



September 9, 1994

BULLETIN #660

RE: REVISED SLA CONSTITUTION

As you all know, California's surplus line regulations and business environment have been changing significantly over the past several years. Among other changes, the Association is now designated as the State's official surplus line advisory organization under legislation that went into effect on January 1 of this year (A.B. 865, now codified as Insurance Code Section 1780.50 et. seq.). Our Constitution has remained fundamentally unchanged since its adoption 50 years ago. In an effort to modernize and in view of recent legislative developments, the Executive Committee appointed a Subcommittee nearly two years ago to update the Association's Constitution.

Attached is the proposed Revised and Restated Constitution, and an executive summary of the principal changes, prepared by the Subcommittee with the Association's counsel. This revised Constitution was approved by the Executive Committee at its August 24, 1994 meeting. The Executive Committee, with the belief that this revised Constitution will better serve the current role and functions of the Association, now submits it to the Membership for approval.

Please review the attached documents carefully, complete, sign and date the ballot, and return it by mail, fax or hand delivery to the Association's office, attention: Ilona Bovee/ Constitution Ballot, by October 14, 1994. The revised Constitution must be approved by two-thirds of the entire SLA Membership to become effective.

The results of the mail/fax vote will be put to the Membership for confirmation and ratification at the 1995 Annual Meeting tentatively scheduled for January 17 in San Francisco and January 18 in Los Angeles.

If you have any questions, please call the Stamping Office.

James S. Pugh
Assistant Manager
Enclosures

BALLOT
Proposed Resolution

Resolved, that The Surplus Line Association of California hereby adopts the proposed Revised and Restated Constitution attached to the Association Bulletin #660 dated September 9, 1994, as the Association's Constitution.

The undersigned member of The Surplus Line Association of California (the 'Association'), personally or by its accredited representative, consents to holding this vote by mail or fax, approves the form of the attached notice, and votes on the foregoing proposed Resolution as indicated below.

(Check one)

- I vote in favor of the above proposed Resolution.
- I vote against the above proposed Resolution.
- I abstain from voting for or against the above proposed Resolution.

Date.
Printed or Typed Name of Member (individual or organization)

Member's License Number'

Printed or Typed Name of Accredited Representative of Member (required for organization members; optional for individual members)

Signature of Member or Accredited Representative.

This ballot must be mailed, faxed or hand-delivered to the SLA by October 14, 1994 to be counted. _____.

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In the case of an organization member, the organization's license number and not the individual license number of the accredited representative should be inserted.

REVISED AND RESTATED SLA CONSTITUTION

Executive Summary

This is an executive summary of the Revised and Restated Constitution of The Surplus Line Association of California approved by the Executive Committee at its August 24, 1994 meeting and submitted to the SLA Membership for approval. The Revised Constitution must be approved by a 2/3 vote of the entire SLA Membership to become effective. This summary highlights the points in which the revised Constitution differs from the existing Constitution. Asterisks indicate those provisions with major changes.

Article I - Definitions

This new article adds key definitions.

Article 11 - Name and Territory

Substantially the same as existing Article 1

. Article III - Non-Profit Status

Moved from existing Article 11.2 to this new proposed article with no substantial changes.

***Article IV - Purposes**

Existing Article 11 sets forth the "Objects" of the Association. These are moved to this proposed article, renamed "Purposes," reorganized to better adhere to the SLA's current priorities, and rephrased to conform to AB 865 and the new functions of the Association. The new Purposes are derived from the following sources:

Proposed Article IV(1) = Existing	Article 11.1.(a) and AB 865
Proposed Article IV(2) = Existing	Article 11.1.(d)
Proposed Article IV(3) = AB 865	
Proposed Article IV(4) = AB 865	
Proposed Article IV(5) = Existing	Article 11.1.(b)
Proposed Article IV(6) = Existing	Article 11.1.(e)
Proposed Article IV(7) = new	

***Article V - Powers** This new provision expressly empowers the Association to perform any acts that facilitate and encourage compliance with the surplus line laws and advance the purposes of the Association, as well as permitting contracting and hiring employees. It is needed because the existing Constitution fails to articulate any express "powers" of the Association, although existing Article V.5. gives the Executive Committee "general powers" to carry out and enforce the provisions of the Constitution and transact business.

***Article VI - Membership** Conforming to AB 865, paragraph 1 of this proposed provision deems all surplus line brokers automatically to be members of the Association.

Purely for convenience, this article includes a new paragraph 2 labeling individual and organization members as two separate "classes" of members. This is helpful because the requirements for proxies and authorized representatives of organizations differs somewhat from individual members. There are no other substantive differences for the two classes.

Proposed paragraph 3 retains the concept in existing Article VII.1. that organization Members must have an "accredited representative" to act on their behalf but the person is renamed "authorized representative."

