

Regulation 15. Guaranty Fund; Guaranty Fund Custodial Accounts.

A. INEX Insurance Exchange Guaranty Fund 1. Creation and Purpose. The Exchange shall establish an Illinois not-for-profit corporation to be known as the INEX Insurance Exchange Guaranty Fund, Inc. ("Guaranty Fund") or such other name as the Board of Trustees may approve. The Certificate of Incorporation, by-laws and Plan of Operation of the Guaranty Fund shall be consistent with this Section. The purpose of the Guaranty Fund shall be to protect all insureds and reinsureds under policies issued by syndicates through the facilities of the Exchange in accordance with and subject to the limitations contained in this Section and, further, subject to the funds which become available to this corporation. The Guaranty Fund shall not be liable for policies or contracts which are not issued either (i) through the facilities of the Exchange or (ii) pursuant to policy-issuing procedures specifically approved and authorized in writing by the Exchange.

2. Membership in Guaranty Fund. The membership of the Guaranty Fund shall consist solely of syndicates. Each syndicate shall become and remain a member of the Guaranty Fund as a condition of its authority to transact business on the Exchange.

3. Powers of Guaranty Fund. In addition to the powers and duties otherwise provided for in this Section, the Guaranty Fund shall have and may exercise all other powers and authority available to it under the Illinois General Not for Profit Corporation Act, including without limitation, power to:

- (a) Investigate, compromise, settle, pay and otherwise satisfy unpaid insurance contractual obligations of an insolvent syndicate to the extent of the Guaranty Fund's obligations hereunder, deny all other claims and review settlement releases and judgments to which the insolvent syndicate or its insureds or reinsureds were parties to determine the extent to which such settlements,

- releases and judgments may be properly contested;
- (b) Reimburse each person performing services for Guaranty Fund, including the Board if appropriate;
 - (c) Invest the Guaranty Fund Premium Surcharge Fund;
 - (d) Employ, retain or contract with such persons as are necessary to handle claims and perform other duties of the Guaranty Fund.
 - (e) Maintain records of all financial transactions of the Guaranty Fund;
 - (f) Prepare a Plan of Operation, and any amendments thereto, necessary or suitable to assure the fair, reasonable, and equitable administration of the Guaranty Fund;
and
 - (g) Perform such other acts as are necessary or proper to effectuate the purpose and goal of the Guaranty Fund.

4. Obligations of Guaranty Fund. Subject to the limitations herein and such terms and conditions as the Guaranty Fund Board may prescribe, claimants under policies issued through the Exchange by a syndicate which is determined to be insolvent shall have a claim against the Guaranty Fund for unpaid insurance contractual obligations which exist as of the date of the determination of insolvency by the Board or which arise thereafter but prior to the earliest of (i) the expiration or cancellation date of the policy, (ii) the effective date of any replacement policy obtained by the policyholder, or (iii) thirty (30) days after the entry of an Order of Liquidation by the Circuit Court of Cook County. "Unpaid insurance contractual obligation" as used herein shall mean a loss or unearned premium claim which is certified by a court of competent jurisdiction as remaining unpaid after the application of the insolvent syndicate's assets in satisfaction of its outstanding obligations. The Guaranty Fund shall be liable for payment of unpaid insurance contractual obligations only to

the extent of:

- (i) the full amount of a covered claim for benefits under a workers' compensation insurance coverage;
- (ii) an amount not exceeding \$10,000 per policy, but not less than \$100 for the return of unearned premium;
- (iii) an amount not exceeding \$300,000 per claimant for all other covered claims (inclusive of any defense costs or other supplemental expenses to the extent costs and expenses are covered in terms of the underlying policy).

In no event shall the Guaranty Fund be obligated to pay a claimant an amount in excess of the obligation of the insolvent syndicate under the policy or coverage from which the claim arises.

(a) Direct Payment of Obligations. The Guaranty Fund shall directly pay or otherwise satisfy unpaid insurance contractual obligations to the extent of funds available to it in the following priority of payment:

- (i) Class 1. Expenses directly related to a syndicate's insolvency.
- (ii) Class 2. Loss claims which arise out of and are within the coverage of, and are not in excess of the applicable limits of, policies or contracts of insurance or reinsurance underwritten by the insolvent syndicate; then
- (iii) Class 3. Claims for unearned premiums on policies or contracts of insurance or reinsurance underwritten by the insolvent syndicate.

