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Surplus Lines Insurers

Sec. 38a-740-1. Definitions

As used in Sections 38a-740-1 to 38a-740-11, inclusive:

(a) An "affiliate" of, or person "affiliated" with, a specific person means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specific person.

(b) "Alien insurance company" or "alien insurer" includes any insurance company which has been chartered by or organized or constituted within or under the laws of any state or country outside the United States.

(c) "Commissioner" means the Insurance Commissioner of this state.

(d) "Control," "controlling," "controlled by" and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person.

(e) "Eligible surplus lines insurer" means an unauthorized insurer with which an excess line broker may place surplus lines insurance pursuant to Section 38a-740-2.

(f) "Surplus lines broker" means a person, firm or corporation licensed pursuant to Section 38a-794 of the General Statutes to place insurance of risks resident, located or to be performed in this state with unauthorized insurers eligible to accept such insurance.

(g) "Insurance company" or "insurer" includes any corporation, association, partnership, an insurance exchange duly authorized under the laws of any state, or combination of persons doing any kind or form of insurance business.

(h) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

(i) "Surplus lines insurance" means any insurance in this state of risks resident, located or to be performed in this state, permitted to be placed through an surplus lines broker with an unauthorized insurer eligible to accept such insurance.

(j) "Unauthorized insurer" means an insurer not licensed to do an insurance business in this state.

(k) "White list" means a listing by the Commissioner of the "eligible surplus lines insurers."

(Effective September 25, 1992; transferred and amended January 16, 1996)

Sec. 38a-740-2. Eligible surplus lines insurers

No surplus lines broker may procure insurance for any subjects or risks resident, located or to be performed in this state except one which is declared to be an eligible surplus lines insurer in accordance with Section 38a-740-4.

(Effective September 25, 1992; transferred and amended January 16, 1996)

Sec. 38a-740-3. Waiver

Except when precluded by law, the Commissioner may, where good cause appears, waive the applicability of any Section of this Regulation or portion thereof, as to an insurance company whose name appears on the White List immediately prior to

the effective date of this Regulation, or an insurance company which is an affiliate of an insurer licensed in this state.

(Effective September 25, 1992; transferred and amended January 16, 1996)

Sec. 38a-740-4. Standards for eligible surplus lines insurers

No unauthorized insurer shall be or become an eligible surplus lines insurer unless declared eligible by the Commissioner in accordance with the following conditions:

(a) For each line of insurance it proposes to write as an eligible surplus lines insurer, the insurer shall:

(1) be currently licensed in the State of its domicile if chartered, incorporated, organized or constituted within the United States;

(2) be currently licensed in its United States domiciliary jurisdiction if as an alien insurer, it does business through a United States branch; or

(3) be currently licensed in its domiciliary jurisdiction outside the United States if an alien insurer.

(4) show that it writes the lines of business that it proposes to write in this State in sufficient volume as to demonstrate an expertness in insuring such product lines.

(b) Each insurer must have capital and surplus to policyholders of at least fifteen million dollars, provided those insurers presently on the list of eligible surplus lines insurers that do not meet this requirement shall have until December 31, 1997 to meet this requirement if such insurers have capital and surplus to policyholders of at least ten million dollars by December 31, 1995 and capital and surplus to policyholders of at least twelve million dollars by December 31,1996.

(c) A determination of financial condition will be made regarding those insurers which apply. In making this determination there shall be deducted from unassigned funds any non-qualifying assets or understatement in reserves or special deposits not held on account for all policyholders. The difference between market value and amortized value of investments in bonds may be taken into consideration and also the ratio of earned premiums to surplus as regards policyholders when that ratio exceeds 3:1, as well as any other ratios that are generally acceptable among regulators and the insurance industry.

(d) The Insurance Commissioner, upon assessment of the rate of growth of the insurer, its business persistency, supporting surplus resources, business acquisition costs, claims experience and investment policies shall make a determination concerning the adequacy of equity resources as related to the insurer's business expansion. Such determination together with a review of the insurer's plan of operations both nationally and for the State of Connecticut, will be used to evaluate the insurer's potential to perform on policy obligations contracted within this State and its expertness in the business of insurance. The condition or methods of operation of the insurer must not be such as would render its operation hazardous to the public or its policyholders in this State.