Like existing Article III of the Constitution, paragraph 4 requires all members to file a signed copy of the Constitution with the Association. The signing requirement has been relocated here from existing Article XII.

***Article VII - Officers** The "Chairman" has been renamed "Chair." The office of "Vice-Chair" has been created, which may or may not be filled at the option of the Executive Committee.

The powers and responsibilities of the Chair and Secretary-Treasurer set forth in existing Article IV have been made more explicit. In particular, the office of Secretary-Treasurer has been given far more specific responsibilities than in the past, although he or she will be empowered to delegate those responsibilities. The oversight and ultimate authority of the Executive Committee over the officers has been clarified. 2

Article VIII - Committees All provisions of the existing Constitution establishing committees have been consolidated in this Article for ease of reference. The committees specifically addressed include:

Executive Committee. This committee will continue to exercise overall authority and supervision over the SLA, as at present.

Stamping Office Committee. The name has been shortened from "Stamping Office and Contact Committee"; it will be smaller than in the past, with no more than 5 members. It will continue to perform those functions delegated to it by the Executive Committee.

Nominating Committee. Basically the same as the existing Constitution, except as discussed in Article XI below regarding Elections.

Admitted Market Liaison Committee. This is a new name for the "Arbitration Committee" in existing Article XI.

The Executive Committee will have authority to appoint additional committees or subcommittees. The Chairman will have the power to appoint ad hoc or advisory committees.

Article IX - Meetings The meeting procedures (e.g. calling, notice, quorum) in existing Article VI have been reorganized and clarified but not significantly changed. Procedures for Association meetings and Committee meetings have been placed in separate sections for ease of reference. A request by 10% of the Membership rather than by just 2 members will be required to call a Special Meeting of the Association. Notice of a Special Meeting of the Association must be sent one week instead of just 2 days in advance.

Article X - Voting The proposed voting procedures are substantially the same as existing Article VII. The use of proxies by individual members as distinguished from voting by an authorized representative of an organization Member was clarified. Express approval for mail, telephone or facsimile votes was added.

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***Article XI - Elections** This is a new article with substantially new election procedures. (Compare existing Article V.) The nominating committee will nominate a slate of candidates balanced according to size, location and type of operation. Members will receive advance notice of the nominating committee's slate and have the option to nominate alternative slates. In addition, floor nominations will be permitted at the Annual Meeting so long as the candidates are qualified and the slate is balanced. Floor nominations will be submitted for the Commissioner's review as required by AB 865 (Ins. Code § 1780.67).

Article XII - Amendments Substantially the same as existing Article IX. Article XIII - Funds and Disbursements Substantially the same as existing Article XIII, except the proposed language in paragraph 1 regarding assessment of the stamping fee is new, derived almost verbatim from AB 865 (Ins. Code § 1780.56(b)). Also, the types of investments permitted for SLA funds specified in proposed Paragraph 3 has been expanded to include treasury bills, repurchase agreements and other prudent investments.

Article XIV - Arbitration and Violations Substantially the same as existing Article XI, except the name of the article has been changed from "Administration and Violations" and the provisions for establishing the Arbitration Committee (renamed as "Admitted Market Liaison Committee") have been moved to proposed Article VIII.

The basic 4-step arbitration procedure remains the same: the Arbitrator finds facts and recommends (not prescribes) remedies; the Admitted Market Liaison Committee must review and confirm or reject Arbitrator's decision; the losing party may appeal to the Executive Committee or, ultimately, to the Commissioner. The Association's remedies for violations would be limited to reprimands or recommending to the Commissioner or other law enforcement agencies to fine, or to suspend or revoke a license.

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Article XV - Manager and Asst. Manager This is a new provision generally authorizing these two management positions without specifying any specific duties.

Article XVI - Stamping Office Substantially the same as existing Article XIII, except with slight modifications to paragraph 1 to conform to AB 865 (Ins. Code § 1 780.56) and recent changes in the Surplus Line Law regarding document filing and review by the Stamping Office. Paragraph 2 has been revised to specify that the Executive Committee (not the Stamping Office Committee) holds the power to act for the Association in matters concerning the Stamping Office, to issue bulletins, to establish fees and the like, but that the Executive Committee may delegate any such powers subject to its ongoing oversight.

Article XVII - General Substantially the same as existing Article XIV, except obsolete references in paragraph 1 to the majority requirement and all of paragraph 3 have been deleted.

Article XVIII - Immunity and Indemnification Substantially the same as existing Article XV, except paragraphs 1, 3 and 4 have been clarified to express with greater precision the Association's intention with respect to those provisions, and proposed paragraph 2, which references the immunity provisions contained in AB 865 (Ins. Code 1 780.66), has been added.

Omitted Provisions Existing Article VII regarding Fact Findings has been dropped because it is unnecessary. The Executive Committee has the power to conduct fact finding without this specific provision.

Existing Article XII regarding Pledges has been incorporated into paragraph 4 of proposed Article VI regarding Membership.

