Senate Task Force on the Development of the New York Insurance Exchange

Senator John R. Dunne, Chairman
Senator Donald M. Halperin
Senator Roy M. Goodman

Preliminary Report — July, 1980

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THE SENATE
STATE OF NEW YORK
ALBANY
12247

July 21, 1980

The Honorable Warren M. Anderson
330 State Capitol Building
Albany, New York 12247

Dear Senator Anderson:

Since its appointment on February 22, 1980, the Special Senate Task Force on the New York Insurance Exchange has investigated every aspect of the Insurance Exchange. The charge given to it by you was "to look into the matter of regulation and all other aspects of the Free Trade Zone and the Insurance Exchange and to report to the Senate their findings and recommendations for legislative action."

The Task Force concludes that the manner and breadth of regulations proposed by the Department may have prompted the allegations of overregulation, but the Exchange has been successful in negotiating with the Insurance Department for the withdrawal of some of the more onerous provisions of such regulations. While the existence of a perception of overregulation can be documented, the State Insurance Department and the Board of Governors of the Exchange appear to have developed a salutary "give and take" relationship which, if continued, will permit the sound development of the Exchange as a significant international insurance marketplace. Despite the perception of overregulation of some members of the insurance industry, the Exchange personnel and its members have been complimentary of both Superintendent Albert B. Lewis and the Insurance Department staff for their contribution to the Exchange.

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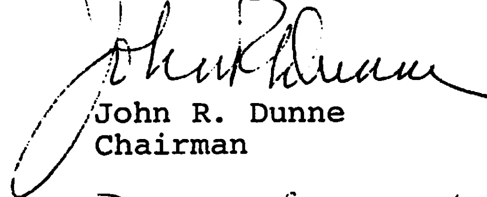
The Task Force believes that some areas of concern, such as development of a back office facility and assessments for expenses, are internal matters and, as such, are the principal province of the Board of Governors. We have therefore concentrated on the legislative and regulatory aspects of the Insurance Exchange and related segments of the industry.

This is the preliminary report of the Task Force which believes that while further experience in the operation of the Insurance Exchange will permit more in depth consideration of recommendations for enhancement of the Exchange's ability to achieve its intended goals, it is appropriate at this time to advance proposals for limited change even as the Exchange is at its threshold of operation.

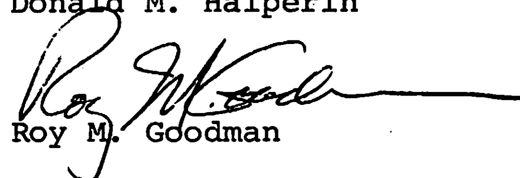
The recommendations contained in this report will require the support and cooperation of the State Insurance Department, the members of the Insurance Exchange and the Legislature. The subsequent development of legislation to enhance the operation of the Exchange will also require continued discussion and compromise. The members of the Task Force will therefore continue to work to resolve these issues and insure that the Insurance Exchange has every chance to reach the goal of reestablishing New York as the capital city of the insurance industry.

Sincerely,



John R. Dunne
Chairman

Donald M. Halperin



Roy M. Goodman

JRD/dg

Background

The Governor's signature had barely dried on the enabling act for the New York Insurance Exchange when doomsaying began. Within eighteen months, an impression had spread among some that New York's hopes for an international insurance center were fading because of Insurance Department regulation and the aggressive promotion of the idea by other states. Industry reaction to the Department's implementation of the Act was peppered with words like "shocked", "dismayed", and "devastating."[1] Brokers were saying that the New York Department was making Illinois (which had just authorized an insurance exchange) look better and better.[2] An exchange feasibility study for the State of Florida said that industry leaders found the most unattractive aspect of the New York Exchange to be "the excessive amount of New York regulation."[3] The New York State Senate leadership, which had piloted the enabling legislation to enactment, felt compelled to look into the matter, and so named a Task Force to see whether the goals of the legislation were being achieved and, if not, to recommend how they might be.

