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Bulletin #481

BULLETIN TO ALL MEMBERS:

RE: Placement of Insurance with Alien Nonadmitted Insurers

On June 20, 1991 Commissioner Garamendi issued proposed regulations requiring every surplus line broker and special lines' surplus line broker to file specified documents with The Surplus Line Association of California as an agent for the Insurance Commissioner in order to demonstrate the financial stability, governmental regulation, and managerial competence and integrity of any alien surplus line insurer proposed for use by such broker. Attached is a copy of the proposed regulations.

Before any "new" alien nonadmitted insurer is used, that is an alien insurer first proposed for use after the effective date of the regulation, the broker must file specified documents with the Association. The broker making the filing on behalf of the alien nonadmitted insurer shall be known as the "contact" broker.

As to "ongoing" alien nonadmitted insurers, that is, an alien nonadmitted insurer used before the effective date of the regulation, the broker must file certain documents no later than September 1, 1991 (and must provide annually each September 1 thereafter updates to the documents originally filed with the Association).

If all documentation required for any "ongoing" alien nonadmitted insurer is not filed by September 1, 1991, the insurer will automatically be deemed unacceptable pursuant to Insurance Code Section 1765.1, and all surplus line brokers and special lines' surplus line brokers must cease placements in the insurer.

The Surplus Line Association of California has developed a "contact" list of surplus line brokers who will be responsible for making filings on behalf of "ongoing" alien nonadmitted insurers. Those brokers will be notified shortly by the Association so that they may commence compiling the required information due to be filed on September 1, 1991.

The proposed regulations have been filed on an emergency basis with the Office of Administrative Law and will be effective on or about June 28, 1991 (upon their filing with the Secretary of State), unless the Office of Administrative Law instructs otherwise. Because of the short time allowed to comply with the filing requirement as it pertains to "ongoing" alien nonadmitted insurers, the Association has chosen to notify you immediately rather than await the effective date of the regulations. If there is a change in the text or status of the regulations you will be so notified by either the Association or the California Department of Insurance. A public hearing will be noticed by the Department of Insurance sometime after the regulations become effective.

If you have further questions, please contact Al Gershaneck of the Association's financial department (415) 434-4900; 800-334-0491 or Carol Fistler, Counsel, State of California, Department of Insurance (415) 557-3840.



A. D. Freeman, Jr.
Manager

ADF:mm

Enclosure

California Department of Insurance

John Garamendi, Commissioner

News Release

FOR IMMEDIATE RELEASE:

June 20, 1991

CONTACT:

Elena Stern 213/736-2389

NEW GARAMENDI REGULATIONS CRACK DOWN ON UNLICENSED INSURERS

Commissioner Also Issues Revised Rollback Regulations

Moving on two fronts to protect California automobile insurance consumers, Insurance Commissioner John Garamendi today released new regulations to crack down on unlicensed insurers doing business in California, and issued revised regulations on Proposition 103 rollbacks. He hailed these new regulations as representative of a new day for insurance consumers in California.

Garamendi has been cracking down on insurers that operate on the fringes of the law since he took office. He initiated four different enforcement actions against FGS Insurance, once the most notorious exploiter of California insurance consumers, resulting in the conservation and liquidation of the company. He also has recently started to stamp out a group insurance scam sold by dozens of brokers offering policies from non-admitted companies with the lure of cheap insurance premiums. The unlicensed companies, often based in the Caribbean, frequently don't provide the minimum coverage required by California law nor do they have the financial stability to meet their obligations to policyholders.

"Too many California consumers have bought insurance from unlicensed insurers and have been left holding the bag when they try to make a claim," Garamendi said. "These regulations will ensure there's actually money in the bank when the policyholders need it."

Garamendi today released tough new regulations that will force alien non-admitted insurers to meet minimum financial standards if they want to do business in the California insurance market. Highlights of these regulations include:

- Before insurance policies may be placed with non-admitted insurers, they must provide financial documents to verify their financial stability and solvency. Insurers not admitted in the California market must show at least \$5.4 million in capital and surplus (this is the minimum amount required for licensed insurers);
- Non-admitted's must demonstrate that they have been in the insurance business for no less than three years. This is called the "seasoning" requirement;

● A trust account must be established and maintained in the United States for those businesses not based here. This will ensure that there will be accessible funds in the U.S. to meet obligations to policyholders.

