

INTRO TO E&S INSURANCE

READ BEFORE BINDING E&S COVERAGE

Updated November 2018

The following Excess & Surplus Insurance information is very important to understand before an Agent begins to write E&S policies. The American Association of Managing General Agents have developed and published a FAQ and A Guide to educate agents on how to use and write E&S insurance. Both are included in this document: **PLEASE READ & STUDY THEM!**

First: NOTE this **IMPORTANT POINT** for agents and their clients to know before an E&S policy is bound:

E&S Policies often have a **MINIMUM EARNED PREMIUM** of 25 to 100 percent. This means that once an E&S policy is bound, a certain percentage of the premium is fully earned and will not be returned upon cancellation, and will be owed by the agent even if the client does not pay.

1. **YES--The Agent will be Responsible to pay the Minimum Earned Premium--even if the client does not pay.**
2. **NEVER BIND an E&S Policy without a Money Order or Certified Cashiers Bank Check. (Cash may not be good!)**

Thus, if a policy is bound and has a 100% fully earned premium, the agent will be responsible for the payment should the client not completely pay with good money. Bad Checks, failure to pay, cancellations request can require the agent to pay the E&S premium unless good money is received for the **FULL AMOUNT** of the **EARNED PREMIUM**.

NOTE: Always require a Money Order or a Certified Cashiers Check for the **EARNED PREMIUM** amount.

Secondly: EXPLAIN THE NON ADMITTED E&S STATUS OF THE POLICY TO THE CLIENT. ALSO EXPLAIN THE NON REFUNDABLE MINIMUM PREMIUM.

1. Review the section of the Quote with the client that explains the E&S, Non Admitted status of the quoted policy. Make sure that the client understands.
2. Review the Non Refundable Minimum Earned Premium Amount. Put this notification on the Paid Receipt.

AAMGA

Excess and Surplus Lines FAQ's

- [What is Excess & Surplus Lines Insurance?](#)
- [What is an admitted carrier or standard lines carrier?](#)
- [What is an excess and surplus lines carrier and how is it different from an admitted carrier?](#)
- [Why am I insured by an E&S company?](#)
- [Why does the disclosure on my policy state that the policy is written by a non-licensed or non-admitted insurance carrier and what does that mean?](#)
- [Is the E&S market regulated?](#)

What is Excess & Surplus Lines Insurance?

Excess and surplus lines insurance is a segment of the insurance market that allows consumers to buy property and casualty insurance through the state regulated insurance market, where policyholders, agents, brokers and insurance companies all have the ability to design specific insurance coverages and negotiate pricing based on the risks to be secured. "Freedom of rate and form" has given the E&S market the ability to adapt quickly to changing market conditions and those of the consumers and commercial entities seeking this unique insurance protection.

Most AAMGA Wholesale Insurance members are entrusted to write both admitted and excess and surplus lines insurance by insurance companies who have delegated underwriting authority to them. They and other excess and surplus line insurance professionals may also be members of the National Association of Professional Surplus

Line Offices (NAPSLO); www.napslo.org, which works in conjunction with the AAMGA on numerous matters of mutual interest to the respective organizations.

The E&S originated when those who needed insurance coverage were unable to secure it from the standard carriers (or admitted carriers) due to a variety of reasons (e.g., new entity or one that does not have a adequate loss history; one that has unique coverage requirements; or a loss record that does not fit the underwriting requirements of a standard carrier).

The E&S industry is comprised of a variety of insurance companies writing what is referred to as "main street" business. The general contractor, trucking company, restaurant, bar or hotel, entities with environmental, professional liability and employment related risks and other unique exposures, are the staples of the business. A few large organizations will write the oil refineries, aircraft liability, property coverage on a communications satellite, etc.

What is an admitted carrier or standard lines carrier?

An admitted carrier or standard carrier is an insurance company that has received a license from the state department of insurance for the authority to write specific lines of insurance. These companies are also bound by rate and form regulations, and are strictly regulated to protect policy holders from a variety of illegal and unethical practices, including fraud. Admitted carriers are also required to financially contribute to the state guarantee fund, which is used to pay for losses if an insurance carrier becomes insolvent or unable to pay the losses due to their policyholders.

What is an excess and surplus (E&S) lines carrier and how is it different from an admitted carrier?

An E&S carrier is not required to be licensed by the state, but is allowed to do business in that state. Sometimes, E&S carriers are also referred to as non-admitted or

unlicensed carriers; however, E&S carriers are financially stable companies that are regulated in other ways.

Most states require that E&S carriers submit financial information, articles of incorporation, list of officers, and other general details. They also cannot write insurance that is typically available in the admitted market, they are not protected by the state guarantee fund, may pay higher taxes, may only write a policy if it has been rejected by three different admitted carriers, and only when the agent placing the business has a surplus lines license. AAMGA member State Surplus Line and Stamping Offices, as well as insurance departments in the states maintain a list of approved surplus lines insurance companies. Policies can only be written by companies on this approved list.

Excess and Surplus line carriers are not bound by most of the rate and form regulations imposed on standard market companies, allowing them the flexibility to change the coverage offered and the rate charged without time constraints and financial costs associated with the filing process. This is good for both the company and the policyholder.

Why am I insured by an E&S company?

Most likely, your policy is written by an E&S carrier because the standard carriers have elected not to cover your insurance needs. The reasons for this vary, but could include the following:

- The risk does not meet the guidelines of the standard market due to age, location, loss history or cancellation;
- The policy limits exceed the guidelines for the standard market;
- The risk is "outside the box" of what the standard carriers are comfortable writing. Sometimes, this is referred to as an "unusual risk", as there is just no other way to describe pet insurance, coverage for a hole-in-one event, protection for an amusement park, etc.;

- The risk is "extraordinary" and the standard carriers may not be comfortable covering such a risk. Usually these are very large exposures with equally high potential for loss such as aviation liability insurance, protection for a demolition business, etc.

Why does the disclosure on my policy state that the policy is written by a non-licensed or non-admitted insurance carrier and what does that mean?

When your policy is written by an Excess & Surplus line insurance carrier, a disclosure of that is required by law. What it means to the policyholder is that IF the carrier were to become insolvent, the policyholder is not eligible for recourse through the state guarantee fund. However, studies including those by the respected A.M. Best organization, which monitors and reports on insurance company solvencies and other important issues, show that the percentage of excess and surplus line carriers that become insolvent is lower than the percentage of admitted carriers that suffer the same fate. The key consideration is to do business with those insurance organizations that are financially strong and have the ability to pay claims when a covered loss occurs, whether the company is an E&S carrier or not.

Is the E&S market regulated?

As mentioned earlier, the E&S market is regulated in a different fashion than licensed or admitted companies. While the amount of direct regulation is less and the amount of free market competition is greater, specifically in the forms used and the rates charged, the E&S industry is still watched very closely. They also cannot write insurance that is typically available in the admitted market, they are not protected by the state guarantee fund, may pay higher taxes, may only write a policy if it has been rejected by 3 different admitted carriers, and the agent placing the business must have a surplus lines license. States also maintain a list of approved surplus lines companies, and policies can only be written by companies on the approved list.

E&O Insights: Key E&S Issues Agencies Need to Know

<http://www.insurancejournal.com/magazines/features/2015/01/26/354686.htm>

By [Curtis M. Pearsall](#) | January 26, 2015



Regardless of whether the market is hard or soft, for agencies to be successful will typically require that they have an active, ongoing relationship with at least a couple of excess and surplus lines (E&S) wholesalers. The E&S industry has played a vital and significant role in securing the coverages the standard market is not interested in for as long as insurance has been part of our society. As agency producers and customer service representatives deal with the E&S marketplace,

there are several key issues to understand to avoid potentially significant errors and omissions (E&O) issues.

Based on the marketplace and the type of coverage you are trying to place, E&S wholesalers may need more time than many would think. So, if you are thinking that you may need to use the E&S market, allow sufficient time. How much time is necessary depends on the type of business and whether the wholesaler has the “pen” for that class of business. To be safe, allow 45-60 days.

What app is needed?

The standard ACORD application is likely to suffice in the majority of submissions. However, there will be situations where the carrier the wholesaler is using has its own app. While the carrier may give you a proposal based on the app you sent in, it may require its own app for binding purposes. When you receive the proposal from the E&S wholesaler, review it to see if this is an issue. Don’t hesitate to contact the wholesaler to explain what you are working on and ask what app is needed.

Does the proposal provide the coverages you requested?

This is an issue not readily understood by many agencies. When an agency completes an application and forwards it to the wholesaler, there is a good chance the wholesaler will not be willing to provide all of the coverages requested. Examples include complete assault and battery exclusions for hospitality industry clients, complete exclusions for bodily injury to subcontractors on policies issued to owners, developers, contractors, etc., and lack of theft and vandalism for vacant properties. Plus, there is the potential that certain loss-control requirements will be stricter regarding security service and other protective controls when vacancy is involved.

It is best to presume the coverage provided on the proposal is not as broad as you requested. E&S markets have historically been able to handle risks the standard market is not interested in because the E&S market can modify coverage by adding specific endorsements (typically exclusions) that carve out exposures of concern.

It is also possible that the proposal will reference various exclusions, which can be significant. To better understand the coverage and any and all limitations, request that the wholesaler provides you with a specimen policy of the policy form and the applicable exclusions. This is the only way to know what coverage is being provided compared to what you originally asked for. This specimen policy should then be provided to your client/prospect for review. The client/prospect may advise you that the coverage is not at the level that he or she requires and, as a result, rejects the coverage offered. It is better to find this out before the coverage is bound than before a loss occurs.

In addition, don't count on the wholesaler to tell you what it is not providing. That is up to your agency to figure out.

While timing is important with all coverages, it is more critical on E&S business. On your proposals that contain coverages underwritten by the E&S market, include any conditions that must be met to ensure that coverage can be bound in a timely manner. E&S markets will not backdate coverage, so a reference to when binding instructions are needed should be included.

Is coverage the same?

Let's "fast forward" to the next year. The new business account you wrote in the E&S market last year is coming up for renewal. Your agency receives a renewal proposal from the wholesaler. Is the coverage the same as it was last year? Don't count on it!

