

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE SURPLUS LINE ASSOCIATION OF WASHINGTON
AND
THE WASHINGTON STATE OFFICE OF INSURANCE COMMISSIONER**

This Memorandum of Understanding (“Memorandum”) is made and entered into as of October 1, 2013, between the Surplus Line Association of Washington (“Association”) and the Washington State Office of Insurance Commissioner (“OIC”). It is subject to, and controlled by, applicable laws of the state of Washington.

The Association is a nonprofit corporation formed, in part, to encourage and facilitate compliance by its member brokers with the laws of the state of Washington relative to surplus line insurance transactions, and with the rules and regulations of the OIC relative to surplus line insurance. The OIC regulates the business of insurance in the state of Washington and has supervisory and regulatory responsibility over those persons and entities engaged in the business of insurance in the state of Washington, or affecting subjects located wholly or partially within the state of Washington.

1. PURPOSE.

The purpose of this Memorandum is to promote cooperation between the Association and the OIC and to memorialize the respective duties and responsibilities held by the Association and the OIC in connection with implementing the statutory requirements of Chapter 48.15 RCW and Chapter 284-15 WAC.

2. RESPONSIBILITIES OF THE ASSOCIATION AND THE OIC.

2.1 The filing of certifications under RCW 48.15.040.

Pursuant to RCW 48.15.040(5) and WAC 284-15-030, when a surplus line broker procures insurance from an unauthorized insurer, the broker must certify the accuracy of facts supporting the diligent effort of the surplus line broker and file the certification with the OIC within sixty days after the insurance is procured. As a service to its members, the Association serves as the initial recipient of the surplus line certifications required to be filed with the OIC under RCW 48.15.040(5) and WAC 284-15-030 and registered by the Association pursuant to Association Rules 4 and 5, which are attached to this Memorandum for informational purposes. In performing this service, the Association acknowledges that it does not review the certifications for truthfulness, accuracy, or validity; rather, in the course of collecting the certifications, the Association only verifies that the members properly complete the certifications. The OIC, in turn, collects the certifications from the Association at least monthly and maintains them as may be required by law.

2.2. Additional responsibilities of the Association.

To benefit its members and Washington State consumers, the Association has additional responsibilities under this Memorandum that include but are not limited to the following:

- a. Encourages and facilitates compliance with Washington State laws and regulations relating to surplus line insurance, and promotes integrity, efficiency and service by its members. Educates and assists members in the understanding of Washington State surplus line laws and regulations.
- b. Provides means for the receipt, recording, and reviewing of documents that members are required to file with the OIC, as well as providing members with guidance for compliance with statutory and regulatory requirements.
- c. Serves as a resource for members by retaining voluntarily-provided financial statement information relating to non-admitted insurers.
- d. Reports to the OIC any fraudulent or illegal insurance activity in the surplus line market that comes to the attention of Association staff.
- e. Accumulates premium data by member and provides that information to the member on a timely basis to ensure taxes are collected as required by law.
- f. Provides advice, comments, and assistance to the OIC in drafting legislation or regulations with regard to matters relating to surplus line business.
- g. Receives and disseminates to members information relative to surplus line insurance on a timely basis.
- h. Communicates with and responds to questions from organizations of admitted insurers concerning surplus line insurance.
- i. Acts as a liaison and builds communication channels between the surplus line industry and the OIC.
- j. Is available to periodically meet with representatives of the OIC to exchange information on subjects relating to this Memorandum.
- k. Cooperates with federal and state regulatory enforcement agencies.

The performance of these additional responsibilities by the Association does not preclude the Association from providing services at the request of the OIC to assist in increasing the availability of certain insurance coverages to Washington state consumers and businesses.

2.3 The payment of premium taxes under RCW 48.15.120.

Pursuant to RCW 48.15.120(1), on or before March 1 of each year, each surplus line broker must remit to the Washington State Treasurer, through the OIC, a tax on the premiums transacted by the broker during the preceding calendar year. As a service to its members, by February 1 of each year, the Association will provide each of its members with information available from Association records regarding the amount of premium filed by class during the previous calendar year by each member. It is understood that this information is received by the Association and provided to the OIC solely for purposes of assisting its members in making their required annual premium tax filings by the March 1

deadline in order to avoid the mandatory imposition of penalties under RCW 48.15.130 and RCW 48.14.060(1). The OIC, in turn, will serve as the initial recipient of all premium tax payments remitted by the surplus line brokers under RCW 48.15.120. Upon receipt, the OIC will promptly remit the premium tax payments to the Washington State Treasurer in accordance with RCW 48.15.120(1).

