



The Surplus Line Association of California

388 Market Street, 11th Floor • San Francisco, CA 94111

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## BULLETIN #982

### **RE: REVISIONS TO THE SLA CONSTITUTION**

As you all know, recently enacted legislation (A.B. 2984) will allow non-resident surplus lines brokers to be licensed in California. California Insurance Code section 1780.52(b) will automatically make such non-resident brokers members of The Surplus Line Association of California ("SLA"). In view of these developments, the Executive Committee, working with the Association's counsel, has drafted proposed amendments to the SLA's Constitution to define the rights and privileges of non-resident members of the SLA and to make certain technical corrections. In particular, the amendments specify that non-resident brokers will be members of the SLA but will not have voting rights or certain other governance positions. The Executive Committee has approved the proposed amendments to the Constitution and now submit them to the Membership for approval. A description of the voting process and a copy of the sections to be amended (with the exact wording of the amendments) are included below. **A ballot to vote on the proposed amendments is enclosed and must be returned by Monday, December 09, 2002.**

A handwritten signature in black ink that reads "Theodore M. Pierce". The signature is fluid and cursive.

Theodore M. Pierce  
Executive Director

## Member Voting Process

Article X.3 states that any vote to amend the Constitution may, in the discretion of the Chair, be taken at a meeting or by mail or facsimile. The Chair and the Executive Committee have determined that a vote by mail will be most expeditious with respect to the proposed amendment in order to avoid the unnecessary expense and inconvenience of convening a Special Meeting of the entire Membership. Article XII requires that regardless of whether the vote takes place at a meeting or by mail or facsimile, any vote to amend the Constitution be approved by at least two thirds of the entire Membership of the SLA, and that Members be provided at least two weeks' written notice of such vote. The results of the mail/fax vote will be publicized to the Membership.

Accordingly, please be advised that a vote on the proposed amendments described below will be taken up to and including **Monday, December 9, 2002**. Any ballots actually received by the SLA on or before December 9, 2002, will be counted to determine whether the proposed amendments receive the necessary affirmative vote from two thirds of the Membership. Ballots not received from any Member on or before December 9, 2002 will be counted as a vote rejecting the proposed amendments and granting non-resident members the same rights and privileges as resident members. Please review the proposed amendments carefully, complete, sign, and date the ballot, and return it by mail, fax, or hand-delivery to the SLA's office, attention: Deanna Zanoni, by **no later than Monday, December 9, 2002**. If you have any questions, please contact Deanna Zanoni.

## Proposed Amendments to the SLA Constitution

Effective January 1, 2003, membership in the SLA will be expanded to include non-resident surplus line brokers. The current version of the Constitution does not address non-resident Members. The Executive Committee believes that it is appropriate to describe the rights and privileges of non-resident Members in the Constitution and make certain technical corrections, and therefore proposes the following highlighted amendments to Articles IV, VI, VIII, IX, X, XI, XII, XIV, XVII, and XVIII of the Constitution. In particular, the Executive Committee believes it to be in the best interest of the SLA Membership to describe the distinctions between the voting and governance roles of resident and non-resident Members, as follows:

### **ARTICLE IV PURPOSES**

\* \* \*

5. To maintain a Stamping Office for the receipt, review and recording of documents with respect to foreign and alien non-admitted insurers and any insurance placed with non-admitted 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; and

\* \* \*

## ARTICLE VI MEMBERSHIP

1. Term of Membership. Any individual or organization licensed as a resident or non-resident 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 in California.

2. Classes of Members. There shall be four ~~two~~ classes of Members, individual resident Members, individual non-resident Members, organization resident Members, and organization non-resident Members, depending on the type of surplus line broker's license held. Members of each ~~Both~~ classes shall have the ~~same~~ rights and duties specifically ascribed to Members of such class under this Constitution.

3. Authorized Representative. An individual resident or non-resident Member may, and each ~~an~~ organization resident or non-resident Member shall, designate an "authorized representative." A Member's authorized representative shall have all the authority of a Member as ascribed to such Member under this Constitution, including but not limited to, authority to be counted towards a quorum and to vote on the Member's behalf if such authority is granted to the relevant Member under this Constitution; provided that to count towards a quorum and vote, a representative of an individual Member must be authorized to vote by Proxy in accordance with paragraph 1. of Article X.