Unlike the standard marketplace where carriers are required to issue a conditional renewal notice when they plan on including some new exclusions or restrictive language, that requirement does not exist in the E&S market. It is up to the retail agent to compare the renewal terms against the expiring coverage to identify any new forms that carve out certain exposures. Without this comparison, the agency will be hard-pressed to bring those differences to the customer's attention. Put yourself in your customer's shoes. If you were not advised of any differences, wouldn't it be logical to assume the coverage was at least the same?

As with the new business, if there is a reference to a new exclusion and you are not familiar with exactly what that new exclusion does, ask the wholesaler for a specimen of the form. Bring this form

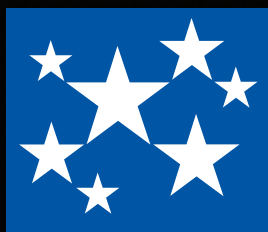
to your customer's attention. Be certain, too, that throughout all of these conversations, whether dealing with new business or renewals, you have documentation detailing the discussion and the ultimate decision. There will be times where that documentation should be in the form of a letter/e-mail back to the customer detailing the discussion and decisions.

The excess and surplus lines marketplace is a great segment of our industry and is unique. Knowing the differences now could save you from a giant errors and omissions headache later.



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American Association of
Managing General Agents

A Guide to Writing E&S Business

An Educational Guide

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Introduction

The American Association of Managing General Agents is pleased to offer the study guide, Understanding the Wholesale Market educational program. It is our hope that this guide will help to allow a better understanding of the additional markets available to the Retail agent through the Wholesale agent, and for the Wholesale agent to better understand the needs of the Retail agent.

The guidelines outlined in this study form the basis of interdependence between the two primary producers of insurance in the market today, thereby allowing agents to realize their ultimate goal, meeting the insurance needs of their clients.

It is not our intent to recommend or provide a specific Wholesale agent, broker, or insurer. The guidelines outlined in this program are intended to assist both Wholesalers and Retailers in the market selection process. The ultimate choice of partners to an agreement is subject to the individual discretion of the actual participants.

As partners in a productive agreement, it is important for the Retailer to realize that the Wholesaler may not be the underwriter and therefore shares a mutual concern with the Retailer for placement of the risk. Retailers are encouraged to know the markets and capacities of the Wholesalers with whom they do business. Wholesalers are counseled to recognize the fact that Excess and Surplus lines are not a regular market for Retailers.

Through shared knowledge of the necessity to operate within the parameters outlined above, the Wholesaler and the Retailer can realize benefits not only to one another but to their respective agency clientele. The agreement between the Wholesaler and Retailer will function at its best when it is considered to be a long-term partnership.

Several commonly used terms referring to the Wholesale Market contribute to a misunderstanding of procedures and practices between the Wholesale and Retail producer; among them, Managing General Agent, Excess and Surplus Market, Surplus Lines Broker and Wholesale Intermediary. To eliminate confusion, hereafter, this program uses simply “Wholesaler” and “Wholesale Market.”

The formation of consistent and profitable relationships between the Retailer and Wholesaler requires an understanding that the method of doing business in the Wholesale Market is substantially different from that of dealing directly with insurance companies. The purpose of this program is to provide guidelines for the Retailer in establishing ongoing relationships with Wholesalers, and to enable Wholesalers to better understand the needs of Retailers. It is suggested that Retailers and Wholesalers approach their working agreements as partners with the parallel objectives of meeting clients’ needs, agency production, and profit without an understanding of the responsibilities, duties and problems each has, it is unlikely that these objectives can be reached.

There are numerous advantages to both Retailer and Wholesaler in the development of continuing agreements. The primary advantage to the Retailer is the discovery of an entirely new marketing source, which can extend into additional sources for standard, nonstandard and specialty lines. This added marketing knowledge places the Retailer in a more competitive position. The Retailer will be able to review any protection limitations that may be imposed upon agency clientele by standard policies and develop the capability to overcome these coverage restrictions. This presents an opportunity to solicit additional coverage’s the Retail agent may not have attempted to market because there was no standard company availability.

Because of the specialty nature of the Wholesale Market, it may be necessary for the Retailer to implement ongoing arrangements with more than one Wholesaler. To capitalize on the full benefits of the Wholesale Market, the Retailer should be aware of the needs of the agency’s clients and, knowing these needs, establish markets with the appropriate Wholesalers. Retailers must realize that Wholesalers are highly specialized and, consequently, the Retailer should transact business with only those Wholesalers who have experience in dealing with the specific risks submitted to them. Attempts to market the same risk with more than one Wholesaler may not be a wise decision.

In summary, the Wholesaler can be a valuable market reference source to the Retailer. For the purposes of this guide, we will use the term “Wholesaler” when referring to the entities that make up the Wholesale Market.

Purpose of the Guide

The purpose of this program is to develop a better understanding between Wholesalers and Retailers of their respective responsibilities, duties and problems. More specifically, the purpose is to accomplish the following:

- I. Outline procedures for the development of a continuing relationship between Wholesalers and Retailers and provide an opportunity to increase agency income through the use of broader products, lines of business and insurers.
- II. Develop a recognition that both Wholesalers and Retailers best serve each other when they consider their affiliation as partners in the areas of customer service and agency profit.
- III. Create an awareness of the methods through which Retailers can identify and use appropriate Wholesalers and evaluate the insurers represented in the Wholesale Market.
- IV. Provide guidelines by which Wholesalers can qualify Retailers and improve Wholesalers' understanding of the Retailer's needs.
- V. Provide licensing and regulatory guidelines when working within the E&S Industry.

Chapter 1

Definitions and General Insurance Information

Definition of Terms used throughout the Guide

Please note: Even though state licensing for persons engaged in the business of soliciting, selling, negotiating and effectuating contracts of insurance has moved to the term “insurance producer” – insurance law still applies and is guided by the insurance terms of insurance agent/agency and/or insurance broker/brokerage firm. And these insurance law differences apply to the nature in which insurance producers conduct their insurance operations/placements. Therefore, it is important that insurance producers understand their agent vs. broker roles and standings, even more importantly, when conducting wholesale-retail activities and relationships.

AA - Aggregator Agency/Agent

An agency appointed by an insurer and authorized and expected by that insurer to produce business for the insurer through developing a large subproducer base and is expected to develop successful and cost-effective business processing procedures and systems that reduce carrier expenses in acquiring, processing and oversight of multi-agencies. Generally, carriers make clear that they reserve the right and it is their business objective to exercise direct appointments of those subproducing agencies that the carrier believes have met both production and accuracy measures set by the carrier. Carrier may leave the business going through AG or may allow that subproducer to place business directly with the insurer.

E&S Broker - Excess & Surplus Lines Broker

Contracted by a specialty carrier, not admitted to the direct insurance marketplace, to be that carrier's broker representative to develop and facilitate insurance placements of interest, acceptance and bound by that insurer.

E&S Broker is only contracted by specialty carriers, and as their broker, they do not have authority to make decisions for the insurer relative to the business that is finally accepted and priced directly by the insurer itself. They follow the instructions of their carriers.

GA – General Agent

Specifically appointed and contracted by the insurer to perform carrier operations assigned to them, as standing for the insurer, and still is subject to and under the oversight and coordination of that insurer relative to that insurer's overall operation and decisions of and for their insurance carrier, as a whole.

GA can be used in any lines of insurance by an insurer in the direct, admitted marketplace, and may operate very similarly to that of the insurer's regional/local branch office operations. GAs may be given authority to appoint on behalf and for the insurer per the retailers with which they do business for/as the carrier.

MGA – Managing General Agent

The actual operative body of the an insurance carrier charter that acts as the carrier in all carrier operative activities, decisions and business development, i.e. executing the authority of the carrier charter pen as appointed and contracted by the authorized owners of that carrier charter/pen of authority. .

An MGA can be used in any line of insurance for any form of insurer: admitted or not; direct or otherwise; broker or agent system; contract/appoint or open-broker subproduction; or any or all combination of these.

MUA – Managing Underwriting Agent

An “agent” appointed by the insurer to be the business development, producer management, business processing, insurance premiums management and underwriting oversight manager for the carrier for a specific program. MUAs can be used in any line of insurance by any form of insurer. Carrier retains all the oversight of the MUA and the subproducers, and handles all claims, form, rate and model filings, and final accounting, auditing and rate activities.

Wholesaler

A broker/agent who acts as an intermediary between a retail agent and an insurer, while having no contact with the insured. There are two types of wholesale brokers: managing general agents and surplus lines brokers. The latter work with the retail agent and the insurer to obtain coverage for the insured; but unlike a managing general agent, a surplus lines broker does not have binding authority from the insurer.

On-line Glossaries

<http://www.haskayne.ucalgary.ca/haskayneundergrad/rminlinks/glossary/n>

<http://www.irmi.com/forms/online/insurance-glossary/terms.aspx>

An Explanation of Underwriting Cycles

Most industries are cyclical to some extent. The property/casualty (P/C) insurance industry cycle is characterized by periods of soft market conditions, in which premium rates are stable or falling and insurance is readily available, and by periods of hard market conditions, where rates rise, coverage may be more difficult to find and insurers' profits increase.

A dominant factor in the P/C insurance cycle is intense competition within the industry. Premium rates drop as insurance companies compete vigorously to increase market share. As the market softens to the point that profits diminish or vanish completely, the capital needed to underwrite new business is depleted. In the up phase of the cycle, competition is less intense, underwriting standards become more stringent, the supply of insurance is limited due to the depletion of capital and, as a result, premiums rise. The prospect of higher profits draws more capital into the marketplace leading to more competition and the inevitable down phase of the cycle.

Primary Difference Between the Retail and Wholesale Markets

The fact that Wholesalers offer specialized marketing capabilities underscores the need for Retailers to be aware of the particular markets available through the Wholesaler. In addition to standard markets, the Wholesaler has direct access to excess and surplus, nonstandard and specialty insurers. There may be times when the coverage requested by a Retailer can be provided only through the use of manuscript or narrative forms. The use of these forms requires an explanation and definition of the insurance protection provided by the Wholesaler.

States have differing licensing, filing, reporting and premium tax requirements for non-admitted and alien carriers that require additional knowledge by the Wholesaler. These are discussed in greater detail in Chapter V, Licensing Rules and Regulations. With the exception of the state of New Jersey, there is at this time no protection under state guaranty funds for insureds of non-admitted companies.

