

## **PROPOSED AMENDED RULE 24 SURPLUS LINE INSURANCE**

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### **Section 1. Purpose**

The purpose of this Rule is to clarify existing legislation regarding surplus lines insurance in order to provide clear guidance to originating producers and brokers and surplus line brokers in Arkansas licensed under Ark. Code Ann. §§ 23-65-301, *et seq.* This Rule provides direction regarding forms and documents necessary for proper reporting and accounting on property, casualty, surety and marine insurance issued by surplus line insurers through surplus line brokers.

Forms SL-2, SL-3, and SL-4 referenced herein are available on the Arkansas Insurance Department's website at <http://www.insurance.arkansas.gov/Accounting/divpage.htm>. At the discretion of the Commissioner, the forms may be accepted in electronic format.

### **Section 2. Authority**

This Rule is promulgated pursuant to the authority granted to the Commissioner under Ark. Code Ann. §§ 23-61-108, 23-65-301, *et seq.*, and 25-15-201, *et seq.*

### **Section 3. Applicability and Scope**

The provisions of this Rule shall be applicable to resident and non-resident producers and brokers licensed for property, casualty, surety and marine insurance transactions in this State and serving as the originating producer or broker on Arkansas surplus line policies and surplus line brokers licensed pursuant to Ark. Code Ann. §§ 23-65-301, *et seq.*

### **Section 4. Effective Date**

The effective date of this Rule shall be the date on which it is signed by the Commissioner.

## **Section 5. Affidavits**

A. In accordance with Ark. Code. Ann. § 23-65-306, Form SL-2, the surplus line broker's affidavit, must be completed in full and forwarded to the Commissioner by the surplus line broker within sixty (60) days of the end of the month in which the coverage was procured.

B. The originating producer or broker, pursuant to Ark. Code. Ann. § 23-65-305, must make a diligent effort to place the business in admitted insurers. To this end, the originating producer or broker must attempt to place the business with those admitted insurers which he has reason to believe are actually marketing in this State the kind or class of insurance sought to be placed, before the business may be placed in surplus line insurers.

C. In regard to the affidavit of the surplus line broker, he may rely on the diligent effort made by the originating producer or broker. If the surplus line broker also serves as the originating producer or broker, the surplus line broker must make the diligent effort to secure coverage through the admitted market.

D. If the originating producer or broker is made aware of an offer of renewal in the admitted market from any source, the property, casualty, surety or marine policy cannot be written on a surplus line basis unless it qualifies under Section 5(E) below.

E. Any offer of similar coverage by an admitted insurer requiring a gross premium of twenty percent (20%) or more higher than the total gross premium and charges, including taxes and expense of underwriting, applicable to the procurable surplus line coverage may be considered a declination by the originating producer or broker and the surplus line broker.

F. In accordance with Ark. Code. Ann. § 23-65-305, if a portion of the property or risk can be written in an admitted insurer, it must be written in that insurer. The amount of insurance placed in an approved surplus line insurer can only be the balance remaining from the amount procurable from admitted insurers.

G. It is permissible for the surplus line broker to file a monthly affidavit, Form SL-2, with the insurers' names, total premiums, total expense of underwriting, and total tax for each insurer with which he placed business during that month, and a completed Form SL-2A for each insurer.

H. Return premiums, additional premiums, and premiums paid on a monthly payment method are to be so identified on Form SL-2A. In the column designated as "Premium," the amount of the premium and the amount of return premium (in parenthesis) are to be inserted.

I. If the surplus line broker desires to retain evidence of having filed Forms SL-2 with the Department, the surplus line broker must forward one (1) additional copy thereof so that the Department can stamp the copy "FILED" and return it to the surplus line broker. The

broker must request a file-marked copy and include a postage paid, self-addressed envelope for use in returning the copy.

J. Due to the similarity of the names of many insurers, the full and complete names as they appear on the Arkansas Approved Surplus Lines Insurers List and the NAIC Non-Admitted Insurers Quarterly Listing must be given on all forms.

