbitrate somewhere other than the state where the insured properties, risks, or exposures are located. Subsequently, we would support allowing arbitration jurisdiction to remain in the risk state of a personal lines insured.

Thank you for the opportunity to participate in this drafting effort and your consideration of our suggestions. We are pleased to answer any questions you may have.

Sincerely,



Robert W. Woody
Vice President & Counsel
APCIA
robert.woody@apci.org
202.828.7141



Gary P. Sullivan
Sr. Director, Emerging Risks
APCIA
gary.sullivan@apcia.org
202.828.7161



November 28, 2022

Via Email

The Honorable James Donelon
Louisiana Commissioner of Insurance
Chair, NAIC Surplus Lines Task Force

Re: Draft Revisions to the Nonadmitted Insurance Model Act (“the Model Act”)

Dear Commissioner Donelon:

This comment letter is submitted on behalf of Underwriters at Lloyd’s, London (“Lloyd’s”) in response to the referenced exposure. Lloyd’s is the largest writer of nonadmitted insurance in the United States. In 2021, Lloyd’s wrote more than \$13.6 billion in surplus lines premium and an additional \$1.47 billion in other nonadmitted premiums, encompassing business from all 50 states. We appreciate the opportunity to provide these comments.

Lloyd’s appreciates the Task Force’s thorough examination of the home state for “unaffiliated groups” and supports the drafting note that was included to highlight the varying ways states have approached these groups. A drafting note is the traditional way to address divergence amongst the states and is appropriate here.

Lloyd’s sole remaining issue concerns Section 9(H) on arbitration. This section requires minor updating to reflect the home state concept, and Lloyd’s has suggested some language below. Additionally, just as the Task Force recognized that large commercial insureds, such as Exempt Commercial Purchasers, should have the ability to select the location of arbitration proceedings, so too should purchasers of Independently Procured Insurance and Wet Marine and Transportation Insurance, who are typically sophisticated commercial entities. Additionally, in the case of Wet Marine and Transportation Insurance, the insured assets crisscross the country and/or the globe to reach their final destination, and consequently, should not be limited to a single state in their selection of an arbitration venue.

Except with regard to Exempt Commercial Purchasers, Independently Procured Insurance, and Wet Marine and Transportation Insurance, conditions or stipulations in the policy or contract notwithstanding, 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~~ in the home state of the risk.

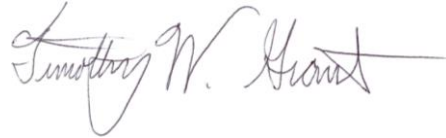
Lloyd’s appreciates the opportunity to offer these comments and would like to again commend the Task Force and the Drafting Group on their expert work throughout the duration of these revisions. It represents the NAIC process at its best, and Lloyd’s looks forward to supporting adoption of the updated model.

LLOYD'S

Very truly yours,



Sabrina Miesowitz
General Counsel



Timothy W. Grant
Associate General Counsel

From: [Best, Andrea](#)
To: [Daleo, Andy](#)
Cc: [Dawson, Thomas](#)
Subject: Comments to Model 870
Date: Monday, November 28, 2022 5:16:51 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Andy, please see our comments to the Surplus Lines Task Force below. Best regards.

Dear Commissioner Donelon and members of the Surplus Lines Task Force:

Thank you for the opportunity to provide further comments on the proposed revisions to the Nonadmitted Insurance Model Act (“the Model Act”). On behalf of our clients, we are grateful to the Drafting Group for their hard work over the past year, and we were pleased to see that the latest draft of the Model Act incorporates comments from industry, in particular with respect to the proposed revisions to the definition of “home state” for unaffiliated groups.