In most states the Wholesale Market is relatively free from regulation. This permits carriers to use their own forms and rates. The result can be a great variance in policy forms, coverage's, modes of premium payments, cancellation rights and policy warranties. Retailers rarely have direct contact with Wholesale insurers and relatively little knowledge of the Wholesale markets. Therefore, Retailers must rely to a great extent on the professionalism of the Wholesaler. Conversely, because the Wholesaler has no direct access to the insured, the Wholesaler must depend upon the Retailer for complete and accurate information on the risk to be insured. This absence of direct communication is peculiar to the Wholesale Market.

Chapter 2

Retailers: Establishing the Relationship with a Wholesaler

Making Full Use of the Wholesale Market

It has been the custom of Retail agents to consider the Wholesale Market solely as a source for non-admitted markets, excess and surplus lines and special risks. To continue viewing the current Wholesale Market in the same somewhat restricted fashion is inappropriate. While the existing market continues to provide traditional facilities, it also offers standard markets and innovative specialty lines that meet existing needs, i.e., Kidnap and Ransom insurance, Expense of Hostile Takeover protection, Financial Guaranty, and Vendors Special Interest coverage's. Changing market requirements have created new sources to meet the needs of the insurance buyer.

Retailers who are not aware of the expansion of the Wholesale Markets are restricting their marketing potential. The extended resources and capacities offered through the Wholesale Markets provide an exceptional competitive opportunity to the Retailer. In order to realize the total possibilities of the Wholesale Market, it is recommended that the Retailer arrange for a preliminary discussion with the Wholesaler whom they have selected. This meeting will accomplish a recognition of the needs and procedures of both entities as well as the identification of the additional marketing facilities which could become available to the Retailer. The Wholesaler can also recommend other market sources which may be required to satisfy the Retailer's needs. Through an open exchange between Wholesaler and Retailer, the full potential of an affiliation can be more completely understood.

Establishing the Wholesaler/Retailer Working Agreement and Relationship

Creation of a functional understanding of the procedural requirements and underwriting authorities of Wholesalers and Retailers is fundamental to the success of a continuing agreement. Professionalism and good faith are essential to a lasting arrangement. If the agreement is to perform effectively, it is important that every effort be made to reach a common understanding regarding what each partner can expect.

What the retailer should expect from the wholesaler

- A. Financially sound insurers
- B. Stable market sources
- C. Access to a wide range of markets
- D. Prompt payment of return premiums
- E. Efficient handling of claim
- F. Suggestions to make a declined risk acceptable
- G. Protection from double brokerage
- H. Samples of policy forms and provisions

Marketing Issues

The Retailer must be aware of a number of marketing issues that occur when placing insurance in the Wholesale Market. These include:

- Restricted market availability
- Finding Wholesale Markets
- How to use Wholesale Markets
- Qualifying the Wholesaler
- Authority of the Wholesaler
- Access to the Wholesale Insurer

The following checklist should be used in selecting the Wholesaler:

1. Is there an agency contract or producer agreement?
2. What are the stipulations of the agency contract or producer agreement?
3. How long has the Wholesaler been in business?
4. Is the Wholesale agency owned by an insurance company, investment company or individuals?
5. What is the professional experience of the principals in the Wholesale Agency?
6. Does the Wholesaler maintain active membership in a trade association or professional organization, i.e., AAMGA, NAPSLO, IIAA, PIA, CIC, CPCU or any state Surplus Lines Association?
7. Does the Wholesaler have the professional designation, Certified Managing General Agency (CMGA) or the Certified Insurance Wholesaler (CIW) which details a commitment to continuing education?

CMGA: www.aamga.org/education/designations/CMGA
CIW: www.aamga.org/education/designations/CIW
8. What are the areas of specialization of the Wholesale agency?
9. Does the Wholesaler offer primarily commercial or personal lines markets?
10. What companies does the Wholesaler represent?
11. What is the volume and growth of the Wholesaler?
12. Does the Wholesaler verify the financial solvency of the carriers represented?
13. Does the Wholesaler maintain adequate Errors and Omissions coverage?
14. What services does the Wholesaler provide to the Retailer?
15. What payment terms are offered by the Wholesaler?
16. Are there minimum annual production requirements?

General Agency Interview Form

Name of General Agency _____

Agency Principal(s) _____

Person(s) interviewed and Title(s) _____

1. Is there any class of business in which you specialize? _____

2. In what classes of business have you been particularly competitive and had a substantial number of issues in the last year? _____

3. Do you offer both commercial and personal lines? _____

4. In which lines do you have binding authority? _____

5. Who are your primary companies? _____

6. Do you have any special "lead or prospect" programs we should be aware of that we may not be taking advantage of? _____

7. What company carries your errors & omissions coverage? _____

What limits? _____

It is important that the Retailer not assume that each Wholesaler has identical authority. The following checklist should be used in determining the authority of the Wholesaler:

1. Does the Wholesaler have authority to appoint agents for an admitted company?
 - a. If so, can the Wholesaler also terminate agents?
 - b. Can the Wholesaler delegate authority to agents appointed?
2. With what Companies does the Wholesaler have binding authority?
3. What lines can be bound by the Wholesaler?
4. What are the policy limits of the binding authority?
5. Is the Wholesaler approved by American Tribunal at Lloyd's for binding authority?
6. In the absence of binding authority, what type of agreement will the Retailer have with the Wholesaler?
7. Can the Wholesaler issue policies and endorsements?
8. Does the Wholesaler have claims authority?
 - a. What are the limits of authority?
 - b. Can the Wholesaler issue drafts? If so, what is the limit of draft authority?
 - c. Can the Wholesaler assign independent adjusters?
9. What other types of authority does the Wholesaler possess?
 - a. Filings, i.e., Cargo, Contractors, Truckers, etc.
 - b. Certificates of Insurance
 - c. Countersignature
 - d. Cancellation/Termination notices

Guidelines for Working with the Wholesaler

DO'S AND DON'T'S

DO

1. Establish a continuing, working relationship with the Wholesaler.
2. Make a complete submission, including the completed application signed by the insured, with adequate supporting data.
3. Determine the application requirements of the Wholesaler PRIOR to submission.
4. Learn and observe the account payment needs of the Wholesaler.
5. Make a timely submission. Consider the nature of the risk, know the condition of the market and be aware of the complexity of the risk in order to give the Wholesaler adequate time to provide a market.
6. Provide a prompt and adequate follow-up to requests for additional information.
7. In case of a duplicate submission or the replacement of the existing Retailer, submit an Agent of Record letter signed by the insured.
8. Determine which market the Wholesaler will use to avoid making a duplicate submission.
9. Provide evidence of rejection from the primary marketplace.

DON'T

1. Abuse the Wholesale Market by flooding the market with duplicate submissions.
2. "Tie up" the Wholesale Market.
3. Submit different sets of data to different Wholesalers, hoping to secure a lower quotation.
4. Drop the ball once the risk is bound. Be certain to follow through to policy issuance.
5. Advance the premium for the insured.
6. Sign the application for the insured.

Chapter 3

What Wholesalers Expect of their Retailers

Wholesaler Expectations

As was discussed in the previous chapter, creation of a functional understanding of the procedural requirements and underwriting authorities of Wholesalers and Retailers is fundamental to the success of a continuing agreement. Both partners in this transaction are equally important and the better understanding each can have of the other, the more smooth this process is likely to be.

What the Wholesaler Should Expect from the Retailer

- A. Accurate risk submission information
- B. Complete underwriting data
- C. Adequate lead time for placement
- D. Prompt payment of accounts
- E. Follow through on requests for data
- F. Timely and complete submission of claims information

A preliminary review of the risk with the Wholesaler, accompanied by a brief outline of the submission, permits the Wholesaler to determine if a market is available. The Wholesaler can, at this point, inform the Retailer whether it already has been approached by another Retailer for placement of the account. The Retailer should also advise the Wholesaler if they have approached other Wholesalers for placement of the account. The Wholesaler and Retailer can then determine the best and most equitable way to proceed in marketing the risk to an insurer. The Wholesaler must know at the beginning of the negotiations which primary coverages are controlled by the Retailer. The Wholesaler will also need to know the primary limits of the coverage, the premiums, and the terms and conditions of the primary forms before negotiations can be completed on Umbrella or Following Form Excess Liability coverages.

As partners in a productive agreement, it is important for the Retailer to realize that the Wholesaler may not be the underwriter and therefore shares a mutual concern with the Retailer for placement of the risk. Retailers are encouraged to know the markets and capacities of the Wholesalers with whom they do business. Wholesalers are counseled to recognize the fact that Excess and Surplus lines are not a regular market for Retailers.

Through shared knowledge of the necessity to operate within the parameters outlined above, the Wholesaler and Retailer can realize benefits not only to one another but to their respective agency clientele. The agreement between the Wholesaler and Retailer will function at its best when it is considered to be a long-term partnership commitment.

The Wholesaler must also know the marketing restrictions they will encounter in dealing with the Retailer. These include:

- Restricted market availability
- Markets available to the Retailer
- Procedures for use by the Retailer
- Qualifying the Retailer
- Authority of the Retailer
- Access to the Insured

The following checklist should be used in selecting the Retailer:

1. Who, in terms of volume, are the three primary companies used by the Retailer?
2. What is the Retailer's volume/product mix, i.e., Commercial to Personal Lines volume?
3. What is the three-to-five year loss history of the Retailer with existing companies?
4. Does the Retailer specialize in any particular type of insurance?
5. Does the Retailer maintain adequate, in force Errors & Omissions coverage?
6. What experience does the Retailer have in dealing with Wholesalers?
7. Will the Retailer be a continuing source of business for the Wholesaler?
8. What marketing and front-line underwriting services can the Retailer provide the Wholesaler?
9. How long has the Retailer been in business?
10. What is professional experience of the Retailer's principals?
11. Does the Retailer maintain an active membership in a trade association or professional organization, i.e., IIAA, PIA, CIC or CPCU?
12. The names of current active agency credit references

Agency Profile

NAME	Date _____
	Name _____
	Federal Tax I.D.# _____
	Address _____
	City State Zip _____
	Telephone _____
	<input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Individual Date Agency Established _____

OWNERSHIP	Owners	Title
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	Brief Explanation of Each Principal's Background	
	_____ _____ _____ _____ _____	

PERSONNEL	Key Agency Personnel
	Office Manager _____
	Accounting _____
	Commercial Underwriting _____
	Personal Lines Underwriting _____
	Claims _____
	Solicitors _____
Others _____	

Agency Profile

MARKETING

COMPANIES you are currently representing **INCLUDING EXCESS AND SURPLUS LINES**, as well as **MANAGING GENERAL AGENCIES**. Also, please give **NAME AND PHONE NUMBER OF SPECIAL AGENT FOR EACH COMPANY**. Use separate sheet of paper if necessary.