"The recent explosion of auto insurance abuses by unlicensed companies is the result of a lack of affordable insurance from legitimate markets," said Garamendi. "The Legislature and the Governor must act now to adopt a low-cost auto insurance plan so that consumers needn't turn to dubious unlicensed companies promising lower rates."

Revised Rollback Regulations

Bringing Californians one step closer to receiving insurance rollback checks, Insurance Commissioner John Garamendi today outlined the department's revised and likely final Proposition 103 rollback regulations.

Upon taking office in January, Garamendi repealed his predecessor's regulations governing Proposition 103 rollbacks, which had been tied up in costly administrative proceedings and litigation for over a year. He proposed new regulations that were designed to deliver the maximum rollbacks permitted by law and be better able to survive court challenges. Garamendi's original proposed regulations included industry-wide efficiency standards and a formula by which the rollback would be determined. It also contained:

- strict regulation of company profit levels;
- penalties for inefficiency;
- independent evaluation of company claims;
- total-return ratemaking; and
- denial of profit on surplus "surplus."

In March, Garamendi proposed changes to streamline regulatory oversight of specialty commercial insurers, facilitate the entry of new companies into the California market and provide greater scrutiny of the allocation of national insurers' countrywide expenses to California. The March changes also permitted: charitable contributions to be a permissible expense; investment income to be evaluated by each company's own experience rather than by industry-wide average; and company size to be considered by the Commissioner in reaching decisions on generic rating factors.

"I have repeatedly said that getting the people of California the rollbacks and fair long-term rate regulation they voted for in 1988 is my first priority as Insurance Commissioner," Garamendi said. "These unprecedented regulations, and the spirit with which they are proposed, should renew Californians' faith that the Department of Insurance is first and foremost a consumer protection agency. Rollback checks will be issued this year and there will continue to be a freeze on any rate increases until the rollbacks have been delivered."

The amended regulations released today reflect comments received from consumers, insurers, agents and brokers and as a result of internal department review. They fine-tune the previous regulations and strengthen the department's ability to get consumers the biggest rollbacks possible as soon as possible. The latest changes to the regulations include:

- minor changes to the rollback computation formula;
- specification of explicit circumstances under which insurers may obtain a variance from the formula; and
- Exclusion from the efficiency standard of expenses associated with paying specific claims.

Hearings on setting specific values that will plug into the rollback formula are nearly complete. The Commissioner will select the maximum rate of return and allowable surplus levels within two weeks. Determinations regarding limits on executive compensation, efficiency standards, and standards for review of insurers' reserves will be made by mid-July, after one more week of hearings in San Francisco.

The unlicensed insurer regulations have been submitted to the Office of Administrative Law for approval as emergency regulations. Once the OAL has approved the regulations, the department will open a 45-day public comment period.

In these last stages of the rollback regulations, there will be a 15-day public comment period before Garamendi can give final approval to the regulations.

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2174: Placement of Insurance with Alien Nonadmitted Insurers

(a) Required Documents

Every surplus line broker and special lines' surplus line broker shall file the following documents with the Surplus Line Association of California (the "Association") as agent for the Insurance Commissioner in order to demonstrate the financial stability, governmental regulation, and managerial competence and integrity of any alien (as defined in Insurance Code Section 1580) surplus line insurer proposed for use by such broker:

(1) Annual Statements

Three (3) most recent annual statements which shall:

- (A) be in written form,
- (B) be in English,
- (C) show operations under the same management, and
- (D) be expressed in United States currency based on exchange rates as of the date of the statement.

(2) Report of Examination

The most recent Report of Examination of the insurer which shall be:

- (A) in English,
- (B) not older than three (3) years,
- (C) in accord with the rules and regulations of the domiciliary country, and
- (D) certified by the domiciliary country's insurance regulatory agency.

