

FROM: Director, Worldwide Markets
LOCATION: G12
EXTENSION: 5998
DATE: 9 January 2003
REFERENCE: Y2967
SUBJECT: US SURPLUS LINES – SURPLUS LINES BROKERS
SUBJECT AREA(S):
ATTACHMENTS: None
ACTION POINTS: **Underwriters to ensure US surplus lines risks are always placed through licensed surplus lines brokers.**
DEADLINE:

1. Purpose of bulletin

To remind Underwriters that they are responsible for ensuring that every US surplus lines risk they write is placed via a broker who possesses a current US state surplus lines license.

2. Requirements

Generally speaking, US states regulate surplus lines transactions by exercising jurisdiction over licensed surplus lines brokers. The states' insurance laws therefore require surplus lines business to be placed via a surplus lines broker licensed to do business in the state governing the placement of the risk. Some states only issue surplus lines broker licenses to brokers resident in that state, although this is changing due to the Federal Gramm-Leach-Bliley Act of 1999.

Underwriters should take reasonable steps to verify that a broker with a surplus lines license for the appropriate US state is involved in every surplus lines risk. Underwriters may rely on representations by the Lloyd's broker on this point where it appears reasonable to do so. Nevertheless responsibility for ensuring compliance will ultimately rest with the underwriter.

We normally expect the leading underwriter on a slip to make sufficient checks to ensure that a surplus lines risk is placed via a licensed surplus lines broker. Following underwriters who are satisfied that the leading underwriter has made such checks should not need to make their own enquiries unless they have reason to believe that no licensed surplus lines broker is involved in the placement. However, if the documentation presented to them suggests that such checks have not been carried out, or they have other reasons for considering that a licensed surplus lines broker may not be involved, they should make appropriate enquiries.

In the case of binding authority business, underwriters should instruct coverholders to ensure that all placements comply with relevant legislation. If the coverholder is not a licensed US surplus lines broker they can handle US surplus lines risks only via a surplus lines broker licensed for the state concerned. If the coverholder is a licensed US surplus lines broker they can handle US surplus lines for the states in which they are licensed and from other states only via a surplus lines broker licensed for the state concerned. Underwriters remain responsible for compliance with this requirement, even if the business is produced via an extended broker chain.

State surplus lines insurance laws contain other requirements with which a placement must comply. A surplus lines broker should ensure that a risk is placed in accordance with these laws. Worldwide Markets will, via Market Bulletins and the US Fact Sheets available on the internet, draw the attention of underwriters to specific obligations, which underwriters are under in relation to surplus lines business. The surplus lines broker also ensures that surplus lines taxes, usually payable by the insured, are collected and submitted to the state.

Surplus lines breaches such as a failure to use a licensed surplus lines broker can result in the insurer concerned incurring regulatory penalties such as fines, or even the suspension or revocation of their authorisation to trade in the state concerned. Lloyd's will normally seek to recover all central costs – such as legal fees or regulatory fines - from the syndicates involved in the placement. If a non-compliant risk is underwritten on a subscription basis Lloyd's will normally apportion the recovery amongst all the syndicates involved in proportion to their share of the risk.

3. Verification checks

Underwriters should determine what checks are appropriate in the light of their relationship with, and knowledge of, the US intermediary involved in the placement. Such checks can include:

- Asking the Lloyd's broker for a copy of the US intermediary's surplus lines license – particularly in cases where there is a new producer relationship.
- Checking the individual state insurance department websites. These websites vary in content, but many states, e.g. California, have a searchable database of agents/intermediaries by both company and individual name, detailing types of licenses held. A useful link to the various websites of state insurance departments is on the NAIC website: <http://www.naic.org/1regulator/usamap.htm>
- Checking the website of the National Association of Professional Surplus Lines Offices, Ltd (NAPSLO) <http://www.napslo.org/>. NAPSLO is a national trade association representing the surplus lines industry and the wholesale insurance marketing system

4. Further information

For information about overseas regulatory requirements applying to Lloyd's and Lloyd's Underwriters contact:

Lloyd's Worldwide Market Services
Box 190b,
Tel: 020 7327 6677
Fax: 020 7327 5255
Email: market.services@lloyds.com

If a syndicate or a broker has reason to believe it may have been involved in a surplus lines breach they should contact:

Mark Ette, Compliance Department
Tel: 020 7327 6278
Email: mark.e.ette@lloyds.com
or
Maria Wilkins, Worldwide Markets
Tel: 020 7327 6863
Email: maria.s.wilkins@lloyds.com

This bulletin is being sent to all Compliance Officers, Active Underwriters and Accredited Lloyd's Brokers.