The Task Force is sympathetic to those in the industry who may believe that the Task Force is one more government body trying to jump into Exchange affairs even before the Exchange has a chance to regulate itself. The Task Force has no desire to play regulator; instead, it has an institutional duty to see that the laws which the Legislature enacts are carried out.

The Task Force is not another problem for the industry because its aim is to meet the industry plea for less government regulation.

Perhaps some thoughts on the oversight obligation of the legislative branch of government will help to explain why the Task Force was created.

A basic issue for any government is whether it will operate through law or administrative fiat. Almost a hundred years ago, Lord Bryce said that one of America's strengths was its choice of the former:

> It is a great merit of American government that it relies very little on officials (i.e., administrators) and arms them with little power of interference...It is natural to fancy that a government of the people and by the people will be led to undertake many and various functions of the people...There has doubtless been of late years a tendency in this direction. But it has taken the direction of acting through the law rather than through the officials. That is to say, when it prescribes to the citizen a particular cause of action, it has relied upon ordinary legal sanctions instead of investing the administrative officers with inquisitorial duties or powers that might prove oppressive.[4]

Much has changed and not all for the better. Faced with problems growing in number and complexity, legislatures have increasingly delegated broad powers to executive agencies which are thought to possess the know how to write detailed rules to carry out legislative intent.[5] Agency rule making is a quasi-legislative function because the rules have "the force and effect of law."[6]

There is no question but that some delegation is necessary. The legislature has neither the time nor the manpower to write laws that say exactly what must be done in every conceivable case. The problem, however, is that agencies may abuse their power by issuing rules that do not conform to the intent of statutes. When this happens, democracy itself is threatened because the decisions of the elected representatives of the people are thwarted by an unelected elite.

To guard against such usurpation, the Legislature has to keep a close watch on the activities of the executive agencies. Nevertheless, as the scope and power of the administrative branch grew, the traditional methods of legislative oversight - approval of budgets, nominations to top administrative posts - became less effective. Those techniques address an agency's overall direction, not its day-to-day functions such as rule making.[7]

In recent years, the New York State Legislature has sought to expand its oversight ability. It is making use of scientific and technical expertise in developing detailed policy initiatives.[8] It also has established two bodies - the Legislative Commission on Expenditure Review and the Administrative Regulations Review Commission - to determine whether agencies are faithfully carrying out their duties in accord with legislative intent.

Much needs to be done, however, for every week sees at least fifty pages of new rules appear in the <u>State Register</u>.

The Senate Task Force on the New York Insurance Exchange is part of the Legislature's continuing effort to meet the challenge of over-expanding bureaucratic power. Its job is especially important because the Insurance Department is the clearest example of this challenge: it is difficult to name an agency which possesses broader or less restricted rule-making power. And nowhere is this power more evident than in the legislation which authorized the New York Insurance Exchange. Not only may the Department issue rules applying solely to the Exchange, but, by regulatory fiat, it may also exempt the Exchange from existing laws, rules and regulations.[9]

It is the Legislature's duty to make sure that this power is used to carry out the intent of the law instead of confounding it. The Superintendent has issued the following regulations:

Regulation 86-a	Interface with the Free Trade Zone[11]
Regulation 89	Exempting underwriting syndicates from certain provisions of the Insurance Law[12]
Regulation 89-a	Allowable investments in underwriting syndicates[13]
Regulation 89-b	Qualification for Public Governor[14]

In each case the Superintendent has used the emergency provisions of the State Administrative Procedures Act[15] and has dispensed with the requirements of notice and opportunity to present views at a public hearing before the effective date of the regulation. Such emergency adoptions are intended only for regulations deemed "necessary for the preservation of the public health, safety or general welfare."[16] The Administrative Regulation Review Commission has corresponded with the Insurance Department on the similar use of circular letters as a means of issuing regulations.[17] Further investigation by the ARRC into possible abuses of the emergency powers may be warranted.

