

Article 3.1
Alternative Composite Deposits

§15220. Participation in Alternative Composite Deposits

(a) All private self insured employers, active or revoked, shall be annually determined by the Manager to be either eligible or non-eligible for participation in the alternative composite deposit program.

Participation shall be as a fully participating self insured employer or as a partially participating self insured employer as provided in subsection(c)(1).

(b) All non-eligible self insurers shall be deemed "excluded". The following self insured employers shall be excluded from the alternative composite deposit program:

(1) Any new private sector self insured employer during their first three full years of self insurance. An employer shall be considered a new self insured employer if, when it applied to become self insured, it did not possess an active Certificate of Consent to Self Insure issued pursuant to Labor Code Section 3700(b) for itself or for its parent, a subsidiary, or an affiliate employer.

(2) Any former private self insured employer that possesses a revoked Certificate of Consent to Self-Insure and is no longer required to submit a Self-Insurer's Annual Report pursuant to Section 15251 of this subchapter 2 because all known claims costs have been reported and all known claims are closed.

(3) Any former private self insured employer that possesses a revoked Certificate of Consent to Self Insure and is required to post no more than the minimum security deposit amount pursuant to Labor Code Section 3701(b).

(4) Any current or former private self insured employer to the extent it has sold off all or any portion of its workers' compensation liabilities under a special excess workers compensation insurance policy to an admitted carrier and has continued to post security deposit to secure such sold off liabilities for 3 years from the policy issuance date.

(5) All private group self insurers of workers' compensation liabilities as provided for in Article 13 of this subchapter 2.

(6) Any private self insured employer to the extent that it transfers any or all of its existing self insured workers' compensation liabilities to either: (A) a fully insured employer, such as in the merger, reorganization, sale or spin off of a division or subsidiary; or, (B) a carrier through a contractual sell off that is not a special excess workers' compensation insurance policy pursuant to Labor Code Section 3702.8(c) and (d).

(7) Any current or former private self insured employer that has defaulted on the payment of its self insured workers' compensation liabilities and whose liabilities have been turned over to the Security Fund by the Director.

(8) Any current or former private self insured employer that has failed to post the full amount of security deposit required by Section 15210 for more than 60 consecutive days.

(9) Any former private self insured employer that has posted a surety bond that contains no provision to release the carrier's liabilities under the surety bond.

(10) Any private self insured employer that does not meet the minimum credit rating criteria for participation in the alternative composite deposit contained in subsection (d)(3).

(11) Any current or former private legally self insured employer that is a member of a public sector healthcare joint powers authority pursuant to Government Code Section 6527.

(12) Any self insured employer that has been specifically excluded by written request of the Security Fund. Notwithstanding other requirements of this section, the Security Fund may submit a written request to the Manager that any private self-insured employer otherwise excluded from participation in the alternative composite deposit program be included, and the Manager, upon such written request, may grant the request; the written request shall identify the private self-insured employer and shall state the reasons that such private self-insured employer should be included in the alternative composite deposit.

(c) All private self insured employers determined by the Manager to be eligible shall be required to participate in the alternative composite deposit program.

(1) The Manager shall identify each eligible participant as one of the following:

- (A) Fully participating employer, or
- (B) Partially participating employer.

(d) To qualify as a fully participating private self insured employer, the employer shall meet all the following requirements:

(1) The employer is not excluded by subsection (b) of this regulation;

(2) The self insured employer meets the minimum financial requirements in its last published annual financial report as provided in Section 15203.2;

(3) The employer possesses an acceptable credit rating on the date of the Security Fund's written alternative composite deposit proposal. An acceptable credit rating shall be any "A" or any "B" rating or equivalent as determined by section 15220.1, in either of the following publications:

(A) Moody's Investor Service Corporate Finance monthly subscription rating guide entitled "Moody's Global Rating Guide", or

(B) Standard & Poor's Credit Market Services monthly subscription rating guide entitled "Global Ratings Handbook".

In the event that ratings have been determined pursuant to both subsection(d) (3) (A) and (B), and the ratings differ, the ~~lowest~~ most recently published rating shall be utilized.

(e) The following self insured employers shall qualify as partially participating members of the alternative composite deposit program:

(1) The employer is not excluded by subsection (b) of this regulation;

(2) The employer meets the qualifications of subsection (d) but has been identified as a partially participating self insured employer by action of the Manager for cause. Cause may include, but is not limited to, failure to provide a parental agreement of assumption and guarantee; failure to file a complete and timely Self Insurer's Annual Report; failure to post the required security deposit by the required date; failure to report all claim liabilities or to estimate claims liabilities pursuant to Section 15300 of these regulations as determined in a routine audit or special audit; and/or, failure to post alternate deposit for new subsidiaries or affiliates of the self insurer after the end of the cycle for the previous year's alternate composite deposit.

