

Best Practices *for* Working Relationships Between Wholesalers & Retailers



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INTRODUCTION

The Texas Surplus Lines Association (TSLA) and the Independent Insurance Agents of Texas (IIAT) formed a Task Force in 2003 to review the relationships that exist between wholesalers and retailers who are members of their respective associations. The Boards of Directors of TSLA and IIAT each appointed three members of their associations to the Task Force and assigned staff to coordinate the project:

REPRESENTING TSLA	REPRESENTING IIAT
Paul Rainey RSI International Arlington	Bill Harrison Brown & Brown San Antonio
Rose Perez Leicht General Agency Houston	Bryan Shofner Shofner & Associates Lubbock
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	David Surles IIAT Director of Professional Liability Austin

The Task Force commissioned surveys of TSLA and IIAT members to assist them in reviewing current practices and developing recommendations to enhance the working relationships between members of both groups. Forty-one of approximately 84 TSLA members and 271 of approximately 1,700 IIAT members responded to the survey. The publication was revised in September 2014 to update references to current laws and rules.

About TSLA

TSLA was founded in 1956 to promote the general business well-being of its membership, to protect the public and its trust in the business of insurance through the promotion of sound, authorized and eligible markets within the State of Texas and to encourage compliance with provisions of the Texas Insurance Code as they relate to excess and surplus lines insurance. The association is very active on legislative and regulatory issues. TSLA publishes annually a Membership Roster & Product Guide. Known as the “purple book,” the guide includes a list of TSLA members and the products they offer. It is mailed to over 3500 agents in Texas, including IIAT and FIWT members, and is distributed at their conventions through the TSLA exhibit booth. In addition, the product guide is found on the TSLA web site at www.tsla.org.

About IIAT

IIAT was founded in 1898 to represent the interests of independent insurance agents, with a major commitment to professionalism in providing education, governmental advocacy, insurance markets and technical resources. Membership in IIAT includes membership in the Independent Insurance Agents & Brokers of America. IIAT maintains a market search guide on its web site at www.iiat.org to assist its members in finding specific products offered by wholesalers.

What is a wholesaler?

Wholesale insurance agencies in Texas provide a variety of insurance products through different types of insurance companies. A single wholesaler may wear multiple hats in the insurance marketplace and perform different services depending on the type of insurer it represents and its relationship with the insurer.

For the purpose of this publication, we have chosen to use the term **WHOLESALER** to mean any insurance entity that serves as an intermediary between a “retailer” – an agency that has direct contact with an insurance policyholder or prospect – and the insurance company that serves as the risk-taker on an insurance policy. Wholesalers are known by a variety of titles, both by themselves and the rest of the insurance industry, including **broker, managing general agent, surplus lines agent or broker, and program underwriting manager.**

Defined in historical and legal terms, a **BROKER** is someone who represents only the policyholder and not the insurance company in the insurance transaction. Some retailers, especially large independent agencies, refer to themselves as “brokers” even though they generally operate like any other retail insurance agency. In Texas there is no legal recognition of, or license for, a “broker.” In common usage, the term “broker” has come to mean just the opposite of its historical and legal roots – it is an agency that accepts insurance business from another agency for placement with an insurance company represented by the “broker.” Most wholesalers refer to themselves as “brokers” in a generic sense, while in legal and licensing terms they are either managing general agents or surplus lines agents, usually holding both types of licenses. In Texas, persons with general lines or risk managers licenses also can be wholesalers or “brokers.”

A **MANAGING GENERAL AGENT** is a wholesaler who represents one or more insurers with varying degrees of authority, including one or more of the following: appointing retail agents within a specific geographic area, accepting business from appointed retail agents within agreed guidelines, and negotiating and paying claims. In Texas, a Managing General Agent license is required when the agent has supervisory responsibility for the local agency and field operations of an insurance company, or is authorized by an insurance company to accept or process on its behalf insurance policies produced and sold by other agents. The license is not required if the person or entity maintains a surplus lines agents license, general lines property and casualty agents license, or a risk managers license, unless the premium volume accepted from other agents represents 50 percent or more of its total annual business, or is more than \$500,000 annually.

A **SURPLUS LINES AGENT or SURPLUS LINES BROKER** places insurance policies with non-admitted (surplus lines) insurance companies and is licensed in Texas as a Surplus Lines Agent. Surplus lines insurance companies are not “admitted” to do business in Texas but are “approved” for surplus lines by the Texas Department of Insurance. A policy written through a surplus lines company includes a separate surplus lines tax and stamping office fee that must be collected by the surplus lines agent and remitted to the appropriate authorities. A surplus lines agent can be a retailer that places its own customers’ insurance with a surplus lines company, or it can be a wholesaler that places surplus lines business referred to it by a retailer.

In a legal sense and for licensing purposes, a **PROGRAM UNDERWRITING MANAGER** generally meets the definition of Managing General Agent as described above.

The wholesale insurance market in Texas

While no exact numbers exist to accurately determine the size of the wholesale insurance market in Texas, anecdotal information suggests it is HUGE.

Surplus lines business is only a part of the overall wholesale market, but the amount of surplus lines premium written in Texas is a good starting place to put a number on the overall market. According to the Surplus Lines Stamping Office of Texas, surplus lines companies wrote an estimated \$4 billion in premium in 2012, the majority of which was presumably produced by independent agencies.

Combined with admitted company business, the total premium volume placed through wholesalers in Texas could easily exceed \$5 billion.

IIAT executives estimate that the average retail agency places 20 percent of its premium volume through wholesalers. Some retailers place considerably less than 20 percent, while others with no “standard” markets place 100 percent of their business through wholesalers.

Wholesalers and retailers can’t live without one another. In order for both parties to survive, there must be constant and effective communication that reinforces the relationship. Relationships between the two must be professional and workflows must be efficient in order for both sides to reach their ultimate goals: serve the needs of their clients and make a profit for themselves and for the insurance companies they represent.

How to use this report

This report is intended to increase communication between retail and wholesale agents with the goal of improving systems and procedures for the benefit of both groups and their customers. A summary list of recommendations for both groups is provided at the end of each section of this report. In the Appendix, separate forms are provided for retailers and wholesalers that aggregate these recommendations for each group. These forms are titled “Best Practices Evaluation.” Many of these recommendations attempt to establish standards for communications and practices that will facilitate the flow of business between the two groups.

At a minimum, wholesalers and retailers interested in improving their business practices should review the recommendations that relate to their respective businesses. Where the recommendations do not reflect current practice, further discussion with their business partners on the other side of the fence is encouraged. Business partners should also be notified of where current practice is in line with these recommendations.

Participants in this task force hope that this report is the beginning of improved cooperation between retailers and wholesalers. As one of the largest wholesale production states in the country, Texas can lead the way in standardizing business practices for the benefit of all involved.

See Appendix for best practices evaluations.

ESTABLISHING THE RELATIONSHIP

Why wholesalers need retailers

Wholesalers need relationships with a sufficient numbers of retailers to ensure a continuous flow of submissions that will lead to successful placements through insurance companies represented by the wholesaler. To accomplish this goal, a wholesaler must carefully select retailers based on criteria established by the wholesaler. Generally, wholesalers want retailers who:

- Need the markets and services provided by the wholesaler;
- Submit an acceptable number of applications that lead to successful placements;
- Submit accurate and complete applications;
- Provide adequate lead time for placement;
- Promptly pay premiums for policies issued by the wholesaler; and
- Operate in a professional and efficient manner.