Overview

The Insurance Exchange Task Force held interviews and meetings with groups and individuals representing the various interests involved in the Exchange. Based on these discussions and a thorough review of the legislative history, the Task Force is offering a series of recommendations and observations for consideration by the Exchange Board of Governors and by the State Insurance Department. Since the Exchange has been in operation for only a little over three months, it would be premature to draw any final conclusions as to most of its activities. On the other hand, the Board of Governors has deferred consideration of some matters that affect the Exchange's ability to meet its goals as stated in the

legislative history. The Task Force suggests that the Board of Governors seriously consider these issues which are described below.

<u>Access to the Insurance Exchange of Business Rejected by the Free Trade Zone</u>

The interface between the Free Trade Zone and the Insurance Exchange[18] should be modified at least to equalize access by New York-based risks to both the New York Insurance Exchange and the non-admitted market.

Promulgation of a regulation such as Regulation 86-a was specifically provided for in the enabling legislation.[19] That legislation authorizes the Insurance Exchange to write "reinsurance of all kinds of insurance", "direct insurance of all kinds on risks located entirely outside the United States" and "risks which shall have been submitted to and certified as having been rejected by a committee representative of insurers licensed by the Superintendent under section one hundred and sixty-eight(d) of this chapter"[20] (i.e., the Free Trade Zone). Based upon data available through June 1980, only six risks had been certified as "rejected" by the Free Trade Zone Committee and only two of those were subsequently written on the Exchange. Although this experience does not necessarily indicate the regulation's effectiveness, it should be kept in mind that

when the Governor unveiled his Exchange proposal, he stated to the Legislature that "It is anticipated that the New York Reinsurance Exchange will attract substantial direct and re-insurance business to this State."[21]

Regulation 86-a must be viewed in light of how it has and will affect the flow of business to the Exchange and its interaction with the rest of the New York insurance market for property and casualty risks. This market has four main parts: the normal admitted market consisting of 456 fire and casualty companies;[22] 84 specially licensed Free Trade Zone companies;[23] 19 Underwriting Syndicates on the New York Insurance Exchange;[24] and the Excess and Surplus Line or "non-admitted" market consisting of 357 licensed excess line brokers.[25]

By its statutes[26] and regulations,[27] New York State has, understandably, demonstrated a preference for the admitted market. Admitted insurers must, by law, participate in residual market mechanisms,[28] insolvency funds[29] and other risk-sharing programs[30] in order to protect the public interest and to make available needed types of insurance. The Free Trade Zone is a specially-licensed class of insurers which are part of the admitted market and are subject to the same assessments that apply to the rest of the admitted market.[31] Similarly, underwriting syndicates on the New York Insurance Exchange must also pay such assessments on direct business which it writes after having been rejected by the Free Trade Zone. From the

standpoint of assessments for the FAIR Plan, the Medical Malpractice Insurance Association and other risk-sharing facilities, Exchange syndicates, special risk insurers in the Free Trade Zone and admitted carriers are all on the same footing and enjoy no special exemption or advantage over the other.

The non-admitted market consists of insurance placed with an insurer not licensed to do business in the state where the risk is located.[32] Non-admitted insurers are free from the assessments that apply to the admitted market. In 1977, non-admitted insurers wrote 193 million dollars in premiums on New York risks.[33] In 1978, that figure rose to almost 215 million dollars, an increase of over eleven percent.[34] The New York Insurance Exchange was created, in part, to recapture such direct business which continues to be exported beyond our borders.[35]

Yet, the process which qualifies this business for export to foreign markets seems to ignore the Insurance Exchange. Paradoxically, some New York business is allowed by one department regulation (41) to be written in the foreign, non-admitted market, while it is prohibited by the interface regulation (86-a) from being written on the Exchange. For example, once a price has been quoted on a risk by a Free Trade Zone licensee, no matter how many other Free Zone

licensees reject it, that risk may not be written on the Insurance Exchange. Yet, under the provisions of Regulation 41 and current practice, that same risk may be written in the non-admitted market.