(e) In order to be declared an eligible surplus lines insurer an insurance company must file an application on the form prescribed by the Insurance Commissioner and do the following:

(1) If an alien insurer, give the name and address of its United States Manager or representative.

(2) File a certificate of compliance from the public official having supervision of insurance in the company's domiciliary jurisdiction showing that it is authorized to transact the kind or kinds of insurance proposed to be transacted in Connecticut.

(3) File a legible copy of the corporate charter or articles of incorporation with all amendments thereto certified by the public officer with whom the originals are on file in its domiciliary jurisdiction.

(4) File a copy of the bylaws, as amended, certified to by the company's secretary or other officer having custody thereof.

(5) File evidence of all deposits in the United States.

(6) File a certified copy of the deed of trust filed with the jurisdiction of entry to the United States, if a branch of an alien insurer.

(7) File a statement of trusteed surplus in the United States, if an alien insurer.

(8) File a certified copy of a report of examination conducted by the company's domiciliary jurisdiction with an "as of date" no more than two years preceding its application, or such other evidence of verification of financial security as is acceptable to both its domiciliary jurisdiction and to the Commissioner.

(9) File annual statements for the two years preceding the current year for the type(s) of insurance proposed to be transacted in this state. They shall be in such form and with such detail as is prescribed by the Commissioner.

(10) File a copy of any agreements by which the right to conduct or influence any of the affairs of the company is transferred to others, also any employment or deferred compensation agreements in which any officer, director or shareholder who controls five percent or more of the outstanding shares of the company directly or indirectly participates.

(11) File audit reports for two complete fiscal years immediately preceding the date of application certified by the company's outside public accounting firm (if the applicant has appointed independent outside accountants). If not contained in the report, a reconciliation, prepared by the independent accountant, shall be furnished which details adjustments from original basis of presentation to statutory form. Include any comments or management letters prepared by the outside accountant, as well as recommendations relative to adequacy of internal controls or a signed statement by the independent accountant that no recommendations have been rendered to management.

In the case of an insurance exchange created under the laws of any state and where the exchange requires its syndicates to file audited financial statements on an annual basis, the exchange must provide the Commissioner with a certification from the Insurance Department of its state of domicile that such statements have been filed by each syndicate and are available for the Commissioner's inspection upon request. The certification must include a schedule of capital and surplus for each syndicate so filing.

(12) File a detailed narrative of the company's plan of operations for this state and nationally.

(13) File a statement of ownership of the applicant. Include all shareholders of record who control five percent or more of the outstanding shares of the applicant directly or indirectly.

(14) File biographical data respecting all directors and the following officers of the applicant: The president, vice president, secretary, treasurer, chief actuary, general counsel, comptroller and any person, however described, who enjoys, in fact, the executive authority of any such officers, including a statement that no officer, director or five percent shareholder has been convicted of a felony; or if such persons have been so convicted, a description of the nature of the crime and the address of the court and docket number of the case when judgment was entered.

(15) File copies of all annual, quarterly or other reports, and proxy statements made by the applicant and its parent to stockholders and policyholders during the preceding twelve month period.

(16) File any prospectus of the company or its parent within the preceeding three years.

(17) File a copy of the most recent Form 10-K, if the applicant or any of its affiliates are regulated by the Securities and Exchange Commission.

(18) File a copy of the holding company registration statement, and any amendments thereto, as filed with the insurance supervisory official in the jurisdiction where the company is registered for the current year.

(19) If a license has been refused or approval as an eligible surplus lines insurer has been refused or withdrawn by any jurisdiction, furnish an explanation and a copy of any refusal or withdrawal. Also include any disciplinary action by any jurisdiction in the most recent two year period.

