

# THE SURPLUS LINE ASSOCIATION

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BULLETIN TO ALL MEMBERS:

RE: SECURITY PROGRAM

INDIVIDUAL RESPONSIBILITY OF MEMBER TO THE PUBLIC. Section 1765 of the Insurance Code, relating to the qualifications for a surplus line broker's license, reads in part as follows:

"Upon application in such form as the commissioner prescribes and subject to the provisions of Sections 1666, 1667 and 1668 of this code, the commissioner shall issue a license authorizing any applicant that is trustworthy and competent to transact an insurance brokerage business in such manner as to safeguard the interest of the insured, to act as a surplus line broker \* \* \* ."

ULTIMATE RESPONSIBILITY IS ON MEMBER. Section 1765.1 of said Code, relating to the authority of the Insurance Commissioner over the soundness of nonadmitted insurers in which surplus line risks may properly be placed, reads as follows:

"In addition to any other statements or reports required by this chapter, the commissioner may also address to any licensee a written request for full and complete information respecting the financial stability, reputation and integrity of any nonadmitted insurer with whom such licensee has dealt or proposes to deal in the transaction of insurance business. The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he believes is to be in the public interest, order such licensee in writing to place no further insurance business on property located or operations conducted within or on the lives of persons residents of this State with such nonadmitted insurer on behalf of any person. Any placement in such nonadmitted insurer made by a licensee after receipt of such order is a violation of this chapter."

It will be noted that neither of the foregoing sections requires or authorizes the Insurance Commissioner to approve a nonadmitted insurer prior to its use by a surplus line broker. No other provision of the Insurance Code or the Rules and Regulations of the Insurance Commissioner makes such a requirement.

There cannot, therefore, lawfully be either an "approved" or a "disapproved" list of nonadmitted insurers. The only insurers "approved" by the Insurance Commissioner are admitted insurers because only such insurers are subject to the regulatory laws of California and required to meet and maintain the financial requirements and other standards of the conduct of their business prescribed by such laws. The law places the responsibility for the selection of nonadmitted security on the surplus line broker and the soundness of his judgment in making the selection of such security so as to "safeguard the interest of the insured" is one of the basic qualifications required for him to obtain and retain his license.

The authority of the Insurance Commissioner is, pursuant to Section 1765.1, to require any surplus line broker to furnish information about a nonadmitted insurer used by him as security. Although the Insurance Commissioner, it seems, could require such information about all nonadmitted insurers used by California licensed surplus line brokers, it does not appear that the statute requires him to do so. The Insurance Commissioner presently believes that the purposes of the statute can be achieved by following the procedures outlined in this Bulletin. This belief is subject, of course, to future review of results and possible amendment of procedures. It is emphasized again, as hereinabove pointed out, that the right to select security, and the responsibility for the security selected, rests basically with the surplus line broker.

PROCEDURES RE SECURITY. It is the desire of your Surplus Line Association to aid its members in the selection of nonadmitted security in the interests of their clients so as to fulfill their responsibilities under the law. The purpose of this Bulletin is to outline the procedures proposed by the Associations after full consultation with the Insurance Department regarding the review and handling of questions concerning the security of foreign and alien nonadmitted insurers. Of course, the Insurance Commissioner may in specific instances feel it necessary to proceed independently under his statutory powers without following the procedures herein outlined, but in any such case, he advises that he will notify the Association of his action.

These procedures are as follows:

1. Definition of terms:

- (a) Nonadmitted foreign company means domiciled in the United States, but not admitted in California.
- (b) Nonadmitted alien company means domiciled in a foreign country.

2. Procedure with respect to use by Surplus Line Brokers of nonadmitted insurers, foreign and alien.

(a) Contracts.

As distinguished from the open market placement problems, where contracts are entered into involving companies, the companies are to be reviewed at least as to such elements of capital, surplus and business reputation before the contract is used by the surplus line broker. The surplus

line broker is to advise the Association office of the names and addresses of such companies. If there are no existing files on any of such companies, the surplus line broker is to secure and file with the Association the latest annual statement. In case of foreign insurers a copy of the last Convention Form Annual Statement and copy of last examination report should be obtained and filed. Similar filings annually may be required. In case of an alien insurer, the best and latest financial information available should be obtained. The Association will endeavor to guide the members as to the pertinent information required. After such consultation with Insurance Department staff, as is deemed necessary, the Association will notify the member whether or not there is objection to the use of such companies.

(b) Open market placements.

It is generally recognized that in many open market placements there is a capacity problem resulting in a problem to the overseas broker in finding companies. It is felt that on open market placements the prior submittal of proposed companies would restrict the ability of the broker to provide coverage for the risk. Filing of the certificate with the security shown thereon, or by copy of cover note attached, shall be the only filing necessary to report the use of such security to the Association. Information on the companies is to be secured by the Association by writing direct to these companies. The responsibility for the quality of the non-admitted security selected still rests with the broker, and he should satisfy himself as to the quality of the security used. It is suggested that the members secure company statements for their own analysis of the companies used on their business. They should secure these from their overseas broker.

3. Association office to secure information annually.

The Association will secure information annually from the companies used as security and shall examine this information, and may discuss these files with the Insurance Department staff.

4. Information requested not supplied by company, to be furnished by member.

In those cases where the Association requests information from the company and the information is not forthcoming, the member using that company is to be requested to secure the information and submit it to the Association. The member using the company may be held responsible for securing the information required.

5. Request to cease using a company in future.

After discussion with the Insurance Department, if it is

felt that there is reason to doubt the soundness of a company, the Insurance Department will direct the Association to advise the member using the company of these facts leading to this concern. The member is to be advised that if there is to be continued use of this company, the Department will take direct action with the member under Section 1765.1.

6. Bulletin to all members concerning discontinuance of a company as security.

In order that all members may know that a company is being discontinued from further use, a bulletin from the Association will advise the members. This bulletin shall not reveal the names of any members who have used the company as security. The members shall take action to ascertain that such companies are not used on California business in future by notifying their overseas brokers.

7. Direct notification by Insurance Commissioner in serious cases.

It is to be emphasized that where the information developed appears serious, immediate action may be taken by the Commissioner under Section 1765.1, or possibly concerning cancellation of outstanding contracts of insurance under authority of Section 12928.5 of the Insurance Code.


8. Maintenance of files in Association office. Disseminating information.

The Association's files on security are to be available at all times for review by the Insurance Department. They are to be available for the members to review upon visit to the office or pertinent information will be furnished by phone.

No information on security is to be released to other than surplus line brokers and to the Insurance Department by the Association office. Questions by other brokers and insureds concerning security are to be answered by the surplus line broker involved.

9. Exception to requirements in special individual cases when coverage cannot otherwise be secured.

In special and rather unusual individual cases where a great capacity problem may exist, it may be possible to place the risk without following all of the foregoing procedures. In such cases the problem should be referred to the Association for such special handling, as may be permitted by the Insurance Commissioner.

  
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