Regulation 41 defines conditions under which an Excess and Surplus Lines broker may export business while Regulation 86-a defines how that business may be placed on the Exchange. These two regulations deal with similar risks but in different ways. Under Regulation 86-A, the broker may submit the risk only to carriers approved by the Free Trade Zone Committee as actual writers of the particular line of business.[36] If any such carrier bids for the risk, regardless of price, that business cannot be shown on the Insurance Exchange. The broker may, however, take that risk to a foreign market and any rejections received from Free Trade Zone licensees qualify for purposes of Regulation 41 to allow the risk to be placed outside the state. Under Regulation 41, the broker may choose from among 456 admitted companies which carriers are to bid for the risk. Once the broker has secured five rejections and filed the required affidavit, he may place the risk with a non-admitted carrier, even though in the process he may have received an acceptance.

The double standard established by these two regulations clearly favors the non-admitted market to the detriment of the Insurance Exchange. A review of the actual operation of the

Free Trade Zone illustrates this point.

Although there are eighty-four licensed special risk insurers, only twenty-five such companies or groups may offer rejections of risks to the Secretary for certification to the Insurance Exchange. The operating rules of the Free Trade Zone require that in order to qualify as a valid rejection, the company rejecting the risk must be on the Special Risk Roster.[37] As of June 27, 1980, only fifty-six companies were on the roster and eleven of those listed are not licensed to write direct business.[38] Of the remaining forty-five companies, there are twenty-eight companies in eight groups of affiliated insurers. According to the operating rules, a risk may not be rejected by more than one affiliated insurer.[39] That is, once one company has rejected a risk, rejections offered by any of its affiliated companies are invalid. This reduces the number of insurers which may offer rejections to twenty-five. Finally, six of the remaining twenty-five companies will not accept business from a broker unless he has an established account with the company.[40] In actual practice, therefore, a broker without an established account with the specified companies is narrowly restricted to nineteen insurers or groups of affiliated insurers in order to obtain his five or three rejections and gain access to the Insurance Exchange. By comparison, in order to qualify to export the business out of New York, the very practice the Exchange legislation was designed to discourage, a broker may obtain the needed five

rejections from among over four hundred and fifty admitted carriers.

It seems unwise to make it easier to export direct New York risks than it is to write them on the Insurance Exchange. Not only does such a process defeat the legislative intent behind the creation of the Insurance Exchange, it may undermine its financial viability as well.[41] As in the case of similar stock or commodity exchanges, a key measure of the Insurance Exchange's success will be its daily volume of business. Volume is measured by both the number of transactions as well as their individual size. As pointed out earlier, over two hundred million dollars in excess and surplus lines premiums leave the state annually. If the Insurance Exchange had the same ability to write this business as its foreign competitors, its prospects for volume growth - as well as achieving the Legislature's intent - would be much brighter.

The Insurance Exchange had adopted a plan of assessment for expense of operation which was based upon a fixed percentage of premium volume and was assessed against both brokers and underwriting syndicates. Even if the Insurance Exchange were to write in 1980 its forecasted $40 to $50 million in premiums, it would not be able to cover its operating expenses. This method of assessment met with some objections in that the more business a member produced

on the Exchange, the greater share of the operating expenses that member carried. In addition, the assessments could add sufficient costs to the rate charged so that quotation of a risk on the Exchange would not be competitive with quotations elsewhere. Finally, in some cases of reinsurance, the assessment on the broker member was as high as one-third of the commission. For these principal reasons the Exchange has adopted another form of assessment which fixes each syndicate's operating share at $25,000 annually and assesses brokers on their number of employees. This method of assessment provides greater incentive for utilization of the Exchange by its members. But, as long as the Exchange remains precluded from writing direct risks, the opportunity to realize a return on their investment will be diminished. This recommendation to provide more ready access to the Exchange for direct business is consistent with the efforts of the Board of Governors to attract greater volume of business and insure its ability to meet its operating expenses. Without the impediments inherent in Regulation 86-a and the operating rules of the Free Trade Zone, the Insurance Exchange would be more attractive to both the brokers who place the business and to the buyers of insurance whose interest they represent.