K. The guidelines and procedures outlined in this Rule and Ark. Code Ann. §§ 23-65-301, *et seq.*, shall apply anew each time it is proposed that a particular coverage, which has been placed in the surplus line market, be rewritten or renewed on a surplus line basis.

L. Computer-generated Forms SL-2, SL-3, and SL-4 are permissible for use if they follow the format outlined in the forms located on the Department's website. Specimen forms must be submitted to the Commissioner for approval prior to use in this State.

### **Section 6. Endorsement of Contract**

Pursuant to Ark. Code Ann. § 23-65-307, all insurance contracts procured and delivered as surplus line coverage shall be initialed by, or bear the name of, the surplus line broker who procured it. In addition, the contract shall contain a conspicuous statement substantially similar to the following:

This contract is registered and delivered as a surplus line coverage under the Surplus Lines Insurance Law, and it may in some respects be different from contracts issued by insurers in the admitted markets, and, accordingly, it may, depending upon the circumstances, be more or less favorable to an insured than a contract from an admitted carrier might be. The protection of the Arkansas Property and Casualty Guaranty Act does not apply to this contract. A tax of four percent (4%) is required to be collected from the insured on all surplus lines premiums.

### **Section 7. Disclosure to Surplus Line Insured**

Form SL-3, Disclosure to Surplus Line Insured, must be signed by the insured and retained by the originating producer or broker.

### **Section 8. Licensing of Corporations and Partnerships Acting as Surplus Line Brokers**

A. All individuals acting as surplus line brokers in this State must first individually qualify for and be issued a surplus line broker's license pursuant to Ark. Code Ann. § 23-65-308.

B. Hereinafter, any corporation or partnership which provides a facility for transacting business on a surplus line basis shall be required to apply for and obtain a surplus line broker's license in the name of the corporation or partnership pursuant to Ark. Code Ann. §

23-65-308. Each individual to act as a surplus line broker under the license must qualify individually for a surplus line broker's license and upon doing so will be added to the license of the corporate or partnership broker. As to corporations and partnerships currently operating on this basis but not being corporately licensed, a period of sixty (60) days is granted beyond the effective date of this Rule within which such licenses must be obtained in order for such corporations, partnerships and individuals to remain in compliance with this Rule.

### **Section 9. Records of Surplus Line Brokers**

In addition to the other items of information required to be maintained by the surplus line broker, pursuant to Ark. Code Ann. § 23-65-313(a)(9) surplus line brokers shall also maintain complete records as to expenses of underwriting as well as the amount of such expense collected from insureds. It shall be sufficient for these records to be maintained as a total for each surplus line insurer, and it shall not be necessary to maintain records on an individual risk basis.

### **Section 10. Statement to be Filed Annually**

A. Form SL-4 must be completed in full by all licensed surplus line brokers and submitted to the Department on or before the first day of March of each year as required by Ark. Code Ann. § 23-65-314.

B. All surplus line brokers must file Form SL-4, even if the broker did not write any Arkansas business on a surplus line basis during the preceding calendar year, noting thereon that no business was transacted.

C. As to surplus line brokers who write business only through a corporation or partnership which is also licensed as a surplus line broker, only a Form SL-4 filed by the corporation or partnership shall be necessary.

### **Section 11. Surplus Line Tax**

The filing of each Form SL-2 must be accompanied by full payment of the 4% tax required by Ark. Code Ann. § 23-65-315. The filing of Form SL-4, due March 1 annually, must be accompanied by full payment of the balance of taxes due, if any, for surplus line insurance procured during the preceding calendar year. Expense of underwriting shall be considered as part of the premium for surplus line tax purposes.

### **Section 12. Severability**

If any section or portion of a section of this Rule or the application thereof to any person or circumstances is held invalid by a court, the remainder of the Rule, or the application of such provision to other persons or circumstances shall not be affected thereby.