

(c) When an insurance risk or any part thereof is placed with an ineligible unauthorized insurer pursuant to (b) above, the policy, binder or cover note shall be clearly stamped in boldface type with the following:

“All or part of the insurers participating in this risk have not been admitted to transact business in the State of New Jersey, nor have they been approved as surplus lines insurers by the Commissioner of Banking and Insurance of New Jersey. The placing of such insurance by a duly licensed surplus lines agent in this State, shall not be construed as approval of such insurer by the Commissioner of Banking and Insurance of the State of New Jersey and insurance coverage provided by such insurer is not protected by either the New Jersey Guaranty Fund or by the New Jersey Surplus Lines Insurance Guaranty Fund.”

(d) Upon renewal of any placement pursuant to (b) above, a diligent effort shall be made to place the business with an authorized insurer or a surplus lines insurer in accordance with (a) above. If the business cannot be placed with an authorized insurer or a surplus lines insurer, the following conditions shall be met at least five business days prior to the effective date of the renewal policy:

1. The surplus lines agent shall, in accordance with N.J.A.C. 11:1-33.3(b)1, complete forms SLPS-6-Certl and SLPS-8-AFF3, prior to each renewal;
2. The most recent certified annual statement of the insurer’s financial condition shall be filed with the SLEO; and
3. The policy shall be stamped clearly in boldface type with the filing “All or part of the insurers participating in this risk have not been admitted to transact business in the State of New Jersey, nor have they been approved as a surplus lines insurer by the Commissioner of Banking and Insurance of New Jersey. The placing of such insurance by a duly licensed surplus lines agent in this State, shall not be construed as approval of such insurer by the Commissioner of Banking and Insurance of the State of New Jersey and insurance coverage provided by such insurer is not protected by either the New Jersey Insurance Guaranty Fund or by the New Jersey Surplus Lines Guaranty Fund.”

(e) The New Jersey Surplus Lines Insurance Guaranty Fund Act, N.J.S.A. 17:22-6.70 et seq., does not provide protection for New Jersey insureds who are insured by policies procured from ineligible unauthorized insurers as described in (b) and (c) above. Therefore, no Guaranty Fund surcharge shall be charged or added to premiums related to these policies.

(f) A surplus lines agent may receive a commission for his or her services rendered on behalf of an ineligible unauthorized insurer, pursuant to insurance placements which conform to (b) and (c) above.

Recodified from N.J.A.C. 11:1-33.8 and amended by R.2005 d.104, effective April 4, 2005.
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).
Rewrote (a) and (b); in (d), amended N.J.A.C. reference. Former N.J.A.C. 11:1-33.3, Policy form filings, repealed.

11:1-33.4 Penalties

Failure to comply with the provisions of this subchapter shall subject producers and surplus lines agents to penalties as provided in N.J.S.A. 17:22-6.61 and 17:22A-17.

Recodified from N.J.A.C. 11:1-33.9 by R.2005 d.104, effective April 4, 2005.
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).
Former N.J.A.C. 11:1-33.4, Policy form standards, repealed.

11:1-33.5 (Reserved)

Repealed by R.2005 d.104, effective April 4, 2005.
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).
Section was “Exclusions”.

11:1-33.6 (Reserved)

Repealed by R.2005 d.104, effective April 4, 2005.
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).
Section was “List of disapproved or withdrawn forms or contracts; exportable list hearing”.

11:1-33.7 (Reserved)

Repealed by R.2005 d.104, effective April 4, 2005.
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).
Section was “Refiling policy forms”.

11:1-33.8 (Reserved)

Recodified to N.J.A.C. 11:1-33.3 by R.2005 d.104, effective April 4, 2005.
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).

11:1-33.9 (Reserved)

Recodified to N.J.C. 11:1-33.4 by R.2005 d.104, effective April 4, 2005.
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).