If no report is available, the sponsoring broker must furnish a complete written explanation in English as to why no such report is available. If the domiciliary country does not, as a matter of course, prepare such reports, a letter in English from the domiciliary country's insurance regulatory agency stating that reports of examinations are not prepared and that the insurer is in good standing and otherwise acceptable will suffice. The Department reserves the right to deem a proposed alien nonadmitted insurer unacceptable if the explanation or certification regarding the Report of Examination and the standing of the insurer is incomplete, invalid, inaccurate or misleading.

(3) Audit Report

A certified independent audit report on the insurer which is:

- (A) in English,
- (B) in accord with generally accepted auditing standards (GAAS) that prescribes generally accepted accounting principles (GAAP), or International Accounting Standards (IAS) published by the International Accounting Standards Committee and the International Auditing Guidelines (IAG) published by the International Auditing Practice Committee (IAPC) of the International Federation of Accountants (IFAC),
- (C) not older than one (1) year,
- (D) not materially misleading, inaccurate or incomplete,
- (E) and includes a summary of its significant accounting practices as part of the notes to its financial statement.
- (F) performed by an auditor licensed in the auditor's state or country of domicile. To substantiate such licensure, please provide an original certification in English of such license from the licensing authority.

A consolidated report is acceptable, but the Department reserves the right to require an audit report on the proposed alien nonadmitted insurer alone when necessary to clarify the financial condition of the alien nonadmitted insurer. An accountant review report and an accountant compilation in lieu of an independent audit report will not be acceptable.

(4) Narrative-DOI Form A - Rev. 5/91

A narrative report on the insurer's operations prepared by the insurer in English and in the format of DOI Form A Rev. 5/91 (Appendix A).

(5) DOI Form B - Rev. 5/91

Complete financial information provided on DOI Form B (Appendix B). The answers in DOI Form B shall follow the Insurance Solvency International guide to Alien Reporting Format - Standard Definitions of Accounting Items. Any answer which does not agree with a standard definition must be fully explained in the DOI Form B - Rev. 5/91. If the insurer is listed by the Insurance Solvency International (ISI) financial report service, the NAIIO (Nonadmitted Alien Insurer Information Office), or both, a copy of the most recent annual financial data furnished either to ISI or NAIIO must also be filed with the Surplus Line Association.

(6) Capital and Surplus

Demonstration of a minimum of five million four hundred thousand dollars (\$5,400,000) in capital and surplus consisting of assets acceptable under the California Insurance Code. This demonstration must be reflected in its most recent annual financial statement, and its recent audit report filed pursuant to (a)(1) and (a)(3). It should be noted that letters of credit are NOT acceptable assets under the California Insurance Code.

If the alien nonadmitted insurer is an association or syndicate which has individuals or unincorporated insurers as members, the sponsoring broker must provide evidence that the insurer has established and maintained in the United States a

trust fund in the standard NAIC (National Association of Insurance Commissioners)-NAIIO format in a Federal Reserve System member bank in an amount not less than one hundred million dollars (\$100,000,000) for the protection of all of its United States policyholders. A copy of the trust fund agreement must be filed with the Association. The corpus of the trust fund must be in cash or securities of the same character and quality as specified in Sections 1170 through 1182 of the California Insurance Code.

(7) Seasoning

Demonstration of compliance by the insurer with the seasoning requirements prescribed by Section 716 of the California Insurance Code unless the alien nonadmitted insurer would qualify for exemption under (a), (b), or (c) of Section 716.

(8) Certification

An original certification in English from the domiciliary country's insurance regulatory agency stating that the alien nonadmitted insurer is licensed to transact insurance on risks located in its domiciliary country and the date on which it first received such authority/license from its domiciliary country.

(9) U. S. Trust Account

A trust account must be established and maintained in the United States in the standard NAIC-NAIIO format in a Federal Reserve System member bank in an amount not less than five million four hundred thousand dollars (\$5,400,000) for the protection of all of its United States policyholders. A verified copy of the insurer's U. S. Trust account shall be filed.

The corpus of the trust fund must be in cash or securities of the same character and quality as specified in Sections 1170 through 1182 of the California Insurance Code.

(10) Agent for Service of Process--The insurer must provide information on its agent for service of process in California.

