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ROBERT E. BELOTEN
CHAIR

To: Group Trustees and Administrators

From: Trisha M. Gannon

Date: October 1, 2012

Subject: Assumption of Liability Policy Exit fee
Circular 2012-#2

Pursuant to Part R of Chapter 56 of the Laws of 2010, a self-insurer may apply to the Chair of the Workers' Compensation Board for permission to secure such future and contingent liabilities by executing an assumption of workers' compensation liability insurance policy. The Chair may, in his or her discretion allow the execution of such a policy, provided however that the policy meets the following terms and conditions:

- a. Such policy shall be in a form approved by the Superintendent of Insurance and issued by the State Insurance Fund or any insurance company licensed to issue this class of insurance in this state.
- b. Such policy shall only be issued for a single complete premium payment in advance by the group self insurer and in an amount deemed acceptable by the Chair and the Superintendent of Insurance.
- c. Such policy shall be non-cancelable without recourse for any cause during the continuance of the liability secured and so covered.
- d. Prior to the execution of such policy, a group self insurer must satisfy all outstanding penalties and WCL assessments that are either past due or will be become due prior to the execution of such policy.
- e. In lieu of the applicable premium charge ordinarily required to be imposed by the State Insurance Fund or any insurance company licensed to issue this class of insurance in this state in connection with the issuance of such policy, the premium imposed by the assuming entity shall include the following surcharges:
 - (i) A surcharge equivalent to the Compensation Insurance Rating Board (CIRB) rate for New York State Assessment Surcharge in effect at the time of execution of the policy. This surcharge shall be collected and applied to the assessments levied by the Board WCL §15(8), WCL §25-a, and WCL §151, in the respective percentages as set forth in the New York State Assessment Surcharge rate in effect at the time of the execution of the policy. This subparagraph shall remain in effect for only individual

self-insurers that remain subject to WCL §15(8), WCL §25-a, and WCL §151 assessments, and

- (ii) A surcharge, representing the present value estimate of all future liability pursuant WCL §50(5), in an amount determined by the Chair, sufficient to satisfy all future assessment liability pursuant to WCL §50(5). Annually, on or before November 1st, the Chair shall publish such rate, to be effective for all policies executed. Said rate may, in the discretion of the Chair, be adjusted annually to reflect changes in circumstances. The rate for policies executed on and after October 1, 2012, shall be 5.2%; and
 - (iii) A surcharge equivalent to the rate required by the Superintendent of Insurance in effect at the time of the execution of the policy for the Workers' Compensation Security Fund (Fund), pursuant to WCL§108. In the event there is no surcharge in effect at the time of execution, a surcharge of 2% for the benefit of the Fund shall be collected and held in escrow by the Chair for the benefit of the Fund and shall be paid over by the Chair to the Superintendent of Insurance in the event that the Fund is required to make payments on the claims that are the subject of the policy.
- f. All surcharges referenced in paragraph (e) above, as well as any other applicable taxes, shall be shall be payable to the Chair simultaneous with the execution of the assumption of workers' compensation liability insurance policy.
 - g. Not less than 45 days prior to the execution of such policy the group self insurer shall file with the Chair a plan setting forth the manner in which the group self insurer shall wind down all remaining operations of the group self insurer, including, but not limited to, the issuance of releases of joint and several liability, and the billing and/or the return of funds to the employer members of the group self insurer. Said plan shall include the retainer of independent legal counsel for such purpose. The Chair shall review said plan for reasonableness and approve said plan where appropriate.
 - h. Simultaneous to the execution of such a policy, the group self insurer shall provide a release to the Chair whereby the group self insurer waives any and all rights to recoveries, refunds and/or credits associated with assessments levied by the Workers' Compensation Board against the group self insurer pursuant to the WCL

A group self insurer that complies with all of the above conditions and executes such a policy for the total amount of all liabilities attributable to all operating years and ceases or has ceased providing workers' compensation coverage to its members will not be subject to any future assessments as a group self insurer pursuant to the WCL.