Subject to the limitations of 4(i), 4(ii) and 4(iii) above, each class of claims shall be paid, reserved for, or otherwise satisfied in full before payment of any claims of a subordinate class. If there are not sufficient funds to pay all claimants of a class, the Guaranty Fund shall attempt, but shall not be obligated, to pay an equal percentage to each claimant of such class. Provided, however, that insurance obligations arising under policies or contracts of insurance or reinsurance which are bound

before the effective date of this amendment to section 15 4(a) of the Regulations shall be paid or otherwise satisfied in accordance with, and subject to, the order of priority in effect on the date such policy or contract was bound.

(b) Aggregate Limit. Assuming that funds are available to it, the aggregate liability of the Guaranty Fund to pay unpaid insurance contractual obligations of an insolvent syndicate and related expenses shall not exceed \$15,000,000 with respect to any one insolvency. In the event that one or more syndicates are declared insolvent within ninety (90) days after a prior syndicate has been declared insolvent, such insolvencies shall be combined and treated as one insolvency for the purposes of determining: (i) the limit of amounts payable from the Guaranty Fund; and (ii) the priority of payments.

(c) Payment to Liquidator. If the Illinois Director of Insurance as Liquidator of an insolvent syndicate agrees to accept funds from the Guaranty Fund subject to the conditions hereinafter set forth, the Guaranty Fund may at its discretion, in lieu of paying claimants directly, distribute to the Liquidator available funds up to the aggregate limit less an amount for estimated general and related expenses. The Guaranty Fund shall not distribute any funds (except the insolvent syndicate's Guaranty Fund Custodial Account) to the Liquidator unless the Liquidator agrees to distribute such funds solely to claimants consistent with this Section and agrees to return any excess amount not paid to claimants qualified hereunder.

(d) Expenses of the Guaranty Fund. Expenses of the Guaranty Fund which are not related to the insolvency of any syndicate shall be general expenses. General expenses shall be paid from the Guaranty Fund Premium Surcharge Fund.

(e) Payments to Subscribers, Syndicates or Affiliates. Notwithstanding anything to the contrary in this Section, under no circumstances shall the Guaranty Fund make any payment to, or

which inures to the benefit of, the insolvent syndicate, any subscriber of the syndicate or any affiliate of the syndicate or any subscriber.

5. Indemnification. Members of the Guaranty Fund Board, officers and employees of the Guaranty Fund shall be indemnified and held harmless from any and all liabilities, costs, claims and expenses, including attorneys' fees, incurred by or imposed on them in connection with or resulting from any claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, or any appeal therein, in which they become involved or with which they are threatened, as a party or otherwise by reason of now or hereafter being or having heretofore been a director, officer or employee of the Guaranty Fund, or by reason of alleged acts or omissions as a director, officer or employee whether or not they continue to be such at the time such costs and expenses shall have been incurred. The expense of such indemnification shall be general expenses payable out of the Guaranty Fund Premium Surcharge Fund. The rights of indemnification provided in this Section shall inure to the benefit of the heirs, executors, administrators, or legal representatives of the persons covered hereby.

6. Tax Exemption. The Guaranty Fund shall use its best efforts to qualify as exempt, to the fullest extent practicable, from all taxes levied by the United States and the State of Illinois or any of its subdivisions.

B. Guaranty Fund Custodial Account. 1. Amount Required. Each syndicate, other than limited syndicates, as a condition of admission to the Exchange, shall establish and maintain a custodial account for the purposes described in this Section as part of its capitalization. The total value of the assets maintained in this account shall not be less than \$1,000,000 except as otherwise provided herein. Not less than fifty percent (50%) of the value of the assets to be maintained in the account shall consist of cash or marketable securities which otherwise qualify as investments under

these Regulations. The balance of the amount required may consist of amounts drawable under acceptable letters of credit delivered to the Exchange for deposit in a safety deposit box. The total value of the assets required herein will be reduced to the extent that amounts are withdrawn to satisfy obligations of the Guaranty Fund.