(11) Principal Place of Business--The insurer must provide the address and telephone number of its principal place of business.

(12) Consumer Protection--An original certification in English from the domiciliary country's insurance regulatory authority that the insurer is in good standing and explaining its consumer complaint record and performance in that country.

(b) Department Review

The Department may have full access to all the documents filed with the Association and may require the Association to forward to it any or all of the documents.

(c) Unacceptable/Insurance Code Section 1765.1

The Insurance Commissioner has the right to object to the use of any alien nonadmitted insurer at anytime, whether before or after placement, pursuant to Insurance Code Section 1765.1.

(d) Updates

The sponsoring surplus line broker and special lines' surplus line broker shall provide annual updates to the documents originally filed with the Association. The updates shall be filed no later than September 1 of the following year. If no update is filed, the insurer will be presumed unacceptable. The Department may require the Association to forward any or all of the update documents to it.

(e) Prohibition Against Placement of Insurance with Alien Nonadmitted Insurers for Price Alone

Placement of insurance with alien nonadmitted insurers must comply with Insurance Code Section 1763. In accord with that statute, exportation for price alone is prohibited.

(f) "New" Alien Nonadmitted Insurers

Any "new" alien nonadmitted insurers, that is, a nonadmitted alien insurer which has not been used as of the effective date of this regulation, cannot be used until the sponsoring broker files all of the items listed in Paragraph (a) with the Association.

(g) "Ongoing" Alien Nonadmitted Insurers

As to "ongoing" alien nonadmitted insurers, that is, an alien nonadmitted insurer used before the effective date of the regulation, the broker must file all the documents required in Paragraph (a) no later than September 1, 1991.

If all documentation required by Paragraph (a) for any "ongoing" alien nonadmitted insurer is not filed by September 1, 1991, the insurer will automatically be deemed unacceptable pursuant to Insurance Code Section 1765.1, and all surplus line brokers and special lines' surplus line brokers must cease placements in the insurer.

(h) Ultimate Responsibility

The ultimate responsibility for placement of insurance with any alien nonadmitted insurer rests exclusively with the placing broker.

Authority: Insurance Code Section 1763

Reference: Insurance Code Section 1763, and 1765.1

Doc. #0021s (formerly Doc. #8431s)

APPENDIX A
COI FORM A (Rev. 05/91)
COMPANY INFORMATION

1. Insurer shall provide a narrative of its plan of operation including the following information:
 - a. Date of incorporation, or if unincorporated, date of organization. Date of commencement of business. If incorporated, capital stock authorized, issued and outstanding shares.
 - b. An explanation of the ownership and control of the insurer, its principal management, and its subsidiaries and affiliates.
 - c. Territories of operation.
 - d. Lines of business transacted showing gross premiums, reinsurance assumed, reinsurance ceded and net premiums.
 - e. An explanation of the largest gross premium amount written on one risk and type of insurance.
 - f. An explanation of the method used for asset valuation.
 - g. Does the company have legal title and/or similar ownership rights to all assets reported in the balance sheet?
 - n. If any assets are encumbered, pledged or restricted in any manner, a detailed explanation should be provided for each asset.
 - i. A schedule for each asset equal to 10% or more of the total assets or 5% of insurer's adjusted shareholder funds, whichever is the lesser as of the financial statement date. The schedule should describe the asset, list its cost, amortized value, market value in U.S. currency, and/or any other method of valuation.
 - j. If the insurer has its loss reserves reviewed by an actuary for adequacy and reasonableness, a copy of any loss reserve certification issued shall be filed. If no such review is done, the insurer shall provide a complete explanation of its reserving methodology.
 - k. A schedule of reinsurance per Schedule R.
 - l. Provide the total for the largest amount written on any one risk and type of insurance.
2. Provide name and address of United States Counsel (or representative).
3. Provide name and address of supervisory official at the insurance regulatory agency of the country of domicile.
4. Describe any legal or regulatory action taken against the insurer and/or any of its officers or directors. Submit copies of underlying documents when appropriate.
5. Describe any major and/or material transaction which is pending or has occurred during the past year that affects the operation of the company. Submit copies of underlying documents when appropriate.
6. Provide information regarding U.S. Trust account.