The changes necessary to modify the Free Trade Zone interface with the Insurance Exchange should have no detrimental

effect on the admitted carriers in this state. Under the proposed regulatory change, prior to the placement of direct business on the Insurance Exchange, the broker would have to comply with the same standards which govern the exportation of business out of the state. Assessments for the FAIR Plan, the Medical Malpractice Insurance Association and any other risk-sharing plans will continue to apply to New York risks written on the Exchange. The freedom from filing requirements granted to special risk Free Zone insurers will remain in full force and effect.

The Task Force therefore recommends that in order for domestic business to be eligible for the Insurance Exchange, it should be in compliance with the same conditions as are required for access to the non-admitted market. This will require action by both the Superintendent and the Legislature, but such action should be conditioned on a specific request by the Exchange's Board of Governors for such modification. The standards for exporting domestic business should offer some incentive for risks to be written on the Exchange, but only after diligent effort has been made to place the risks with the carriers representing the full admitted market. Care should be taken to avoid giving preferential treatment to any narrow segment of the admitted market.

Exempting Syndicates from Federal Bankruptcy Jurisdiction

Regulation 89 provides, inter alia, "...no insurer licensed under the laws of this State, any other state,

territory or possession of the United States, or under the laws of a foreign country, shall become an Underwriting Member of the Exchange." Because of that provision, many participants have expressed concern about the issue of federal jurisdiction over a bankrupt syndicate. Congress has specifically exempted insurance companies from the Federal Bankruptcy Code[42] in order to leave their liquidation to the state insurance departments which were empowered expressly to regulate such companies.[43] Regulation 89, however, explicitly states that an insurance company may not be an underwriting member.[44] This provision is intended to protect an admitted insurer from financial impairment should its underwriting syndicate become insolvent. The regulation, in effect, requires that in order to participate in the Insurance Exchange, an insurer must form a separate subsidiary corporation under The Business Corporation Law. In that way, the subsidiary will be separately capitalized and distinct from the insurance company. Should the subsidiary become insolvent, its liability will be limited and it will not impair the insolvency of the parent insurance company.

The question of federal bankruptcy jurisdiction may have to be answered in the future. It may be difficult to seek an insurance company exception under the Bankruptcy Code[45] when the State regulation under which these syndicates

operate prohibits their direct participation. This argument also applies to the problems currently encountered in requests for insurance company treatment from the Internal Revenue Service and the Securities and Exchange Commission.

The purpose of this part of the regulation is practical, but can be achieved with a modification permitting an underwriting member to be an "insurer" but with strictly limited powers. Thus, a syndicate could be organized as a stock insurance company under appropriate provisions of the insurance law[46] and be allowed to become an underwriting member of the Insurance Exchange, but its authority as an insurer would be strictly limited to conducting insurance activities solely on the New York Insurance Exchange. This form of business organization would not be a requirement for admission, however, and those syndicates which choose to utilize the business corporation, general or limited partnerships, as a vehicle for such activity, would remain free to do so.

The Task Force encourages the Insurance Department to review this aspect of Regulation 89 and to implement the appropriate change. Such executive action, however, is inadequate to meet the problem totally. Syndicates may be created under other than the Insurance Law.

As stated, the Federal Bankruptcy Code provides specific exemptions to insurers and leaves their liquidation to the state insurance departments. In deciding whether a business corporation which was not formed under the insurance law is exempted from the Bankruptcy Code, courts rely upon

state law[47] using the statutes of the state in which the corporation was organized as a first source of authority.[48] Section 425-a of the Insurance Law is silent with regard to the status of an underwriting syndicate for purposes of liquidation. Since underwriting syndicates are formed not under the Insurance Law but under the Business Corporation Law of this state[49] and the laws of other jurisdictions,[50] it can be argued that the syndicates are not "insurance companies" and thus not exempt from federal bankruptcy jurisdiction.[51]

While the state cannot broaden the grounds for granting an exemption from federal jurisdiction,[52] it can structure its laws in such a way as to vest jurisdiction in the Superintendent of Insurance and thereby fall within the federally defined exemption. While such state action is not necessarily controlling,[53] it can be the basis for the Superintendent's assertion of jurisdiction over a bankrupt underwriting member for purposes of liquidation.