2.4 Right of Inspection by the OIC.

The Association shall provide right of access to its facilities to the OIC or to personnel designated by the OIC at all reasonable times in order to monitor and evaluate performance, compliance, and/or quality assurance under sections 2.1 and 2.3 of this Memorandum. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the Association's business.

3. CONTACT PERSON(S).

The Association and the OIC will designate, as soon as possible after entering into this Memorandum, the individual(s) who will be the contact person(s) for purposes of handling all matters related to, or that may arise under, this Memorandum. Each party shall promptly notify the other if there is any change in the designated contact person(s).

4. PUBLIC RECORD.

It is understood that this Memorandum is subject to public disclosure under the provisions of the Public Records Act, chapter 42.56 RCW.

5. TERM AND TERMINATION OF MEMORANDUM.

This Memorandum shall remain in effect until terminated. Either the Association or the OIC may terminate this Memorandum upon thirty-days written notice. Termination shall not affect the rights, duties, or obligations of the Association, its members, or the OIC with respect to complying with laws of the state of Washington and the provisions of Title 48 RCW and Title 284 WAC.

6. AMENDMENT OF MEMORANDUM.

This Memorandum shall be reviewed by the OIC for purposes of compliance with state laws and regulations, updating, and/or revision at least every two years, but may be revised at any time with the mutual consent of the parties. This Memorandum may be amended only upon the written, mutual consent of both the Association and the OIC.

7. ENTIRE MEMORANDUM.

This Memorandum, supersedes, and otherwise replaces, all other existing memoranda, agreements, understandings, or representations, whether oral or written, between the signatories to this Memorandum. No waiver, alteration or modification of the

provisions in this Memorandum shall be binding unless subsequently made in writing and signed by a duly authorized representative of the Association and the OIC.

8. NONBINDING OBLIGATION.

This Memorandum does not obligate funds, personnel, services, or other resources of either the Association or the OIC. This Memorandum is an expression of intent and understanding only. Both the Association and the OIC act as an independent party with respect to the performance of duties under this Memorandum and neither party represents that it is an employee, affiliate, partner, delegate, representative, or agent of the other party to the Memorandum. The Memorandum does not give a third party any benefit, legal or equitable right, remedy, or claim under this Memorandum.

9. EFFECTIVE DATE.

This Memorandum is effective on October 1, 2013.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed by their duly authorized representatives.

Surplus Line Association of Washington	Washington State Office of Insurance Commissioner
Dated: <u>10/9/13</u> Signed: <u></u> Robert R. Hope Executive Director Surplus Line Association of Washington 1710 One Union Square 600 University Street Seattle, WA 98101 Phone: (206) 682-3409 E-mail: bob@surpluslines.org	Dated: <u>10-11-2013</u> Signed: <u></u> John F. Hamje Deputy Insurance Commissioner Consumer Protection Division Office of Insurance Commissioner PO Box 40257 Olympia, WA 98504-0257 5000 Capital Blvd. Tumwater, WA 98501 Phone: (360) 725-7262 E-mail: johnha@oic.wa.gov

RULE 4

Submission Procedure and Forms

All surplus line insurance coverages written by members of the Association on Washington risks (per RCW48.15.120) are to be submitted to the Association office for examination.

The following Rules shall apply to such submissions:

- (1) All submissions must be filed on forms prescribed and furnished by the Association.
- (2) The certification form must be filed within sixty (60) days of the effective or procurement date. Policy documents are to be filed with the certification form. If these policy documents are not available within 60 days, these policy documents must be sent upon receipt by the member. Policy documents required are:
 - Policy declarations, certificate or covernote declarations
 - Supplemental declarations
 - Schedule of forms and endorsements
 - Copy of the service of suit endorsement
- (3) Upon receipt of a complete submission, the Association office will either accept the same by registering the submission or will issue a "tag" for correction. Submissions "tagged" for amendment or correction must be corrected promptly.
- (4) When the Association office receives a certification form, the Association office will thereafter deliver a copy of the certification form to the Insurance Commissioner. Whether or not the submission is registered it will be considered filed with the Insurance Department for reporting and tax purposes. Changes to the certification form can be made until the account is registered. This will complete the surplus line broker's filing requirement under the Washington Insurance Code.
- (5) The policy will not be considered registered until the certification form and policy documents have been received and reviewed by the Association, any tags have been cleared, and registration confirmation has been sent to the broker.
- (6) The notice of a "Registered" certification form and a copy of coverages constitutes a complete copy of the filing for the broker's records.
- (7) Endorsements or other modifications of coverages previously submitted must be promptly filed with the Association where the endorsement or other modification involves any additional or return premium, changes in security, or a change of policy number.
 - (a) Endorsements having additional or return premiums must include details, e.g. premiums, state tax, stamping fee.
 - (b) Non-money endorsements need not be filed, except for changes of security or policy number.
 - (c) Certifications should not be submitted with an endorsement.