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REVISED AND RESTATED

CONSTITUTION

OF

THE SURPLUS LINE ASSOCIATION OF CALIFORNIA

APPROVED BY EXECUTIVE/STAMPING OFFICE COMMITTEE AT
AUGUST 24, 1994 MEETING; PENDING APPROVAL BY MEMBERSHIP

ARTICLE I DEFINITIONS

For purposes of this Constitution, the following terms shall have the specified definitions:

1 Commissioner. "Commissioner" means the Insurance Commissioner of the State of California.

2 Member/Membership. "Member" means a licensed surplus line broker that has satisfied the requirements of Article VI, paragraph 1 . "Membership" means the collective body of Members of the Association, or the status of being a Member.

3 Plan of Operation. "Plan of Operation" means the document identifying the duties the Association is authorized to perform pursuant to the Insurance Code and describing how the Association will perform those duties.

4 Surplus Line Laws. "Surplus Line Laws" means any and all statutes, regulations or lawful orders of the Commissioner applicable to the placement of insurance with nonadmitted insurers through surplus line brokers in accordance with Insurance Code § 1 763 and any insurance so placed.

ARTICLE 11 NAME, TERRITORY

1 Name. The name of this organization is The Surplus Line Association of California. · Territory. The territory of the Association is the State of California.

ARTICLE III NON-PROFIT STATUS

The Association is not organized for profit, and no part of its net earnings shall inure to the benefit of any Member or individual.

ARTICLE IV PURPOSES

The purposes of the Association are:

1 To monitor, facilitate and encourage compliance by Members and insofar as reasonably possible by non-Members, with the Surplus Line Laws and to discourage and to prevent violations of the Surplus Line Laws by methods hereinafter provided;

2 To promote fair dealing between Members and with the public, to protect the rights of admitted insurers under the Surplus Line Laws, and to encourage legal use of the surplus line market by Members and, insofar as possible by non-Members, by all proper means including conferring with organizations of admitted insurance carriers and making available to Members information concerning the insurance market;

3 To assist the Commissioner in monitoring and regulating the transfer of risk on a sound basis through Members to nonadmitted insurers in accordance with the Surplus Line Laws and to assist with any other matters as the Commissioner may reasonably direct;

4 To establish and implement the Association's Plan of Operation;

· To maintain a Stamping Office for the receipt, review and recording of documents with respect to foreign and alien nonadmitted insurers and any insurance placed with nonadmitted insurers, for performing functions specified in the Association's Plan of Operation or otherwise directed by the Executive Committee, and any other matters the Commissioner reasonably may direct the Association to perform;

6 To confer and cooperate with federal and state officials and other organizations for the purpose of accomplishing the purposes set forth in this Constitution;

7 To provide such other services to its Members as are incidental or related to the purposes of the Association.

2 ARTICLE POWERS

The Association shall have the following powers for carrying out its purposes, which shall be exercised by the Executive Committee in accordance with Article VIII:

- 1 To perform any acts that will facilitate and encourage compliance by its Members with the Surplus Line Laws;
- 2 To perform any acts necessary or appropriate for fulfilling or advancing the purposes of the Association;
- 3 To make contracts and expend funds in the name of the Association;
- 4 To employ and retain whatever persons and organizations are necessary to perform the duties and carry out the purposes of the Association and to exercise any authority incidental thereto.

ARTICLE VI MEMBERSHIP

1 **Term of Membership.** Any individual or organization licensed as a surplus line broker under the laws of the State of California shall be deemed a Member of the Association. Membership in the Association shall automatically terminate upon a Member's ceasing to be a licensed surplus line broker.

· **Classes of Members.** There shall be two classes of Members, individual Members and organization Members, depending on the type of surplus line broker's license held. Both classes shall have the same rights and duties under this Constitution.

3 **Authorized Representative.** An individual Member may, and an organization Member shall, designate an "authorized representative." A Member's authorized representative shall have all the authority of a Member, including but not limited to, authority to be counted towards a quorum and to vote on the Member's behalf; provided that to count toward a quorum and vote, a representative of an individual Member

3 must be authorized to vote by proxy in accordance with paragraph 1 of Article X.

4 **Signing the Constitution.** Each Member, or in the case of an organization Member the Member's authorized representative, shall sign and file with the Association a copy of the Constitution. Such act shall constitute acceptance of and subscription to the Constitution and shall commit the Member and all of his, her or its employees and representatives to strict observance thereof. Failure to sign or file a copy of the Constitution will not relieve any Member of his or her or its obligation to comply with the Constitution. The Association will notify the Commissioner of such failure.

ARTICLE VII OFFICERS

1 **Officers.** The officers of the Association shall be a Chair and a Secretary-Treasurer, to be elected at the annual meeting and to hold office until the next annual meeting or until their successors are elected. In addition, the Executive Committee may, in its discretion, appoint one Executive Committee member to serve as Vice-Chair.