Name of companies added to your agency within the past 12 months

Name of companies withdrawn from your agency within the past 12 months

P&C Volume Past Twelve (12) Months \$ _____ Comm. _____ % PL _____ %

Apprx. Volume Standard Business _____

Apprx. Volume Excess & Surplus Lines _____

What lines do you have a need to place?

MISCELLANEOUS

Name and Address of Banking Connection

Type of Account _____ Account# _____

Does your agency have an automated account? ☐ Yes ☐ No

If yes, whose _____

Name and Address of E&O Carrier _____

Policy# _____ Expiration Date _____

Minimum of \$20,000 first year volume commitment.

Please do the following: ☐ Attach a copy of your agent's license.

☐ Attach a check for \$8.00 (Payable to the state board of insurance)

Comments

Signature _____ Title _____

Producer Questionnaire

Name of Agency _____

Address _____

C/S/Z _____ County _____ Phone# _____

Federal Tax I.D.# or Social Security# _____

Agency is: ☐ Individual ☐ Partnership ☐ Corporation

If Subsidiary, list agency's parent corporation _____

How many years has agency been established? _____ years

List any former agency names or previous addresses _____

Total Number of Employees _____ Number of Licensed Producers _____

Number of Branch Offices _____ (list addresses on separate sheet)

Principals, Partners or Corporate Officers *

1. Name _____ Title _____

Residential Address _____

1. Name _____ Title _____

Residential Address _____

Personal History of Major Principals *

1. Agent's Name _____ Birthdate _____

Are you active in the agency? _____ What are your other business interests? _____

Previous Business Experience (last 7 years)

From	To	Position	Name & Address of Firm	Reason for Change
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

1. Agent's Name _____ Birthdate _____

Are you active in the agency? _____ What are your other business interests? _____

Previous Business Experience (last 7 years)

From	To	Position	Name & Address of Firm	Reason for Change
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

* Use additional sheet for more than two

Property and Casualty Licenses

Name as Shown on State License	Type of License	License No.	Individual S.S. Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Note: Attach photocopies of all property and casualty licenses.

Agency Information

Give a brief statement describing type of business written by agency and sources of such business:

List Professional or Trade Organizations of which you are a member (i.e.: IIAA, PIA, etc.)

Principal Licensed Companies (Last Fiscal Year)

Name and Address	Property and Casualty	Volume Length of representation
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total Agency Premium Volume by Year for 3 Prior Years

Year	Personal	Commercial
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

What is the percentage of business derived from sources other than direct agency solicitation (if auto dealers, banks, etc.)? Please Explain _____

List all changes in Company Connections by your Agency in the Past 3 Years

Companies Added and Date	Companies Terminated and Date
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Does Agency utilize specialty insurance companies? <input type="checkbox"/> Yes <input type="checkbox"/> No		If yes, please list	
Specialty Company	Type of Business	Loss Record	Length of Representation
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

List Principal Wholesale Brokers:

Name and Address	Length of Association	Brokers Terminated (last 6 years)	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Has agency ever been sued as a result of official acts performed?

☐ Yes ☐ No If yes, please complete the following:

Date of Lawsuit	Nature of Lawsuit	Legal Results	Remarks
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Does agency carry Errors and Omissions Insurance? ☐ Yes ☐ No

If yes, please furnish certificate of insurance and/or complete the following:

Underwriter and/or Company	Policy#	Policy Period		Liability	Deductible SIR
		From	To		
_____	_____	_____	_____	_____	_____

Does agency's umbrella or excess cover Agents E & O? ☐ Yes ☐ No

If yes, please provide the following:

Underwriter and/or Company	Policy#	Policy Period		Liability
		From	To	
_____	_____	_____	_____	_____

Financial Information

Please attach audited financial statement for prior fiscal year.

Please attach current fiscal year-to-date financial statements.

List Banks where Agency maintains accounts:

Name and Address of Bank _____

Account Officer _____

Business Account _____

Premium Trust Account _____

Personal Account _____

If more than one agency office, list central accounting office, personnel and phone number:

I certify that the above information is true and correct, in accordance with my own knowledge and belief.

Witness: _____ Name: _____

Title: _____

Date: _____

Excess & Surplus Lines Questionnaire

A. Firm Information

Complete legal name of firm _____

Tax ID# _____

Address _____

City _____ State _____ Zip _____

Mailing Address (If different from above) _____

Phone _____ Fax _____

E-mail _____

Website _____

☐ Corporation ☐ Partnership ☐ Individual

B. Background

Year business established _____

During the past (5) years, has the firm acquired/merged with another firm,
or has the firm name changed? ☐ Yes ☐ No

If yes, please explain

Is the firm engaged in, owned by, associated or affiliated with, or controlled by
any other business interest? ☐ Yes ☐ No

Are you a member of ☐ AAMGA ☐ NAPSLO ☐ Other

If other, please list _____

C. Principals & Personnel

1. Breakdown of Producer's Staff

Staff	Number/Current Year	Number/Prior Year
Principals/Partners/Owners		
Offices/Managers		
Brokers (Other than above)		
Other Employees		
Total Staff		

2. Principals/Officers/Brokers (List in order of percentage of ownership and attach resumes):

Name	Title/Position	Year Started-Insurance	Year Started-Producer	% of Ownership

D. Operations

1. Please indicate states you hold surplus lines licenses, either as an entity, or for states where entities are not recognized, please indicate the appropriate individual's surplus lines license number. Please note many states require both entity and individual, as noted.

* Note: We will only accept submissions and provide quotes for business in states where we have been given verified licensing.

State	Type of License Required	Licensee(s) Name	License(s) Number
AL	ENTITY/INDIV.		
AK	ENTITY/INDIV.		
AZ	ENTITY/INDIV.		
AR	ENTITY/INDIV.		
CA	ENTITY/INDIV.		
CO	ENTITY/INDIV.		
CT	ENTITY/INDIV.		
DE	ENTITY/INDIV.		
DC	INDIVIDUAL		
FL	INDIVIDUAL		
GA	INDIVIDUAL		
HI	ENTITY/INDIV.		
ID	INDIVIDUAL		
IL	INDIVIDUAL		
IN	ENTITY/INDIV.		
IA	INDIVIDUAL		
KS	INDIVIDUAL		
KY	INDIVIDUAL		
LA	ENTITY/INDIV.		
ME	INDIVIDUAL		

State	Type of License Required	Licensee(s) Name	License(s) Number
MD	ENTITY/INDIV.		
MA	ENTITY/INDIV.		
MI	ENTITY/INDIV.		
MN	INDIVIDUAL		
MO	INDIVIDUAL		
MS	INDIVIDUAL		
MT	ENTITY/INDIV.		
NE	ENTITY/INDIV.		
NV	ENTITY/INDIV.		
NH	ENTITY/INDIV.		
NJ	ENTITY/INDIV.		
NM	ENTITY/INDIV.		
NY	ENTITY/INDIV.		
NC	INDIVIDUAL		
ND	ENTITY/INDIV.		
OH	ENTITY/INDIV.		
OK	ENTITY/INDIV.		
OR	ENTITY/INDIV.		
PA	ENTITY/INDIV.		
RI	ENTITY/INDIV.		
SC	INDIVIDUAL		
SD	INDIVIDUAL		
TN	INDIVIDUAL		
TX	ENTITY/INDIV.		
UT	ENTITY/INDIV.		
VT	INDIVIDUAL		
VA	ENTITY/INDIV.		
WA	ENTITY/INDIV.		
WV	INDIVIDUAL		
WI	INDIVIDUAL		
WY	ENTITY/INDIV.		

List All Branch Offices:

2. Does your firm operate as a wholesaler, MGA, retailer, or combination?

☐ % Retail ☐ % Wholesale Brokerage ☐ % MGA Binding Authority

3. List by state the number of agents/brokers from whom business is received

State	#Agents/ Brokers	State	#Agents/ Brokers	State	#Agents/ Brokers	State	#Agents/ Brokers

4. Do the retail agents/brokers for whom you place business sign an agreement regarding submission of business and payment of premium?

☐ Yes ☐ No

If yes, attach a copy of the agreement.

D. Premium Volume & Distribution

1. Total Volume for last five (5) years

Volume	Year	Volume	Year

2. Total Volume (If listing under "Other," please attach description)

Type	Current Year	Prior Year
Automobile Liability		
Automobile Physical Damage		
Property		
General Liability		
Umbrella & Excess		
Packages		
Special Programs		
Professional Liability		
Personal Lines		
Other		
Total		

3A. List major broker companies in order of premium volume

Name	Years Represented	Annual Volume	Loss Ratio	Binding Authority

3B. List major binding companies (if applicable) and describe binding authority in 4 below

Name	Years Represented	Annual Volume	Loss Ratio	Binding Authority

4. Describe scope of binding authority, i.e. limit of authority, lines of insurance _____

5. Describe claims handling procedures _____

6. Describe major niches you fill in the market _____

7. List companies discontinued in the last five (5) years

Companies Discontinued the Last Five (5) Years

8. List any other XL Insurance business units you do business with

XL Insurance Business Units Doing Business With

F. Production to Company

1. Anticipated volume will be derived from the following sources

a. New Business \$ _____

b. Transfer from Current Company in Office \$ _____

c. Transfer from Discontinued Company \$ _____

2. Please give brief explanation _____

3. What will it take for us to be successful together _____

G. Financial

1. If accounting not handled by main office, please provide address

Street _____

City _____ State _____ Zip _____

Accounting Contact _____

2. Bank reference _____

Name _____

Trust Account Number Other _____

Name _____

Bank Address _____

City _____ State _____ Zip _____

(Attach as copy of latest financial statement. An updated financial statement will be required on an annual basis for the firm holding a contract as well as the parent company)

3. Do you maintain fidelity coverage for all officers and employees? ☐ Yes ☐ No

If yes, please indicate the following

Insurance Company _____

Limits _____

Deductible _____

Expiration Date _____

Attach a Fidelity Declarations page

Please Include Current Copies Of

Staff E-Mail Address & Phone Extension Directory

Company and Corporate Financial Statements

Sub-Producer Agreement

Resumes of all Officers, Managers and Brokers

Personal Financial Statements of Principal Guarantors

COMMENTS

Other Information that you would like us to consider _____

The undersigned hereby declares that the answers given with respect to the foregoing questions are true, complete, and accurate with no misrepresentations, omissions, or any other concealment of fact.

