

November 15, 1984

SUBJECT: INSURANCE

CIRCULAR LETTER NO. 17 (1984)

To: ALL LICENSED INSURANCE COMPANIES

November 15, 1984

Subject: Use of a Surety Bond to Guarantee Performance of a Reinsurance Agreement

The Insurance Department has concluded that the issuance by a licensed property/casualty insurance company of a surety bond by which the insurer guarantees that the reinsurer will perform its obligations under a reinsurance agreement is not a permissible kind of insurance.

Our conclusion is based upon Section 1113(a)(16)(B) which defines and circumscribes fidelity and surety insurance as follows:

"Fidelity and surety insurance" means: Becoming surety on, or guaranteeing performance of any lawful contract except...(ii) any insurance contract...."

The foregoing supersedes an earlier legal opinion from the Department's Office of General Counsel dated April 10, 1962 which concluded that a surety bond used in support of policy obligations ceded by reinsurance to unauthorized reinsurers constituted "funds" meeting the requirements of Section 1301(a)(14). Since such an undertaking is not a permissible kind of insurance in New York and is not under the control of the ceding insurer, the Department will not allow such a surety bond to be used as an offset to the recoverables due from an unauthorized reinsurer.

It is the Department's position that such a surety bond does not constitute "funds", within the meaning of Section 1301(a)(14), and therefore may not be used to reduce the ceding company's liability for any new or additional recoverables due from an unauthorized insurance company. The Department will permit credit to be taken on financial statements filed with it for recoverables due from an unauthorized insurer which were "funded" by a previously acceptable surety bond issued by an authorized insurer, if such bond was issued or increased prior to December 1, 1984. Such action will permit compliance with the Department's legal position and avoid any disruptions.

Very truly yours,

[SIGNATURE]

JAMES P. CORCORAN

Superintendent of Insurance