



The Excess and Surplus Lines Stamping Office

*Contributing to a Stable, Efficient
and Financially Strong
Non-Admitted Marketplace*

A position paper published by the
National Association of Professional Surplus Lines Offices, Ltd.
and the American Association of Managing General Agents.

April 2000

Reprinted April 2002

American Association of Managing General Agents

The American Association of Managing General Agents, Kansas City, Mo., was founded in 1926 and is the nation's premier trade association of state and regional wholesale insurance agents with contractual authority to perform managerial functions on behalf of insurers through the American agency system. More information about AAMGA can be found on the association's web site, www.aamga.org.

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National Association of Professional Surplus Lines Offices

The National Association of Professional Surplus Lines Offices, Ltd. (NAPSLO) is a national trade association representing the surplus lines industry and the wholesale insurance marketing system. Since it was founded in 1975, NAPSLO has become the authoritative voice of surplus lines. Acting as a source of information, NAPSLO spends a great deal of time identifying and explaining to regulatory bodies, other segments of the insurance industry, the media and the public the vital role surplus lines plays in the insurance industry.

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FOREWORD

The National Association of Professional Surplus Lines Offices (NAPSLO) and the American Association of Managing General Agents (AAMGA) support the creation and operation of state stamping offices because they offer a form of efficient, self-regulation which benefits consumers through an innovative and resourceful excess and surplus line marketplace. NAPSLO and AAMGA believe the following points characterize the ideal attributes for stamping offices.

1. **Governance** - Stamping offices should be authorized by legislation and governed by an independent board consisting of licensees elected by licensees. Stamping offices facilitate the principle of export to companies outside the regulatory jurisdiction of the state while simultaneously protecting consumer interests.
2. **Compliance and Self Regulation** - Stamping offices act as independent intermediaries between the insurance department and surplus lines agents and brokers in matters of compliance and administration of surplus line laws and regulations. Stamping offices should not, however, act as substitutes for the ultimate authority of the insurance department.
3. **Solvency** - Stamping offices monitor the security of markets used by surplus lines brokers including those markets used in states having eligibility lists. Stamping offices should be granted immunity with regard to their efforts in assuring security of markets.
4. **Advocacy** - Stamping offices should participate proactively in the legislative and regulatory process in support of the surplus lines industry to the ultimate benefit of the consumer.
5. **Education** - Stamping offices should take on a proactive role in educating markets, licensees, consumers, regulators and legislators about the roles of the surplus lines market and stamping offices and also qualify and conduct, educational programs for continuing education credit.
6. **Service & Information** - Stamping offices should provide service and information to their members, markets, consumers and other interested parties regarding means of compliance and general problem solving.
7. **Electronic Filing Procedures** - Stamping offices should embrace electronic filing methods to promote efficiency and minimize the cost of stamping procedures.
8. **Taxation of Multi-State Risks** - Stamping offices should be considered as a mechanism to solve the national problem by facilitating the collection of surplus lines taxes on multi-state risks.

STAMPING OFFICES

INTRODUCTION

In 1994, the National Association of Professional Surplus Lines Offices (NAPSLO) and the American Association of Managing General Agents (AAMGA) published a position paper in support of the contributions and services provided to the excess and surplus lines community by state stamping offices. The E&S community serves insureds who cannot obtain property and casualty insurance due to the insureds' unique insurance needs or risk characteristics and the specialty licensed excess/surplus line brokers who fulfill these insurance needs by placing such risks with eligible-nonadmitted insurers.

The E&S market underwrote approximately \$9.5 billion of premium in 1998 which constituted approximately 6.5 percent of all U.S. 1998 commercial lines premium.

NAPSLO and AAMGA continue to support the creation and use of stamping offices because they contribute to a stable, efficient and financially secure non-admitted marketplace. The objectives of this position paper are to update the 1994 position paper, to reexamine the role of state stamping offices, to demonstrate the benefits stamping offices provide to consumers, regulators, producers and insurers, and to provide association members information about the opportunities to maximize use of the services available from state stamping offices.

I. HISTORY OF STATE STAMPING OFFICES

The legal environment for the sale of insurance evolved in the nineteenth century. Insurer and broker licensing was mandated and limitations on the use of unlicensed insurers were imposed. The first surplus lines law authorizing placements with unlicensed insurers was enacted in the 1890s.

In the 1930s, E&S brokers, particularly in the western states, formed voluntary surplus line broker associations which helped set standards by which unlicensed insurers and surplus line brokers could verify each others' qualifications to underwrite or place excess and surplus lines. These voluntary broker-created associations, particularly in California, Oregon and Washington, evolved into stamping offices by contracting with the local state insurance department to perform certain services in reviewing E&S placements for compliance with state law.

THE CREATION OF STATE STAMPING OFFICES, THEREFORE, WAS ESSENTIALLY BROKER DRIVEN.