Signature of Applicant _____

Title _____

It is vital that the Retailer understand that the authority to conduct business in the Wholesale Market will be very limited. Typically, the Retailer has no binding or other authority unless specifically granted by the Wholesaler and/or insurance company, therefore, none should be assumed by the Retailer unless he has written authority. The Retailer should be very careful to understand the authority granted by Wholesalers and should have all such agreements in writing. The authority granted in the Wholesale Market can be very different in both scope and form from the Standard or Admitted Market.

Chapter 4

The Agency-Producer Agreement

The Agency / Producer Agreement

Most Wholesale/Retail relationships are conducted without a formal, written agreement. However, it is strongly recommended that a written agreement be utilized. The very nature of the Wholesale Market requires explicit documentation of the requirements and authorities shared by both the Retailer and Wholesaler. It is important to recognize that the responsibilities involved in the agreement extend beyond the normal two-party business relationships.

The following summarizes eleven specific provisions recommended for inclusion in the written agreement between the Wholesaler and Retailer:

1. Amendments

All amendments to the agreement, including the schedule of commissions, require the express written consent of both Wholesaler and Retailer.

2. Arbitration Clause

The stipulation of a procedure for the resolution of any controversy caused by the agreement is what makes the agreement a viable document. The arbitration clause should indicate the procedure to be followed in the event of a disagreement or dispute involving the interpretation of the agreement or the performance or nonperformance of the parties to the agreement. This arbitration procedure is outlined below.

- a. The parties will make every effort to establish a meeting for the purpose of settling unresolved disputes. It is understood that this meeting will be conducted in good faith.
- b. If the parties to the agreement are unable to resolve their conflict within fifteen days, the controversy will be resolved by arbitration.
- c. All unresolved disputes with regard to the conditions of the agreement will be decided by a panel of three disinterested arbitrators. The party who desires arbitration will appoint one disinterested arbitrator and will furnish written notice of the appointment to the other party. Within ten days thereafter, the other party will appoint one arbitrator. The two appointed arbitrators will, within fifteen days thereafter, together select a third arbitrator who will be designated as the presiding officer of the panel. If the appointed arbitrators fail or refuse to choose a third arbitrator within thirty days after having been appointed, the third arbitrator will be chosen by a court having jurisdiction over the disputed agreement.
- d. The decision of a majority of the panel will be binding on the parties without right of appeal, and may be enforced by a court having jurisdiction over the agreement in question. The determination of the panel must be in writing and bear the signatures of a majority of the arbitrators.
- e. Expenses of arbitration will be shared on an equal basis by the parties. Arbitrators shall have the right to select one party for a greater amount of the expenses should it be found that the party did not initially offer a good faith effort to resolve the difference on an informal basis.
- f. Specify which state, county and court will have jurisdiction.

3. Authority To Bind

The Retailer has no authority to bind coverages unless specifically authorized in writing by the Wholesaler. There are certain states that prohibit binding authorization for a non-admitted company. Such restrictions are enforced by statute. Other states maintain provisions in their insurance regulations that control the binding authorities of non-admitted carriers.

Because there are specific situations where the Wholesaler can grant binding authority to the Retailer, it is suggested that the limits of any specific binding authority be negotiated between the Wholesaler and the Retailer. As indicated previously, any such agreement should be in writing.

4. Cancellation Of Policies

Frequently, policies obtained through the Wholesale Market contain a provision that the premium is “fully earned” in the event of a total loss, or that there is a “minimum earned” premium at the time the policy is written. A “minimum earned” premium provision would be especially significant in the event of cancellation of the policy by the insured. Certain policies require premium payment prior to their effective date and cannot be cancelled by the insured or Retailer without penalty once the premium is received. Since there exist unusual cancellation conditions that require approval of both the Wholesaler and the insurer, it is important that any cancellation procedure that deviates from the agency agreement be specified and reviewed by the Wholesaler and Retailer. It is recommended that the agreement stipulate the following:

- a. The earned premium on any policy cancelled after its effective date will be computed in accordance with the policy’s cancellation provisions.
- b. Return commissions on cancelled policies will be paid at a rate identical to the original commission scale.
- c. The right of “flat” cancellation should be provided when acceptable evidence for cancellation is received by the Wholesaler prior to the effective date of the policy.

Since it is not uncommon for policies issued through the Wholesale Market to contain provisions which apply to “fully earned” or “minimum earned” premiums, the Wholesaler should be certain that any special cancellation condition or other conditions outlined in the quotation, binder or policy be explained to the Retailer when the risk is initially accepted. It is important to understand that the Retailer has no authority to cancel policies issued through the Wholesale Market; therefore, it is vital that all requests for cancellation be submitted in written form to the Wholesaler on a timely basis.

5. Commissions

A schedule of commissions is normally not a part of the agreement between Wholesalers and Retailers. It is provided as a separate schedule and is not subject to the provisions of the agency agreement. The commission rates paid through the Wholesale Market are governed by both the class of risk and the insurer. In certain instances the Wholesaler can commit to a specific commission level. It is suggested that this specific commission level be incorporated into the schedule of commissions. In addition, an indication of which commissions are to be negotiated should be included in the commission schedule.

6. Indemnification

The indemnity provisions of the agency agreement should be written in a bilateral fashion, because both Wholesaler and Retailer are, in essence, independent businesses that require protection from the negligence of other individuals or businesses.

7. Ownership Of Expirations

The agency agreement should contain a provision which will guarantee the Retailer’s ownership interest in that business which has been placed through the Wholesaler. The wording of this provision should indicate that: “The use and control of expirations, and the records thereof, shall remain in the undisputed possessions and ownership of the Retailer.”

The agreement should also include a provision which restricts the Wholesaler from the use of the expirations of the Retailer in any marketing method for the sale, service or renewal of any form of insurance coverage of the customers or prospects of the Retailer.

In addition to the above provisions regarding expirations, there should be a provision indicating that, if the agreement is terminated and the Retailer has not properly accounted for and paid all premiums and return commissions for which the Retailer is liable, the Wholesaler can retain a vested right, title and interest in the expirations and records of the Retailer as of the date of termination. The Wholesaler can retain the right to collect any indebtedness due from the Retailer through the use and control of such expirations. The Whole-

saler agrees to use reasonable business judgment in the sale of these expirations and is accountable to the Retailer for all sums received which, net of expenses, exceed the amount of indebtedness. The Wholesaler is urged to make a specific inquiry of the Retailer to determine if there has been any assignment of the Retailer's ownership of expirations. Such an assignment is generally a collateral condition to any financing agreement between Retailers and insurance companies. An assignment of the Retailer's ownership of expiration rights would take precedence over the foregoing clause in the "Ownership of Expirations" section of the agency agreement.

8. Payment Of Premiums

This essential segment of the agreement should be explicit in stipulating the time for premium remittance. The agreement should state whether the premium remittance is less commission, plus any applicable taxes, fees or policy fees. In order to avoid misunderstanding, any other charges or special fees should be specifically outlined in the agreement, on the quotation, binder or policy.

The majority of Wholesale/Retail agreements hold the Retailer liable for uncollected premiums, fees and charges, including earned premiums developed by audits or interim reports. Since the Wholesaler is responsible to the insurers for all earned premiums, this liability is not unusual. The Retailer must be fully aware of the responsibility for premium payments in all situations involving the Wholesale Market. These obligations include not only those areas already mentioned, but policies which contain specific provisions for payment of "minimum earned premiums," "fully earned premiums," or "earned policy fees or charges." The Retailer must also realize that certain policies prohibit flat cancellations.

9. Successors

The agreement should indicate whether or not the Retailer has the right of assignment. Typically, the right of assignment is subject to prior approval by the Wholesaler.

10. Termination

The agreement should specify immediate termination in the event there has been a violation of either party's fiduciary responsibility, including insolvency, threat of insolvency, fraud, abandonment, willful, gross or negligent misconduct, including the termination or suspension of either the Wholesaler's or Retailer's license. What would happen in the event of an agency merger should also be addressed.

Agreements normally run on a continuous, until cancelled, basis. Termination of the agreement may be readily accomplished by mutual agreement of the parties or by one party furnishing thirty days written notice of termination (subject to state law).

11. Evidence Of 'In Force' E&O Coverage Should Be Exchanged By Both Wholesalers And Retailers

Why is this important?

- As evidence of good faith and professional understanding.
- Solvency of insurer.
- Coverage (effective dates, as required and requested).
- Policy protection (parallel, limits, deductibles, exclusions).
- Time frames (adequate time for placement, market needs).

Review

The previous discussion of the agency agreement is not intended to be definitive; rather it is intended to provide guidance only. The points mentioned are areas for review, consideration and understanding. Final documentation of the actual agreement should be based upon appropriate research and discussion by all parties to the agreement.

Insurance Producer Agreement

Section 1 - Producer's Authority

The Producer shall periodically submit risks to the Company for its consideration as authorized by the Company. These risks shall be located in states in which the Producer is duly licensed and authorized to operate.

The term "for its consideration" shall mean that (i) all such insurance proposals shall be considered for acceptance or rejection by the Company before coverage shall be effective, and (ii) the Producer specifically has no right to bind the Company, alter or cancel any coverage in the absence of specific authorization to do so.