4. Signing the Constitution. Each individual resident or non-resident Member, or in the case of an organization resident or non-resident 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 VIII COMMITTEES

### 1. Executive Committee.

(a) Composition. The Association's resident membership shall elect an Executive Committee which shall be the governing body of the Association. The Executive Committee shall consist of thirteen individual resident Members and/or the authorized representatives of organization resident Members. The retiring Chair, the current Chair, the Vice-Chair, and the Secretary-Treasurer shall be voting Members for the ensuing year and the remaining nine Members shall be elected as hereinafter provided. All Members shall hold office until the next annual meeting or until their Successors are elected.

\* \* \*

2. 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 individual

~~resident Members and/or the authorized representatives of organization resident Members 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 individual resident Members and/or the authorized representatives of organization resident Members 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 individual resident Members and/or the authorized representatives of organization resident 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.

5. Other Committees.

(a) Subcommittees. The Executive Committee may appoint such additional committees or Subcommittees composed of individual resident Members and/or the authorized representatives of organization resident Members 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

### 1. Association Meetings.

(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 resident Members present approve.

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

## ARTICLE X VOTING

1. Proxy. To vote by proxy, an individual resident 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 resident Members are not required to obtain a proxy to vote on behalf of the Member.
2. Required Vote. Except as otherwise provided, all resolutions and motions offered shall be deemed adopted when assented to by a majority of the resident Members present and voting. If separate sessions are held in the manner set forth in paragraph I (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 resident 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 resident 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 resident Membership may be obtained. Non-resident members shall not have a right to vote in any event and shall not be counted for quorum, majority or super-majority purposes.
3. Mail, Telephone and Facsimile Votes. Any vote of the resident 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 or e-mail , 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

2. Nominating Committee Slate. The Nominating Committee shall nominate a slate of candidates for the offices of Chair, Vice-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, provided, however, that all representative officers and committee members shall be individual resident Members or the authorized representatives of organization resident Members.

## ARTICLE XII AMENDMENTS

This Constitution may be amended by the affirmative vote of not less than two-thirds of the entire resident 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 XIV  
ARBITRATION AND VIOLATIONS

(c) Referral to Executive Committee. The Arbitrator may, at his or her 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.

ARTICLE XVII  
GENERAL

2. Submission of Questions. Pursuant to the ~~s~~urplus 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 ~~S~~urplus 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

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 proceeding~~ 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 proceeding.~~ against expenses actually and reasonably incurred by that person in connection with the defense or settlement of the ~~action proceeding~~ 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 ~~it~~ 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~~ proceeding without court approval.

(c) Of expenses incurred in defending a pending ~~action~~ proceeding which is settled or otherwise disposed of without court approval.

All terms of the SLA Constitution shall remain unchanged except as set forth above.

BALLOT REGARDING NOVEMBER 2002 AMENDMENTS TO THE CONSTITUTION  
OF THE SURPLUS LINE ASSOCIATION OF CALIFORNIA

TO: Surplus Line Association of California  
c/o Deanna M. Zaroni  
Fax (415) 434-3716  
or  
388 Market Street, 11th Floor  
San Francisco, CA 94111

On behalf of \_\_\_\_\_ (“Member”) I provide the following vote.

\_\_\_\_\_ Member **approves** of the amendments to the SLA Constitution as set forth in  
Bulletin 982 (i.e., the amendments should be adopted).

\_\_\_\_\_ Member **rejects** the amendments to the SLA Constitution as set forth in  
Bulletin 982 (i.e., the amendments should not be adopted).

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
If signed by a Member's authorized representative,  
specify the name of the Member (Print)

NOTE: AS DESCRIBED IN THE ATTACHED BULLETIN # 982, THIS BALLOT MUST BE  
RECEIVED BY THE SLA NO LATER THAN MONDAY DECEMBER 9, 2002.

**FAX NUMBER (415) 434-3716**