Accordingly, the Task Force recommends that Section 425-a of the Insurance Law be amended by adding a new subdivision nine to state:

> "For purposes of subdivision one of section five hundred and ten of this chapter, an insolvent underwriting member shall be deemed an insurance company for purposes of liquidation."

Amendments to the Exchange Constitution

Both the Committee of Thirteen and the Legislature clearly intended that the Board of Governors be able to amend the Constitution of the Exchange, subject to the approval of the Superintendent. Article XVI of the Exchange Constitution provides:

> "The provisions of this Constitution may be amended or replaced and new provision may be adopted, only by the members of the Exchange in accordance with the procedures specified in this article."[54]

Section 425-a (3) of the Insurance Law states:

> "Any amendments to the Constitution and by-laws shall be subject to the approval of the Superintendent."[55]

In addition, the state's Not-For-Profit Corporation Law, under which the Exchange was organized, specifically reserves to such corporations the power to adopt, amend or repeal its by-laws.[56] Unlike a corporation organized under a general statute, however, creation of the Insurance Exchange was authorized by a special legislative act (Chapter 480 of the Laws of 1978). A subsequent act (Chapter 11 of the Laws of 1979) which approved the constitution contained the verbatim text of its constitution. That legislation was hurriedly passed after weeks of negotiations finally resulted in agreement on certain elements of the constitution. There is no evidence of any legislative intent behind embodying the constitution in the statute or for requiring legislative concurrence for any amendments thereto.

Once approved by the Governor as Chapter Eleven of the Laws of 1979, the Exchange Constitution is given full force and effect as the law of the State. The Exchange Constitution certified as having passed both houses of the Legislature by a majority vote, three-fifths being present,[57] may be read into evidence in cases or controversies as the Law of the State of New York.[58]

A review of the corporations which have been created by special act of the legislature supports the contention that legislative action is necessary to amend the Exchange Constitution. The Senate Standing Committee on Corporations, Commissions and Authorities routinely processes legislation amending the laws creating such corporations. In 1980, for example, that committee approved bills affecting the corporate structure of the Salvation Army,[59] Wadsworth Library,[60] and the Colonial Farmhouse Restoration Society,[61] all of which had previously been created by statute. In each of these examples, however, the specific act incorporating the entity did not contain the entire constitution of the corporation; it merely stated the minimum provisions to be contained therein. The Task Force staff was unable to locate a single example of enabling legislation embodying the entire constitution of the corporation. There is no question, however, that the constitution is part of the laws of the State and the New York State Constitution provides: "the legislative power of this state shall be vested in the Senate and Assembly."[62] The power

to amend the Exchange Constitution may be construed to be an unconstitutional delegation of legislative power.[63] In order to remove any question about the legislative intent of Chapter 11, the Task Force recommends that subdivision two of Section 425-a be repealed, thereby removing the Insurance Exchange Constitution from the statute, but specifically reciting that it otherwise remains in full force and effect. This would conform the act authorizing creation of the Insurance Exchange with similar legislation creating other corporations. The statute would continue to contain the following minimum provisions:[64]

1. One-third of the members of the board of governors shall be public members.
2. At least two-thirds of the Governors shall be citizens of the United States.
3. The principal offices of the exchange and its members shall be within New York State.
4. The exchange shall establish a Security Fund approved by the Superintendent.

In addition, there is adequate safeguard for the public interest by specific provision of law which reserves to the Superintendent full authority to approve or disapprove any amendments to the Constitution.[65]

FOOTNOTES

1. Brevette, Francine, "Storm of Protest Greets Proposal for New Regulation for N.Y. Exchange, Journal of Commerce, 26 November 1979.