There is one final aspect of the proposed revisions to the Model Act on which we would like to offer our comments—Section 9(H) regarding arbitration, which was a topic of discussion on the last Surplus Lines Task Force call. It is a general principle of nonadmitted insurance that the policies have freedom of form, leaving the parties free to agree commercial terms such as the location of arbitration. We believe that arbitration provisions within contracts for commercial insurance should be fully negotiable between the two parties, rather than require arbitration to take place in the state where the risk is located. There are many reasons why an insured – not just an insurer – might prefer to have arbitration in a state other than where the exposure is located; for example the insured might be resident in a different state from where the dispute arose. While the latest draft of the Model Act included an exemption from this requirement for Exempt Commercial Purchasers, such policyholders cover only the very largest of insureds. We believe it is appropriate to extend this exemption to all commercial policies, as well as to other kinds of nonadmitted insurance such as ocean marine, aviation and transportation insurance policies, where arbitration clauses are commonly employed and where the insured is quite often located in a venue far from the risk exposure.

For these reasons, we would ask that the Task Force consider amending Section 9(H) so that it begins with “Except with regard to commercial policyholders, exempt ocean marine, aviation and transportation risks.” Alternatively, the Task Force may consider an amendment at the end of subsection 9(H) that says, “unless the parties mutually agree to conduct the arbitration or other alternative dispute resolution elsewhere.”

We once again thank the Drafting Group and the Surplus Lines Task Force for their excellent work in providing needed updates to the Model Act. Thank you for the opportunity to comment and please let us know if you have any questions.

Best regards.

ANDREA BEST

Partner

McDermott Will & Emery UK LLP 22 Bishopsgate, London EC2N 4BQ, United Kingdom

Tel +44 20 7577 6960 **Mobile** +44 7593 132656 **Email** abest@mwe.com

Website | [vCard](#) | [Twitter](#) | [LinkedIn](#)

McDermott Will & Emery UK LLP is a limited liability partnership registered in England and Wales with registered number OC311909. It is regulated by the Solicitors Regulation Authority of England and Wales. A list of the members of McDermott Will & Emery UK LLP and their professional qualifications is available for inspection at its principal place of business and registered office at 110 Bishopsgate, London EC2N 4AY, DX 131004 CDE Houndsditch, United Kingdom.

This message is a PRIVATE communication. This message and all attachments are a private communication sent by a law firm and may be confidential or protected by privilege. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of the information contained in or attached to this message is strictly prohibited. Please notify the sender of the delivery error by replying to this message, and then delete it from your system. Our [Privacy Policy](#) explains how we may use your personal information or data and any personal information or data provided or made available to us. Thank you.

Please visit <http://www.mwe.com/> for more information about our Firm.



November 22, 2022

Commissioner Jim Donelon, Chair
Surplus Lines Task Force
National Association of Insurance Commissioners

Re: Nonadmitted Insurance Model Act

Commissioner Donelon and members of the Surplus Lines Task Force:

The Wholesale & Specialty Insurance Association (WSIA) would like to thank the Model 870 Drafting Group for their extensive work on revisions to the Nonadmitted Insurance Model Act and would like to thank the Surplus Lines Task Force for the opportunity to comment on the draft. WSIA is very pleased with the most recent iteration of the draft, in particular, the deletion of Section 3(J)(4) regarding the home state definition for unaffiliated groups. We agree with the drafting group's recommendations that any consideration of unaffiliated groups be addressed in the comment, as opposed to the text of the model.

However, we believe one issue remains with Section 9(H) and its applicability to commercial business. Arbitration provisions within contracts should be fully negotiable between the two parties in order to allow maximum flexibility for surplus lines insurers to provide coverage when the admitted market cannot, especially in commercial transactions. We applaud the most recent change to provide an exemption from this provision for Exempt Commercial Purchasers, however we believe it is appropriate to extend this exemption to all commercial policies. There are many instances where it may be advantageous for an insured to conduct arbitration in a state of their choosing rather than the state where the dispute arose. Alternatively, the task force may consider an amendment at the end of subsection 9(H) that says, "unless the parties mutually agree to conduct the arbitration or other alternative dispute resolution elsewhere."

We would again like to thank the drafting group and the Surplus Lines Task Force for their great work in providing needed amendments to the model and look forward to supporting the adoption of this model very soon. Thank you for the opportunity to comment and please let us know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "John H. Meetz".

John H. Meetz
Senior State Relations Manager
WSIA
john@wsia.org
816.799.0863

A handwritten signature in blue ink that reads "Keri A. Kish".

Keri A. Kish
Director of Government Relations
WSIA
keri@wsia.org
816.799.0855