Chair. The Chair, subject to the oversight and ultimate authority of the Executive Committee, shall supervise the affairs of the Association. He or she shall perform all duties incidental to his or her office and such other duties as may be required by law, by this Constitution, or which may be assigned to the Chair from time to time by the Executive Committee or the voting members. The Chair shall have the power to form and appoint ad hoc advisory committees as he or she deems necessary or appropriate. If the Executive Committee appoints a Vice-Chair pursuant to paragraph 1 of the Article, the Chair may, in his or her discretion, authorize the Vice-Chair to assist in the performance of one or more of the Chair's duties. The Chair shall be an ex-officio Member of all committees with voting power and shall preside at all meetings of the Association and of the Executive Committee. The Chair's vote shall only be counted to break a tie vote of the other Members present and voting. In the absence of the Chair and the Vice-Chair, if any, the Executive Committee may designate a Chair pro tem.

3 **Vice-Chair.** If the Executive Committee appoints a Vice-Chair pursuant to paragraph 1 of this Article, he or she shall assist the Chair as the Chair deems necessary or desirable, and in the Chair's absence or inability to serve, shall be Acting Chair and shall perform all the duties and exercise all of the powers of the Chair.

4 Secretary-Treasurer. The Secretary-Treasurer shall be a member of the Executive Committee with voting power. The Secretary-Treasurer shall be responsible to do or to cause to be done the following:

- (a) certify and keep at the principal office the original or a copy of the Association's Constitution, as amended or otherwise altered to date;
 - (b) keep a book of minutes of meetings of the Association, the Executive Committee and the Stamping Office Committee, and vote counts, recording therein the time and place of holding thereof, whether regular or special, and if special, how authorized, what notice was given thereof, the names of those present at such meetings and the proceedings thereof, and shall provide copies of the minutes to the Executive Committee;
 - (c) see that all notices are duly given in accordance with the provisions of this Constitution or as may be required by law;
 - (d) be custodian of records of the Association or designate one or more employees of the Association to serve as custodian of records subject to his or her supervision;
 - (e) keep the Membership list;
 - (f) exhibit and provide at all reasonable times to any officer, Executive Committee member or Association member on request therefor, the Constitution, the Membership list and the minutes of meetings;
 - (g) have charge and custody of, and be responsible for, all funds and securities of the Association, and, as appropriate, maintain all such funds in the name of the Association in any of the following as shall be selected by the Executive Committee or its designee: (1) banks, trust companies, or other depositories; (2) in United States government bonds, treasury certificates or other obligations for which the full faith and credit of the United States are pledged for payment of principal and interest; (3) in certificates of deposit of any federally or state chartered bank, (4) in repurchase agreements collateralized by securities issued by the United State government; or (5) any other prudent investment that the Executive Committee deems appropriate;
- whatever;
- (i) disburse the funds of the Association as may be directed by the Executive Committee, taking proper vouchers of such disbursements;
 - (j) keep and maintain adequate and correct accounts of the Association's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses;
 - (k) exhibit at all reasonable times the books of account and financial records to any Executive Committee member on request therefor;
 - (l) render to the Executive Committee, whenever requested, an account of any and all of his or her transactions as Secretary Treasurer and of the financial condition of the Association;
 - (m) cause to be prepared, and certify or have certified, the financial statements, a summary of which shall be available to any Member on request and included in the annual report to the Members, and the tax and other statements necessary to maintain the Association's tax exempt status; and
 - (n) in general, perform all duties incidental to the office of Secretary Treasurer and such other duties as may be required by law, this Constitution, the Association's Plan of Operation, or which may be assigned to him or her from time to time by the Executive Committee.

6 Vacancies. Any vacancy occurring in any of the offices of the Association may be filled by the Executive Committee for the unexpired term.

ARTICLE VIII COMMITTEES

1 Executive Committee

(a) Composition. The Association shall elect an Executive Committee which shall be the governing body of the Association. The Executive Committee shall consist of thirteen Members. The retiring Chair, the current Chair and the Secretary-Treasurer shall be voting Members for the ensuing year and the remaining ten Members shall be elected as hereinafter provided. All Members shall hold office until the next annual meeting or until their successors are elected.

(b) Vacancies. Subject to confirmation by the Executive Committee, the Chair shall have the power to fill, for the unexpired term, vacancies on the Executive Committee caused by death or otherwise.

(c) General Powers. In addition to the powers expressly given to it by the provisions of the Constitution, the Executive Committee is hereby invested with the general powers to carry out and enforce the provisions of this Constitution and the Association's Plan of Operation and to transact all other business of the Association not otherwise delegated by this Constitution.