**APPENDIX
EXHIBIT A-1**

Form to be used at the time of quotation:

The undersigned applicant has been advised by the undersigned originating insurance producer and understands that an insurance policy written by a surplus lines insurer is not subject to the filing or approval requirements of the New Jersey Department of Banking and Insurance. Such a policy may contain conditions, limitations, exclusions and different terms than a policy issued by an insurer granted a Certificate of Authority by the New Jersey Department of Banking and Insurance.

Applicant’s Signature

Applicant’s Name (Print or Type)

Date of Applicant’s Signature

Producer Signature

Producer Name (Print or Type)

Date of Producer Signature

New Jersey Producer License Reference Number

(Originating producer—Corporate or partnership)

(Originating producer—Individual name and/or Title)

(Originating producer—Complete Address)

The above hereby certifies that he/she is duly licensed as an insurance producer under the laws of New Jersey, and that: On or about _____, I was engaged by the insured named herein to procure insurance of the kind described herein and in the amount shown. I have made a diligent effort first to place this coverage with authorized insurers, each of which is authorized in New Jersey to write insurance of the kind requested and is an insurer that I had a good faith reason to believe might consider writing the type of coverage described herein.

The following insurers are among those that I contacted relative to this risk, or to substantially similar risks within the past 30 days:

Insurer	Representative	Telephone No.	Date	Result Code*
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

*Result Codes: (enter appropriate code(s) for each insurer listed above)

A— Having made a diligent effort, I was unable to obtain an offer/quote from this authorized insurer in the admitted market, which declined to accept all or any part of risk.

AND/OR

B— Having made a diligent effort, the only offer(s)/quote(s) obtained reflected such a substantial increase in premium over similar coverage placed within the preceding 12 months that comparable coverage is, as a practical matter, unavailable from this authorized insurer in the admitted market.

AND/OR

C—Having made a diligent effort, the only offer(s)/quote(s) obtained reflect(s) such a substantial reduction in coverage from coverage placed within the preceding 12 months for substantially similar premium that comparable coverage is, as a practical matter, unavailable from this authorized insurer in the admitted market.

I certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the statements are willfully false, I am subject to civil and criminal penalties.

(Date)

(Signature)

Amended by R.2005 d.104, effective April 4, 2005.
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).

EXHIBIT C

Form No. SLPS-8-AFF3 [] [] [] [] [] - [] [] - [] [] [] [] []
Transaction #
STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE
THE SURPLUS LINES EXAMINING OFFICE
PO Box 325 TRENTON, NEW JERSEY 08625-325

SUPPLEMENTAL CERTIFICATION BY SURPLUS LINES AGENT FOR PROCUREMENT OF INSURANCE FROM INELIGIBLE UNAUTHORIZED INSURER

EXHIBIT A-2

Statement to Appear on all Surplus Lines Policies, Evidence of Coverage and Renewal Policies or to be provided or as a stand alone notice:

This policy is written by a surplus lines insurer and is not subject to the filing or approval requirements of the New Jersey Department of Banking and Insurance. Such a policy may contain conditions, limitations, exclusions and different terms than a policy issued by an insurer granted a Certificate of Authority by the New Jersey Department of Banking and Insurance. The insurer has been approved by the Department as an eligible surplus lines insurer, but the policy is not covered by the New Jersey Insurance Guaranty Fund, and only a policy of medical malpractice liability insurance as defined in N.J.S.A. 17:30D-3d or a policy of property insurance covering owner-occupied dwellings of less than four dwelling units are covered by the New Jersey Surplus Lines Guaranty Fund.

Repeal and New Rule, R.2005 d.104, effective April 4, 2005.
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).

EXHIBIT B

Form No. SLPS-6-CERT1 [] [] [] [] [] - [] [] - [] [] [] [] []
Transaction #
STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE
SURPLUS LINES EXAMINING OFFICE
PO BOX 325 Trenton, New Jersey 08625-0325

CERTIFICATION OF EFFORT TO PLACE RISK WITH AUTHORIZED INSURER

This certification shall be submitted by the originating producer to the surplus lines agent within 30 business days after the effectuation of any surplus lines insurance. The original of the certification must be maintained in the files of the surplus lines agent and a copy in the files of the producer and both must be available for inspection by the Commissioner for a period of at least five years.

