

THE SURPLUS LINE ASSOCIATION
OF CALIFORNIA

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BULLETIN TO ALL MEMBERS

RE: Security Program

Attached is a copy of the Security Program.

This Bulletin is sent as a reminder and follow up.

If you are not familiar with this Program, we urge you to read the enclosed copy at your earliest convenience.



A. D. Freeman, Jr.
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No. 176 - Revised March 1, 1985

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 follow:

"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 it 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" in any sense 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 for 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 REGARDING SECURITY. It is the desire of your Surplus Line Association to be of aid to its members in the gathering of information about nonadmitted security in the interests of their clients so as to help members to fulfill their responsibilities under the law. The purpose of this Bulletin is to outline the procedures adopted by the Association 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) Alien company means domiciled in a foreign country, but not admitted in California.

2. Suggested procedure with respect to information gathering about nonadmitted insurers, foreign and alien.

(a) Contracts.

When contracts are entered into with companies, the companies should be reviewed by the surplus line broker at least concerning such elements as capital, surplus and business reputation before the contract is used by him.

The surplus line broker should advise the Association office of the names and addresses of such companies. If there are no existing Association files on any of such company(s) the surplus line broker should secure and file with the Association the latest annual statement(s). In case of foreign insurers a copy of the last Convention Form Annual Statement and copy of the last examination report should be obtained and filed. Similar filings annually are requested as long as the nonadmitted insurer is being used as security. 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 to be ascertained and filed.

(b) Open market placements.

It is generally recognized that in many open market placements there is a capacity problem resulting in the need for an overseas broker to find additional companies in order to promptly provide full coverage for the risk and where it is not practical to follow the information gathering procedures suggested herein. In such cases, filing of the certificate with the security shown thereon, or by copy of cover note attached, will be the only filing in which the use of such security is reported to the Association. Financial information on companies is to be filed with the Association after the broker has secured such information and completed his analysis. Similar filings annually are requested as long as the nonadmitted insurer is being used as security. The responsibility for the selection of the nonadmitted security used rests with the broker, and he should secure company financial statements for his analysis.

3. Association office to secure information annually from member.

The Association will secure this information annually concerning the companies used as security and shall review this information, and may discuss it with the Insurance Department.

4. Information requested by, but not otherwise supplied to Association, is to be furnished by member.

In those cases where the Association requests information concerning a company and the information is not otherwise forthcoming, the member using that company will be asked to secure the information and submit it to the Association. It is the responsibility of the member to secure information concerning nonadmitted insurers used as surplus line security.

5. Request to cease using a company in future.

After discussion with the Insurance Department, if there is reason to doubt the soundness of a company, the Insurance Department may direct the Association to advise the member using the company of the facts leading to this concern. The Association will advise the member 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 the Department has directed discontinuance of further use of a company, 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 make certain that such companies are not used on California business in the 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, possibly to include required cancellation of outstanding contracts of insurance under authority of Section 12928.5 of the Insurance Code.

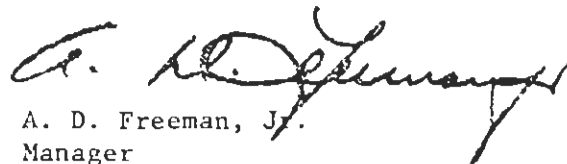
8. Maintenance of files in Association office. Disseminating information.

The Association's files on security are to be available at all times for review by the Insurance Department. They are also available for the members to review in the stamping office, or pertinent information may 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 the outlined procedures 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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