(f) If an alien insurer as defined in Section 38a-740-1 (b) of this regulation, or group of insurers located outside the United States, such insurer or insurers shall establish and maintain a United States trust fund in the following amounts: (1) In the case of a Lloyd's plan or other similar group of insurers, which consists of unincorporated individual insurers, or a combination of both unincorporated and incorporated insurers, such trust shall be in the amount of one hundred million dollars which shall be held jointly for the benefit of any United States surplus lines policyholder of any member of the group.

(1) The incorporated members of the group shall not be engaged in any other business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(2) In the case of a group of incorporated insurers under common administration, which has continuously transacted an insurance business outside the United States for at least three years immediately prior to the effective date of this regulation, and which submits to this state's authority to examine its books and records and agrees to bear the expense of the examination:

(A) The group shall maintain an aggregate policyholders' surplus of ten billion dollars; and

(B) The group shall maintain in trust a surplus in the amount of one hundred million dollars which shall be available for the benefit of United States surplus lines policyholders of any member of the group; and

(C) Each insurer which is a member of the group shall individually maintain capital and surplus of not less than twenty-five million dollars per company.

(3) In the case of all other alien insurers, such insurer shall establish and maintain in the United States a trust fund for the benefit of the United States surplus lines policyholders of such insurer, in the minimum amount of five million four hundred thousand dollars, except that those insurers on the list of eligible surplus lines insurers on the effective date of this regulation that do not meet this requirement shall have until December 31, 1996 to meet this requirement if such insurers have a United States trust fund in the minimum amount of two million five hundred thousand dollars as of the effective date of this regulation and a United States trust fund in the minimum amount of three million five hundred thousand dollars as of December 31, 1995.

(4) The trust funds required by this subsection shall be maintained in an irrevocable trust account in the United States in a qualified financial institution and shall consist of cash, securities, letters of credit or investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state and, in addition, shall substantially satisfy the requirements of the Standard Form Trust Agreement required for listing with the NAIC International Insurers Department.

(5) Insurers in compliance with subsections (1) or (2) of this section shall not be subject to section 38a-740-4 (b) of this regulation.

(6) In the case of an insurance exchange created by the laws of a state other than this state:

(A) The syndicates of the exchange shall maintain under terms acceptable to the Commissioner capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than seventy-five million dollars in the aggregate; and

(B) The exchange shall maintain under terms acceptable to the Commissioner not less than fifty percent of the policyholder surplus of each syndicate in a custodial account accessible to the exchange or its domiciliary Commissioner in the event of insolvency or impairment of the individual syndicate; and

(C) In addition, each individual syndicate to be eligible to accept surplus lines insurance placements from this state shall meet either of the following requirements:

(i) For insurance exchanges which maintain funds in an amount of not less than fifteen million dollars for the protection of all exchange policyholders, the syndicate shall maintain under terms acceptable to the Commissioner minimum capital and surplus, or its equivalent under the laws of the domiciliary jurisdiction, of not less than five million dollars; or

(ii) For insurance exchanges which do not maintain funds in an amount of not less than fifteen million dollars for the protection of all exchange policyholders, the syndicate shall maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than the minimum capital and surplus requirements under the laws of its domiciliary jurisdiction or fifteen million dollars, whichever is greater.

(g) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims. The insurer shall designate in writing to the Commissioner the name of the proper individual in its employ who is directly and actively in charge of and responsible for handling any and all insurance claims and to whom all correspondence regarding such claims may be directed. Any personnel changes affecting such previously designated individual shall be reported to the Department and indicate the present designated individual responsible for and in charge of handling of such insurance claims.

(h) No insurer shall be an eligible surplus lines insurer the management of which is found by the Commissioner to be incompetent or untrustworthy, or lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public; or which the commissioner has good reason to believe is affiliated with any person or persons whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public.

(i) No insurer shall be declared an eligible surplus lines insurer unless it has first appointed in writing the Insurance Commissioner of this State and his successors in office to be its attorney in this State, upon whom all lawful process, in any action or proceeding against it, may be served with the same effect as if the company was a domestic corporation. Such power of attorney shall be of the same legal force and validity as if served on the company, and that the authority shall continue in force so long as any certificate of membership, policy or liability remains outstanding against the company in this State. A certificate of such appointment, certified and authenticated, shall be filed in the office of the Commissioner and copies certified by him shall be sufficient evidence. Service upon such attorney shall be sufficient service upon the principal.