2. Ibid.

3. Robert Hughes Associates, Inc., "Insurance Exchange Feasibility Study", produced for the Insurance Department, State of Florida, 21 December 1979, p. 28.

4. Bryce, James, The American Commonwealth (1888), from the chapter "The Strength of American Democracy", cited by Theodore J. Lowi, The End of Liberalism (New York; W.W. Norton, 1969).

5. New York State Legislature, Senate, Senate Research Service Task Force on Critical Problems, Administrative Rules...What Is The Legislature's Role? (Albany, 1980), p. 5.

6. N.Y.S. Legislature, Administrative Regulation Review Commission, The Process of Regulatory Reform (Albany, 1980) p. 5.

7. New York State Legislature, Administrative Regulations Review Commission, Rulemaking and Legislative Oversight in New York State (Albany, 1978), pp. 18-20.

8. Connery, Robert H. and Benjamin, Gerald, Rockefeller of New York: Executive Power in the Statehouse (Ithaca: Cornell, 1979), pp. 88-89.

9. Insurance Law Sec. 425-a.

10. Minutes of the 3/28/78 meeting of the N.Y. Reinsurance Exchange (in formation) p. 4.

11. 11 N.Y.C.R.R. Part 19.

12. 11 N.Y.C.R.R. Subpart 18-1.

13. 11 N.Y.C.R.R. Subpart 18-2.

14. 11 N.Y.C.R.R. Subpart 18-3.

15. N.Y. State Sec. 202 (2)(c).

16. N.Y. State Sec. 202 (2)(L).

17. Letter to the Superintendent of Insurance dated June 15, 1979, Senate-Assembly Administrative Regulations Review Commission, Albany, New York.

18. 11 N.Y.C.R.R. Part 19.

19. N.Y. Insurance Law Sec. 425-a (1)(iii) (McKinney's Supp. 1979-80).

20. Id.

21. Governor Hugh L. Carey's Legislative Memorandum in Support of the New York Insurance Exchange; May 1978.

22. The 1979 Annual Report of the Superintendent of Insurance, Albany, N.Y., p. 17.

23. Free Zone Roster Class I and Class II, Special Risks by Line and Company, May 16, 1980 Edition (hereinafter Free Zone Roster).

24. Fact Sheet on the New York Insurance Exchange presented at the NAIC annual meeting, Denver, Colo., June 17, 1980.

25. Excess Line Insurance Brokers, Department of Insurance Licening Bureau, State of New York, June 24, 1980.

26. N.Y. Insurance Law §122.

27. 11 N.Y.C.R.R. 27.5.

28. N.Y. Insurance Law Art. 17-A, Art. 17-B.

29. N.Y. Insurance Law §334.

30. N.Y. Insurance Law Art. 19.

31. N.Y. Insurance Law §168-d(2) (McKinney's Supp. 1979-80).

32. A background study of the Non-Admitted Insurance Market, National Association of Insurance Commissioners, January 1980.

33. The 1979 Annual Report of the Superintendent, supra at 5.

34. Letter to the Senate Task Force, dated June 19, 1980, Insurance Department, State of New York, Albany, N.Y.

35. Governor's Economic Affairs Cabinet Report.

36. 11 N.Y.C.R.R. Part 19.

37. Operating Rules of the Representative Committee of Special Risk Insurers, §6.30(2).
38. Operating Rules, §6.30(2).
39. Id.

40. Free Zone Roster.

41. Minutes of the Board of Governors, New York Insurance Exchange, New York, N.Y., January 25, 1980.

42. Title 11, U.S.C.A. §22.

43. See N.Y. Insurance Law Article X, XI.

44. "...no insurer licensed under the laws of this state, any other state, territory or possession of the United States, or under the laws of a foreign country, shall become an underwriting member of the Exchange", 11 N.Y.C.R.R. Subpart 18-1.