(d) Financial Powers. The Executive Committee shall authorize such expenditures and actions as in its judgment shall be necessary to accomplish said purposes. •

Stamping Office Committee. Within 21 days after election of the Executive Committee, the Executive Committee shall appoint a Stamping Office Committee of no more than five from the Membership of the Association. Subject to supervision by the Executive Committee, the Stamping Office Committee shall supervise the operation of the Stamping Office and shall exercise any powers expressly delegated to it by this Constitution or by the Executive Committee.

3 Nominating Committee. Not less than sixty days prior to each annual meeting, the Chair shall appoint a Nominating Committee of five from the Membership of the Association, which shall perform the duties specified in Article XI and shall do or cause to be done any acts incidental to the performance of those duties.

4 Admitted Market Liaison Committee. The Executive Committee may appoint an Admitted Market Liaison Committee of six Members, and if appointed, it shall liaise with the admitted market on matters of common interest and shall also exercise the powers specified in Article XIV.

• Other Committees.

(a) Subcommittees. The Executive Committee may appoint such additional committees or subcommittees as it may deem necessary or desirable, and may delegate to them, subject to supervision by the Executive Committee, any of the Executive Committee's powers.

(b) Ad Hoc or Advisory Committees. The Chair may appoint ad hoc or advisory committees to study issues or perform special projects as he or she deems necessary or appropriate.

ARTICLE IX MEETINGS

Association Meetings.

(a) Annual Meeting. The annual meeting of the Association shall be held in January, or as soon thereafter as the Executive Committee deems necessary or appropriate, on a date or dates to be fixed by the Executive Committee. A combined statewide meeting, or separate meetings in Northern and Southern California, may be held, as determined by the Executive Committee. Whenever the annual meeting is held in such separate locations and sessions, it shall be known as a single annual meeting and the first session shall be adjourned to the next session of the annual meeting.

(b) Special Meetings. Special meetings of the Association may be called at any time by the Chair and shall be called at the written request of ten percent of the Members of the Association.

(c) Notice. Notice of annual meetings of the Association, with an agenda of matters to be considered, shall be sent to the Members at least one week in advance of the meeting. Notice of special meetings must be sent to the Members at least one week in advance, with an agenda of matters to be considered. Any matters not included in the agenda shall not be considered at annual or special meetings, unless a quorum is present and two-thirds of the Members present approve.

(d) Quorum. At annual and special meetings of the Association, one-third of the Members shall constitute a quorum. If separate sessions are held, in the manner set forth in paragraph 1 (a) of this Article, one-third of the Members having principal offices in Southern California shall constitute a quorum for the Southern session, and one-third of the Members having principal offices in Northern California shall constitute a quorum for the Northern session.

Committee Meetings.

(a) Attendance. Any Member or a Member's authorized representative shall be permitted to attend meetings of the committees of the Association to discuss before such committee matters in which that Member is interested.

(b) Notice. Notice of regular committee meetings, with an agenda of matters to be considered, shall be sent to the members of that committee, and the Association's Chair, at least one week in advance of the meeting. Notice of special committee meetings shall be given at least 48 hours in advance of the meeting unless extenuating circumstances warrant shorter notice. If less than

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48 hours notice is given, the committee may act only if (1) a quorum is in attendance, (2) the members present unanimously agree to waive notice, or (3) the absent members subsequently agree to waive notice and consent to the holding of the meeting. Any matters not included in the agenda shall not be considered at regular or special meetings, unless a quorum is present and two-thirds of the committee members approve.

(c) Quorum. A majority of a committee's members shall constitute a quorum of that committee for the transaction of business.

(d) Unanimous Written Consent. Every action required or permitted to be taken by a committee may be taken without a meeting if all committee members consent thereto or ratify the act in writing.

(e) Telephone Conference Meetings. Committee meetings may be held through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Participation in a meeting pursuant to this paragraph constitutes presence in person at such meeting.

ARTICLE X VOTING

Proxy. To vote by proxy, an individual Member shall file in writing with the Association the name of a person authorized to vote on that Member's behalf in the proceedings of the Association. Authorized representatives of organization Members are not required to obtain a proxy to vote on behalf of the Member.

Required Vote. Except as otherwise provided, all resolutions and motions offered shall be deemed adopted when assented to by a majority of the Members present and voting. If separate sessions are held in the manner set forth in paragraph 1 (a) of Article IX, the resolutions and motions must receive such majority assent at both sessions or in a subsequent mail vote. When otherwise provided, as when a two-thirds vote of the entire Membership of the Association is required, the number of votes at the meeting shall be counted. If this constitutes a majority of those present but not two-thirds of the entire Association Membership, the approval of a sufficient number by mail or facsimile vote, within thirty days of the last session of the meeting, to constitute the required two-thirds of the Membership may be obtained.

3 Mail, Telephone and Facsimile Votes. Any vote of the Membership of the Association, including a vote to amend this Constitution pursuant to Article XII, may be taken at a meeting or by mail or facsimile, in the discretion of the Chair. Any vote of a committee of the Association may, in the discretion of the chairman of that committee, be taken by mail, telephone or facsimile, except on matters before the Executive Committee on appeal from findings of the

Arbitrator in a complaint.

