



## **DOMESTIC/FOREIGN INSURERS BULLETIN NO. 45**

**TO: ALL INTERESTED PARTIES**

**RE: NEW INSURANCE COMPANY LICENSE TYPE:  
"DOMESTIC SURPLUS LINES INSURER"**

**DATED: October 14, 2011**

### **BACKGROUND**

The *Delaware Nonadmitted Insurance Act [SB 109]*, enacted this year, creates a new category of insurance company, referred to as a Delaware "Domestic Surplus Lines Insurer (DSLII)." This insurer category differs from others in that it allows a Delaware-domiciled insurer to be treated as nonadmitted in Delaware for particular business purposes. A Delaware domestic surplus lines insurer will be domiciled and admitted in Delaware but, unlike all other Delaware-domiciled insurers, can write surplus lines policies in Delaware.

In the past, if a surplus lines insurer was admitted in Delaware, the company was not permitted to write coverage on the Delaware portion of a multi-state surplus lines policy, making it necessary to obtain that portion of the coverage from another insurer through a separate policy. Under the new law, this new type of insurer must fulfill all the requirements of an admitted domestic company, but will be considered nonadmitted for the writing of surplus lines business. This new law makes Delaware one of a handful of states in which a domestic insurer may offer surplus lines coverage in all 50 states—including Delaware, its state of domicile.

A company that is licensed as a Delaware domestic surplus lines insurer may write surplus lines insurance business in any jurisdiction, including this state. Although the company is an admitted company, a domestic surplus lines insurer is limited to the writing of surplus lines business only. In this state, a Delaware domestic surplus lines insurer may only insure a Delaware risk when such coverage is procured according to the rules and procedures in the Delaware Code, Title 18, Chapter 19, governing surplus lines insurance; and the premium shall be subject to a surplus lines premium tax pursuant to 18 Del. C. § 1925.

A domestic surplus lines insurer must agree to abide by all the requirements of Title 18, Chapter 19, and with all other requirements of the Delaware Code applicable to Delaware domestic insurers, unless otherwise exempted. The provisions of Chapters 42 and 44 of Title 18 regarding the Delaware Insurance Guaranty Funds will not apply to a domestic surplus lines insurer.

Companies applying to become Delaware domestic surplus lines insurers will have to prove adequate financial solvency, meet certain regulatory criteria, and specifically be approved by the Insurance Commissioner. This Bulletin addresses the procedures that must be followed by companies wishing to become a Domestic Surplus Lines Insurer in Delaware.

## APPLICATION PROCEDURES

Companies that want to become Delaware domestic surplus lines insurers must submit the following materials depending on the company's current type:

### CURRENT DELAWARE DOMESTIC COMPANY

1. A cover letter declaring the company's intent to convert to a domestic surplus lines insurer.
2. A certified Board Resolution stating that the board is in agreement with the company's intent to convert to a domestic surplus lines insurer.
3. A Plan of Operations stating, at minimum, the types and classes of surplus lines insurance coverage(s) the company expects to offer.
4. An affidavit certifying that the Fifteen Million dollar (\$15,000,000) minimum capital and surplus requirement has been met.
5. An Affidavit attesting that the company does not currently have any admitted policies in place covering Delaware risks and does not intend to write any policies on an admitted basis in the future.
6. IF APPLICABLE: If lines of business are enumerated on the company's current Certificate of Incorporation, the company must amend its Certificate of Incorporation to remove the lines of business; since, as a DSLI, it may only write surplus lines business. The company must submit a copy of the amended Certificate of Incorporation, certified by the Division of Corporations.
7. Upon approval of the company's application for conversion to a DSLI, the company must return its existing Certificate of Authority for cancellation. A new Certificate of Authority will be issued to the company stating that it is admitted as a Delaware domestic surplus lines insurer. If the company cannot locate its existing Certificate of Authority, it must submit an Affidavit of Lost Certificate of Authority.
8. The following fees must be paid with the application:
  - \$100 Initial Surplus Lines Insurer Application fee.
  - \$100 Certificate of Authority fee.
  - If applicable: \$10 Amended Certificate of Incorporation fee.