45. Title 11, U.S.C.A. §22.

46. See N.Y. Insurance Law Article X, XI.

47. Sims v. Fidelity Assurance Association, 129 F.2d 442, 49 Am. Bankr. Rep. N.S. 470, Affirmed 318 U.S. 608, Hoile v. Unity Life Insurance Company, 136 F.2d 133, 53 Am. Bankr. Rep. N.S.37; In re Supreme Lodge of the Mansons Annuity, 286 F.180; cf in re Prudence Co., 79 F.2d 77, 20 Am. Bankr. Rep. N.S. 549, certiorari denied 296 U.S. 646 stating: "Declaration of a state statute that certain class of corporation is not amenable to this title in brutum fulmen, unless this title exempts such class." 79 F. 2d at 80. See also Capital Endorsement Co. v. Kroeger, 86 F.2d 976.

48. In re Union Guarantee & Mortgage Co., 75 F.2d 984, cert. den. 296 U.S. 594.

49. Eg: Aneco Syndicate, under 6 McKinney's §402, Certificate of Incorporation No. A578566, filed May 24, 1979, Department of State, Albany, New York. Pan Atlantic Investors, Ltd. under 6 McKinney's §402, Certificate of Incorporation No. A580797, filed June 4, 1978, Department of State, Albany, New York.

50. Eg: AIG Multi-Line Syndicate, Ind., under Del Code, Application for Authority No. A582755 under 6 McKinney's §1304 filed June 4, 1979, Department of State, Albany, New York.

51. U.S. v. Martin 1969, 408 F.2d 949, cert. den. 396 U.S. 824.

52. In re Prudence Co., supra.

53. In re Prudence Co., supra.

54. Constitution of the New York Insurance Exchange Inc., Article 16.

55. N.Y. Insurance Law §425-a(3) (McKinney's Supp. 1979-80).

56. N.Y. Not For Profit Corporation Law §202(a)(13).

57. N.Y. Legislative Law §44.

58. N.Y. Public Officers Law §70-b.

59. Senate Bill 3762.

60. Senate Bill 7947.

61. Senate Bill 9448.

62. New York State Constitution Article 3, §1.

63. Fink v. Cole 1951, 302 N.Y. 216, City of Rochester v. Monroe.

64. 11 N.Y.C.R.R., Subpart 18-1.

65. N.Y. Insurance Law Sec. 425-a (1)(iii) (McKinney's Supp. 1979-80).

INSURANCE EXCHANGE INTERVIEWS:

Andrew J. Barile, President, ANECO Group

Reginald E. Beane, Director, Government and Industry Relations, RIMS

William C. Burton, Counsel, Continental Insurance Company

Mario Carfi, Chief, Insurance Exchange Bureau, New York State Insurance Department

Robert Clements, President, Marsh & McLennan, Inc.

Joseph F. Conroy, Secretary, Committee of Special Risk Insurers

John R. Cox, President, INA Corporation

Gerard F. Curtis, President AAMET

Joseph P. Decaminada, Sr. Vice President and General Counsel, Atlantic Mutual Insurance Company

Francis T. Donohue, Chief, Property Bureau, New York State Insurance Department

Harold A. Eckmann, Chairman and Chief Executive Officer, Atlantic Mutual Insurance Company

Patrick J. Foley, Associate General Counsel, American International Group

Donald D. Gabay, First Deputy Superintendent of Insurance, New York State Insurance Department

William S. Gibson, Vice President and General Counsel, Continental Insurance Company

Lionel J. Goetz, President, Pan-Atlantic Group

Maurice R. Greenberg, President and Chief Executive Officer, American International Group

Charles W. Havens, III, President, Reinsurance Association of America

Ian Heap, President, Crum & Forster Management

Kenneth A. Hecken, Vice President and Director, Johnson & Higgins

L. Patton Kline, Chairman, Marsh & McLennan, Inc.

Donald Kramer, President, Kramer Capital Consultants

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