Information used by wholesalers to qualify retailers

A wholesaler will require a retailer to submit a variety of information in order to qualify the retailer before accepting business. While the required information may be similar to that requested by insurance companies, the selection process by wholesalers is generally less formal and stringent. Primarily, the wholesaler wants to be sure that the retailer will be submitting the type of business desired by the wholesaler, and that the retailer truly needs the markets offered by the wholesaler. In addition, the wholesaler wants to contract with financially viable retailers that have a history of paying their bills on time.

Why retailers need wholesalers

Retailers need wholesalers in order to place insurance for clients whose needs are not met by the retailers' appointed companies. This includes not only clients that are hard to place because of unusual or hazardous exposures, but also clients that have special coverage needs that are not fulfilled by so-called "standard" companies. In general, retailers are looking for wholesalers who:

- Provide access to markets needed by the retailers' clients;
- Represent financially sound insurers;
- Provide prompt, courteous and efficient service; and
- Furnish timely quotes that lead to a high "hit ratio."

How many wholesalers does a retailer need? Because of the specialty nature of the wholesale market, it is generally necessary for the retailer to establish relationships with more than one wholesaler. To capitalize on the full benefits of the wholesale market, the retailer should be generally aware of client needs and establish relationships with wholesalers who can meet those needs. Retailers should know the strengths and weaknesses of the wholesalers they represent. When marketing accounts, retailers should carefully consider which single wholesaler is most capable – through company representation, specialization and experience – of bringing the submission to a successful conclusion. Trying to market the same account with more than one wholesaler is usually not an efficient approach.

Information used by retailers to qualify wholesalers

Retailers are concerned with a wholesaler's reputation in the industry. In addition, retailers place a great deal of reliance on personal relationships with a wholesaler's management and marketing staff.

Standardized profile forms

Because an overwhelming percentage of retailers and wholesalers indicate they would use an industry-standard profile form to develop basic information, the Task Force developed such forms – see the **Appendix**. The Task Force recommends that retailers and wholesalers use these forms as checklists to evaluate their qualifying process.

Errors and omissions insurance

Despite the three respondents who say they are offended if a retailer asks for evidence of E&O, the Task Force believes retailers have as much of a right to ask about the wholesaler's E&O insurance as wholesalers have to ask about retailers' coverage.

Why is this exchange of E&O information important? For one thing, it serves as mutual evidence of good faith and professional courtesy. The E&O certificate shows that the agency has been able to obtain coverage with a suitable insurer and that coverage is adequate for the size and complexity of the agency.

The Task Force recommends that wholesalers and retailers carry E&O insurance with limits of at least \$500,000 per claim and that they exchange evidence of E&O when establishing the relationship and when the E&O renews each year.

BEST PRACTICES ESTABLISHING RELATIONSHIPS

- n Wholesalers should accept the standard retail agency profile form developed by the Task Force (see Appendix) when provided by a retailer, and request other required information on a supplement to this form.
- n Retailers should use the standard wholesale agency profile form (see Appendix) developed by the Task Force as a checklist when searching for a wholesaler.
- n Wholesalers and retailers should carry E&O insurance with limits of at least ~~\$500,000~~ **1,000,000** per claim and should exchange evidence of E&O with each other when establishing the relationship and when the E&O renews each year.

See Appendix for standardized profile forms.

CONTRACTS

Contracts between wholesalers and retailers – required or not?

Most wholesalers require execution of a contract prior to doing business with a retailer. There is no standard contract – each wholesaler develops its own, and the terms and conditions of the contracts vary widely from one to another.

The Independent Agent's "Guide to Agency-Company Agreements," published by the Independent Insurance Agents & Brokers of America (IIABA), notes two disturbing trends related to contracts between independent agents and the companies they represent:

1. Independent agents generally either don't know or don't care about what they are signing until it is too late.
2. Some companies are willing to take advantage of this lack of attention either by having agents sign deficient contracts or by seeking to ignore rights granted under their own agreements.

These same trends are evident in the "Don't Know" responses by retailers when asked about specific provisions of their contracts with wholesalers (see survey responses on following pages). While it may not be possible to unilaterally change a wholesaler's contract, the retailer should be aware of its terms and conditions so there won't be any unpleasant surprises later.

Contract provisions of interest to retailers

Hold harmless

A contractual hold harmless or indemnification provision requires one party to indemnify the other for losses and expenses incurred by the second party as a result of the actions of the first party. The usual trigger for indemnification is negligence, but some contracts may require indemnification for other types of wrongful acts.

The survey reveals that most contracts between wholesalers and retailers require the retailer to indemnify the wholesaler, but fewer than half of the contracts require the wholesaler to indemnify the retailer. This inequity in hold harmless provisions may be a direct result of the unequal bargaining power between the two parties and possibly the lack of attention that retailers give to reading their contracts.

An indemnification provision is helpful only if the indemnifying party has enough assets or insurance to back it up. Some errors and omissions liability policies purchased by insurance agents specifically exclude liability assumed by the insured under a contract, except for liability that would be imposed even in the absence of the contract. This may be especially true of E&O policies purchased by wholesalers, since the coverage offered in such policies is generally more limited than that for retailers. Indemnification provisions in wholesaler-retailer contracts may be ill-advised for this reason alone. Generally, neither party is in a position to provide unlimited indemnification to the other. It may be a good idea to leave indemnity provisions out of the contracts, and let the doctrine of common law indemnification play out in the event one party's actions adversely affect the other.

The Task Force recommends that contracts not include indemnification provisions. As an alternative, if the contract includes an indemnification provision, the Task Force recommends that it be bi-lateral.

Termination

Wholesalers are obviously not in the same position as insurance companies when it comes to reasons they might want to terminate a relationship with a retailer. An insurer's desire to write business ebbs and flows based on many different internal and external factors. When an insurer terminates a contract with an agency, the consequences for the agency as well as the policyholders placed in that company may be significant.

A wholesaler on the other hand, just like a retailer, is in business to write all the insurance it can write. A wholesaler will generally terminate an agent's contract only for reasons particular to that agent, such as breach of contract, malfeasance or lack of production. The consequences of the termination are generally less severe in the long term, because the retailer has a wide range of wholesalers from which to choose. In the short term, however, a contract termination can disrupt an agency's normal operations. For this reason, the Task Force recommends that contracts include provision for at least 30 days' advance notice of termination, except for intentional breach of contract or malfeasance by the retailer. In addition, the Task Force recommends specific provisions that require the wholesaler to honor outstanding quotes and continue accepting renewal submissions during the notice period.

Uncollectible audits

If an insured refuses or is unable to pay additional premium resulting from a final audit, the insurance company is in a much better position to accept the "loss" than is either the wholesaler or the retailer. The Task Force recommends that wholesalers extend to retailers by contract the same rights that wholesalers enjoy from insurers and to make retailers aware of a "no-return" policy when an account is quoted.

Ownership of expirations and non-piracy

It is obvious from the survey results that there is a significant misconception among retailers that wholesalers are contractually prohibited from soliciting their customers. All of the retail respondents who were familiar with their contracts believed at least one of their contracts included such a provision. That seems unlikely, considering that barely half of the wholesalers' contracts include such a provision.

It must be said that the typical wholesaler has no intention of pirating the retailer's customers at any time. After all, they are in the wholesale business because they have no desire to deal directly with policyholders. However, because non-piracy provisions give comfort and security to retail agents, especially when a wholesale agency is affiliated with a retail agency, the Task Force recommends that all contracts include such provisions with exceptions for termination due to nonpayment of accounts not in dispute.