(f) Excluded self insured employers shall not be eligible for any portion of their security deposit to be covered by the alternative composite deposit. The excluded private self insurer shall continue to secure its workers' compensation liabilities as required in Article 3 and to pay assessments as provided in Article 4 of this subchapter 2.

(g) Any private self insured employer that is eligible only as a partially participating member or is excluded to participate in the alternative composite deposit shall post the balance of the amount of required security deposit with the Director pursuant to Labor Code Section 3701 and Article 3 of this subchapter 2.

(h) For cause, the Manager may downgrade an eligible private self insured employer from:

(1) fully participating employer to partially participating employer as provided in subsection

(e) (2); or

(2) from partially participating employer to excluded.

Cause may include, but is not limited to, failure to submit the Self Insurers' Annual Report and/or failure to estimate future claim liabilities on the Self Insurers' Annual Report fully pursuant to Section 15300 as determined in an audit; inclusion of claim liabilities of subsidiaries or affiliates in their self insurance program that have not been granted a Certificate to Self Insure by the Director; failure to post a security deposit pursuant to Labor Code Section 3701 and these regulations; failure to meet the financial requirements for self insurance pursuant to Section 15203.1; failure to submit an Assumption and Guarantee Agreement pursuant to Section 15203.1; and/or, failure to pay any assessments, fees, and/or penalties pursuant to Labor Code Section 3702.9, this article, and/or Articles 4 or 9 of this subchapter 2.

Note: Authority Cited: Sections [3701](#), [3701.8](#) and [3702.10](#), Labor Code.

Reference: ~~Section~~[Sections 3701](#), [3701.8](#), Labor Code, and Section 6527, Government Code.

§15220.1. Financial Information Summary.

(a) In addition to the existing requirements to provide the current financial statement to the Manager contained in Section 15203.2 of these regulations, the Manager shall require ~~a Financial information Summary Form, Form A4-7 (4/03)~~ that includes designated general information and key financial items from such financial statement required by Section 15203.2, in a format approved by the Director pursuant to subsection (c) (3), from any private self insured employer that:

(1) does not have public financial statements (such as closely held or privately held employers) or has no published credit rating; and

(2) has a required security deposit equal to or greater than \$2,000,000 or fails to meet the financial requirements to be self insured as contained in Section 15203.2.

(b) ~~The Financial information Financial Summary Form, Form A4-7 (4/03)~~, shall include the following designated general information and key financial items:

(1) General Information Items:

(A) Name of Employer

(B) Date of Last Annual Financial Statement

(2) Key Financial Information:

(A) Cash and Marketable Securities

(B) Inventory

(C) Total Current Assets

(D) Total Intangible Assets

(E) Total Assets

(F) Total Short Term Debt

(G) Total Current Liabilities

(H) Total Long Term Debt

(I) Long Term Pension Obligations

(J) Total Liabilities

(K) Total Shareholders' Equity

(L) Total Preferred Stock

(M) Retained Earnings

(N) Net Sales

(O) Cost of Goods Sold

(P) Selling, General & Administrative Expenses

(Q) Operating Profit/ (Loss)

(R) Earnings before Interest and Taxes

(S) Total Interest Expenses

(T) Rental Expense

(U) Net Income

(V) Depreciation & Amortization

(W) Extraordinary Items

(c) ~~—~~A private self insured employer that fails to file ~~Form A4-7, Financial Summary~~ the financial information Form, as determined by this section, shall be ineligible to participate as a fully participating member in the current alternative composite deposit.

(1) The Manager shall utilize available financial information to assign a non-investment grade rating to any self insured employer that fails to submit financial information ~~a Financial Summary Form, Form A4-7 (4/03),~~ for eligibility as a partial participating member.

(2) The Manager shall be authorized to determine that a private self insurer that fails to submit ~~a Financial Summary Form,~~ financial information be ineligible for partial participation in the current alternative composite deposit program.