ARTICLE XI ELECTIONS

1 Annual Election. Elections for the officers of the Association and members of the Executive Committee shall be held annually at the Annual Meeting or as soon thereafter as practicable. Voting in this election shall be conducted in accordance with Article X.

Nominating Committee Slate. The Nominating Committee shall nominate a slate of candidates for the offices of Chair, Secretary Treasurer and the Executive Committee. It shall be the policy of the Association to seek to maintain a balance among its representative officers and committee members based on the size, location and type of operations.

3 Alternative Slates. Not less than 14 days prior to the election, the Nominating Committee shall mail its slate of candidates to the Membership and shall solicit nominations from the Membership for alternative slates of qualified candidates which seek to maintain the prescribed balance among representative officers and committee members based on the size, location and type of operations. The Member submitting an alternative slate shall demonstrate that all such proposed candidates are qualified and have consented to the nomination.

4 Floor Nominations

. Any Member may propose from the floor an alternative slate of qualified candidates provided the proposed slate conforms to paragraph 3 of this Article with respect to the prescribed balance based on size, location and type of operations, and the qualifications and consent of the proposed candidates. In the event the Chair determines that one or more floor nominations satisfy the foregoing requirements, the Chair shall promptly submit to the Commissioner, if required, all qualified alternative slates and postpone the election until the Commissioner completes his review of the new nominees but for no more than thirty days. The postponed election, in the Chair's discretion, may be taken by mail or facsimile.

ARTICLE XII AMENDMENTS

This Constitution may be amended by the affirmative vote of not less than two-thirds of the entire Membership, in the manner set forth in Article X, to adopt an amendment to the Constitution, provided at least two weeks' written notice has been given to the Members. If such vote is to be taken at an annual or special meeting of the Association, such notice shall specify that the meeting is called for such general purpose and shall set forth the nature of the proposed amendment; if such vote is to be taken by mail or facsimile, such notice shall specify the exact wording of the proposed amendment.

ARTICLE XIII FUNDS AND DISBURSEMENTS

1 The Association may assess a stamping fee for each policy, declarations page, cover note, or other premium bearing document submitted to the Association. The stamping fee shall be paid by the filing Member and the Member may collect the stamping fee from the insured. The stamping fee shall be established from time to time by the Executive Committee and shall reflect all reasonable costs associated with the services provided by the Association. At least sixty (60) days prior to any proposed increase the Membership shall be notified of the increase.

1 The Executive Committee shall levy and collect from the Members such dues and assessments, inclusive of the stamping fee referred to in paragraph 1 of this Article, as may be determined by the Executive Committee to be sufficient to cover the reasonable costs of the Association. The insured, on all surplus line insurance placed by Members in the State of California, shall be charged, in addition to the -specified premium for such insurance, for an amount to reimburse such Member for the California state tax on premiums, and for a surcharge in such amount as shall be fixed, from time to time, by the Executive Committee to reimburse such Member for dues and assessments paid or to be paid to the Association. If the insurance is placed directly with a Member, such

Member shall charge the insured for such an amount and such surcharge; if the insurance is placed with a Member through a non-Member broker or agent, such Member shall require such broker or agent to charge the insured for such amount and such surcharge, and to remit the same to such Member, without any deduction for any commission thereon.

3 Funds of the Association shall be maintained in the name of the Association in any of the following as shall be selected by the Executive Committee or its designee: (1) banks, trust companies, or other depositories; (2) in United States government bonds, treasury certificates or other obligations for which the full faith and credit of the United States are pledged for payment of principal and interest; (3) in certificates of deposit of any federally or state chartered bank; (4) in repurchase agreements collateralized by securities issued by the United State government; or (5) any other prudent investment that the Executive Committee deems appropriate.

4 Disbursements from the funds of the Association shall be subject to approval of the Executive Committee. The Secretary-Treasurer shall keep, or cause to be kept, a record of all receipts and disbursements. The Executive Committee shall employ a public accountant to audit the accounts of the Association prior to each annual meeting of Members, and in its discretion, at any other time. A summary report of such annual audit shall be presented at the annual meeting. A copy of the full audit report will be made available to any member upon written request to the Secretary-Treasurer or Manager.

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· **The officers, Executive Committee members, Stamping Office Committee members, and employees of the Association shall be bonded in such sums as the Executive Committee may specify. The premium on such bonds shall be paid by the Association.**

ARTICLE XIV

ARBITRATION AND VIOLATIONS

1 Arbitration Procedures

(a) Arbitrator. The Executive Committee may appoint an Arbitrator, subject to the approval of the Association, for a term specified by the Executive Committee not to exceed 12 months. The Arbitrator shall be a person wholly independent of any connection with any Member of the Association. Financial arrangements for the services and expenses of the Arbitrator shall be made by the Executive Committee.