BEST PRACTICES CONTRACTS

- In order to provide stability, security and accountability in business dealings between wholesalers and retailers, and to encourage long-term relationships, wholesalers and retailers should enter into contracts provided by the wholesaler.
- Contracts should not include indemnification provisions. As an alternative, if the contract includes an indemnification provision, it should be bi-lateral.
- The contract should be for an indefinite term and permit termination by either party with at least 30 days' advance notice, unless terminated for breach of contract or malfeasance. Upon termination and during the notice period, the retailer should be permitted to bind outstanding quotes and submit renewal applications, unless the wholesaler is unable to place coverage for reasons beyond the wholesaler's control (e.g., lost market).
- Wholesalers should extend to retailers by contract the same rights that wholesalers enjoy from insurers with regard to uncollectible audits, and make retailers aware of "no-return" policy when an account is quoted.
- Contracts should include provisions that prohibit the wholesaler from soliciting business directly from a policyholder placed with the wholesaler by the retailer, either during the term of the contract or following termination of the contract, with exceptions for termination due to nonpayment of accounts not in dispute.
- Retailers should read their contracts carefully and ask questions if they don't understand a provision in the contract. Retailers should request revisions to contracts that don't include provisions recommended by the Task Force.

See Appendix for suggested wording for contract provisions recommended above.

BINDING AUTHORITY

Wholesaler binding authority

Approximately half of the responding wholesalers do not have binding authority with at least some of the companies they represent. This fact highlights an important consideration for retailers when reviewing quotes received from wholesalers and when requesting that coverage be bound. If a wholesaler does not have binding authority with the company, it may take longer to confirm that coverage has actually been bound by the insurance company. When this is the case, the retailer should make no representations to the proposed insured that coverage is bound until written confirmation is received.

The Task Force recommends that wholesalers provide written quotes that clearly indicate whether coverage can be bound by the wholesaler or must be confirmed by the insurance company.

Retailer binding authority

Some retailers apparently are under the mistaken impression that they have binding authority with wholesalers, when in fact they do not. Retailers rarely have binding authority. In most cases, retailers are not authorized to issue written binders even after they have received confirmation that coverage has been bound.

Another complication in the area of binding authority of retailers is Rule 19.905 in the Texas Administrative Code, printed below.

Texas Administrative Code Chapter 19, Rule 19.905

When a licensed local recording agent who does not have an appointment from a particular insurance company has referred an application for insurance to a local recording agent or managing general agent who does have an appointment with that company and the referral has resulted in the issuance of a policy of insurance written by that company, the agent who has the appointment may share the commission with the agent who does not have an appointment. The local recording agent, without an appointment from the company which takes the risk or issues a policy, may prepare an application for insurance, may collect and remit premium due to the agent issuing any such policy, and may deliver the policy and any endorsements to the insured and shall as to such activities be regarded as the agent of the insured and shall not be considered to be the agent of the company for any purpose. Upon making such referral, the local recording agent without an appointment from the company which takes the risk shall make written disclosure to the insured that such agent is not authorized to bind coverage or to execute or issue a policy for the subject risk. An agent without an appointment from a particular insurer may not sign or execute policies or issue binders, endorsements, or any other indication of coverage on behalf of that insurer.

Based on this rule, a retailer is never authorized to sign or issue binders unless the agent or agency has an appointment with the insurance company. See the **Appendix** for a sample disclosure form that complies with this rule.

The Task Force recommends that retailers assume they do not have binding authority or even the authority to sign or issue a written binder, unless they receive such authority in writing from the wholesaler.

ACORD binders

The ACORD Binder is an industry standard form that is widely recognized by retailers, “standard” insurers, and policyholders alike. Most agency management systems used by retailers support ACORD forms.

According to wholesaler members of the Task Force, many wholesalers’ agency management systems do not support ACORD forms. The retailer members of the Task Force recommend that wholesalers should standardize their binder forms by adopting the widely accepted ACORD form.

BEST PRACTICES BINDERS

- Wholesalers should provide written quotes that clearly indicate whether coverage can be bound by the wholesaler or must be confirmed by the insurance company.
- Retailers should assume they do not have binding authority or even the authority to issue a written binder, unless they receive such authority in writing from the wholesaler.
- (Retailer recommendation) wholesalers should move to standardize binder forms to the more recognized ACORD form.

Issuance of certificates by wholesalers

Many wholesalers do not have the authority to issue certificates of insurance for at least some of the companies they represent. In conversations with several wholesalers, the Task Force learned that some wholesalers do not issue certificates because they don't want to – they either refuse to provide certificate service or they tell the retailer to issue certificates as needed.

There appears to be a “disconnect” in the respective perceptions of wholesalers and retailers with regard to how long it takes wholesalers to issue certificates. The Task Force recommends that wholesalers respond to written requests within 24 hours.

Issuance of certificates by retailers

Some retailers apparently are under the mistaken impression that they have the authority to issue certificates of insurance on business written through wholesalers, when in fact they do not.

Another complication in the area of certificates is Rule 19.905 in the Texas Administrative Code (see Binding Authority). Based on that rule, a retailer is never authorized to sign or issue certificates of insurance unless the agent or agency has an appointment with the insurance company.

With regard to business placed with a surplus lines insurer, the Texas Department of Insurance provided the following statement in a recent bulletin: “Agents should not sign certificates of insurance or other documents evidencing coverage issued by an eligible surplus lines insurer unless the agent holds a surplus lines license.”

The ACORD instruction guide for using its certificates includes the following statement concerning the Authorized Representative section of the certificate: “Form must be signed by an agent, broker, or other representative authorized by all companies to issue certificates.”

The Task Force acknowledges the wide variance of current practices among wholesalers and retailers regarding issuance of certificates of insurance. The retail members of the Task Force believe that wholesalers are responsible for furnishing certificates of insurance to retailers in a timely manner upon request. The wholesale members of the Task Force are reluctant to recommend any single Best Practice that some wholesalers could not or would not perform. Accordingly, the Task Force developed the following optional recommendations, shown below in the order of preference:

1. Wholesaler issues a master certificate on the account at the time it is written, completes a specific certificate with job-specific data when requested by the retailer, and faxes, e-mails or mails the completed certificate to the retailer within 24 hours of request.
2. Retailer issue certificates as needed and faxes or e-mails to wholesaler for signature. Wholesaler faxes, e-mails or mails the signed certificate to the retailer within 24 hours of request.
3. Wholesaler gives retailer written authority to issue certificates, either on a general or specific basis. Retailer sends copy of completed certificate to wholesaler.
4. Wholesaler gives retailer oral authority to issue certificates on a specific basis. Retailer sends copy of completed certificate to wholesaler.

In addition, the Task Force recommends that retailers take the initiative to ask wholesalers about certificate procedures for each account.

Notice of cancellation to certificate holders (Updated in June 2013)

When wholesalers and retailers were surveyed in 2003, the typical certificate of insurance stated that the insurer would “endeavor” to provide notice of cancellation and the agency typically entered a number of days in the cancellation section. The survey results displayed below reflect these procedures. Today, the ACORD certificate form simply states that the policies will be canceled and notice delivered in accordance with policy provisions. If the certificate holder insists on receiving notice of cancellation, the policy must be endorsed in such a way that obligates the insurance company to send notice. For more detailed information, see the IIAT publication “Best Practices for Certificates of Insurance,” available to members at iiat.org.

ACORD certificates of insurance

The ACORD Certificate of Insurance form is an industry standard form that is widely recognized in the industry, as well as by policyholders and certificate holders. The Task Force recommends that wholesalers and retailers use the ACORD Certificate of Insurance form.