(j) No insurer shall be declared an eligible surplus lines insurer that is owned or financially controlled by another state or territory of the United States or an alien nation or any state or province thereof.

(k) In addition to all of the other requirements of this subsection, an insurer not domiciled in the United States or its territories shall be listed by the NAIC International Insurers Department. The commissioner may waive the requirements of this subsection upon an affirmative finding of acceptability by the commissioner if the commissioner is satisfied that the placement of insurance with the insurer is necessary and will not be detrimental to the public and the policyholder. In determining whether business may be placed with the insurer, the commissioner may consider such factors as:

(i) The interests of the public and policyholders;

(ii) The length of time the insurer has been authorized in its domiciliary jurisdiction and elsewhere;

(iii) Unavailability of particular coverages from authorized insurers or unauthorized insurers meeting the requirements of this subsection;

(iv) The size of the company as measured by its assets, capital and surplus, reserves, premium writings, insurance in force or other appropriate criteria;

(v) The kinds of business the company writes, its net exposure and the extent to which the company's business is diversified among several lines of insurance and geographic locations; and

(vi) The past and projected trend in the size of the company's capital and surplus considering such factors as premium growth, operating history, loss and expense ratios, or other appropriate criteria.

(L) The surplus lines insurer shall provide to the commissioner a copy of its current annual statement certified by the insurer and an actuarial opinion as to the adequacy of, and methodology used to determine, the insurer's loss reserves. The statement shall be provided at the same time it is provided to the insurer's domicile, but in no event more than eight months after the close of the period reported upon, and shall be certified as a true and correct copy by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile and certified by a senior officer of the nonadmitted insurer as a true and correct copy of the statement filed with the regulatory authority in the domicile of the nonadmitted insurer. In the case of an insurance exchange qualifying under subdivision (6) of subsection (f) of this section, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(Effective September 25, 1992; transferred and amended January 16, 1996)

Sec. 38a-740-5. Hearing

Any insurer whose application to be declared an eligible surplus lines insurer is denied may request the Commissioner for a hearing.

(Effective September 25, 1992; transferred and amended January 16, 1996)

Sec. 38a-740-6. Requirements of eligible surplus lines insurers

In order to remain an eligible surplus lines insurer in Connecticut the unauthorized insurer shall comply with the following requirements.

(a) The insurer shall continue to maintain the same financial stability and condition, qualifications and general suitability necessary to be declared an eligible surplus lines insurer pursuant to Section 38a-740-4.

(b) The insurer shall file annually, on or before the first day of March, a true report, signed and sworn to by its president or a vice president, and secretary or an

assistant secretary, of its financial condition on the thirty-first day of December next preceding, in such form and with such detail as is prescribed by the Commissioner. The Commissioner may grant extensions of time in which to file such reports when an insurer can demonstrate satisfactorily the need for such an extension. In addition to such annual report, the Commissioner, when he deems it necessary, may require any eligible surplus lines insurer to file financial statements on a quarterly basis. Further, whenever the Commissioner has determined that more frequent reports are required because of certain factors or trends affecting companies writing a particular class or classes of business or because of changes in the company's management or financial or operating condition, he may require any eligible surplus lines insurer to file financial statements on other than an annual or quarterly basis.

Notwithstanding the provisions of this Subsection to the contrary, when the syndicates of an insurance exchange are required to file annual reports with the exchange on the National Association of Insurance Commissioners Convention Form Annual Statement, an insurance exchange created under the laws of any state shall file such report on the first day of May, however, such report may be filed on a combined basis.

(c) The insurer shall file at least once in every five years an official report of an examination made by governmental authorities of the domiciliary jurisdiction of the insurer. The examination report shall be concerned with the condition and affairs of the company. In place of such an official report, the insurer may file such other evidence of verification of financial security as is acceptable to both its domiciliary jurisdiction and to the Commissioner.

(d) The insurer shall file any other information requested by the Commissioner concerning material changes in its financial condition, operations or management.