(b) Arbitrator's Findings Confirmed by Committee. It shall be the duty of the Admitted Market Liaison Committee, upon notice of the Arbitrator, to review within five days from the date of such notice any questions, controversies or complaints which have come before the Arbitrator, and to affirm or reverse his or her findings and recommended remedies, if any, by a majority vote of such Committee.

(c) Referral to Executive Committee. The Arbitrator may, at his discretion, consult with the Executive Committee with respect to any such findings or recommended remedies, and the Executive Committee shall then take such action as it may deem appropriate with respect thereto.

(d) Abstention. No Member of the Admitted Market Liaison Committee shall vote on any question or controversy in which he, she, or his or her office may be a party. ·

Power and Authority of Arbitrator. The Arbitrator shall have power and authority, subject to confirmation as provided in paragraph 1 (b) of 1 4

this Article: (a) to construe the Association's Constitution, Plan of Operation, bulletins, and the Surplus Line Law; (b) to make findings, determine violations and recommend remedies therefor; and (c) to prescribe the procedure to be followed in matters coming before him or her under the powers hereby conferred. Findings and recommended remedies of the Arbitrator or the Admitted Market Liaison Committee, as the case may be, under the powers hereby conferred shall be binding upon Members subject to the right of appeal hereinafter provided. The Arbitrator shall give notice of his or her findings and prescribed remedies in matters involving violations to all parties concerned.

3 Appeal to Executive Committee. The findings and recommended remedies of the Arbitrator or the Admitted Market Liaison Committee, as the case may be, shall be subject to appeal to the Executive Committee. Appeal must be made in writing and filed with the Arbitrator within ten (10) days from the date of service of the findings and recommended remedies, from which appeal is taken; otherwise the findings or recommended remedies of the Arbitrator or the Admitted Market Liaison Committee, as the case may be, or the decision of the Executive Committee, as the case may be, shall be final. When an appeal is taken from a decision of the Arbitrator or the Admitted Market Liaison Committee, the Executive Committee shall fix a date for a hearing thereon, with due regard to the interests of the parties involved, but in no event later than thirty (30) days after notice of appeal is filed.

4 Appeal to Commissioner. Any person adversely affected by a decision of the Association pursuant to this Article may petition the Commissioner for review after all remedies provided by the Association are exhausted.

5 Inspection of Books and Records. The Arbitrator shall have the right to inspect books and records of the Members of the Association, the complainant, and their respective representatives for the purpose of determining the facts necessary to enable the Arbitrator to resolve any issue before him or her. Members and their representatives shall disclose complete information and facts with respect to such issues on request of the Arbitrator. Refusal or willful failure of a complainant or of a Member complained against (or the representative of either) to recognize such rights of the Arbitrator shall constitute a presumption of the invalidity or the validity of a complaint, as the case may be.

6 Findings and Remedies. The Association shall have the power to make findings and to prescribe one or more of the following remedies for acts determined by the Association pursuant to this Article to be contrary to law or the lawful provisions of the Association's Constitution, the Association's Plan of Operation, or bulletins:

(a) Private reprimand,

(b) Public reprimand,

(c) Referral of the findings or recommended remedies, or both, which may include but not limited to recommendations for fines and license suspension or revocation, to the Commissioner, the Attorney General of the State of California, and to any other state or federal law enforcement agencies.

ARTICLE XV MANAGER AND ASSISTANT MANAGER

The Executive Committee may employ a Manager and an Assistant Manager recommended by the Stamping Office Committee with such salaries and duties as may be recommended by the Stamping Office Committee and approved by the Executive Committee.

ARTICLE XVI STAMPING OFFICE

1 Functions. The Association shall maintain a Stamping Office (a) for the filing of policies, certificates, declaration pages, cover notes and other documents for risks located in the State of California placed by Members and (b) for the review of such filings for completeness, accuracy, and any other matters as the Commissioner reasonably may direct.. Such Stamping Office may file with the Commissioner such documents filed with it by Members as the Stamping Office deems necessary or advisable.

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Supervision. The Executive Committee shall have full power to act in all matters relating to the Stamping Office, including but not limited to, the power to (a) act for the Association in dealings with the Commissioner relative to the conduct and operation of the Stamping Office, (b) issue Bulletins respecting filings to be made therewith, (c) establish fees and procedures within the limits of the Surplus Line Laws, and (d) perform any other

necessary or appropriate acts pertinent to Stamping Office matters. Any such powers may be delegated to the Stamping Office Committee, the Chair and/or other special or ad hoc committees, subject to ongoing review, oversight and ultimate authority of the Executive Committee.

ARTICLE XVII GENERAL

1 Regulatory Compliance. No insurance shall be placed with nonadmitted insurers except in accordance with the Surplus Line Laws.