PRACTICES CERTIFICATES OF INSURANCE

- Wholesalers should respond to written requests for certificates within 24 hours.
- Wholesalers have the primary responsibility for issuing certificates of insurance requested by retailers, or for specifically authorizing retailers to issue certificates, in accordance with the following optional recommendations, shown in the order of preference:
 1. Wholesaler issues a master certificate on the account at the time it is written, completes a specific certificate on the account with job-specific data when requested by the retailer, and faxes or e-mails or mails the completed certificate to the retailer within 24 hours of request.
 2. Retailer issue certificates as needed and faxes or e-mails to wholesaler for signature. Wholesaler faxes or e-mails or mails the signed certificate to the retailer within 24 hours of request.
 3. Wholesaler gives retailer written authority to issue certificates, either on a general or specific basis. Retailer sends copy of completed certificate to wholesaler.
 4. Wholesaler gives retailer oral authority to issue certificates on a specific basis. Retailer sends copy of completed certificate to wholesaler.
- Retailers should take the initiative to ask wholesaler about certificate procedures on each account.
- If the certificate holder insists on receiving notice of cancellation, the policy must be endorsed in such a way that obligates the insurance company to send notice.

SUBMISSIONS

Acknowledgment of submissions

Communication is critical to the submission process. If a wholesaler doesn't acknowledge receipt of a retailer's submission, the retailer's workload is increased because a short suspense and follow-up is required. The Task Force recommends that wholesalers always acknowledge a retailer's submission by phone, fax, e-mail or mail.

Timeliness of the acknowledgment

The Task Force recommends that wholesalers acknowledge receipt of a submission within 24 hours.

Contents of the acknowledgment

Communication between the wholesaler and the retailer is a key component of efficient business relationships. Knowing what companies will be approached by the wholesaler can provide the retailer with some level of assurance that the submission is receiving the attention it deserves, and will permit the retailer to pass that assurance along to the client. In addition, the retailer will be less likely to seek or demand frequent status reports. The Task Force recommends that wholesalers routinely communicate this market information to retailers at the time the submission is received or shortly thereafter.

The Task Force recommends that the submission acknowledgment include a reminder that coverage can't be bound until a binder is actually confirmed by the insurance company or the wholesaler.

Quality of the submission

Incomplete submissions are the bane of every wholesaler. It's obvious from the survey results that retailers think they are doing a much better job than they really are.

An incomplete submission is a waste of everyone's time. The incomplete submission must be reviewed by the wholesaler, who then must develop questions and request the missing information from the retailer. The submission must be suspended and perhaps followed up on. This extra work prevents the underwriter from working on a submission from another retailer.

Wholesalers ultimately come to the point where they know which retailers consistently provide complete submissions and the submissions from those retailers go to the top of the stack.

The Task Force recommends that retailers complete applications in full (no blanks) and furnish supplementary information to give the wholesaler a complete "picture" of the account. See the **Appendix** for a Submission Checklist (or, How to Get to the Top of the Pile).

Duplicate submissions and agent-of-record letters

In a narrative part of the survey, wholesalers were asked to briefly describe the agency's policy or procedures concerning duplicate submissions on the same account from more than one retail agency.

Thirty-three responding wholesalers (out of 41) said they handle submissions on a first-come first-served basis. Upon receipt of a second submission on the same account, they require the second retailer to obtain a letter signed by the prospect naming the second agent as the "agent of record."

The other eight respondents indicated they offer the same quote to each retailer who provides a complete submission.

One respondent acknowledged how difficult this situation can be: "Generally first-in gets the quote, unless submissions are sent in more than 60 days just to block a market, but we sometimes request the producer to have the insured sign an agent of record. This may be the most difficult area to be fair in."

It is not uncommon for an incumbent retailer to attempt to "block" markets by sending early submissions to multiple wholesalers with no intention of actually presenting the quotes received from those wholesalers. This anti-competitive practice is frustrating for wholesalers and retailers alike.

Another problem is that agents sometimes ask clients to sign agent-of-record letters without explaining what the letter means – that the client is "firing" the agent that made the first submission (often the incumbent agent) and giving control of the account to the second agent. When asked to sign another letter by the first agent to rescind the letter given to the second agent, the picture then becomes even more confusing and frustrating for all concerned, while at the same time creating delay in the quoting process.

While acknowledging that the "first-come first-served or agent-of-record-letter" method is not perfect, it is the method preferred by a majority of wholesalers and retailers.

The Task Force recommends that wholesalers notify retailers when duplicate submissions are received and explain their procedures for duplicate submissions at that time. Upon receipt of an agent-of-record letter, the wholesaler should advise the first retailer that they have five days to obtain a rescinding letter.

The Task Force recommends that retailers explain agent-of-record letters to clients and prospects before asking them to sign.

BEST PRACTICES SUBMISSIONS

- Wholesalers should acknowledge receipt of a retailer's submission by phone, fax, e-mail, or mail within 24 hours.
- Wholesalers should routinely communicate market information to retailers at the time the submission is received or shortly thereafter.
- Wholesalers should include in the submission acknowledgment a reminder that coverage can't be bound until a binder is actually confirmed by the insurance company or the wholesaler
- Retailers should furnish complete applications and supplementary information to give the wholesaler a complete "picture" of the account. See the Appendix for a Submission Checklist (or, How to Get to the Top of the Pile).
- When wholesalers receive duplicate submissions on the same account, they should notify both retailers of the duplicate submission and explain their procedures for duplicate submissions at that time.
- Retailers should explain agent-of-record letters to clients and prospects before asking them to sign.

See Appendix for submission checklist for retailers.

RENEWALS

Beginning the renewal process

Most wholesalers and retailers begin the renewal process around 60 days prior to the expiration date. The Task Force recommends that wholesalers contact retailers at least 60 days prior to expiration by informing retailers what information is needed for renewal.

Timeliness of renewal quotes

The Task Force recommends that retailers forward renewal information to wholesalers at least 30 days prior to the expiration date in order to meet their own expectations of obtaining renewal quotes at least 10 days prior to expiration.

Despite the expectations and best intentions of wholesalers and retailers (93 percent of both), to have renewal quotes ready 10 or more days prior to the expiration date, the reality is far different according to retailers – 33 percent say they are receiving quotes five or fewer days prior to the expiration date. While realizing that wholesalers are often at the mercy of the insurance companies they represent, the Task Force recommends that wholesalers strive to get renewal quotes to retailers at least 10 days prior to expiration.

Renewal quote extensions

Some wholesalers may allow an extension of the expiring policy only for extenuating circumstances, but not just to give the retailer or the customer more time to shop for a lower renewal premium. The Task Force recommends that retailers not ask for an extension except for extenuating circumstances, and that wholesalers attempt to grant extensions when circumstances warrant.

Shopping renewals

The Task Force recommends that wholesalers and retailers at least consider other companies and markets at renewal time, but actual shopping should be reserved for cases where the agent sincerely believes the policyholder will benefit from other quotes.

Wholesalers and retailers are together in the belief that shopping an account at renewal generally does not affect an underwriter's desire to do a good job and retain the account. The Task Force believes this is the right attitude and recommends that all wholesalers and their companies adopt this approach.

BEST PRACTICES RENEWALS

- Wholesalers should contact retailers at least 60 days prior to expiration by informing retailers what information is needed for renewal.
- Retailers should forward renewal information to wholesalers at least 30 days prior to the expiration date.
- Wholesalers should strive to get renewal quotes to retailers at least 10 days prior to expiration.
- Retailers should not ask for an extension of the expiring policy except rarely for extenuating circumstances. Wholesalers should attempt to grant extensions when circumstances warrant.
- Wholesalers and retailers should at least consider other companies and markets at renewal time, but actual shopping should be reserved for cases where the agent sincerely believes the policyholder will benefit from other quotes.
- Wholesalers and their companies should not “punish” an account for shopping at renewal time, and should focus instead on doing a good job to earn the opportunity to retain the account.

