



Government of the District of Columbia  
Department of Insurance, Securities and Banking

Anthony A. Williams  
**Mayor**

Lawrence H. Mirel  
**Commissioner**



**MARKET  
CONDUCT  
EXAMINATION**



Government of the District of Columbia  
Department of Insurance, Securities and Banking

**Government of the District of Columbia**  
**Department of Insurance, Securities and Banking**



**Lawrence H. Mirel**  
**Commissioner**

September 14, 2005

I, Lawrence H. Mirel, Commissioner of Insurance, Securities and Banking of the District of Columbia, hereby certify that I have compared the annexed copy of the

**MARKET CONDUCT EXAMINATION REPORT**

**of**

**DENNIS CRAFT**

**On behalf of**

**MARSH USA INC.**

With the original on file in this Department and the same is a correct transcript there from, and of the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed the seal of this Department, at the  
City of Washington, the day and year first written

A handwritten signature of Lawrence H. Mirel in cursive script.

Lawrence H. Mirel  
Commissioner of Insurance, Securities and Banking

## TABLE OF CONTENTS

	PAGE
SALUTATION	1
FORWARD	2
SCOPE OF EXAMINATION	2
METHODOLOGY	3
BROKER PROFILE	4
OPERATIONS AND MANAGEMENT:	
Antifraud Procedures	6
Disaster Recovery Plan	6
Records	6
Broker Licensing	7
Statutory Bond	7
DISB Report Filings	8
Tax Reporting and Tax Allocation	9
Consumer Complaints	11
Calculation and Refund of Unearned Premium	11
Broker Cooperation with Examiners	11
PLACEMENT ACTIVITIES	
Disclosure Requirements	12
Listing of all Forms and Endorsements in Declarations	13
Selected Insurer Evaluation Practices	14
Binding Authority	15
Marketing and Advertising	15
Diligent Effort Before Placement	16
SUMMARY OF FINDINGS	17
ACKNOWLEDGEMENT	18

## **SALUTATION**

May 31, 2005

Honorable Lawrence. H. Mirel, Commissioner  
Department of Insurance and Securities Regulation  
District of Columbia  
810 First Street Northeast, Suite 701  
Washington, DC 20002

Dear Mr. Commissioner:

In accordance with your instructions and pursuant to District of Columbia Official Code 31-1402 (a), and procedures promulgated by the National Association of Insurance Commissioners, a comprehensive market conduct examination of the management and affairs has been conducted of:

**DENNIS CRAFT  
On Behalf of  
MARSH USA INC.**

with statutory administrative offices located at 1255 23rd Street NW, Suite 400 Washington, D.C. 20037.

The report thereon, as of December 31, 2003 is herein respectfully submitted.

## **FORWARD**

This examination is a systematic investigation of documents, procedures, and systems conducted in accordance with the guidelines and procedures recommended by the National Association of Insurance Commissioners (NAIC). The examination report generally notes only those areas or items which the Department of Insurance, Securities and Banking (DISB) takes exception. The examination reflects the District of Columbia insurance activities of Mr. Dennis Craft, hereinafter referred to as the Broker. In the District of Columbia, a brokerage firm, such as Marsh USA, Inc., cannot obtain a surplus line broker license. Marsh USA, Inc. uses the broker license of its designated employee. Mr. Dennis Craft is an employee of Marsh.

Any violation found in this report is any Broker activity that does not comply with an insurance statute or regulation. Brokerage policies, practices and procedures are only commented on for the purposes of giving the reader clarity. The examination report may include management recommendations addressing areas of concern noted by DISB but which no statutory violation exists. In reviewing material for this report, the examiners relied primarily on records and materials furnished by the Broker.

This is the Broker's initial market conduct examination.

## **SCOPE OF EXAMINATION**

The on-site phase of this Comprehensive Surplus Lines Broker Examination of Marsh USA, Inc. was performed at its Washington, D.C. branch office location, which is situated at 1255 23rd Street NW, Suite 400. The examination covered the period from January 1, 2001 through December 31, 2003.

In accordance with DC Official Code § 31-1403, the guidelines and procedures set forth in the Examiners' Handbook adopted by the NAIC have been followed in the conduct of the examination and the preparation of this report.