(e) The insurer shall remit to the Commissioner the fees required by Section 38a-740-11.

(f) If it appears to the Commissioner upon satisfactory evidence, that the surplus to policyholders of an eligible surplus lines insurer as appears on its financial statement is reduced forty percent below the minimum requirement for eligibility, such company shall not issue any new policies or transact any new business until it receives from the Commissioner authority to do so or until authorized by court order in an action brought for that purpose.

(g) If the deficiency is more than twenty and less than forty percent of the required surplus and the directors of the company certify under oath that the deficiency will be restored by the company such company may continue business for thirty days from the date such deficiency is found by the Commissioner. If at the expiration of the thirty days, or any extension thereof granted by the Commissioner in writing, any portion of the deficiency is not restored, the company shall not thereafter issue new policies or transact new business until authorized by the Commissioner or authorized by court order in an action brought for that purpose.

(Effective September 25, 1992; transferred and amended January 16, 1996)

Sec. 38a-740-7. Notification

Any eligible surplus lines insurer is required to notify the Insurance Commissioner within thirty (30) days of the happening of any one or more of the following:

(1) the suspension or revocation of a license or right to transact business in another jurisdiction;

(2) the receipt of an order or complaint to show cause why the license or right to transact business should not be suspended or revoked, or charges of any type filed by a state, federal agency or any other jurisdiction which, if substantiated,

could result in suspension or revocation of a license, certificate of authority, or right to transact business in another jurisdiction;

(3) the imposition of a penalty by any other state, federal agency or any other jurisdiction for any violation of the insurance or insurance related laws of such other state, federal agency or jurisdiction; or

(4) any change in control of the company.

(Effective September 25, 1992; transferred and amended January 16, 1996)

Sec. 38a-740-8. List of eligible surplus lines insurers

The Commissioner shall from time to time publish a list of all authorized insurers declared to be eligible surplus lines insurers, and shall mail a copy thereof to each licensed surplus lines broker at his office last of record with the Commissioner.

(Effective September 25, 1992; transferred and amended January 16, 1996)

Sec. 38a-740-9. Withdrawal of eligibility; grounds; notice

If at any time the Commissioner has reason to believe that any unauthorized insurer having been declared an eligible surplus lines insurer pursuant to Section 38a-740-4, is impaired financially or no longer meets the requirements for eligibility as set forth in Section 38a-740-6, he shall declare such insurer no longer an eligible surplus lines insurer. If the Commissioner determines, after a hearing thereon of which reasonable notice was given to all licensed surplus lines brokers that an insurer currently eligible as a surplus lines insurer has violated the laws of Connecticut, or has failed to make reasonably prompt settlement of just claims for losses and/or return premiums he may declare such insurer no longer an eligible surplus lines insurer. The Commissioner shall promptly mail notice of all such declarations to each surplus lines broker at his address last of record with the Commissioner.

(Effective September 25, 1992; transferred and amended January 16, 1996)

Sec. 38a-740-10. Actual financial condition and claim practices of eligible surplus lines insurers

Nothing in Sections 38a-740-1 to 38a-740-9, inclusive, shall be deemed to impose on the Commissioner any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer; and the status of being an eligible surplus lines insurer, if granted by the Commissioner, shall be construed to mean only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the Commissioner has no credible evidence to the contrary.

(Effective September 25, 1992; transferred and amended January 16, 1996)

Sec. 38a-740-11. Fees

(a) Upon the initial filing of the material required by Section 38a-740-4, the unauthorized insurer shall pay to the Commissioner a nonrefundable fee of one thousand dollars by check or money order made payable to the Treasurer, State of Connecticut.

(b) On or before the first day of May of each year after the initial filing of the material required by Section 38a-740-4, each unauthorized insurer declared to be an eligible surplus lines insurer pursuant to Section 38a-740-4 and remaining on the list of eligible surplus lines insurers published pursuant to Section 38a-740-8, shall pay to the Commissioner an annual fee of sixty three dollars by check or money order made payable to the Treasurer, State of Connecticut.

(Effective September 25, 1992; transferred and amended January 16, 1996)