Section 2 - Producer's Responsibilities

- A. Once a proposal has been accepted and bound by the Company, the Producer shall have the authority and the responsibility to:
 1. Collect, account for and pay to Company premiums, fees and other charges (hereinafter collectively referred to as "premiums") for business placed with the Company, including premiums developed by credits or other adjustments, such premiums being held by the Producer in a fiduciary capacity with no right of offset or counter claim; and
 2. Deposit premiums collected on behalf of the Company in accounts in a financial institution satisfactory to the Company, which financial institution is insured by the Federal Deposit Insurance Corporation or other insurance acceptable to the Company. If interest bearing accounts are allowed by law, Producer is authorized to collect and retain interest on all premiums held in such accounts.
 3. The Producer may not change the financial institution in which the Company's premiums are deposited unless (a) the Producer gives the Company at least forty-five (45) days prior written notice of the change; (b) the new financial institution is insured by the Federal Deposit Insurance Corporation or other insurance acceptable to the Company; or (c) the Company gives the Producer its prior written approval to the change. The Company agrees that its approval shall not be unreasonably withheld. The premiums collected on behalf of the Company may be commingled with other insurance premiums received by the Producer on behalf of other insurance companies in the operation of its business, provided that (a) such commingling is permitted by law; (b) where the law sets forth certain prerequisites, said prerequisites are complied with; (c) the Company's premiums so commingled may be readily and reasonably ascertained at all times from the books and records of the Producer; and (d) the Company may have access during ordinary reasonable business hours to such books and records as they pertain to the Company's premiums.
 4. Transmit to the Company, net of commissions, premiums collected on behalf of Company.
 5. Receive and report promptly to the Company all known or reported claims, losses, or notices thereof, made pursuant to the terms of any binder, certificate of insurance, or insurance policy issued by or on behalf of the Company.
 6. Report promptly to the Company all consumer complaints, all communications received from any Insurance Department or other regulatory agencies concerning business placed with the Company.
 7. Issue and sign Certificates of Insurance, as approved by Company, without modifying or altering any

of the pre-printed language on the certificate, provided that a copy of each of the certificates signed and issued is promptly transmitted to the Company unless otherwise agreed to in writing. Any modification or alteration of the pre-printed language on the certificate will require the prior consent of the Company.

8. Comply with the laws and regulations applicable to its operation including, but not limited to, obtaining and maintaining appropriate licenses and keeping records of all transactions affecting business written on behalf of the Company.
 9. Comply with all surplus lines regulations when submitting risks to a non-admitted company, collect and pay all applicable surplus lines taxes, surcharges and stamping fees and file affidavits with all appropriate governmental jurisdictions.
 10. Report promptly to the Company all changes in address and relevant license information.
- B. The Producer may not:
1. Adjust, compromise or settle claims or waive any insurance policy or other contract condition.
 2. Without the Company's prior written consent, use the Company's or any affiliate's name or logo in any advertising or promotional material or presentation. In the event the Company is subjected to loss or expense arising out of or in conjunction with any unauthorized advertisement or promotional material or presentation by the Producer, the Producer will be liable for all resulting damages and costs.
 3. Represent to any third party that it has any other authority not specifically granted under this Agreement.

Section 3 - Brokerage or Commission

- A. The brokerage or commission (hereinafter "commission") earned by the Producer shall be negotiated between the parties with regard to each insurance proposal accepted by the Company hereunder. The agreed-upon commission shall be confirmed by letter in writing from the Company to the Producer. All commission, fees and other charges must be fully disclosed to the insureds by the Producer if required by law.
- B. In the event a policy surcharge, assessment or service fee is authorized by law and the Producer is able to collect such fees, the Producer agrees (i) to report the collection or collectability of such fees to the Company; and (ii) that commission is not calculated on such fees.
- C. Such commission as is agreed upon shall be the maximum commission, and shall be deemed to include countersignature or sub-Producer commissions, the payment of which shall be the responsibility of the Producer.
- D. The Producer agrees, either during the period that this Agreement is in effect or after its termination, to refund commissions, or other charges on policy cancellations or reductions at the same rate at which such commission, or other charges were originally retained or paid, including any commission paid to or netted from premiums.
- E. The right of the Producer to receive commissions or other compensation hereunder shall at all times be subordinate to the right of the Company to offset or apply such commissions or other compensation against any indebtedness of the Producer to the Company.

Section 4 - Producer's Status

- A. The Producer, and any sub-Producer of the Producer, is an independent contractor, not an employee

of the Company, having exclusive control over its time, the conduct of its operations and the selection of the companies with which it does business. Neither the term “Producer” nor anything contained in this Agreement shall be construed as creating an employer/employee relationship between the Company and the Producer or any sub-Producer.

- B. The Business Unit Addendum(s) attached to this Agreement specifically define Producer as an agent or a broker. However, if one Business Unit Addendum defines Producer as an agent, then the Producer shall be defined as an agent for all Business Units and for all other purposes under this Agreement. Producers will be appointed, if required by law or insurance department regulation, in each state in which they are authorized to submit business to a Company. Authorization is determined by the attachment of a “Business Unit Addendum” to this Agreement or by other written agreement between the Producer and an XL business.
- C. The Producer shall maintain a staff of competent and trained personnel and such supplies and equipment necessary to develop, produce and supervise the business covered by this Agreement.
- D. The Producer shall be responsible for all its expenses unless otherwise agreed in writing by the Company. Such expenses shall include, but not be limited to, individual risk inspection and/or credit reports, rentals, transportation, facilities, clerk and employee hire, attorney’s fees, postage, telephone, maps, permitted advertising, or personal local license fees.

Section 5 - Business Reports and Payments

Unless different arrangements are made between the parties, the Producer will prepare and forward to the Company statements of the amount of premiums, net of commissions, due to the Company for business accepted by Company from the Producer.

The Producer agrees to forward such statements and remit related premiums to the Company pursuant to the Addendum(s) to this Agreement.

Section 6 - Inspection and Audit

The Company, or its duly authorized representative, may at all reasonable times inspect and copy all records maintained by the Producer pertaining to this Agreement. Expenses for inspection of records will be borne by the Company. The right to inspect and copy records under this paragraph shall continue until all matters relating to the business produced under this Agreement shall have been concluded.

Section 7 - Mutual Indemnity and Release

- A. The Producer hereby represents and warrants that (1) it maintains, and for the period of time that this Agreement is in effect will maintain, a policy of errors and omissions insurance with a reputable insurer acceptable to Company, duly licensed or authorized and doing business in the state where the Producer is licensed as a resident Producer, said insurer currently being rated not less than “A- ” by Best’s Key Rating Guide, and (2) such policy shall at all times hereunder contain policy limits of at least \$1 million each claim or occurrence / \$1 million aggregate that shall respond to claims that would be consistent with the business herein contemplated.
- B. The Company may request that the Producer provide the Company with a bond, or other surety acceptable to the Company, guaranteeing the Producer’s performance under this Agreement. In such case the Producer will comply with that request within forty-five (45) days after such a request is made by the Company. Such bond or other surety requested shall at all times hereunder be in terms and an amount satisfactory to the Company.
- C. The Producer and its successors and assigns hereby agree to indemnify, defend and hold harmless the Company and any of its affiliates against all liability for losses, costs and expenses of whatsoever

kind, including the fees and disbursements of counsel, and against all said losses, costs and expenses, which the Company or its affiliates may incur (i) by reason of any breach and/or misuse of the limitations, authorizations, responsibilities, or instructions contained in this Agreement, (ii) in enforcing any covenants and conditions of this Agreement, or (iii) arising out of the willful or negligent acts or omissions of the Producer, its employees or its agents with respect to the business involved under this Agreement. The Producer agrees to pay or cause to be paid to the Company all sums or amounts of money that the Company and any of its affiliates shall pay or become liable to pay as charges or expenses of any nature or kind whatsoever, including fees of counsel, by reason of the failure of the Producer, its successors and assigns to comply with the terms of this Agreement, as soon as the Company or any of its affiliates shall have become liable therefore, whether or not the Company or any of its affiliates shall have actually paid such sums or any part thereof.

- D. The Company and its successors and assigns hereby agree to indemnify, defend and hold harmless the Producer and any of its affiliates against all liability for losses, costs and expenses of whatsoever kind, including the fees and disbursements of counsel, and against all said losses, costs and expenses, which the Producer or its affiliates may incur (i) by reason of any breach and/or misuse of the limitations, authorizations, responsibilities, or instructions contained in this Agreement, (ii) in enforcing any covenants and conditions of this Agreement, or (iii) arising out of the willful or negligent acts or omissions of the Company, its employees or its agents with respect to the business involved under this Agreement. The Company agrees to pay or cause to be paid to the Producer all sums or amounts of money that the Producer and any of its affiliates shall pay or become liable to pay as charges or expenses of any nature or kind whatsoever, including fees of counsel, by reason of the failure of the Company, its successors and assigns to comply with the terms of this Agreement, as soon as the Producer or any of its affiliates shall have become liable therefore, whether or not the Producer or any of its affiliates shall have actually paid such sums or any part thereof.

Section 8 - Termination

- A. This Agreement may be terminated:
1. By providing thirty (30) days prior written notice by either party to the other or the minimum period required by applicable state law, whichever is greater; or
 2. Immediately, if any public authority cancels, suspends or declines to renew any license, qualification or certificate of authority of the Company or the Producer; or
 3. Immediately in the event of fraud, insolvency, failure to remit balances in accordance with this Agreement, or willful misconduct, negligence or material breach of contract on the part of the other party, regardless of notice to the other party.
- B. This Agreement shall not inure to the benefit of any successor in interest of the Producer, nor may any interest under this Agreement be assigned by the Producer without the prior written consent of the Company. Such consent shall not be unreasonably withheld. Assignments attempted without such consent are void.

Section 9 - Producer's Responsibility Following Termination

Upon termination of this Agreement, the Producer shall:

- A. Continue to pay the Company in a timely fashion all sums due the Company pursuant to this Agreement until paid in full;
- B. Unless otherwise instructed by the Company, continue to service all business produced by or through

the Producer in the same manner and to the same extent required prior to termination; and

- C. Cease to submit or seek to renew business with the Company or extend the term of any existing business, except as may otherwise be required by law or regulation.

Section 10 - Cancellation of Insurance

Nothing in this Agreement shall be construed as limiting or restricting the right of the Company to cancel any binder, policy, contract or other evidence of insurance issued under this Agreement in accordance with the cancellation provisions of such binder, policy, contract or other evidence of insurance. No insurance contract may be returned to the Company by the Producer for flat cancellation, unless it is returned prior to the inception or effective date of the contract, subject to the terms and conditions of the policy. If a policy is cancelled prior to its natural expiration, Company agrees to remit to the Producer previously paid unearned net premiums that are owed to the policyholder. The Producer, in turn, will reimburse the gross unearned premium to the insured.