## METHODOLOGY

The examination process consists of a sequence of activities. Obtaining and confirming an understanding of the Broker's operational system is vital in the examination process. Such activities are:

- Evaluating brokerage procedural manuals and memorandum;
- Conducting interviews with brokerage personnel;
- Scanning transactions prior to sample selection:

After obtaining operational knowledge, an evaluation or risk assessment is performed of the Broker's unique characteristics, identifying and summarizing the major risks that then drive the individual exam area strategies.

Although the sequence of activities outlined occurs in every DISB market conduct examination and is based on NAIC Handbook standards and tests, some standards are measured using an analysis of general data gathered by the examiner, or provided by the Broker in response to queries. Some standard findings are developed through direct reviews of random sampling of files.

The examiner's judgment determines the specific procedures, plans and tests appropriate for each brokerage operation. The standards were measured using tests designed to adequately measure how the Broker met the standard. Each standard applicable to a Broker's functional operation is reported under its respective heading. A failed standard that also has a specific DC Official Code citation is identified under the related broker function. Unresolved examination violations/issues are at the end of the report under the caption, "Summary of Significant Issues". Areas of review having a direct statutory requirement but not a direct NAIC standard are accompanied at the end of the report under a separate report heading.

This market conduct examination was focused upon the following major areas:

- Operations and Management
- Placement Activities
- Areas having a direct statutory requirement but not a direct NAIC standard

## **BROKER PROFILE**

Marsh USA Inc. is an operating unit of Marsh, Inc. whose parent, Marsh & McLennan Companies, Inc. (MMC), is a global professional services firm with corporate offices at 1166 Avenue of the Americas, New York, NY 10036.

Marsh, Inc. is the world's leading risk and insurance services firm, with 2003 revenues of \$6.9 billion, and 38,000 colleagues in 410 offices, serving clients in more than 100 countries. Clients are served in two principal categories:

Risk management, insurance broking and program management services are provided for businesses, public entities, professional services organization, private clients and associations under the Marsh name.

Reinsurance-broking, risk and financial modeling and associated advisory services are provided to insurance and reinsurance companies, principally under the Guy Carpenter name.

Marsh USA Inc. is compensated through fees and/or commissions for services provided to clients to identify, value, mitigate, transfer and administer risk. In addition to this compensation and any wholesale brokerage commissions, the firm has market services agreements with its principal insurance markets through which it is compensated for services provided to the markets. These payments for services are based upon such factors as the overall volume, growth, and, in limited cases, profitability of the total premium placed with an insurer. Marsh no longer accepts market services agreement revenue from carriers for placing, renewing, consulting on or servicing any insurance policy on or after October 1, 2004. While these types of contingent commissions are common in this industry, the appearance of a conflict of interest has caused Marsh to withdraw from this practice altogether.

Documents providing a general description of Brokerage activities were reviewed to determine profile of operations, including management structure, goals, and recent developments.

The Washington operations of Marsh USA Inc. consist of office sites in both Washington, D.C. and Baltimore, MD, which were combined under a single management team effective January 1, 2002. The Washington operations, led by Mike Goss, are part of the Northeast Region of Marsh USA Inc.

The following table indicated the premium volume attributed to the Washington operations for the period under examination:

	Year	Year	Year
Source of Premium Income	2001	2002	2003
Surplus Lines Companies	\$86,461,039	\$153,631,511	\$256,584,832
Admitted Companies	297,257,345	458,217,426	552,266,506

### **OPERATIONS AND MANAGEMENT**

In order to evaluate the Broker's operations and management, the examiner gathered data using informational requests, direct questioning, interviews, and presentations by the Broker staff and officers.

During the course of this examination, the Broker's operations were reviewed using tests prescribed in the NAIC Examiners Handbook, Volume I, Chapter X to determine if the Broker was meeting established industry standards. The examiners verified that the Brokerage does not collect nonpublic personal information in connection with respect to their commercial business transactions. NAIC standards, B-11, B-12, B-13, B-14, B-15, B-16, B-17 and B-18 are not applicable in this examination and or excluded from comments and findings. The following report section gives direct reference to the NAIC handbook standards applicable for review.



NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-1

The broker has procedures in place to report, as required by statutes, rules, and regulations, fraudulent activities to the appropriate authorities.