### FOREIGN ADMITTED COMPANY SEEKING TO REDOMESTIC AS A DELAWARE DSLI

1. A cover letter declaring the company's intent to change its state of domicile and convert to a Delaware domestic surplus lines insurer.
2. A certified Board Resolution stating that the board is in agreement with the company's intent to change its state of domicile and convert to a domestic surplus lines insurer.
3. Completed UCAA Primary Application, including all applicable attachments.

4. The following State Specific application forms (see attachments):
  - Delaware Domestic Surplus Lines Insurer Application Checklist.
  - Delaware Application for Insurance Company Certificate of Authority.
  - Delaware Form D-2 – Designation of Person to Receive Delaware Regulations, Bulletins, Directives, and Notices of Regulatory Proceedings.
5. The most recent quarterly or annual statement.
6. An Affidavit attesting that the company does not currently have any admitted policies in place covering Delaware risks and does not intend to write any policies on an admitted basis in the future.
7. Certified Articles or Certificate of Incorporation. PLEASE NOTE: If lines of business are enumerated on the company's current Certificate of Incorporation, the company must amend its Articles/Certificate of Incorporation to remove the lines of business; since, as a DSLI, it may only write surplus lines business. The company must submit a copy of the amended Articles/Certificate of Incorporation, certified by the Delaware Division of Corporations.
8. Upon approval of the company's application for conversion to a DSLI, the company must return its existing Certificate of Authority for cancellation. A new Certificate of Authority will be issued to the company stating that it is admitted as a Delaware domestic surplus lines insurer. If the company cannot locate its existing Certificate of Authority, it must submit an Affidavit of Lost Certificate of Authority.
9. The following fees must be paid with the application:
  - \$100 Initial Surplus Lines Insurer Application fee.
  - \$700 Company Redomestication Application fee.

#### NEWLY FORMED OR FOREIGN NONADMITTED COMPANY

1. A cover letter declaring the company's intent to do business as a Delaware domestic surplus lines insurer.
2. A certified Board Resolution stating that the board is in agreement with the company's intent to do business as a Delaware domestic surplus lines insurer.
3. A Plan of Operations stating, at minimum, the types and classes of surplus lines insurance coverage(s) the company expects to offer.
4. Completed UCAA Primary Application, including Form 12 and all other applicable attachments.
5. The following State Specific application forms (see attachments):
  - Delaware Domestic Surplus Lines Insurer Application Checklist.
  - Delaware Application for Insurance Company Certificate of Authority.
  - Delaware Form D-2 – Designation of Person to Receive Delaware Regulations, Bulletins, Directives, and Notices of Regulatory Proceedings.

6. An affidavit certifying that the Fifteen Million dollar (\$15,000,000) minimum capital and surplus requirement has been met.
7. Certified Articles or Certificate of Incorporation. PLEASE NOTE: (For Foreign Nonadmitted Companies) If lines of business are enumerated on the company's current Certificate of Incorporation, the company must amend its Articles/Certificate of Incorporation to remove the lines of business; since, as a DSLI, it may only write surplus lines business. The company must submit a copy of the amended Articles/Certificate of Incorporation, certified by the Division of Corporations.
8. The following fees must be paid with the application:
  - \$100 Initial Surplus Lines Insurer Application fee.
  - \$700 Initial Domestic Company Application fee.

### **FILING INSTRUCTIONS**

Application materials, including payment of fees, must be sent via U.S. mail or courier delivery to the following address:

Delaware Department of Insurance  
Attn: Company Regulation Section  
841 Silver Lake Blvd.  
Dover, DE 19904-2465

Make checks payable to: *Delaware Insurance Department.*



**Karen Weldin Stewart, CIR-ML**  
**Insurance Commissioner**