(Name of insured)

(Address of insured)

(Location of Property or Risk)

(Insurance Coverage: Description and Amount)
////////////////////////////////////

Name of Insured _____

(Street Address) (City or Town) (State) (Zip Code)

Location of Risk _____

(Street Address) (City or Town) (State) (Zip Code)

Insurance Coverage _____
(Type of Coverage) (Policy Limits)

(Name of Surplus Lines Agent Representing Insured Above)

(Title of Representative for Corporation or Partnership)

(Name of Business, Corporation or Partnership)

(Street Address) (City or Town) (State) (Zip Code)

The above named individual is duly licensed as an insurance producer with surplus lines authority pursuant to *N.J.S.A. 17:22-1 et seq.*

Name of Ineligible Unauthorized Insurer that business was placed with:

	<u>NAIC #</u>	<u>ISI #</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

Attach additional listings if needed.

The named ineligible unauthorized insurer has deposited with the Commissioner in accordance with N.J.A.C. 11:2-32, securities in the amount acceptable to the Commissioner, which are held by the Commissioner for the benefit of New Jersey policyholders; and

(I) (We) have procured from such ineligible unauthorized insurer and filed with the Commissioner a certified copy of its current annual statement of financial condition in accordance with N.J.S.A. 17:22-6.45(h).

(I) (We) do not know of this coverage(s) being offered by companies I represent or by other companies in the admitted market.

(I) (We) certify that the foregoing statements made by me are true. I am aware that if any of the statements are willfully false, I am subject to civil and criminal penalties.

Name of Surplus Lines Agent

By: _____
(Signature)

SUBCHAPTER 34. SURPLUS LINES:
EXPORTABLE LIST

11:1-34.1 Purpose and scope

(a) The purpose of this subchapter is to identify the procedures concerning the creation and modification of an exportable list of certain classes of insurance coverages or risks and to promulgate the list as a rule, in implementation of N.J.S.A. 17:22-6.43.

(b) This subchapter shall apply to all surplus lines insurers and producers. Pursuant to N.J.S.A. 17:22-6.40, this subchapter shall not apply to life insurance companies, which may not become eligible surplus lines insurers.

11:1-34.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Annuity” means a contract not coming within the definition of life insurance as set forth in N.J.S.A. 17B:17-3, or health insurance as set forth in N.J.S.A. 17B:17-4, under which an insurer obligates itself to make periodic payments for a specified period of time, such as for a number of years, or until the happening of an event, or for life, or for a period of time determined by any combination thereof. Such a contract which includes extra benefits of the kinds set forth in N.J.S.A. 17B:17-3 or 17B:17-4 shall nevertheless be deemed to be an annuity if such extra benefits constitute a subsidiary or incidental part of the entire contract.

“Authorized insurer” means a domestic or foreign insurer duly authorized by a Certificate of Authority issued by the Commission to transact the business of insurance in this State.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Exportable list” means a list of any class or classes of insurance coverages or risks declared and promulgated by the Commissioner for which there is no reasonable or adequate market among authorized insurers in this State.

“Health insurance” means a contract or agreement whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the bodily injury, disablement, sickness, death by accident or accidental means of a human being, or because of any expense relating thereto, or because of any expense incurred in prevention of sickness, and includes every risk pertaining to any of the enumerated risks. Health insurance does not include workers’ compensation coverages.

“Life insurance” means a policy or contract whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the cessation of human life. Life insurance includes also the granting of endowment benefits and optional modes of settlement of proceeds of life insurance as well as provisions for additional benefits in event of death by accident or accidental means or in event of dismemberment or loss of sight, or safeguarding such insurance against lapse or giving a special surrender value or special benefit or an annuity in the event that the insured shall become totally and permanently disabled, whether such provisions are incorporated in a policy or contract of life insurance or in a policy or contract supplemental thereto. Life insurance does not include workers’ compensation coverages.