Comments: The review methodology for this standard does not have a direct statutory requirement. DC Official Code §§ 22-3225.09 and 22-3225.12 deal with anti-fraud but do not apply to a surplus lines broker.

Finding: The Broker is in compliance with the standard.

Observations: The Broker's policy dealing with defalcations, misappropriations, and fraudulent or unauthorized transactions addresses both fraud involving outsiders and acts of officers and employees, which are regarded as potentially more serious because they could expose the Broker to criminal prosecution, civil liability and investor lawsuits.

Recommendations: It is recommended that the Broker review its existing procedures to ensure that any insurance fraud is reported to the appropriate authorities.

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-2

The broker has a valid disaster recovery plan

Comments: A review of the disaster recovery plan was performed to ascertain that the Brokerage has established a disaster recovery plan and that this plan is consistent with the public interest.

Findings: The Broker is in compliance with the standard.

Observations: The plan was last updated in 2004 and requires annual limited branch location testing. A team of specialists conduct comprehensive testing and training on all Marsh offices and perform unannounced testing using a variety of disaster scenarios.

Recommendations: An area not adequately addressed in the disaster plan is a procedure for evacuation of the handicapped. This matter was discussed with the disaster plan coordinator who agreed to consider the inclusion of these details in future plan revisions.

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-3

Records are adequate, accessible, consistent, orderly and comply with state record retention requirements

Comments: In connection with their verification and evaluation of surplus lines affidavit entries, the examiners reviewed numerous policy and marketing files. Particularly in view of the volume and complexity of these files, their maintenance, legibility, and

organization were found to be excellent. In addition, with regard to the maintenance and availability of records requested throughout the course of this examination, the examiners found that Marsh is fully compliant with the provisions of DC Official Code §§ 31-2231.10 and 31-1403(b).

Findings: The Broker is in compliance with the standard.

Observations: The Brokerage provided a copy of policies applicable to the retention and destruction of insurance records. Each Marsh office appoints a Custodian of Records who is responsible for the maintenance and destruction of insurance records. Records designated as core documents — insurance policies, endorsements, client notification letters for surplus lines placements, client service agreements and engagement letters — are retained permanently. Other insurance records, such as telephone logs, notes, and billing records are retained for a period of five (5) years following expiration.

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-4

The broker is appropriately licensed.

Comments: The review methodology for this standard has a direct statutory requirement. DC Official Code § 31-2502.40(a) that states in part any agent or broker licensed in the District may be licensed to procure policies from companies that are not authorized to do business in the District.

Findings: The Broker, Dennis Craft, is in compliance with the standard.

Observations: To the extent possible, the examiners reviewed licensing requirements with information provided by Marsh, including actual copies of Dennis Craft's licenses. As DISB was converting from a vendor-managed system containing all licensing information to an in-house system, DISB was unable to verify whether Marsh's roster of other employees licensed to transact surplus lines was consistent with DISB's licensing records.

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-5

All statutorily required bonds are in-force

Comments: The DC administrative citation requiring a statutory bond was repealed in April 1997. The DISB failed to inform producers or bond providers of the change in bonding requirements. The Broker provided the examiners with copies of bonds issued biennially covering acts of licensee, Dennis Craft, for the examination period. Each of the bond forms indicates a penal sum of \$20,000.

Finding: Broker procured bonds for the period under examination based on DISB provided renewal license forms.

Observations: Examiners selected to perform this NAIC standard based on information available during the planning phase of this examination. During the execution phase of the examination, the examiners learned of the statutory repeal. Broker was advised of the change in the DC bond requirement during the course of this examination.

Recommendations: None.

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-6

All required reports have been filed with the Department of Insurance or the appropriate authority.

Comments: The review methodology for this standard has a direct statutory requirement. DC Official Code § 31-2502.40(a) that states in part that each broker so licensed for unauthorized policy procurement shall execute and file with DISB on or before the 10<sup>th</sup> day of each month an affidavit covering the policy transactions of the previous month. For the purposes of testing timeliness of reporting, as well as other attributes discussed in this report, the Brokerage was asked to provide affidavits reflecting a total of 680 unauthorized (surplus lines) business transactions reported during the examination period. A sample of 50 transactions was identified, utilizing the NAIC's Market Conduct Statistical Utilities. The Brokerage provided the appropriate policy and companion marketing files, enabling detailed review of each of the selected transactions.