Section 11 - Ownership of Expirations

In the event of termination of this Agreement, the Producer having promptly accounted for and paid over all amounts for which it is liable, the Producer's records pertaining to the business contemplated hereunder and its use and control of expirations shall remain the property of the Producer and be left in its undisputed possession; otherwise, all such records, use and control of expirations shall be vested in the Company.

Section 12 - Policyholder's Designation

Should a conflict exist as to which party is authorized to represent an existing or prospective policyholder with respect to any insurance which is the subject of this Agreement, the policyholder's signed written statement on its company letterhead, designating its representative shall control.

Section 13 - Notices

All notices, requests, demands, reports and other communications hereunder must be in writing and shall be deemed to have been given if delivered by hand or mailed by first class, registered or certified mail, return receipt requested, postage and fees prepaid and addressed as follows:

- A. If to the Producer

Name of Agency
Address of Agency
City, State, Zip
- B. If to the Company (for general matters pertaining to this agreement and general producer matters):

Name of Agency
Address of Agency
City, State, Zip
- C. If to Company for specific business questions concerning binding authority, commissions and other substantive business concerns, refer to the contact person designated in the Business Unit Addendum for the particular business in question which is attached hereto.
- D. Name and address change requests should be made in writing to the Company at the address indicated in 13 (B) above.

Section 14 - Modification and Enforcement of this Agreement

- A. Neither this Agreement nor any amendments nor terms thereto may be changed, waived, or discharged except by written agreement between the Producer and the Company.
- B. This Agreement will be construed and enforced in accordance with the laws of the State of New York.
- C. In the event a court of competent jurisdiction modifies any provision of this Agreement, the remaining provisions of this Agreement shall remain in full force and effect and the modified provision shall be abided by the parties as so modified by the court. The invalidity or unenforceability of any term or provision, or any clause or portion thereof, of this Agreement in no way impairs or affects the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- D. This Agreement embodies the entire Agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof and no party hereto has made any representation, warranty or covenant in connection with the matters set forth herein except as expressly stated herein. All the terms of this Agreement shall be binding upon the successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto, their successors and assigns; provided however, that this Agreement may not be assigned by any party hereto without the prior written consent of the other, and any such assignment without such consent shall be void; and provided further that nothing in this Agreement shall prevent the Company from merging or consolidating with a corporation or having its assets sold or otherwise transferred to another entity. Failure to insist upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right hereunder at any one time or times be deemed a waiver or relinquishment of such right at any other time or times.
- E. The headings of this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning thereof.
- F. The Producer shall at all times obey such instructions as it may receive from time to time from the Company in accordance with this Agreement.
- G. This Agreement supersedes all previous written and oral agreements and agreement amendments between Producer and Company.

Signatures:

For the Companies as Designated on Page 1 of this Agreement ("COMPANY"):

By _____ (signature)

Printed Name _____

Title _____

Witness _____ (signature)

For the PRODUCER:

Name of Agency _____

By _____ (signature)

Printed Name _____

Title _____

Witness _____ (signature)

FEIN _____

Chapter 5

Company Selection and Marketing Suggestions

Company Selection

It is crucial to understand that both Wholesaler and Retailer share the responsibility of selecting a Wholesale Market insurer. This fact cannot be emphasized too strongly. In many situations, the Wholesaler is in a better position to make the initial company appraisal because of personal knowledge and awareness of those companies that constitute the Wholesale Market. However, this does not in any way diminish the fact that the Retailer has a greater than normal degree of responsibility in assuring that a non-admitted insurer is both solvent and reliable. Not only is this company qualification significant at the time of placement, it is an ongoing requirement shared by Wholesaler and Retailer to ascertain that the company remain solvent throughout the policy term. Any knowledge of a change in the solvency or reliability of a non-admitted insurer must be immediately conveyed to the insured. Both Wholesaler and Retailer have a common requirement to be certain that a reasonable effort is made to qualify a non-admitted insurer. The information must be secured from reliable sources and must be acceptable. Detailed inquiries pertaining to the capacity and financial stability of a non-admitted insurer is necessary. This includes an analysis of the insurer's surplus, complete current financial statements and knowledge of an established, irrevocable trust fund if a state requires such a trust fund. The Wholesaler must be certain that a non-admitted insurer has capable financial management and adequate claims procedures. It would be a substantial error for any Retailer who is not specifically licensed for Excess and Surplus lines to attempt placement of coverage directly with a non-admitted insurer. Access to the Wholesale Market should be transacted only through a licensed professional Wholesale agent.

Available financial data on insurance companies is generally dated or inadequate, making it difficult to accurately determine the current financial status of a company. However, there are various sources of company financial and operational data.

Potential Research Sources

1. Best's Review: www.ambest.com
2. National Association of Insurance Commissioners, NAIC: www.naic.org
3. Insurance Regulatory Information System (IRIS): searchable on the www.naic.org website
4. Standard & Poor's: www.standardandpoors.com
5. Conning & Co.- Analysis of reserve adequacies: www.conning.com
6. Duff & Phelps: www.duffandphelps.com
7. State Insurance Departments: www.aamga.org/committees/governmental_affairs
8. Premium Finance Companies
9. Other Agents

The initial steps in qualifying the insurance carrier are vital. Wholesalers and Retailers alike are urged to recognize the great importance of this obligation to the insurance consumer. While responsibility for selection of a company is shared, it is primarily a responsibility of the Wholesaler because of the Wholesaler's greater accessibility to information. If the insurer is an "admitted" company, this responsibility is shared by the state insurance regulatory authority, Wholesaler and Retailer. The Retailer has an increased liability if the insurer is a "non-admitted" company. The Retailer should refer to the specific state statutes to determine the extent of his/her responsibility in the selection of a company.

The Wholesaler has a moral, ethical and legal responsibility to select a financially sound, reliable market. This is, however, a responsibility which is shared to a certain extent by both Wholesaler and Retailer. If a reliable, solvent company cannot be found for policy placement, it is the responsibility of the Wholesaler to notify the Retailer, as no coverage should be secured from such an insurer.

The Wholesaler and/or its employees should have a personal knowledge of the companies represented, as well as an awareness of each company's reinsurance program(s).

Because of the shared liability of the Wholesaler and the Retailer, there is a parallel Errors and Omissions exposure. When the client's policy is received from the insurer, both Wholesaler and Retailer should review the policy to be certain that the coverage provided is that which was ordered by the Retailer. If there are any differences, i.e., deductibles, exclusions, limits, policy dates, etc., the Retailer should be advised by the Wholesaler of any coverage variations.

The Retailer should determine whether or not the company offered by the Wholesaler is licensed in the state through the use of one or more of the following sources:

1. Insurance Department list of "admitted" carriers.
2. Insurance Department list of "non-approved," "non-admitted" carriers.*
3. Insurance Department "White List" of "approved" "non-admitted" carriers.*

*Note that those lists referred to in items "2" and "3" are not available in all states.

Bond Requirements

Bond requirements will vary by state. The Retailer must be sure to check specific state statutes. Bond Requirements are usually the responsibility of the license holder, can apply to the Wholesaler as well as the Retailer, and guarantee payment of any premium taxes for non-admitted carriers that are due the state insurance authority.

Guaranty Fund

The principal question is whether or not the state Guaranty Fund applies to "non-admitted" carriers. This question should be answered in each state where coverage is provided. As previously mentioned in Chapter 1, New Jersey's Guaranty Fund is the only one, at the present time, that provides protection for "non-admitted" carriers.

Marketing Suggestions for Wholesalers and Retailers

Wholesalers and Retailers who realize the advantages of creating a lasting marketing agreement may find these suggestions beneficial. The marketing hints for Wholesalers are directed towards establishing an awareness by Retailers of the markets, capacities and underwriting capabilities of the Wholesaler.

The marketing tips offered for Retailers assume that the Retailer has made the decision to use the Wholesale Market to complete the agency's marketing facilities. With this judgment, the Retailer is in a position to identify target markets for solicitation using the specialty coverage resources of the Wholesaler.

- A. Suggested areas of influence for the Wholesaler to use in establishing a market identity with Retailers.
 1. Attend annual conventions of Retailers at both National and State levels.
 2. Utilize Vendor booths supplied with brochures, outlines and testimonials of the Wholesaler's capabilities. Booths should be in the "Trade Fair" location and attended by qualified representatives of the Wholesaler.
 3. Identify the markets available to the Retailer.
 4. Indicate that facilities go beyond Excess and Surplus lines and whether additional standard, nonstandard and specialty markets are available.
 5. Make yourself available to educate Retail Agents at meetings and conventions.

- B. Retailers can discover a productive area for the development of new accounts by implementing a target marketing plan. In order to effectively initiate a target marketing program, it is necessary to identify a base of prospective clientele. The potential of any target marketing program depends upon the marketing area of the Retailer and the ability of the Retailer to provide specialty coverage markets.

Examples of specialty market prospects include:

1. Adult Day Care
2. Animal Mortality
3. Car Washes
4. Jewelers Block
5. Marine Risks - Hull and Liability
6. Recreational Vehicles
7. Vacant Properties
8. Special Events

Chapter 6

Licensing Rules, Regulations and Guidelines

Licensing Rules and Regulations

Congress' passage of the Gramm-Leach-Bliley Act (GLBA) caused the NAIC to speed the development of the new NAIC Producer Licensing Model Act (PLMA).

The reciprocity provisions of the PLMA also extend to surplus lines producers. A majority of states treat surplus lines as a distinct license type. Persons holding a surplus lines producer license in their home states shall receive nonresident surplus lines producer licenses unless some other reason for disqualification exists.

Under the uniform resident licensing standards ("URLS") promulgated by the NAIC, a producer who wishes to engage in the sale of surplus lines insurance (SLI) must first obtain a surplus lines producer license. This is considered a license type and not a line of authority. The URLS require that a resident hold both property and casualty lines of authority before a SLI producer license can be issued.

Under the reciprocity provisions of GLBA, if a producer holds the SLI license in the producer's home state and is in good standing in the producer's home state, the nonresident state must grant a license. The NAIC Uniform Application is to be used for application as a surplus lines producer.