- (8) Itemization of Premium, Taxes and Fee: Each filing involving premium must include the following itemized charges:

- Premium
- Policy Fee
- Any other applicable fees charged
- State Tax - Refer to Rule 7
- Stamping Fee - Refer to Rule 6

State tax and stamping fee are based on the sum of all premiums and fees, including but not limited to policy, broker and/or inspection fees.

- (9) Listing of Insurers in each Certificate of Coverage: In each submission filed with the Association there shall appear in full the names of all insurers assuming liability, and the percentage of such liability respectively assumed by them, said names to appear both in the certificate and also in Item 3 of the certification form so that the Insurance Commissioner will be advised.
- (10) All documents submitted shall be confidential information to the Association office, and shall not be divulged to, or to be open to inspection by any third party, except the Insurance Commissioner or other governmental agency having legal authority therefore. Provided, however, that the Board of Directors may, by resolution adopted by a majority of its members, allow or require the Executive Director to disclose specific types or categories of information in accordance with the terms, conditions and limitations of such resolution.

RULE 5

Registration Procedures

Association staff will be instructed to verify the following eight items on each submission (except for subsequent endorsements). Upon verification of each of the following items the submission shall be "registered". It shall not be implied or assumed by the members or anyone else that the registration of a submission signifies anything more or less than that the submission has been verified as follows:

- (1) *Mathematical accuracy of tax calculations.* The mathematical accuracy of the tax calculation shall be checked by verifying that the tax indicated is the arithmetically correct result of multiplying the tax rate times the premium stated on the submission.
- (2) *Coding.* The submission shall be coded by the association. The purpose of such coding is for statistical purposes and has no other purpose or effect.
- (3) *Minimum Security Check.* The following minimum security check does not assure the broker that the requirements of RCW 48.15.090 and WAC 284-15-090 have been complied with. Compliance with these statutes is the responsibility of the broker, not the Association.

The staff shall compare the minimum capital and surplus requirements of RCW 48.15.090 and WAC-284-15-090 with the most recent AM Best's financial statements for the insurer, if the insurer is domiciled in the United States. If the insurer is domiciled outside the United States, the staff shall determine whether or not such alien insurer appears on the most recent version of the NAIC Alien Insurers list available in the office of the Association. The staff shall do no further security check or evaluation.

In the event that an insurer does not meet minimum financial standards, the surplus line broker may request a waiver of financial requirements from the Commissioner in accordance with the provisions of WAC 284-15-050. Such documentation should preferably be included with the original submission to the Association. If documentation is not included and the submission is tagged, the documentation must be included with the resubmission.

Such submission shall constitute a representation and warranty that the broker has complied with WAC 284-15-020 (2)(b). It shall not be the responsibility of the Association or its staff to verify compliance with said rule.

- (4) *Certification Completed and Signed.* Staff shall verify that the blanks in the certification form are completed. It shall not be the responsibility of the staff to verify the truth, accuracy, or validity of the statements made in the certification or the completeness of the certification.

- (5) *Arithmetical Accuracy of Percentage Allocation on Multiple Security Certifications.* The security on a certification must always equal 100%. If filing a placement with multiple security, the insurers and their percentage participation must be shown. For example, the affidavit should show:

Underwriters at Lloyds, London	40%
Company "A"	15%
Company "B"	30%
Company "C"	5%
Company "D"	10%
	<hr/>
	100%

- (6) *Service of Suit.* The Submission shall include a copy of the actual service of suit endorsement. Staff shall verify that the wording is appropriate.
- (7) *Registry Stamp.* The staff shall verify that the registry stamp has been properly affixed to the declaration page(s) and has been initialed by or bear the name of the surplus line broker that procured coverage, as required.
- (8) *Schedule of Forms Listing.* The list of forms will not be reviewed for substance, quality or completeness. It will only be verified that a list has been included. Thus, the existence, not the adequacy, of the list will be verified.