Findings: The Broker is in violation of DC Official Code § 31-2502.40(a).

Observations: Affidavit transactions testing of source documents provided by the carriers revealed that fifteen (15) surplus lines policy renewal or endorsement transactions were not reported on monthly affidavits by the 10<sup>th</sup> of the month following the effective dates of these transactions. The Broker did report the transactions and pay all applicable taxes. These transactions are identified in the following table:

Sample Identifier	Policy Number	Effective Date
1	01 2479M	07/01/03
2	CF2I 09592	10/29/03
3	AP505072	07/01/02
9	1079414	03/21/01
13	169782683	07/20/01
14	DG008602	08/14/02
18	92A-2002848	01/18/02
19	92A-2003741	08/23/02
20	92A-2003003	02/15/02
23	92A-2004125	07/01/02
26	92A-2004637	03/21/01
30	92A-2005312	07/20/01

35	92A-2005587	08/14/02
36	92A-2004129	01/18/02
40	647-7060	06/24/02*

\* Transaction date

Observations: Comparisons of gross premium data provided by carriers with Brokerage-generated quotation and invoice documentation revealed no discrepancies. However, it was found that one (1) affidavit entry reflects an incorrect gross premium amount, as compared with policy file documentation. At the same time, it was determined that the tax amount, which was based on the correct premium, is correct.

The lack of an adequate time increment between the transaction month and the report filing due date the following month (only 10 days) can be problematic due to the normal time lags involving typical workflow disruptions, i.e., peaks in workflow volume (particularly toward year-end when a disproportionate number of policy renewals are processed), vacation, illness.

Recommendations: It is recommended the Broker take appropriate steps to streamline internal reporting procedures so delayed reporting of surplus lines transactions to DISB be avoided and the Broker can more fully assure its timely filing objective.

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-7

The applicable taxes are reported and are credited to the state

Comments: The review methodology for this standard has a direct statutory requirement. DC Official Code § 31-2502.40(a) states in part that each broker so licensed for unauthorized policy procurement shall execute and file with DISB on or before the 10<sup>th</sup> day of each month an affidavit covering the policy transactions of the previous month. For the purposes of testing accuracy of reporting, as well as other attributes discussed in this report, the Brokerage was asked to provide affidavits reflecting a total of 680 unauthorized (surplus lines) business transactions reported during the examination period. A sample of 50 transactions was identified, utilizing the NAIC's Market Conduct Statistical Utilities. The Brokerage provided the appropriate policy and companion marketing files, enabling detailed review of each of the selected transactions.

Findings: The Broker is in compliance with the standard as adequate controls exist to prevent reoccurrence of the errors observed in the examiner's sample.

Observations: Affidavit transactions testing of source documents provided by the carriers revealed the following errors as regards accuracy of reporting:

Sample Identifier	Policy Number	Observation
3	AP505072	Policy fee was not included in gross premium resulting in a \$2 underpayment of tax.
7	SM816664	Professional liability exposure was allocated among 12 jurisdictions in error. All exposure units are located in Maryland resulting in an overpayment of DC tax
14	DG008602	Fine arts coverage was allocated among 4 jurisdictions in error. All exposure units are located in DC resulting in an underpayment of DC tax.

Observations: In addition to those cited above, premium allocations for sixteen (16) convention cancellation placements filed on behalf of Seabury & Smith were not handled in accordance with Marsh's procedure, as set forth in the *Surplus Lines Training Guide*, requiring allocation of taxable premium by location of the exposure. These transactions are identified on the following page.

Sample Identifier	Policy Number	Effective Date	Exposure Locations
18	92A-2002848	01/18/02	DC, MD, NY
19	92A-2003741	08/23/02	Italy
21	92A-2003894	10/01/02	IL, MD, London
23	92A-2004125	11/14/02	AZ
24	92A-2004166	12/06/02	AZ
25	92A-2004617	03/18/03	IL, TN
26	92A-2004637	03/20/03	MN
27	92A-2004807	05/07/03	CA, US Virgin Islands
28	92A-2004967	06/11/03	CA
29	92A-2005201	09/02/03	MD
30	92A-2005312	10/03/03	FL
32	92A-2005494	11/14/03	DC, CA, CO, VA
33	92A-2005467	11/01/03	AZ, Canada
34	92A-2005414	11/01/03	LA
35	92A-2005587	12/24/03	NY
36	92A-2004129	11/11/03	NY, IL, CA

All such transactions involved courtesy filings handled by Marsh's Washington Operations on behalf of Seabury & Smith, a Marsh affiliate located in Park Ridge, Illinois. A courtesy filing, as used in the context of this report, occurs when a licensed DC surplus lines broker accepts responsibility for acts of another procuring insurance entity. Seabury & Smith markets convention cancellation insurance (CCI). Seabury & Smith allocates all premiums in accordance with the insured's state of domicile, regardless of exposure location(s).