QUOTES

Format and content of quotes

Retailers don't want to go back to the wholesaler to request additional information on each quote. The Task Force recommends that wholesalers provide written quotes that include sufficient information to make the quote understandable and presentable to the client.

Coverage issues

On renewal quotes, the wholesaler is arguably in a better position to determine if there are any significant coverage changes from one policy to the next. The Task Force recommends that wholesalers communicate any coverage changes to retailers when a renewal policy is quoted.

On all quotes, the wholesaler is generally in a better position to understand coverage limitations that might have an adverse effect on particular accounts. For example, an absolute assault and battery exclusion on an apartment account could cause a significant gap in coverage that the retailer might miss or not completely understand. The Task Force recommends that wholesalers highlight such issues on their quotes, and offer alternatives if those issues can be addressed by endorsements or another market.

BEST PRACTICES QUOTES

- n Wholesalers should provide written quotes.
- n Wholesalers should include the following information in each written quote:
 - Best rating of insurer
 - Additional information needed to bind
 - Binding procedure
 - Sample policy forms and endorsements if not “standard”
 - Policy form editions and endorsement descriptions if “standard”
 - Payment terms
- n Retailers should request sample policy forms and endorsements (if not “standard”) or policy form editions and endorsement descriptions (if “standard”), if items are not included in the wholesaler’s quote.
- n Wholesalers should communicate any coverage changes when a renewal policy is quoted.
- n Wholesalers should highlight significant coverage issues on particular accounts and offer alternatives if those issues can be addressed by endorsements or another market.
- n Retailers should read quotes carefully and communicate with the wholesaler if they have any questions.

POLICYHOLDER SERVICE

(Policy Issuance, Endorsements and Claims)

Policy issuance

The vast majority of wholesalers and retailers agree that it takes fewer than 60 days to issue and process a policy after binding, and a significant percentage agree that it takes less than 30 days. Realizing that wholesalers are often at the mercy of their insurance companies, the Task Force recommends that wholesalers strive for issuance and processing within 30 days after binding.

Checking issued policies

The wholesaler and the retailer each have a responsibility to check issued policies for accuracy. The Task Force recommends that both the wholesaler and the retailer establish and maintain policy-checking procedures.

Endorsements

When a policyholder requests a change to a policy, the policyholder generally expects that the additional coverage is effective as soon as the change is requested from the retail agent. Unfortunately, many retail agents also assume that coverage is bound as soon as the change is requested from the wholesaler. In most cases, this simply is not true – a fact that has resulted in many E&O claims.

Communication is the key to avoiding problems and misunderstandings in the area of endorsements. When there is no communication between the wholesaler and the retailer, or the retailer and the policyholder, every day that passes after a policyholder requests a change increases the odds of an uncovered claim involving the subject of the change.

The Task Force recommends consistent communication and follow-up procedures by wholesalers and retailers to ensure E&O-proof endorsement processing. See Best Practices at the end of this chapter for specific recommendations.

Claims

Failure of a wholesaler to acknowledge receipt of a claim, or of a retailer to follow up on claim notices, can lead to serious E&O exposures, especially when dealing with liability claims. The Task Force recommends that wholesalers acknowledge receipt of claim notices within 24 hours of receipt. If a retailer does not receive acknowledgement from a wholesaler, the Task Force recommends that the retailer follow up within three days.

BEST PRACTICES POLICYHOLDER SERVICES

Policy Issuance

- n Wholesalers should strive for issuance and processing within 30 days after binding.
- n Wholesalers and retailers should establish and maintain policy-checking procedures to ensure accuracy of the issued policy compared to the application and order.

Endorsements

- n When a policyholder requests a change, the retailer should orally tell the policyholder that coverage is not bound until the insurance company confirms, and then follow up in writing with confirmation of the requested change and a statement that coverage is not bound until further notice.
- n The retailer should request the change by fax or e-mail (depending on wholesaler's preference) and verify internally that the fax or e-mail was transmitted successfully.
- n Upon receipt of the change request, the wholesaler should acknowledge receipt immediately (within 24 hours) and include a reminder that coverage is not bound until the wholesaler or the insurance company confirms.
- n If the retailer doesn't receive confirmation from the wholesaler within 24 hours, the retailer should follow up by phone, fax or e-mail to confirm receipt.
- n When the wholesaler is able to confirm that the additional coverage is bound, the wholesaler should inform the retailer and the retailer should inform the policyholder, with additional assurance that the issued endorsement will follow shortly.
- n The retailer should follow up with the wholesaler if the retailer doesn't receive binder confirmation within 10 days, and continue to follow up at 10-day intervals. The retailer should update the policyholder each time, reminding the policyholder that coverage isn't bound yet.
- n Wholesalers should strive to issue endorsements within 30 days of the original request.

Claims

- n Wholesalers should acknowledge receipt of claim notices within 24 hours of receipt.
- n If a retailer does not receive acknowledgment from a wholesaler, the retailer should follow up within three days.

SURPLUS LINES

Quoting a surplus lines company

Texas surplus lines law is clear: A policy is not eligible for placement in a surplus lines company “unless the full amount of insurance required is not procurable” and “after a diligent effort has been made to do so” from a licensed insurer.

What does the law mean when it refers to “the full amount of insurance?” Certainly, it is referring to limits; if an admitted insurer won’t or can’t provide the total limit needed, it’s permissible to place the excess limits in a surplus lines insurer. In addition, documented differences in coverage may be sufficient to meet the requirements, according to legal sources at the Texas Department of Insurance. An agent must have the file documented sufficiently to prove that the coverages offered by the surplus lines insurer represent an overall enhancement to the policyholder, compared to the coverage offered by the admitted insurer.

Texas wholesalers and retailers should be careful to comply with the law because it is vigorously enforced by the courts whenever a surplus lines policy becomes the subject of litigation in a coverage dispute. When dealing with a damaged policyholder/consumer, courts show little mercy when agents are unable to document compliance with the law.

Retailers need to carefully document the effort that has been made to place coverage in an admitted company.

The Task Force recommends that retailers document files to verify what effort has been made to place the coverage in an admitted company. The Task Force recommends that retailers give disclosure letters to policyholders when placing coverage with a surplus lines insurer – see the **Appendix** for a sample letter. See also in the **Appendix** the Surplus Lines Checklist that can be used to document issues related to placing an account through a surplus lines company.

When a retailer has a quote from both a surplus lines company and an admitted company, the Task Force recommends that only the admitted company quote be given to the customer, unless the retailer can clearly document coverage enhancements on the surplus lines policy compared to the admitted company policy. In this case, the Task Force recommends that both quotes be given to the customer.

Guaranty fund disclosure

The surplus lines law requires that each policy or evidence of coverage contain disclosure wording. This wording is usually stamped or inserted on the declarations page or to a separate page directly underneath the declarations. While the law requires the surplus lines agent to affix this disclosure to the policy, retail agents may be held liable as well for not ensuring that the wording appears on the policy. The prescribed wording is as follows:

“This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus lines coverage pursuant to the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and this insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Insurance Code. Chapter 225, Insurance Code, requires payment of _ (insert appropriate tax rate) percent tax on gross premium.”

The Task Force recommends that both wholesalers and retailers maintain procedures and checklists to be sure this wording is placed on a surplus lines policy before it is mailed to a policyholder.