FINANCIAL SUMMARY

~~GENERAL INFORMATION:~~

1. ~~NAME OF MASTER~~
~~CERTIFICATE~~
~~HOLDER:~~ _____

2. ~~DATE OF LAST FINANCIAL STATEMENT:~~ ____ / ____ / ____

(mm dd yr)

~~FINANCIAL INFORMATION:~~

~~CASH & MARKETABLE SECURITIES \$~~ _____

~~INVENTORY \$~~ _____

~~TOTAL CURRENT ASSETS \$~~ _____

~~TOTAL INTANGIBLE ASSETS \$~~ _____

~~TOTAL ASSETS \$~~
\$ _____

~~TOTAL SHORT TERM DEBT \$~~ _____

~~TOTAL CURRENT LIABILITIES \$~~ _____

~~TOTAL LONG TERM DEBT \$~~ _____

~~LONG-TERM PENSION OBLIGATIONS . . . \$~~ _____

~~TOTAL LIABILITIES \$~~
\$ _____

~~TOTAL SHAREHOLDERS' EQUITY \$~~ _____

~~TOTAL PREFERRED STOCK \$~~ _____

~~RETAINED EARNINGS \$~~ _____

~~NET SALES \$~~ _____

~~COST OF GOODS SOLD \$~~ _____

~~SELLING, GENERAL &~~
~~ADMINISTRATIVE EXPENSES \$~~ _____

~~OPERATING PROFIT/(LOSS) \$~~ _____

~~EARNINGS BEFORE INTEREST~~
~~AND TAXES \$~~ _____

~~TOTAL INTEREST EXPENSES \$~~ _____

~~NET INCOME/(NET LOSS) \$~~ _____

~~RENTAL EXPENSE \$~~ _____

~~DEPRECIATION AND AMORTIZATION . . . \$~~ _____

~~EXTRAORDINARY ITEMS \$~~ _____

(3) After December 31, 2004, the financial information required by subsection (b) shall be submitted to the Manager electronically in a format provided by the Manager.

(d) Pursuant to Labor Code Section 3701.8(b)(5), the Manager may provide to the Security Fund any financial information needed to set the deposit assessments for self-insured employers participating in the alternative composite deposit program and to secure the composite deposit.

Note: Authority Cited: Sections 3701.8 and 3702.10, Labor Code.

Reference: Sections 3701.8 and 3702.10, Labor Code.

§15220.3. Alternative Composite Deposits.

(a) The Security Fund shall secure the aggregate security deposit amount required, in whole or part, for all eligible private self insured employers in the alternative composite deposit program, utilizing any one or combination of security instruments listed in Labor Code Section 3701 and/or Section 3701.8 and as provided for in subsection (b) of this section.

(b) These security instruments may include, but not be limited to, letters of credit, surety bonds, approved securities, and cash subject to the regulatory requirements for each contained in Article 3 (commencing with Section 15210) of this subchapter 2. It may also include, but not be limited to, insurance coverage, such as specific or aggregate excess policies, or special excess workers' compensation policies; or other financial instruments, such as commercial paper or reinsurance contracts; or the Security Fund's own secured or unsecured indebtedness; or financial guarantees, including the Security Fund's own guarantee backed by cash or securities.

(c) The Security Fund shall submit a written proposal as required in subsection (d) each year that the Security Fund proposes to replace individual security deposits with an aggregate composite deposit.

(d) Each formal written proposal for an alternative composite deposit to the Manager shall include:

(1) A complete description of the proposed composite deposit including what portions are cash and non-cash; any retentions, deductibles, or co-payments that are contemplated in each layer, if any; and any insurance or reinsurance being utilized as part of the proposal;

(2) A list of all proposed self insured employers to be covered; their amount of coverage; their applicable credit rating or equivalent credit rating as determined by Section 15220.1 of this subchapter 2; and the credit rating agency utilized to determine the credit rating;

(3) Specification of the call order, if any, of the instruments proposed to be posted as part of the alternative composite deposit.

(4) A proposed starting date for the proposed alternative composite deposit that is at least 30 days after the date of the official written proposal to the Manager.

(e) The Manager shall advise the Director of all written proposals submitted by the Security Fund for an alternative composite deposit and the details of the proposal.

(f) The Manager shall review and approve or reject the alternative composite deposit proposal in whole or part and shall advise the Security Fund of the decision within 30 days. If approved, the Security Fund shall have 30 days to post the alternative composite deposit instrument(s) with the Director, unless the Security Fund's approved proposal sets forth some other acceptable timetable for delivery of the instrument(s).

(g) The Manager shall not release security deposits posted by individual self insured employers pursuant to Labor Code Section 3701 until after the alternative composite deposit permitted by Labor Code Section 3701.8 is fully posted.

(h) The Security Fund may subsequently propose additions, extensions, replacements, substitutions, or other changes to the initial alternative composite deposit posted with the Manager, in whole or part, in the same manner as set forth in this section. Approval and posting of any changes in the alternative composite deposit shall comply with the provisions of this section.