INSTRUCTIONS FOR COMPLETING SCHEDULE R

Column

1. Please provide NAIC Identification Numbers, alien/domestic.
2. Self-explanatory/see instruction for Column #3.
3. List in alphabetical order by country, then list in alphabetical order by company.
4. Insert in this column, if applicable, the following letter designation:
 - (J) Reinsurer is subject to delinquency proceedings (i.e., conservation, rehabilitation, receivership, liquidation, or equivalent proceedings).
 - (W) A dispute exists with the company which may affect the recoverability of all or part of the balance shown. A dispute exists, for the purposes of this disclosure, when the reinsurer has contested the validity of coverage, or the ceding or assuming insurer has initiated arbitration or otherwise instituted legal actions concerning any amount claimed to be recoverable.
 - (N) All or part of the balances recoverable are past due. A past due balance is defined for the purposes of this disclosure, as a reinsurance claim which remains unpaid for a period of 180 days after payment is due under the terms and conditions of the reinsurance agreement.
5. If applicable
6. If applicable
7. Self-explanatory
8. If applicable
9. If covered by letters of credit, please identify by appending "L".

De Minimis Provision

(a) Facultative business

Individual recoverables amounting to less than 2% of capital and surplus may be combined.

(b) Treaty business

All amounts (by reinsurer) less than 2% of gross premium income on Proportional (Quota Share) reinsurance and all amounts (by reinsurer) less than 5% of premium ceded on Non-proportional and/or Excess of Loss reinsurance may be combined.

APPENDIX B
DOI FORM B (Rev. 05/91)
(FINANCIAL REPORTING FORMAT)
JURAT

(Name of Insurer)

COUNTRY OF DOMICILE: _____

Insurance Solvency International (ISI) Number: _____

OFFICERS OR DIRECTORS*
(Names and Titles)

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

President

Secretary

Treasurer

The undersigned being duly sworn, state that they are the above described officers of said insurer, and that as of the last day of the fiscal/calendar year just ended, all of the herein described assets were the absolute property of said insurer, free and clear from any liens or claims thereon, except as herein stated, and that this financial statement, together with schedules and explanations therein contained, annexed or referred interrogatories hereto are a full and true statement of all the assets and liabilities and of the condition and affairs of said insurer as of the last day of the fiscal/calendar year just ended, and of its income and deductions therefrom for the year ended on that date, according to the best of their information, knowledge and belief, respectively.

Subscribed and sworn to before

me this _____ day of _____ President

_____ 1991 _____ Secretary

_____ _____ Treasurer

*Please place an asterisk beside any directors added within the previous twelve months.

DCI-FORM B (Rev. 05/91)
Standard Financial Report

(Name of company)

United States Trust Account Information

1. Name and address of United States contact:

2. Name and address of United States Trust Account Trustee:

3. U.S. Trust Account-Terms and conditions of enforceability as specified in the NAIC Standard Trust Agreement:

Terms and Conditions of enforceability

- | | | |
|--|--|--|
| <p><input type="checkbox"/> (1) Judgment Obtained</p> <p><input type="checkbox"/> (2) Judgment Final</p> <p><input type="checkbox"/> (3) Judgment Filed with Trustee</p> <p><input type="checkbox"/> (4) Expiration of 30 days</p> | | <p><input type="checkbox"/> (5) Open Ended with 5-yr. cancellation clause</p> <p><input type="checkbox"/> (6) Expiration Date: _____</p> <p><input type="checkbox"/> (7) Valuation of trust: as of: _____
\$ _____</p> |
|--|--|--|

Major Lines of Coverage:

Section 3

Summary of financial Data	<u>Current Year</u>	<u>Prior Year</u>
Total Assets-----	\$	
Total Liabilities-----	\$	
Total Capital and Surplus Funds-----	\$	
Cash and Invested Assets-----	\$	
Policyholder Reserves-----	\$	
Gross Written Premiums-----	\$	

(Name of Insurer)