Surplus lines tax and stamping office fee

The Task Force recommends that wholesalers display the surplus lines tax and stamping office fee on their quote letters.

Courtesy filings

A retailer will occasionally locate a market for a particular risk by responding to an ad in a national magazine or on the Internet. If the insurance company underwriting the business is not admitted in Texas, the market can't be used without the involvement of a Texas-licensed surplus lines agent. (Note: a wholesaler located in another state can obtain a Texas surplus lines license.) The agent offering the program may suggest that the retailer find a resident surplus lines agent to make a “courtesy filing” with the Texas surplus lines stamping office. Such filings are illegal. Retailers should not ask a Texas surplus lines agent to make a courtesy filing. If a suitable market for the account can't be found through a Texas-licensed agent, the retailer should walk away from the account.

BEST PRACTICES SURPLUS LINES

- n Retailers should document their files to verify what effort has been made to place the coverage in an admitted company.
- n Retailers should give disclosure letters to policyholders when placing coverage with a surplus lines insurer – see the Appendix for a sample letter.
- n When a retailer has a quote from both a surplus lines company and an admitted company, only the admitted company quote should be given to the customer, unless the retailer can clearly document coverage enhancements on the surplus lines policy compared to the admitted company policy.
- n When the retailer has a quote from both a surplus lines company and an admitted company and has documented evidence that the surplus lines coverage is better, both quotes should be given to the customer.
- n Wholesalers and retailers should maintain procedures and checklists to be sure the guaranty fund disclosure wording is placed on a surplus lines policy before it is mailed to a policyholder.
- n Wholesalers should display the surplus lines tax and stamping office fee on quote letters.
- n Retailers should not try to access markets from wholesalers who are not licensed in Texas and should not ask surplus lines wholesalers to make a courtesy filing.

See Appendix for surplus lines checklist and customer disclosure letter.

FINANCIAL RATINGS OF INSURERS

Determining and reporting financial ratings

When an insurance company goes broke and can't pay its claims, everybody is a loser. Both the wholesaler and the retailer should be keenly aware of the financial ratings of the companies they represent, and be alert for any changes in those ratings.

Wholesalers are in a better position than many retailers to monitor financial ratings, and should share that information with their retailers. Wholesalers who are surplus lines agents are statutorily obligated to determine the financial condition of an eligible surplus lines insurer before placing business with that insurer, and are prohibited from knowingly placing business in a financially unsound insurer.

The Task Force recommends that wholesalers include the Best rating of insurers on new and renewal quotes and notify retailers when an insurer's Best rating falls below "A-" as well any incremental reductions below "A-." The Task Force recommends that retailers maintain their own resources to monitor Best ratings of insurers used by the agency, make disclosure to policyholders when a company's Best rating is less than "A-" at the time of placement, and notify policyholders when a company's Best rating falls below "A-."

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Retail Agency Profile Form

Agency Name

Entity Name (if agency name is a trade name or “dba”)

Year Established (if less than 3 years, provide resumes on key personnel)

Mailing Address

Physical Address

Phone #

Fax #

Web Site Address

Tax ID #

Agency is: ☐ sole proprietorship ☐ partnership ☐ corporation ☐ LLC ☐ LLP ☐ LP

Agency Affiliations or Parent Entity (banks, other agencies,
etc.) Former Names or Previous Addresses (last 5 years)

Number of Employees (excluding principals and producers)

Number of Licensed Producers

Number of Branch Offices (list addresses on separate sheet)

Agency Principals:

1. Name Title

of years with agency E-mail

2. Name Title

of years with agency E-mail

If more than 2, list on a separate sheet.

Other Key Personnel:

1. Name Title

of years with agency E-mail

2. Name Title

of years with agency E-mail

If more than 2, list on a separate sheet.

License(s) held by sole proprietor or agency entity:

Type _____ License # _____

Type _____ License # _____

Type _____ License # _____

Breakdown of Agency Revenue:

Commercial Lines _____ Personal Lines _____

Life & Health _____ Other (specify) _____

Total Agency P&C Premium Volume:

Current Year _____ Last Year _____ Previous Year _____

Percentage of Premium Written Through Wholesalers _____

Describe Specialty in Any Areas _____

Membership in Trade Organizations ☐ IIAT Other (specify) _____

Five Largest Insurance Companies Represented:

Name _____ How Long? _____

Name _____ How Long? _____

Name _____ How Long? _____

Name _____ How Long? _____

Name _____ How Long? _____

Other Wholesalers Contracted With:

Name _____ How Long? _____

Name _____ How Long? _____

Name _____ How Long? _____

Name _____ How Long? _____

Primary Financial Institution Used _____

Attach:

☐ Copy of E&O Policy or Certificate

☐ Copy of P&C License for Sole Proprietor or Agency Entity

Wholesale Agency Profile Form

Agency Name _____

Mailing Address _____

Physical Address _____

Phone # _____ Fax # _____

Year Established _____ Web Site Address _____ Number of Employees _____

Agency Affiliations or Parent Entity _____

Former Names _____

Branch Offices _____

Agency Principals:

1. Name _____ Title _____

of years with agency _____ E-mail _____

2. Name _____ Title _____

of years with agency _____ E-mail _____

Other Key Personnel:

1. Name _____ Title _____

of years with agency _____ E-mail _____

2. Name _____ Title _____

of years with agency _____ E-mail _____

Products and Programs Offered

Describe Specialty in Any Areas

Companies Represented:

1. Name _____ Best Rating _____

of years represented _____ Admitted? _____ Binding Authority? _____

2. Name _____ Best Rating _____

of years represented _____ Admitted? _____ Binding Authority? _____

3. Name _____ Best Rating _____

of years represented _____ Admitted? _____ Binding Authority? _____

Licenses Held:

Type _____ License # _____

Type _____ License # _____

_____ Type _____ License # _____

_____ Type

_____ License # _____

Minimum Annual Premium Volume Expected _____

Membership in Trade Organizations: ☐ TSLA

☐ AAMGA

☐ IIAT

Other (specify)

Retailers Best Practices Evaluation Form

Retailers: Use this form to summarize and evaluate your current practices compared to the Task Force recommendations.

Wholesalers: Use this form to evaluate the practices of each of your retailers as a guideline for seeking improved communication and efficiency in those relationships.

Establishing Relationships

Does the retailer use the standard wholesale agency profile form developed by the Task Force?

☐ Yes ☐ No ☐ Don't Know

Does the retailer provide evidence of E&O coverage upon request?

☐ Yes ☐ No ☐ Don't Know

Does the retailer carry E&O insurance with limits of at least \$500,000 per claim?