In the 1930s, the E&S brokers of California, Oregon and Washington were pioneers in creating and realizing the stamping office concept. The utility of the stamping office approach continues to attract new states today. At least seven states have created stamping offices since 1980. The fifteen state stamping offices currently operating today review approximately 80 percent of all E&S insurance placements.

II. GOVERNANCE

The method of creating stamping offices changed over time. While some states, such as Pennsylvania, passed legislation to empower the existing Pennsylvania Surplus Lines Association to act as a stamping office, other states such as New York and Florida legislated the creation of new associations. Therefore the method of empowerment varies from contractual, to legislative creation, and in some cases, a hybrid of the two. The level and degree of services provided by each individual stamping office vary considerably due to significant differences in both the applicable law state by state and by the nature of the relationship between the stamping office and the state itself.

By way of example, some states, by law, publish a list of eligible E&S insurers which specify the carriers which surplus lines brokers can use. In those states, the stamping office is less likely to focus on eligible insurer financial examination. However, in all stamping offices, preventing ineligible markets from illegally transacting business, remains a major goal.

How state stamping offices are governed also varies from state to state. While a board of directors is charged with policy setting obligations in each state, some boards are elected by E&S licensees and only licensees are eligible to be board members. In other states, the board or members of the board are appointed by the insurance commissioner or governor.

NAPSLO and AAMGA believe the essence of the stamping office is its role as a broker driven self-regulatory body. Operating independence, clearly distinct from state insurance regulators, is necessary to optimize the services a stamping office provides. An atmosphere for an open, frank dialogue with licensees is created when it is free from the threat of regulatory penalties.

NAPSLO and AAMGA believe this independence is best accomplished by stamping office enabling legislation which provides for a fully independent board elected by licensees.

III. STAMPING OFFICE SERVICES

While state stamping offices vary greatly in focus, emphasis and services provided, NAPSLO and AAMGA support the stamping office concept since these offices all provide some level of the following services:

- **COMPLIANCE AND SELF-REGULATION**

In a number of states, prior to the creation of the stamping office, clerical errors or inadvertent regulatory violations often resulted in immediate fines, stipulations or other regulatory jeopardy. By placing the stamping office between licensee and regulator, the licensee has a member-service oriented facility which can provide information, guidance and education on issues unique to surplus lines and offer helpful corrections not under threat of fine or license jeopardy. The stamping office therefore provides a help desk function of information and education to assist with compliance while the insurance department retains ultimate enforcement authority.

E&S brokers initiated this form of self-regulation to foster and facilitate compliance with the governing law. By offering the public a greater level of protection, the industry also achieved a greater level of success and acceptability. The E&S broker community was able to create a self-governing dynamic which provides consumer protection to those with E&S insurance needs without changing the marketplace's essential character, simultaneously avoiding a traditional regulatory approach.

The stamping office concept offers a unique approach to the oversight of this segment of the insurance industry. It represents an alliance or partnership between the industry and regulators. Stamping offices help prevent the use of ineligible non-admitted markets and monitor eligible companies operating in the E&S market for solvency. Stamping offices also offer state regulators and legislators expertise in determining the propriety of surplus line transactions and help ensure proper collection of surplus line taxes. Moreover, surplus line licensees and insurers obtain, through the stamping office, a resource to assist them in the professional and proper placement of surplus lines business.

- **SOLVENCY OVERSIGHT AND EVALUATION OF ELIGIBLE NON-ADMITTED INSURERS**

Perhaps the two most important functions of any stamping office are to prevent or stop the use of ineligible insurers from transacting business in the surplus lines market and to monitor and evaluate eligible insurers for financial security.

The methods used vary from conducting a substantial security review of foreign and alien insurers with regard to financial condition, reputation, integrity and operations (such as by the Excess Line Association of New York) to monitoring transaction documentation for use of only white listed companies. Each state stamping office has resources available to their licensees regarding non-admitted insurer eligibility. State stamping offices should have statutory immunity so this service can be performed unrestrained and free from threat of litigation.

- **ADVOCACY**

Stamping offices assist in preserving the vital role of the excess and surplus line marketplace by advocating the principal of export of coverage when licensed insurers are not meeting market demands. Freedom from rate and form combined with the creative, innovative approach in the E&S market provides the greatest range of choices for purchasers as to terms, conditions and coverage. Stamping offices deliver the message that these unique products are delivered by companies which meet stringent financial strength requirements.

Stamping offices are close to and aware of the day to day problems broker members suffer in situations where applicable law and/or regulations impede the completion of legitimate insurance transactions. As a result, stamping offices are proactive in educating legislators and regulators regarding the unique characteristics of the E&S industry and its distribution system.

Stamping offices have promoted useful regulatory and legislative solutions to some of these often unintended impediments.