Balance Sheet

For Period Ended _____

Assets	<u>Current Year</u>	<u>Prior Year</u>
1. Bonds, ----- \$	_____	_____
2. Stocks, Shares-----	_____	_____
3. Real Estate -----	_____	_____
4. Affiliates-----	_____	_____
5. Insurance Depts-----	_____	_____
6. Cash, Deposits-----	_____	_____
7. Other Assets-----	_____	_____
8. Total Assets----- \$	_____	_____
 <u>Liabilities</u>		
9. Technical Reserves----- \$	_____	_____
10. Loss Reserves (Unpaid Losses)---	_____	_____
11. Unearned Premium Reserve-----	_____	_____
12. Funded Reserve-----	_____	_____
13. Other Technical Reserves-----	_____	_____
14. Other Liabilities-----	_____	_____
15. Total Liabilities----- \$	_____	_____
 <u>Shareholder Funds</u>		
16. Capital----- \$	_____	_____
17. Extra Reserves (Shs. Fds.)----	_____	_____
18. Other Surplus-----	_____	_____
19. Shareholders Funds----- \$	_____	_____
20. Adj. & Add'l. Asset Value-----	_____	_____
21. Adj. Shareholder's Funds-----	_____	_____
22. Currency Exchange Rate ----- \$ (per unit of U.S. Currency)	_____	_____

(Name of Insurer)

Income Statement

Report for Period Ended _____

<u>Underwriting Profit/Loss</u>		<u>Current Year</u>	<u>Prior Year</u>
1.	Gross Premiums Written----- \$	_____	_____
2.	-Premiums Ceded-----	_____	_____
3.	Net Premium Written----- \$	_____	_____
4.	Increase in Premium Reserves-----	_____	_____
5.	Net Premium Earned----- \$	_____	_____
6.	-Net Losses Incurred(1)-----	_____	_____
7.	-Management Expenses-----	_____	_____
8.	-Net Commission Expenses-----	_____	_____
9.	+Other Underwriting Income-----	_____	_____
10.	Underwriting Profit/Loss \$	_____	_____
<u>Investment and Miscellaneous Profit/Loss</u>			
11.	+Net Investment Income(2)----- \$	_____	_____
12.	+Asset Valuation adjustment-----	_____	_____
13.	+Other Income (Interest on Investments)	_____	_____
14.	Overall Pre-Tax Earnings \$	_____	_____
15.	Currency Exchange Rate----- \$ (per unit of currency)	_____	_____

(See Income Statement Definitions)

- (1) Net Losses Paid----- \$
- +Change in Unpaid Losses----- \$
- (2) Gross Investment Income----- \$
- Net of Investment Expenses----- \$

(Name of Insurer)

Ratio Report

Current Year Ending _____, Ratios expressed as percentages

	<u>U.S. \$</u>	<u>Original/ Domiciliary Currency</u>
<u>Solvency and Reserves</u>		
1. Net Premium/Shareholder Funds-----	_____	_____
2. Technical Reserve-Shareholder Fund/Net Premium--	_____	_____
3. Technical Reserves/Net Premium-----	_____	_____
4. Technical Reserves/Shareholder Fund-----	_____	_____
5. * % Growth, Shareholder Funds-----	_____	_____
6. * % Growth, Net Premiums-----	_____	_____
<u>Profitability</u>		
7. Underwriting Profit/Inv Inc-----	_____	_____
8. Underwriting Profit/Net Premium-----	_____	_____
9. Profit/Shareholder Funds-----	_____	_____
10. * % Growth, Pre-Tax Profit-----	_____	_____
11. Combined Ratio (1-Yr)-----	_____	_____
<u>Liquidity</u>		
12. Insurance Debts/Assets-----	_____	_____
13. Insurance Debts/Shareholder Funds-----	_____	_____
14. Technical Reserve/Liquid Assets-----	_____	_____
<u>Rinsurance Leverage</u>		
15. Net Premium Written/Gross Premium Written -----	_____	_____
16. Retention Ratio-----	_____	_____
<u>Investments</u>		
17. Investment Yield-----	_____	_____
18. * % Growth, Investment Income-----	_____	_____

* Must be reported in both currencies — U.S. and original/domiciliary