Recommendations: The Broker should hold entities requesting courtesy filing privileges to the same filing standards as the Broker.

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-8

Consumer and insurance department complaints responded to in accordance with statutes, rules, and regulations.

Comments: The review methodology for this standard has direct statutory requirements, i.e., DC Official Code §§ 31-2231.10 and 31-2231.18. The former citation states in part that no person shall fail to maintain its books, records, documents, and other business records in such order that data regarding complaints, claims, rating, underwriting, and marketing are not accessible and retrievable for examination.

The latter citation states in part that the broker shall maintain a complete record of all complaints since the date of its last examination.

Findings: The Broker is in compliance with the standard.

Observations: Brokerage personnel were questioned regarding complaint handling and denied having received any consumer or Department of Insurance complaints during the examination period. DISB records did not reflect any complaints filed against Marsh's District of Columbia branch office during the examination period.

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-9

If the surplus lines broker is responsible for such calculations then unearned premiums are correctly calculated and returned to appropriate party in a timely manner and in accordance with applicable statutes, rules and regulations.

Comments: The review methodology for this standard does not have a direct statutory requirement.

Findings: The Broker is not responsible for determining returned monies.

Observations: While the Brokerage routinely verifies the accuracy of premium refund calculations and monitors the timeliness of refund processing, primary responsibility for these activities rests with the carriers. Based on their review of surplus lines transactions, the examiners concluded that the Brokerage is quite conscientious in their oversight of carrier processing on behalf of their clients. No calculation errors or refund delays were detected during the file review.

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-10

The broker cooperates on a timely basis with examiners performing the examinations.

Comments: The review methodology for this standard has a direct statutory requirement. DC Official Code § 31-1403(b) states in part that every person from whom information is sought must provide the information to the examiners and must facilitate the examination and aid in the examination so far as it is in their power to do so.

Findings: The Broker is in compliance with the standard.

Observations: None

Recommendations: None

### **PLACEMENT; CANCELLATION/NONRENEWAL**

In order to evaluate the Broker's placement and cancellation/nonrenewal practices, the examiner gathered data using informational requests, direct questioning, interviews, and presentations by the Broker staff and officers.

During the course of this examination, the Broker's placement and cancellation/nonrenewal practices used the same sample developed for the review of operations to determine if the Broker was meeting established industry standards. Due to the Broker performing courtesy filing for its affiliate, Seabury & Smith, all courtesy finding documentation was reviewed. All NAIC standards for this phase of the examination were determined applicable. The following report section gives direct reference to the NAIC handbook standards examined.

NAIC Market Conduct Examinations Handbook – Chapter X, Section C Standard C-1
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All required disclosures are made in accordance with statutes, rules, and regulations.
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Comments: The review methodology for this standard does not have a direct statutory requirement.

Findings: The Broker is in compliance with the standard.

Observations:

The Broker's disclosure requirements include a separate letter containing surplus lines warning language. These letters, which are referred to as Client Consent Letters, also acknowledge the client's agreement to place coverage in the non-admitted market.

Testing for compliance with this standard was performed as part of the examiners' affidavit sampling and review. In all cases, the examiners found the appropriate letters in the sample of 50 files reviewed.

With regard to the stamping of surplus lines warnings on policies and binders, the Marsh standard references individual state requirements to ensure that specifically mandated language is imported from available templates. And, while the District of Columbia does not require such warnings, it was noted that all reviewed surplus lines placements originating in the D.C. office reflected the stamped warning language on both binders and policy declarations pages. Marsh placement standards require this notice, as do procedures outlined in their Surplus Lines Training Guide and BASYS Orientation Guide.