Some states also require a resident producer placing SLI to complete an examination or post a bond. However, to comply with the reciprocity provisions of GLBA and Section 8 of the PLMA, these requirements cannot be imposed on nonresidents. States also cannot impose an additional CE requirement on nonresident SLI producers.

SLI producers are routinely subject to additional state administrative requirements. The administration of surplus lines by states is different than other types of insurance because states typically require the producers to perform certain compliance activities that would usually be the responsibility of the insurance company.

One example of these additional requirements is that a producer must first establish that coverage is not available from the admitted market before going to the surplus lines market. In order to determine whether or not such coverage is available in the admitted market, typically the producer must perform a diligent search. A diligent search requires a producer to obtain a specific declination of coverage from a certain number (generally three) of admitted companies who are engaged in writing the type of coverage sought. If no admitted company is writing this type of insurance, the producer may approach those nonadmitted companies who would most likely write the type of coverage sought.

State insurance laws require that surplus lines insurers satisfy specific financial criteria in order to be eligible to write surplus lines insurance in the state. With the exception of New Jersey, states do not have guaranty funds to pay for losses incurred by policyholders of surplus lines insurers which become insolvent.

Diligent Effort Form

The search for coverage from licensed insurers must be conducted pursuant to state requirements. An example form is included at the end of this section, but some states require that their specific form be used. Generally, the Diligent Effort Form stipulates that the retailer must have tried to place the particular risk in question with three admitted carriers before moving to the non-admitted market. It is the Retailer's responsibility to complete the form.

Premium Tax

The Wholesaler must collect and pay a state premium tax on surplus lines policies. Regulations vary by state. The Wholesaler must pass this tax on to the Retailer, who, in turn, passes it on to the insured. There may also be a "policy fee" on "non-admitted" carriers and Lloyd's. This "policy fee" is in addition to the

premium tax and in most cases is fully earned. It should be reasonable in relation to the total premium. In some states a “policy fee” is not allowed.

Please check state websites for more information on applicable taxes and tax regulations.

Inspections

The question of whether or not inspections are required by the insuring company and who pays for the inspections would have to be resolved by the Wholesaler with the insuring company. This information would then be passed on to the Retailer along with advice as to what inspection company should be used and the inspection fee payable.

Application Forms

The application forms used in the Wholesale market can vary significantly in both form and content. Because of these variations, the Retailer’s need for caution in understanding each application form is vital. It is important to note that many applications contain warranties that actually become a part of the policy.

Fully completed applications on original forms, containing the actual signature of the insured, are always required. The information requested by the application must be accurate. It is important that the application match the coverage requested. Because of warranty provisions, the Wholesaler will need all the documentation available from the Retailer and the insured (i.e., brochures, loss experience, insured’s business experience, and other pertinent data). The Retailer will receive a faster response from the Wholesaler by indicating on the application form whether the request is for “policy issue” or “quotation.”

Timely submission of applications has a significant effect on the placement of coverage. The Retailer should be aware that the class of business, size of the risk, total premium involved and the capacity of the market will determine the time it will take the Wholesaler to place the risk. Adequate lead time assures a much better possibility of placement by the Wholesaler.

Policy Forms

Some Wholesalers provide policy forms and some do not. Since the majority of the policies issued through the Wholesale market involve non-admitted carriers, it is suggested that a file of policy forms be supplied to the Retailer if the Wholesaler is using nonstandard forms.

When the Wholesaler is providing markets that use nonstandard forms, the Retailer should be furnished a checklist by the Wholesaler that emphasizes significant points of coverage which need to be reviewed. Some of the more important include:

- Policy exclusions and endorsements
- Territorial restrictions
- Any warranty conditions of the policy

The Wholesaler should advise the Retailer of any nonstandard policy conditions, coverage restrictions or limitations. This is an area where the need for full disclosure and communication between the Wholesaler and Retailer is critical.

Quotations

The Wholesaler’s quotes should be in written form and contain all the terms and conditions pertaining to the involved risk. If there are warranties such as Ansul System, Cleaning Contracts, No Entertainment or Dancing, Correctness of Claims Information, Mileage Restrictions, etc., these should appear prominently in the quotation.

Exclusions may differ from those the Retailer normally sees for the class of risk being quoted, and it is important to make special note of them and advise the insured.

The quotation may have an expiration date (30 or 60 days), and it will be necessary for the Retailer to inquire as to the validity of a quote which has expired. It may be necessary to submit a new application in some instances.

Binding Orders

The Retailer should be aware of the Wholesaler's requirements to bind a risk after it has been quoted. Binding could require full or partial payment of the premium, may be subject to receipt of the original signed application prior to binding, or both. No backdating of effective dates are allowed.

In most cases, Wholesalers require the Retailer to send a written order to bind even when nothing further is required to put the coverage into effect. The written order indicates to the Wholesaler that the Retailer is completely familiar with all the terms, conditions and warranties of the quotation as well as any cancellation restrictions with respect to earned premiums and fees.

Statement of Dilligent Effort

This form is provided for instruction purposes only. Please refer to your state Department of Insurance for the state-specific form that may be required in your state.

I, _____, _____ of _____
Producing Agent Social Security Number

Insurance Agency Name _____ State _____

I have sought to obtain _____
Type of Coverage

for _____ from _____
Name of Insured

1. _____
Authorized Insurer

Date of Contract	Person Contacted	Telephone
------------------	------------------	-----------

2. _____
Authorized Insurer

Date of Contract	Person Contacted	Telephone
------------------	------------------	-----------

3. _____
Authorized Insurer

Date of Contract	Person Contacted	Telephone
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Reasons for Declinations

Date _____ Signature of Producing Agent _____

Name of Producing Agent _____

Chapter 7

The American Association of Managing General Agents (AAMGA)

The American Association of Managing General Agents (AAMGA)

Membership in the Association is highly selective. Those managing general agents admitted to the ranks of the Association must first have demonstrated high standards of excellence and experience, integrity and company representation. Membership criteria, and the AAMGA's vetting process of all prospective members have been identified as two of the main reasons why so many domestic and international markets view the AAMGA as representing the "gold standard" in the wholesale insurance industry.

Membership in the AAMGA is broken down into five main categories:

- Active Members: Managing General Agents
- Associate Members: Domestic and international insurance companies, Lloyd's of London Syndicates and Underwriters, and the Corporation of Lloyd's, London Market Insurance Companies, London Market Brokers, reinsurance and retrocessional insurance companies, captive insurers, and other risk bearing entities
- Business Service Members: law firms, insurance premium financing companies, third-party administrators, document reproduction companies, information technology and automation entities, industry trade publications, and other commercial enterprises who serve the wholesale insurance market and managing general agents
- State Stamping & Surplus Lines Offices
- Honorary Members

In addition, the membership is complemented by over 300 young insurance professionals employed by the Association's members. The Under Forty Organization (UFO) is open to any AAMGA member employee under 40 years of age. The organization provides leadership, management, business acumen, industry training, networking and other skills for the continued professional development of these young men and women. An annual meeting is also held at which the board of the organization is elected, educational sessions are held and roundtable meetings are facilitated.

Wholesaler Selection

The selection of the right Wholesaler by the Retailer is critical. The checklists and guide-lines in this manual provide the Retailer with helpful information when making that selection. Much of the research a Retailer should do has already been done for them if they select a Wholesaler with membership in The AAMGA, which was founded in 1926.

To qualify for membership in The AAMGA, the Wholesaler must meet the following criteria:

1. Be primarily engaged as a Managing General Agent (MGA) for at least the past three years.
2. Represent (with binding authority agreement), for a period of at least three consecutive years, three or more insurers, not of the same group or management, of which two are licensed (admitted) in one or more states in which the MGA operates.
3. Represent those companies described in subparagraph (2) above for at least two of the major lines of insurance underwritten by those companies. The major lines underwritten by those companies must consist primarily of property, casualty, marine and/or automobile insurance.
4. Have underwriting authority from those companies to bind, issue, cancel, endorse, rewrite and renew policies, in accordance with their contractual authority.

5. Operate in the capacity of supervising, underwriting, processing and accounting for the production of at least a premium volume of \$3 million, for the 12 months preceding the date of the application with at least 51% of its total premium volume derived from retail sub-producers not owned by the MGA.
6. Subscribe to the objectives of the Association as set forth in their By-Laws and to any Code of Ethics adopted by the Executive Committee or the membership as a whole. The applicant MGA certifies it has operated in an ethical, reputable and honest manner and no officer, director, shareholder, employee or consultant has been convicted of a felony.

Code of Ethics

American Association of Managing General Agents

The principals, officers and employees of AAMGA members have certain obligations to one another, to the insurance industry, and to the communities in which business is conducted.

Our goals and obligations fall into six broad categories.

1. Financial
2. Intra-organizational
3. Relationships with our sub-producers
4. Relationships with insurance companies
5. Legal responsibilities
6. Community obligations

Financial

As AAMGA members, we must meet all financial obligations (i.e. debts owed, premiums due companies, returns due to sub-producers and insureds, etc.) on a timely basis.

Intra-Organizational

As AAMGA members, we must compete fairly and honorably in the marketplace, making no false statements or misrepresentations about other AAMGA members or competitors.

Relationships With Our Sub-Producers

As AAMGA members, we must serve our sub-producers to the utmost of our ability, and in so doing must:

- * Research and remain current on the financial stability of companies with which we place business.
- * Encourage continuing education and training for ourselves and our staffs.
- * Make no misrepresentation of what coverage is being provided.

Relationships With Insurance Companies We Represent

As AAMGA members, we will faithfully execute the underwriting guidelines of the companies we represent.

As AAMGA members, we must act in the utmost good faith and gather all data necessary to make a proper underwriting decision before putting an insurance company at risk.

As AAMGA members, we are obligated to remain current on the laws affecting insurance companies, in those states in which we have authority, advising companies to the best of our ability on statutes and practices which affect them.

Legal Responsibilities

As AAMGA members, we are required to observe all insurance and other applicable state and federal laws.

Community Obligations

As AAMGA members, we will take an active part in the recognized civic, charitable and philanthropic movements which contribute to the public good of our communities.

It is a privilege, not a right, to belong to the AAMGA. Our AAMGA membership is a “badge of honor.”

We pledge to conduct ourselves in a manner befitting the privilege of membership in the American Association of Managing General Agents.