2. Access to the Account. The Guaranty Fund Board may withdraw assets from the syndicate's guaranty fund custodial accounts if needed to satisfy obligations or expenses of the Guaranty Fund. Such withdrawals shall be consistent with the limitations restrictions or conditions contained in this Section and in no event shall the total withdrawal from any syndicate's custodial account exceed \$500,000 for any one insolvency as defined in this Section or \$1,000,000 in the aggregate for all insolvencies whenever determined. The Guaranty Fund shall utilize cash and marketable securities in full before requesting the Exchange Board to draw down such letters of credit which have been provided to satisfy the requirement of this Section. However, the guaranty fund custodial account of a syndicate shall not be available or used to pay any expenses or unpaid insurance contractual obligations for any insolvency determined by the Exchange Board less than 366 days after the date of admission of such syndicate to the Exchange.

3. Custodial Agreement. Each syndicate required to establish an account shall enter into a written custodial agreement with an acceptable financial institution in compliance with Article IX Section 133(3) of the Illinois Insurance Code. However, once a call has been made by the Guaranty Fund on an existing account the assets may not be moved without the consent and authorization of the INEX Insurance Exchange Guaranty Fund Board. Such agreement and any amendment thereto shall be filed with and approved by the Exchange Board prior to such execution. Such agreements shall, among other things, permit withdrawals by the Guaranty Fund consistent with these Regulations and provide that the custodian agrees to furnish to the Exchange on a monthly basis a

certified schedule of cash and securities, valued at fair market on deposit at the end of the preceding month. No financial institution may act as a custodian for a syndicate where, directly or indirectly, either the bank or the syndicate has an investment or interest of twenty percent (20%) or more in the other.

4. Syndicate's rights in Account. Amounts maintained in a custodial account hereunder shall be admitted assets of the syndicate. No syndicate shall have a claim to any amount in any other syndicate's guaranty fund custodial account. The syndicate may (i) substitute or exchange assets having a fair market value equal to or greater than the fair market value of those then in the account, provided that the assets in the account after such substitution or exchange meet the requirements of subsection B and (ii) receive the income from the cash or securities therein. The assets in the account shall not be pledged, assigned or otherwise encumbered by the syndicate.

5. Withdrawal from the Exchange. If a syndicate voluntarily withdraws from the Exchange, merges, or its authority to conduct business on the Exchange is terminated, its guaranty fund custodial account shall be maintained for a three year period from the withdrawal date or for such less time as otherwise agreed to by the Exchange Board. The guaranty fund custodial account of a withdrawing syndicate shall be available for insolvencies determined prior to the withdrawal date or insolvencies determined for three years thereafter, but only for losses arising on or before the withdrawal date. The account of a withdrawing syndicate shall be available for any one insolvency to the extent of the lesser of (i) \$500,000 or (ii) a proportional share of the Guaranty Fund's obligations determined by dividing the estimated Guaranty Fund's aggregate obligations by the number of syndicates whose custodial accounts are available as of the withdrawal date.

C. Guaranty Fund Premium Surcharge. The Exchange Board may levy a premium surcharge on gross net premiums on policies underwritten by syndicates. The rate of this premium surcharge

shall be fixed annually by the Board, but in no event shall the rate be more than five percent (5%). No syndicate shall have any rights in amounts paid to the Guaranty Fund through the premium surcharge; however, the Exchange Board may permit a syndicate to treat a percentage of such premium surcharge payments as admitted assets. The premium surcharges collected by the Facility shall be transferred to the Guaranty Fund and held in a separate account known as the Guaranty Fund Premium Surcharge Account. Expenses of collecting, maintaining and investing the Guaranty Fund Premium Surcharge Fund shall be general expenses of the Guaranty Fund. In the event an insolvency is determined amounts available in the Guaranty Fund Premium Surcharge Fund shall be used to satisfy obligations of the Guaranty Fund. Premium surcharges due and income accruing thereafter shall not be used to pay related expenses of the Guaranty Fund or unpaid insurance contractual obligations of that insolvent syndicate, but shall be accumulated in a separate account.

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