(i) The Security Fund may provide its own guarantee for any portion of the alternative composite deposit in the form of a retention, a deductible, or its own guarantee, provided the guaranteed amount is secured by segregated cash or securities posted with the Director as set forth in Section 15220.8.

(j) At the time the Security Fund submits the written proposal each year as required by subsection (d), it shall list the self-insurers that it proposes to include in whole or in part in the composite deposit. Notwithstanding Section 15210.1(b) of these regulations, each self-insurer listed for inclusion shall have 60 days from the date of notification of the increase or until July 1 of that year, whichever is sooner, to post any indicated increase in security deposit, and that increase shall be either included in the composite deposit proposed by the Security Fund or separately posted, as required.

Note: Authority Cited: Sections 3701.8 and 3702.10, Labor Code.

Reference: Section 3701.8, Labor Code.

§15220.4. Deposit Assessments by the Security Fund for Participants of the Alternative Composite Deposit.

(a) The Security Fund shall collect an annual deposit assessment from all private self insurers participating in the alternative composite deposit as follows:

(1) A pro-rata cash contribution to build the net worth of the Security Fund to pay existing or future defaults on covered workers' compensation liabilities of eligible private self insured employers under an alternative composite deposit. This portion of the deposit assessment shall be called the Default Loss Fund Fee.

(2) A pro-rata cash contribution to pay the cost of any aggregate loss protection in excess of the level of liability provided through the Default Loss Fund. This portion of the deposit assessment shall be called the Excess Liability Protection Fee.

(3) A pro-rata cash contribution to fund security deposit shortfalls from existing private self insurer insolvencies and defaults formerly funded exclusively by the Security Fund's Insolvency Assessment pursuant to Labor Code Section 3745. This portion of the deposit assessment shall be called the Pre-Existing Deposit Shortfall Fee.

Exception: Private self insurers whose Certificate of Consent to Self Insure was revoked before January 1, 2003, shall remain subject to the assessments as provided by Labor Code Section 3745.

(b) Each private self insured employer participating in an alternative composite deposit with the Security Fund shall be required to annually pay the Security Fund deposit assessment.

(c) The Security Fund shall determine the pro-rata amount of the deposit assessment for each fully participating and partially participating private self insured employer based on all the following:

- (1) Labor Code Section 3701.8(b) requirements;
- (2) the cost of the security instruments permitted in Section 15220.2 including any cash holdings that will make up the Default Loss Fund and/or the Excess Liability Protection Fee portions of any alternative composite deposit proposed to the Director;
- (3) the amount of the security deposit required by the Manager for each participating private self insured employer to secure its self insured workers' compensation liabilities;
- (4) the participating private self insured employer's credit ratingratings or equivalent credit ratingratings as determined by Sections 15220, 15220.1, or Section 15220.3;
- (5) an amount, if needed, for the pro-rata share of incurred but not fully reported liabilities aggregated across all private self insurers;
- (6) an amount for the pro-rata share of pre-existing, unfunded defaulted liabilities of the Self Insurers' Security Fund to be collected for funding cash flow needs by the Pre-Existing Deposit Shortfall Fee;
- (7) other measures of each private self insured employer's contribution to the cost of the alternative composite deposit proposed to the Director; and
- (8) the amount, if any, of the security deposit required to be separately posted with the Director pursuant to Labor Code Section 3701 to secure that portion of the employer's self insured workers' compensation liabilities that is not secured in the alternative composite deposit.

(d) Where the participating self insurer has more than one credit rating from the credit rating agencies and the ratings are not in agreement, the most recently published credit rating shall be used to calculate the deposit assessment.

(e) Excluded private self insured employers shall be required to participate in the assessments. The Manager shall determine the amount of each deposit assessment due from private self insured employers excluded from participation in any alternative composite deposit and submit it to the Security Fund. The Security Fund shall collect the deposit assessments from excluded employers.

(f) The Security Fund may repay any indebtedness incurred as contemplated by Section 15220.3 from the annual deposit assessment. At the time the annual deposit assessment is determined, it may not be known whether any such indebtedness will be incurred, or the amount or repayment terms thereof. Accordingly, a portion of the annual deposit assessment may be contingent upon the actual incurrence of such indebtedness and delayed until the amount and repayment terms are known.

(g) If the Manager increases the security deposit requirement of a participating self-insured employer after the Security Fund has issued the annual assessment for the alternative composite deposit, the amount of the increase may be addressed through a supplemental assessment or by the posting of additional deposit separately as a partially participating self-insurer.

Note: Authority Cited: Sections 3701, 3701.8, '3702.10, 3745. Labor Code.

Reference: Sections 3701, 3701.8, 3701.8(b), 3702.10, 3745. Labor Code.