It was found that the Seabury & Smith convention cancellation insurance (CCI) placement documents are lacking warning stamps. Eighteen (18) of the nineteen (19) CCI files reviewed were not stamped. Moreover, as Seabury & Smith acts as an intermediary and some of these files reflect that client consent letters were forwarded to agents, it is not clear that insureds were advised regarding additional financial exposure in those cases where signed acknowledgement letter copies are absent from the files. Although Marsh standards and procedures are not directly applicable to Seabury & Smith placements, Marsh should hold entities requesting courtesy filing privileges to its own filing standards.

In connection with the use of contingent commission agreements, or Management Service Agreements (MSAs), Marsh was able to demonstrate to the examiners full disclosure of these agreements to their clients. Not only do all invoices generated during this examination period contain language disclosing these relationships, but specimen Client Service Agreements provided to the examiners reveal to new clients the existence of this mode of compensation. The examination confirmed that Marsh negotiates MSAs only at the senior management level and not the local office level. Individual brokers placing business at branch locations are not made aware of the identities of carriers with whom MSAs are in effect, nor are they privy to the terms of such agreements. In this manner, conflicts of interest are avoided at the local office level and brokers are free to act in the best interests of their clients.

Recommendations: The Broker should hold entities requesting courtesy filing privileges to the same filing standards as the Broker.

NAIC Market Conduct Examinations Handbook – Chapter X, Section C Standard C-2

When issued by the surplus lines broker, all forms and endorsements forming a part of the contract are listed on the declaration page.

Comments: The review methodology for this standard does not have a direct statutory requirement.

Findings: The Broker is in compliance with the standard.



Observations: Apart from the nineteen (19) convention cancellation policies or courtesy filings issued by affiliate Seabury & Smith, Broker policy files reviewed indicate that the carriers issue the complex manuscript contracts arranged by Marsh. Nevertheless, where applicable, declarations were reviewed by the examiners to determine whether appropriate policy documents are referenced, pursuant to the NAIC standard. No exceptions were noted. Marsh USA, Inc. has a procedure in effect requiring thorough policy reviews; particularly with respect to policies constituting layered insurance programs.

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X Section C Standard C-3

The selected carrier was evaluated to ensure it complies with statutory requirements regarding financial condition.

Comments: The review methodology for this standard does not have a direct statutory requirement.

Findings: The Broker is in compliance with the standard.

Observations: Marsh requires an A. M. Best rating of at least A- and \$50 million in unencumbered policyholders' surplus to consider placement with an admitted or non-admitted insurer, whether non-U.S. or U.S. domiciled. While verification of financial condition is the individual responsibility of the account representative/broker, Marsh's accounting system (BASYS) includes safeguards that effectively eliminate the possibility of executing placement transactions involving non-approved carriers. When warranted, exceptions to minimum guidelines may be considered to fill market needs. Placements with insurers who fail to meet Marsh guidelines may also develop in cases where specific instructions are received from the client. During the period of this examination, Marsh placed business with forty-nine (49) different surplus lines carriers.

Overall responsibility for financial surveillance rests with Marsh's Market Information Group (MIG), which is headquartered in New York City. General information regarding insurer acceptability includes ratings provided by A.M. Best, Standard & Poor's, Moody's, and Fitch. The Marsh Group, through its intranet, provides information such as this. Additionally, MIG analysts prepare detailed financial analyses of selected insurers, and these are available as attachments to the General Insurer Information pages.

In addition to solvency verification required at policy inception, Marsh procedures call for midterm notification of clients when carrier ratings fall below minimum financial guidelines. Clients are thereby presented with the options of leaving the coverage in place for the remainder of the policy period or canceling and replacing the policy immediately.

Recommendations: None

The authorization to bind was provided before the binder was extended to the insured.

Comments: The review methodology for this standard does not have a direct statutory requirement.

Findings: The Broker is in compliance with the standard.

Observations: With respect to the placement of convention cancellation coverage (CCI), Marsh's affiliate, Seabury & Smith, has a binding authority agreement in effect with Lloyd's.

Based on their review of these placement transactions, the examiners found no cases where Seabury & Smith exceeded the authority granted by Lloyd's. Marsh has not been granted binding authority with any of their surplus lines carriers. Binders issued by the carriers were found in files sampled.

Recommendations: None

All advertising and sales materials are in compliance with applicable statutes, rules and regulations.