☐ Yes ☐ No ☐ Don't Know

Contracts

Does the retailer read wholesalers' contracts carefully and ask questions if they don't understand a provision in the contract?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Binding

Does the retailer request written authorization from the wholesaler before issuing written binders?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Certificates of Insurance

Does the retailer request written authorization from the wholesaler before issuing certificates of insurance?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the retailer send copies of issued certificates to the wholesaler?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Submissions

Does the retailer furnish complete applications?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the retailer attempt to "block" markets?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the retailer send submissions to the wholesaler with sufficient lead time prior to the requested effective date?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Renewals

Does the retailer provide renewal information at least 30 days prior to the renewal date?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the retailer shop renewals with multiple wholesalers?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Quotes

Does the retailer read quotes carefully and communicate with the wholesaler if there are any questions?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Policyholder Service

Does the retailer check issued policies to ensure accuracy of the issued policy compared to the application and order?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the retailer submit endorsement requests promptly after the request is made by the insured?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the retailer submit claims promptly upon notification by the insured?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the retailer allow sufficient time for the wholesaler to process requests before following up on policy issuance, endorsements and claims?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Surplus Lines

Does the retailer document the insured's file to verify what effort was made to place the account in an admitted company?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the retailer give disclosure letters to policyholders when placing coverage with surplus lines insurers?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

When the retailer has quotes from admitted and non-admitted companies, does the retailer give only the admitted company quote, unless the retailer can clearly document coverage enhancements?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the retailer verify that the required guaranty fund disclosure wording is stamped on binders and policies?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Financial Ratings

Does the retailer verify the Best ratings of insurers on new and renewal quotes?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the retailer notify policyholders when an insurer's Best rating falls below "A-" as well as any incremental reductions below "A-"?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Wholesalers Best Practices Evaluation Form

Wholesalers: Use this form to summarize and evaluate your current practices compared to the Task Force recommendations.

Retailers: Use this form to evaluate the practices of each of your wholesalers as a guideline for seeking improved communication and efficiency in those relationships.

Establishing Relationships

Does the wholesaler accept the standard retail agency profile form developed by the Task Force?

☐ Yes ☐ No ☐ Don't Know

Does the wholesaler provide evidence of E&O coverage upon request?

☐ Yes ☐ No ☐ Don't Know

Does the wholesaler carry E&O insurance with limits of at least \$500,000 per claim?

☐ Yes ☐ No ☐ Don't Know

Contracts

Does the wholesaler provide a written agreement to formalize the relationship between the wholesaler and the retailer?

☐ Yes ☐ No ☐ Don't Know

Does the contract include indemnification provisions?

☐ Yes ☐ No ☐ Don't Know

If so, is the indemnification bi-lateral?

☐ Yes ☐ No ☐ Don't Know

Does the contract provide for an indefinite term?

☐ Yes ☐ No ☐ Don't Know

Does the contract provide for at least 30 days advance notice of termination, except for specified causes?

☐ Yes ☐ No ☐ Don't Know

Does the contract provide that, before termination, the retailer is permitted to bind outstanding quotes and submit renewal applications?

☐ Yes ☐ No ☐ Don't Know

Does the contract permit the retailer to return uncollectible audits?

☐ Yes ☐ No ☐ Don't Know

Does the contract prohibit the wholesaler from soliciting business directly from a policyholder, both during the term of the contract and following termination of the contract?

☐ Yes ☐ No ☐ Don't Know

Binding

Does the wholesaler provide written quotes that clearly indicate whether coverage can be bound by the wholesaler or must be confirmed by the insurance company?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the wholesaler use the ACORD binder form?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Certificates of Insurance

Does the wholesaler issue certificates of insurance at the retailer's request?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

If so, does the wholesaler provide prompt turnaround time?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the wholesaler provide written authority to the retailer to issue certificates?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the wholesaler use the ACORD Certificate of Insurance form?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Submission

Does the wholesaler acknowledge the retailer's submission within 24 hours by phone, fax, e-mail or mail?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the wholesaler promptly communicate what markets will be approached with the submission?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the wholesaler remind the retailer at the time of submission that coverage isn't bound until a binder is actually confirmed by the insurance company or the wholesaler?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

When the wholesaler receives a submission from two retailers, does the wholesaler promptly communicate this fact to both retailers and explain procedures at that time?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Renewals

Does the wholesaler contact the retailer at least 60 days prior to expiration to advise what information is needed for renewal?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the wholesaler provide written renewal quotes at least 10 days prior to expiration?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Quotes

Does the wholesaler provide written quotes that include:

Best rating?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Information Needed to Bind?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Binding Procedures?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Sample Policy Forms and Endorsements or Policy Form Editions and Endorsement Descriptions?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Payment Terms?

☐ Yes ☐ No ☐ Sometimes ☐ Don't Know

Does the wholesaler communicate any coverage changes when a renewal policy is quoted?

☐ **Yes** ☐ **No** ☐ **Sometimes** ☐ **Don't Know**

Does the wholesaler highlight significant coverage issues on particular accounts and offer alternatives?

☐ **Yes** ☐ **No** ☐ **Sometimes** ☐ **Don't Know**

Policyholder Service

Does the wholesaler process and issue policies within 30 days after binding?

☐ **Yes** ☐ **No** ☐ **Sometimes** ☐ **Don't Know**

Does the wholesaler check issued policies to ensure accuracy of the issued policy compared to the application and order?

☐ **Yes** ☐ **No** ☐ **Sometimes** ☐ **Don't Know**

When the retailer submits an endorsement request, does the wholesaler promptly acknowledge receipt and include a reminder that coverage is not bound until the wholesaler or the insurance company confirms?

☐ **Yes** ☐ **No** ☐ **Sometimes** ☐ **Don't Know**

Does the wholesaler process and issue endorsements within 30 days of the original request?

☐ **Yes** ☐ **No** ☐ **Sometimes** ☐ **Don't Know**

When the retailer submits a claim notice, does the wholesaler promptly acknowledge receipt within 24 hours?

☐ **Yes** ☐ **No** ☐ **Sometimes** ☐ **Don't Know**

Surplus Lines

Does the wholesaler always attach the required guaranty fund disclosure wording on binders and policies?

☐ **Yes** ☐ **No** ☐ **Sometimes** ☐ **Don't Know**

Does the wholesaler display the surplus lines tax and stamping office fee on quote letters?

☐ **Yes** ☐ **No** ☐ **Sometimes** ☐ **Don't Know**

Financial Ratings

Does the wholesaler include the Best rating of insurers on new and renewal quotes?

☐ **Yes** ☐ **No** ☐ **Sometimes** ☐ **Don't Know**

Does the wholesaler notify the retailer when an insurer's Best rating falls below "A-" as well as any incremental reductions below "A-"?

☐ **Yes** ☐ **No** ☐ **Sometimes** ☐ **Don't Know**

Suggested Wording for Contract Provisions

Indemnification

(Retailer) shall indemnify and hold (Wholesaler) harmless against all liability, including attorney's fees and costs of investigation and defense incident thereto, arising out of or relating to (Retailer's) acts or omissions, except to the extent (Wholesaler) causes or contributes to such errors;

(Wholesaler) shall indemnify and hold (Retailer) harmless against all liability, including attorney's fees and costs of investigation and defense incident thereto, arising out of or relating to (Wholesaler's) acts or omissions, except to the extent (Retailer) causes or contributes to such errors.

Term and Termination

It being the intent of (Wholesaler) and (Retailer) to provide for stability in their relationship, this Agreement shall remain in force unless terminated pursuant to the terms of this agreement.

This Agreement may be terminated by (Wholesaler) or (Retailer) upon either party giving the other at least 30 days' advance written notice, or immediately by written notice if due to breach of contract or malfeasance by either party.

(Wholesaler) shall not terminate this Agreement based on volume or mix of business placed by (Retailer), unless (Wholesaler) has provided written notice to (Retailer) of its requirements and given (Retailer) sufficient time to meet those requirements.

During the term of the agreement and during the termination notice period, (Wholesaler) shall honor outstanding quotes already given to (Retailer) and shall continue to accept and process renewal applications submitted by (Retailer), unless (Wholesaler) is unable to honor quotes or renewal requests as a result of circumstances beyond (Wholesaler's) control or termination is due to nonpayment of accounts not in dispute.

Following termination, (Retailer) shall be permitted to perform routine service on the business and to receive the same rate of commission paid on the business prior to termination.