“State” means the State of New Jersey.

“Surplus lines insurer” means an eligible, unauthorized insurer with which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq. (see Appendix A to this subchapter, incorporated herein by reference).

Amended by R.2001 d.75, effective March 5, 2001.
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

11:1-34.3 Exportable list hearing

(a) In the month of November or December of each year, the Commissioner or his or her designee shall hold a hearing, pursuant to N.J.S.A. 17:22-6.43, for the purpose of determining the extent of the existence or a reasonable or adequate market among authorized insurers for certain classes of insurance coverages and risks. Additionally, the hearing shall provide interested parties the opportunity to present relevant information for the Commissioner’s consideration as to why forms disapproved or withdrawn should be approved.

1. This hearing shall be preceded by a notice of hearing published in the New Jersey Register at least 30 days prior to the date of the hearing, which notice shall include information concerning the date by which, and the person to whom, written public comment may be made. Notice shall also be provided to persons who have previously requested receipt of such notice.

2. The notice published in the New Jersey Register and as otherwise provided pursuant to (a)1 above shall also request that persons who wish to testify at the hearing provide the Department with timely notice of this intention, including a brief summary of the subject matter of their testimony.

3. The notice shall indicate whether the hearing shall address the merits of maintaining all items currently on the list, or whether the hearing will consider only specific additions, deletions or clarifications regarding the list.

4. The notice shall provide a list of disapproved policy forms or contracts that have been disapproved or withdrawn by the Commissioner since the previous exportable list hearing was held.

(b) The hearing shall be conducted by a hearing officer designated by the Commissioner. The length of testimony permitted at the hearing and the receipt of questions from the floor shall be within the discretion of the hearing officer.

(c) Interested parties may present evidence to the Commissioner that the conditions of non-procurability have changed. Evidence of non-procurability should demonstrate that there exists no reasonable or adequate market among authorized insurers.

(d) A transcript of the hearing shall be made and a copy thereof shall be made available to any interested person upon request and payment of an appropriate fee.

Public Notice: Public hearing on the Exportable List.
See: 28 N.J.R. 4680(b).

Public Notice: Public hearing on the Exportable List.
See: 29 N.J.R. 5028(b).

Public Notice: Public hearing on the Exportable List.
See: 30 N.J.R. 4291(b).

Public Notice: Public hearing on the Exportable List.
See: 31 N.J.R. 3860(a).

Public Notice: Public hearing on the Exportable List.
See: 32 N.J.R. 4019(a).

Amended by R.2001 d.75, effective March 5, 2001.
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Rewrote (a).

Public Notice: Public Hearing on the Exportable List.
See: 34 N.J.R. 315(a), 3994(a).

Public Notice: Public Hearing on the Exportable List.
See: 35 N.J.R. 5446(a).

Public Notice: Public Hearing on the Exportable List.
See: 36 N.J.R. 5173(a).

11:1-34.4 Exportable list hearing record

(a) The record of the hearing shall include the following:

1. Timely-received written public comments;
2. The transcript of the hearing; and
3. Any other information which the hearing officer may deem relevant.

11:1-34.5 Promulgation and modification of exportable list

(a) Upon review of the exportable list hearing record, the Commissioner shall, by rule, declare eligible for export generally, and notwithstanding the provisions of N.J.S.A. 17:22-6.43(a), (b) and (c), any class or classes of insurance coverage or risk for which he or she finds there exists no reasonable or adequate market among authorized insurers; provided, however, that if adequate documentary evidence has been presented which satisfies the Commissioner that a reasonable or adequate market does exist among authorized insurers, he or she may, by rule, strike any class or classes of insurance coverage or risks from the exportable list.