Comments: The review methodology for this standard has several direct statutory requirements. DC Official Code §§ 31-2231.03 refers to misrepresentations and false advertising, 31-2231.04 addresses false information and advertising generally, 31-2231.05 speaks to defamation and finally 31-2231.21 prohibits the practice of twisting.

Findings: The Broker is in compliance with the standard.

Observations: Marsh has no marketing and advertising efforts directed specifically toward surplus lines placement. At the same time, the more generally focused (commercial lines) print advertisements provided by Marsh were reviewed and found to be compliant with DC citations listed above. The materials provided and reviewed consisted primarily of institutional advertisements or invitations to inquire within the contexts of educational.

As Seabury & Smith is directly engaged in the marketing of a specialized surplus lines product — convention cancellation insurance — samples of print advertising was provided to the examiners for compliance review. Their advertising directly focused upon the CCI product and is appropriately classified as invitations to contract. The examiners found no violations.

Recommendations: None

Diligent effort was made to place the risk with an admitted carrier in compliance with statutes, rules, and regulations.

Comments: The review methodology for this standard can be found in DC Official Code § 31-2502.40 that states in part that prior to procurement of unauthorized policies the licensed agent or broker must make a diligent effort to place the insurance with authorized companies.

Findings: The Broker is in compliance with the standard.

Observations: Diligent placement effort is an excellent area for Marsh, as is the documentation of these efforts. The Brokerage has a formal procedure in effect requiring the completion of a placement report, which is needed in order to process a surplus lines placement. While the above referenced Code citation is not specific with respect to the diligent placement effort required, the Broker requires documentation of three (3) placement attempts and declinations from admitted market carriers.

During the placements testing phase of this examination, all Marsh policy files reviewed were found to contain declination reports, documenting the name and address of each declining entity, together with the identity of the person declining and the date declined.

Regarding the CCI placements, the testing for diligent placement efforts yielded a less favorable outcome. In response to the examiners' request for compliance documentation, Seabury & Smith submitted undated declination letters from three (3) admitted carriers. The letters provided were generic and identified no particular submission

Recommendation: The Broker should hold entities requesting courtesy filing privileges to the same filing standards as the Broker.

## **SUMMARY OF FINDINGS**

### **Standard B-1**

Page 6

As discussed, the Brokerage is in violation of DC Official Code § 31-2502.40(a) insofar as fifteen (15) surplus lines transactions were not reported on monthly affidavits by the 10th of the month following the effective dates of these transactions. It is recommended that the Broker review its existing procedures to ensure that any insurance fraud is reported to the appropriate authorities.

### **Standard B-2**

Page 6

An area not adequately addressed in the disaster plan is a procedure for evacuation of the handicapped. This matter was discussed with the disaster plan coordinator who agreed to consider the inclusion of these details in future plan revisions.

### **Standard B-6**

Page 8

As discussed, the Brokerage is in violation of DC Official Code § 31-2502.40(a) insofar as fifteen (15) surplus lines transactions were not reported on monthly affidavits by the 10th of the month following the effective dates of these transactions. It is recommended the Broker take appropriate steps to streamline internal reporting procedures so delayed reporting of surplus lines transactions to DISB be avoided and the Broker can more fully assure its timely filing objective.

### **Standard B-7**

Page 9

The Broker should hold entities requesting courtesy filing privileges to the same filing standards as the Broker.

### **Standard C-1**

Page 12

The Broker should hold entities requesting courtesy filing privileges to the same filing standards as the Broker.

### **Standard C-6**

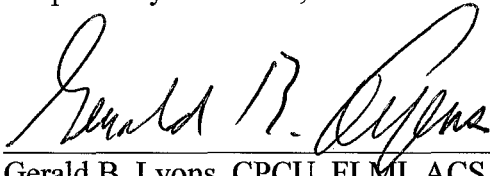
Page 16

The Broker should hold entities requesting courtesy filing privileges to the same filing standards as the Broker.

### ACKNOWLEDGMENT

In addition to the undersigned, William McCune, Supervisory Market Conduct Examiner reviewed the supporting work papers and assisted in the preparation of the written report.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gerald B. Lyons", written over a horizontal line.

Gerald B. Lyons, CPCU, FLMI, ACS, AMIM, AIM, CIE