Uncollectible Audits

(Retailer) is relieved from liability for additional premiums resulting from audits of policies placed by (Retailer), when (Retailer) has provided written notice to (Wholesaler) of inability to collect the premium from the policyholder within 60 days from the date the notice of premium due is received by (Retailer). This provision applies only if (Wholesaler) is relieved from liability by the insurance company.

Ownership of Expirations and Non-Piracy

The ownership, use and control of expirations, the records thereof, and the (Retailer's) work product, shall remain in the undisputed possession and ownership of (Retailer), and (Wholesaler) shall not use its records of those expirations or work product in any marketing method for the sale, service or renewal of any form of insurance coverage, or other product/service which abridges (Retailer's) right of exclusive ownership, use and control of the expirations or work product, nor shall (Wholesaler) refer or communicate this expiration information or work product to any other party.

Submission Checklist for Retailers

(Or, How to Get to the Top of the Pile)

General – Build your relationship with the wholesaler by:

- ☐ Maintaining friendly but professional relationship with the wholesaler at all times
- ☐ Learning the wholesaler's preferences and submitting accounts that meet those preferences
- ☐ Visiting the wholesaler occasionally (without wasting their time)
- ☐ Sending small gifts and thank-you notes to recognize outstanding service
- ☐ Always sending complete submissions
- ☐ Always sending submissions well ahead of the date a quote is needed
- ☐ Promptly providing additional information requested by the wholesaler

Specific – Submissions should include:

- ☐ Cover letter summarizing the nature of the insured's operations, expiring policy information, target premium, target quote date, your relationship with the account, and personal recommendation
- ☐ Typewritten fully-completed application (no blanks)
- ☐ Photographs
- ☐ Brochures
- ☐ Complete loss history, preferably company-generated loss runs, with narrative details on large claims
- ☐ Experience modifier worksheets
- ☐ Rating information
- ☐ Copies or descriptions of safety programs and training manuals
- ☐ Financial information
- ☐ Resumes of principals

DOs and DON'Ts for Retailers Working With Wholesalers

DOs

Do establish good working relationships with a limited number of wholesalers.

Do call the underwriter to qualify the account by phone.

Do give adequate lead time to quote. Think ahead.

Do provide a complete submission.

Do indicate what premium is needed to write the account.

Do request advance copies of forms used by the company providing the quote.

Do indicate if this is a new account, or one you control.

Do pay your account on time.

Do indicate whether other wholesalers are quoting on the account, and the markets they are quoting, if possible.

Do give feedback on the quote, and a last shot to write the account.

Do keep notes on market preferences and your experience with each wholesaler.

DON'Ts

Don't quote a surplus lines company against an admitted company.

Don't accept quotes without terms and conditions of coverage.

Don't try to make the risk look better than it is.

Don't quote, quote, quote and never bind.

Don't make the underwriter chase information needed to give an accurate quote.

Don't assume that coverage limitations must be accepted. Negotiate with the underwriter.

Don't blindly send each account to multiple wholesalers.

Don't keep quiet if you are unhappy with service.

Don't be unpleasant to work with.

DOs and DON'Ts for Wholesalers Working With Retailers

DOs

Do regularly communicate with retailers on your preferences and market strengths.

Do provide evidence of E&O coverage when requested.

Do develop agency agreements that are equitable and clear.

Do provide quotes that clearly communicate coverage, binding and payment conditions, and company financial information.

Do acknowledge receipt of a retailer's submissions, endorsement requests and loss notices.

Do provide renewal quotes at least 10 days prior to expiration.

Do monitor the financial condition of represented companies and notify retailers promptly of any negative changes.

DON'Ts

Don't market an account to a surplus lines company when the account is currently written by an admitted company, unless you are sure it is being non-renewed or you can provide better coverage.

Don't punish an account for shopping at renewal time.

Don't keep quiet if you are unhappy with a retailer's submissions.

Don't be unpleasant to work with.

Disclosure Statement for Brokered Business

Disclosure Statement

(In compliance with Texas Administrative Code 19.905)

RE: (insured's name)
(type of insurance)

In order to serve your insurance needs, our agency has referred your application to _____ We do not have appointment with the insurance company through which this insurance is issued, and therefore we are not authorized to bind coverage or to execute or issue the policy. We have the authority to prepare the application, collect and remit the premium, and deliver the policy and any endorsements. Please contact our agency if you require any changes to this policy or need to report a claim.

(agent's signature)

(insured's acknowledgment)

Date: _____

Surplus Lines Checklist

Account name:

Type of policy:

	Yes	No
Have you searched for an admitted company to write this account? Proper documentation of this must be on file.		
List of Admitted Companies approached and each reason for declination		
1.		
2.		
3.		
BEST RATING: Is the company rated by A.M. Best?		
If yes, what is the Best rating?		
LICENSE: Is the policy issued by an out of state broker?		
If so, who is responsible for filing and paying premium taxes? Broker <input type="checkbox"/> Agency STOP NOW. We don't have a surplus lines license.		
TAXES and FEES: Amount of policy fee \$_____ (100% earned & non-refundable)		
Surplus Lines Tax \$_____ & Surplus Lines Fee \$_____ (refundable)		
PREMIUM ISSUES:		
Is there a Minimum Earned Premium? If so, what % or amount?		
Is the policy on a Minimum and Deposit (M&D) basis?		
Is the policy auditable? If M&D, there will be NO return premium – advise insured.		
If policy is on a Premium Note, the down payment must equal the “greater of” the Minimum Earned plus 100% of Policy Fee, and never less than 25% of premium plus 100% of Policy Fee.		
Remember to advise insured on proposal of SHORT-RATE cancellation penalty.		
COVERAGE ISSUES:		
Do you have a copy of the coverage forms? Have you reviewed them carefully?		
Do you have a copy of all endorsements; terms & conditions indicated on the broker's proposal? If none are indicated, ask before quoting and review carefully.		
Additionally, complete standard “New or Renewal” coverage checklist		
DISCLOSURE TO INSURED:		
Have you furnished copies of all restrictive endorsements with the proposal and discussed with the insured?		
Has the insured been informed of the premium and payment conditions above?		
Has the insured been furnished the appropriate surplus lines disclaimer letter and signed a copy for our file?		
If company is not rated or rated less than B+, did you furnish the appropriate surplus lines/Best rating disclosure letter?		
Have you reviewed any additional coverage recommendations with the insured?		
Do you have written confirmation of binding from the broker?		
Suspense for receipt of policy or binder extension.		

Sample Letter – Disclosure of Surplus Lines Placement

SUBJECT: General Liability Policy

Dear Mr. Client:

Despite our efforts to place your coverage with an insurance company that is licensed in Texas, your policy will be placed through a surplus lines company. This company is different from a licensed company in several respects.

Surplus lines insurance companies must be approved by the Texas Department of Insurance to operate in Texas, but policies written through these companies are not protected by the state guaranty fund in the event the company becomes insolvent. The company we will place your coverage with is rated “ ” () by the A. M. Best Company.

In addition, surplus lines companies are not required to submit their policy forms to the Texas Department of Insurance for approval, so the coverage may not be as broad as that offered by a licensed insurance company.

Before we can issue your policy, we need for you to sign below, indicating that you understand and acknowledge your coverage may not be as broad as it has been in the past and that coverage will be placed through a surplus lines company. Please read your policy carefully when you receive it and call us if you have any questions.

Thank you for your business.

I acknowledge that I have reviewed this letter and understand that my insurance will not cover certain types of losses that may have been covered in the past, and that my coverage will be placed through a surplus lines company not subject to protection by the state guaranty fund.

Signed_

Date_