Export lists have been created in many states to eliminate declination requirements where no known licensed insurers are writing a class of business. Likewise, stamping offices should promote the elimination of declinations for transactions which have been deregulated for licensed insurers. Stamping offices have also promoted the elimination of forced use of residual market mechanisms over eligible, voluntary, non-admitted insurers.

These and other issues have been the subject of lobbying/advocacy efforts of stamping offices.

- **EDUCATION**

Most stamping offices offer state accredited continuing education courses, seminars and publications including bulletins, newsletters, annual reports, websites or other advisories geared specifically to E&S issues. These efforts are geared toward training licensees and their staffs in the applicable laws, rules and regulations to help facilitate proper documentation of transactions and to keep their members abreast of current E&S issues.

- **SERVICE AND INFORMATION**

In addition to solvency review, stamping offices provide education, publications, member training and other informational services to facilitate compliance, prevent fraud and protect consumers, all of which enhance the reputation of the E&S marketplace.

- **SERVICE AND INFORMATION (cont.)**

Documentation review by stamping offices offers additional protections to consumers. While monitoring for use of only eligible non-admitted insurers is the paramount anti-fraud protection provided to consumers, documentation review and analysis also prevents and sometimes corrects transactions which materially violate applicable law or regulation. Transactions are reviewed to verify all necessary consumer disclosures are made, that only licensees are placing E&S risks, that only those lines of business eligible for export are being placed, and that all documentation is completed correctly.

From the documents submitted, data is collected. Data collection is geared toward two important reporting goals. Information is reported at regular intervals to broker members to assist members in accounting for and paying any excess or surplus line tax due.

Information is also regularly reported to the insurance department which helps protect state revenues by informing the state of taxes which are due. It also provides the state a method of monitoring the E&S industry in a laissez-faire manner without devoting excessive state resources to the process.

Stamping offices are a source of market information. Responding to inquiries, ranging from which markets are writing a certain class of business to providing names or other resources for particular information, are part of the regular daily functions.

IV. STAMPING OFFICES IN THE FUTURE

The E&S industry is a dynamic industry, quick to react to changes and developments effecting technology, industry and the world as a whole. Stamping offices are reacting to the changing dynamics of the marketplace as well.

NAPSLO and AAMGA support and encourage stamping offices to offer services and to create and implement solutions to new issues as they develop and to act as a catalyst to solve problems.

- **ELECTRONIC FILING PROCEDURES**

The future of many stamping offices include the elimination of paper filings in favor of a fully electronic filing approach. An e-commerce solution could substantially reduce filing costs, mailing downtime, key strokes, errors and tremendously simplify the filing procedures in a number of states.

- **MULTI-STATE BROKER LICENSING AND TAXATION OF MULTI-STATE RISKS**

The E&S industry and stamping offices are also grappling with regulatory hurdles which exist largely as a result of antiquated law and regulation. Perhaps the greatest barrier that exists today is an E&S broker's inability to conduct a multi-state business or handle national program business. These barriers include the inability to obtain multi-state or non-resident licenses, contending with courtesy and/or accommodation filing prohibitions and the complex and conflicting state laws on E&S tax payments. State stamping offices are examining these issues and seeking solutions to these difficulties. Solutions may include a form of non-resident, reciprocal E&S broker licensing to ease the burdens referred to above.

V. CONCLUSION

The non-admitted market is different from the licensed insurance industry and its unique features and function are often misunderstood by regulators, legislators, and consumers. The stamping office bridges the gap of understanding between the various parties.

Stamping offices have an enviable track record with billions of dollars and millions of transactions recorded over many years with a remarkable absence of complaints.

Stamping offices provide a level of stability to the marketplace and help protect the industry's reputation by monitoring transactions to prevent fraud. A taint which can damage the entire industry due to one or two transactions, is avoided.

NAPSLO and AAMGA are committed to the stamping office concept and the role that such an office can play in protecting the consumer seeking coverage in the non-admitted market and by facilitating the safety valve function of the excess and surplus lines market.

Our organizations feel that these arguments for establishing state stamping offices by statute are persuasive if not compelling. A stamping office that works closely with the insurance department to create a more efficiently regulated surplus lines market, one whose function is understood by the regulator, and which fosters a fair and competitive insurance environment, and most importantly, protects the consumer should be welcomed by all parties involved.

VI. APPENDIX

- A. Chart of information and services provided by state stamping offices.
- B. Names and addresses of the state stamping offices.

Appendix B:

SURPLUS LINES STAMPING OFFICES

Surplus Lines Association of Arizona

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Surplus Line Association of California

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Surplus Lines Association of Colorado

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Florida Surplus Lines Service Office

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www.fslso.com

Surplus Line Association of Idaho, Inc.

Wendy Tippetts, Manager
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Surplus Line Assoc. of Illinois

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Mississippi Surplus Lines Association

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Excess Line Association of New York

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Surplus Line Association of Oregon

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Pennsylvania Surplus Lines Association

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Surplus Lines Stamping Office of Texas

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