2 Submission of Questions. Pursuant to the Surplus Line Laws, in order to avoid conflict with insurance coverages actually available through admitted insurance carriers and to enable the Stamping Office to maintain a complete record of all decisions concerning Member inquiries, Members are required to submit through the Stamping Office all questions relating to surplus line business on which a ruling or interpretation is deemed necessary from the Insurance Commissioner. Where the question submitted also involves an Association determination, it will be referred to the appropriate committee for review before submission to the Commissioner.

ARTICLE XVIII IMMUNITY AND INDEMNIFICATION

1 For the purposes of this Article, "agent" means any person or firm who is or was a committee member, Member, officer, employee or other agent of the Association, who acted or is acting on behalf of the Association and whose acts are or were authorized or ratified by the Association; "ratified" means the Executive Committee, by resolution, expressly and affirmatively consents to be bound by a previously performed act or omission; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under paragraph 5 or paragraph 6(d).

As provided in the California Insurance Code, there shall be no liability on the part of, and no cause of action of any nature shall arise against, the Association, its Members, officers, committee members, agents, or employees for any action taken or omitted by any of them in the performance of their duties or the exercise of their authority delegated by the Insurance Commissioner, unless such party acted in bad faith. No immunity or defense of liability shall be granted to a Member for that Member's failure to comply with the Surplus Line Laws.

3 The Association shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Association to procure a judgment in its favor) by reason of the fact that the person is or was an agent of the Association whose acts or omissions on behalf of and authorized or ratified by the Association resulted in, gave rise to or provided a basis for the proceeding, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding if that person acted in good faith and in a manner the person reasonably believed to be in the best interests of the Association and, in the case of a criminal proceeding, the person had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Association or that the person has reasonable cause to believe that the person's conduct was unlawful.

4 The Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the Association to procure a judgment in its favor by reason of the fact that the person is or was an agent of the Association whose acts or omissions on behalf of and authorized or ratified by the Association resulted in, gave rise to or provided a basis for the action, against expenses actually and reasonably incurred by that person in connection with the defense or settlement of the action if the person acted in good faith, in a manner the person believed to be in the best

interests of the Association and its Members. No indemnification shall be made under this Article for any of the following:

- (a) In respect of any claim, issue or matter as to which the person shall have been adjudged to be liable to the Association in the performance of that person's duty to the Association and its Members, unless and only to the extent that the court in which the proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses and then only to the extent that the court shall determine.
- (b) Of amounts paid in settling or otherwise disposing of a pending action without court approval.
- (c) Of expenses incurred in defending a pending action which is settled or otherwise disposed of without court approval.

To the extent that an agent of the Association has been successful on the merits in defense of any proceeding referred to in paragraphs 3 or 4 of this Article or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

6 Except as provided in paragraph 5 of this Article, any indemnification under this Article shall be made by the Association only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in paragraphs 3 and 4 of this Article, by any of the following:

(a) A majority vote of a quorum consisting of Executive Committee members who are not parties to such proceeding.

19 (b) If such a quorum consisting of Executive Committee members is not obtainable, by legal counsel in a written opinion.

(c) Approval of a majority of the Members, with the Members to be indemnified not being entitled to vote thereon.

(d) The court in which the proceeding is or was pending upon application made by the Association or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney or other person is opposed by the Association.

7 Expenses incurred in defending any proceeding may be advanced by the Association prior to the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay that amount if it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this Article.

8 The indemnification provided by this Article for acts, omissions, or transactions while acting in the capacity of, or while serving as, a committee member, Member, officer, employee or other agent of the Association but not involving breach of duty to the Association and its Members shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any agreement, vote of Members or disinterested Executive Committee members, or otherwise, to the extent the additional rights to indemnification are authorized in the articles of the Constitution. The rights to indemnity thereunder shall continue as to a person who has ceased to be a committee member, Member, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of the person. Nothing contained in this Article shall affect any right to indemnification to which such persons may be entitled by contract or otherwise.

No indemnification or advance shall be made under this Article, except as provided in paragraph 5 of this Article or subparagraph (d) of paragraph 6 of this Article, in any circumstances where it appears:

(a) That it would be inconsistent with a provision of the Constitution, a resolution of the Members, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which

the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification.

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

1 0 The Association shall have power to purchase and maintain insurance on behalf of the Association and any agent of the Association against any liability asserted against or incurred by the Association or the agent in his, her or its agency capacity or arising out of the agent's status as such whether or not the Association would have the power to indemnify the agent against that liability under this Article.

1 i This Article does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in that person's capacity as such, even though the person may also be an agent, as defined in paragraph 1 of this Article, of the employer Association. The Association shall have power to indemnify and purchase and maintain insurance on behalf of any such trustee, investment manager, or other fiduciary.

Subscribed to at _____ this _____ day of _____ 19 ____.
Name of Member _____ Signature:
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