

**NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
FOURTEENTH AMENDMENT TO  
INSURANCE REGULATION 41  
(11 NYCRR PART 27)**

**EXCESS LINE PLACEMENTS GOVERNING STANDARDS**

I, Benjamin M. Lawskey, Superintendent of Financial Services of the State of New York, pursuant to the authority granted by Sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 3103, 5907, 5909, 5911, 9102, and Articles 21 and 59 of the Insurance Law, Sections 202 and 302 of the Financial Services Law, Chapter 225 of the Laws of 1997, Chapter 587 of the Laws of 2002, and Chapter 61 of the Laws of 2011, do hereby promulgate the following Fourteenth Amendment to Part 27 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 41) to take effect upon filing with the Secretary of State of New York, to read as follows:

(Matter in brackets is deleted; new matter is underlined.)

Section 27.0. Preamble

(a) The Insurance Law prohibits the sale in New York of insurance (other than ocean marine insurance and such other insurance specified in section 2117(b) and (c) of the Insurance Law) when written by insurers not authorized in New York, unless:

(1) the contract of insurance provides insurance coverage only of the kinds specified in paragraphs 4 through 14, 16, 17, 19, 20, 22, 27, [or] 28, or 31 of section 1113(a) of the Insurance Law;

(2) the coverage is unobtainable in whole or in part from authorized insurers, including, where appropriate, residual market facilities authorized to write and writing the kinds of insurance provided, except as set forth in section 2118(b)(3)(F) of the Insurance Law; and

(3) the coverage is procured from one or more unauthorized insurers by a licensed excess line broker, provided that the broker exercises due care and makes a diligent effort as required by section 2118 of the Insurance Law, except as set forth in section 2118(b)(3)(F) of the Insurance Law.

(b) On July 21, 2010, President Obama signed into law the Nonadmitted and Reinsurance Reform Act of 2010 (“NRRA”), which prohibits any State, other than the insured’s home state, from requiring a premium tax payment for nonadmitted insurance. The NRRA also subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured’s home state, and provides that only an insured’s home state may require an excess line broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to such insured. On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the New York Insurance Law to conform to the NRRA.

(c) This Part establishes procedures deemed essential in the exercise of the due care and the making of a diligent effort as required by the Insurance Law and in accordance with the NRRA, when the insured's home state is this State.

[(c)] (d) In the absence of satisfactory explanation, failure by an excess line broker to comply with the requirements of this Part when the insured's home state is this State may be considered as evidence of:

(1) conduct detrimental to the interests of the people of this State within the meaning of section 2118 of the Insurance Law; and

(2) incompetency or untrustworthiness within the meaning of section 2110(a) of the Insurance Law.

[(d) No] (e) When the insured's home state is this State, an excess line broker shall not place coverage with any unauthorized insurer except in conformity with this Part or as otherwise permitted by the Insurance Law.

#### Section 27.1. Definitions

For purposes of this Part:

(a) *Authorized insurer* has the meaning ascribed by section 107(a)(10) of the Insurance Law.

(b) *Residual market facility* means an entity established pursuant to article 53, 54 or 55 of the Insurance Law or any other entity mandated by the Legislature to provide an insurance market to residents of this State.

(c) *Unauthorized insurer* means an insurer that is not an authorized insurer, including:

(1) an underwriting member, syndicate or similar insurance exchange entity not authorized to do an insurance business in this State;

(2) an association of insurance underwriters not authorized to do an insurance business in this State; or

(3) a partnership of insurers not authorized to do an insurance business in this State, each licensed in its domicile and the partnership is duly authorized by its domiciliary jurisdiction to insure risks on a joint and several basis.

(d) *Insurance exchange entity* means a person, firm, association or corporation, authorized under the laws of any state of the United States other than this State, to underwrite risks of insurance as a member or syndicate of an insurance exchange.

(e) *Association of insurance underwriters* means a group, association or other organization of insurers that engages in joint underwriting or joint reinsurance.

(f) *Excess line association* means the Excess Line Association of New York created by section 2130 of the Insurance Law.

(g) *Purchasing group* has the meaning ascribed by section 5902(m) of the Insurance Law.

(h) *Placement* or *procurement* means the process of negotiating and obtaining coverage, and the date of placement or date of procurement means the earlier of when such coverage is bound or effective.

(i) *Qualified United States financial institution* means an institution that:

(1) is organized and licensed (or in the case of an United States office of a foreign banking organization, licensed) under the laws of the United States or any of its states;

(2) is regulated, supervised and examined by United States Federal or state authorities having regulatory authority over banks and trust companies;

(3) has been determined by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC) as an acceptable financial institution; and

(4) is authorized under the laws of the United States or any of its states to act as a trustee.

(j) *Home jurisdiction* means the jurisdiction where the insurer is domiciled and has been issued or has in force a license or certificate of authority, or is granted a corporate charter, to do an insurance business pursuant to the laws of the jurisdiction.

(k) *Letter of credit* means a letter of credit that complies with the requirements of Part 79 (Regulation No. 133) of this Title.

(l) *Lloyd's* means Underwriters at Lloyd's, London.

(m) *Producing broker* means any person, firm, association or corporation who or which acts as an insurance broker, other than the excess line broker, on behalf of the insured.

(n) *Special risk insurer* means an insurer pursuant to article 63 of the Insurance Law.

(o) *Binder* has the meaning ascribed by section 2118(f)(2)(B) of the Insurance Law.

(p) *Binding authority* has the meaning ascribed by section 2118(f)(2)(C) of the Insurance Law.

(q) *Alien insurer* has the meaning ascribed by section 107(a)(5) of the Insurance Law.

(r) *Foreign insurer* has the meaning ascribed by section 107(a)(21) of the Insurance Law.

(s) *Eligible* means that an insurer not authorized in this state has satisfied the requirements of this Part[, including establishing the requisite trust fund and maintaining the minimum surplus].

(t) *Exempt commercial purchaser* has the meaning ascribed by section 2101(x)(2) of the Insurance Law.

(u) *Insured's home state* has the meaning ascribed by section 2101(x)(3) of the Insurance Law.

(v) *United States* means the states and territories of the United States, the commonwealth of Puerto Rico, and the District of Columbia.

#### Section 27.2. Excess line broker license application and renewal

(a) Each application for an excess line broker's license or renewal thereof shall be submitted to the Licensing Bureau of the New York State [Insurance] Department of Financial Services located in Albany, NY, using the appropriate form which may be obtained, upon request, from the Licensing Bureau.

(b) All information called for by the forms shall be supplied thereon and shall be duly sworn to by the applicant.

#### Section 27.3. Submission of risk to authorized insurers

(a) Except as provided in [subsection] section 2118(b)(3)(F) of the Insurance Law and subdivision (g) of this section, no excess line broker shall place coverage for a risk with any unauthorized insurer, when the insured's home state is this State, unless the risk has been declined by at least three authorized insurers, each of which is authorized in this State to write insurance of the kind requested and is an insurer that the excess line broker has reason to believe might consider writing the type of coverage or class of insurance involved. An excess line broker shall be considered to have reason to believe that an authorized insurer might consider writing the type of coverage or class of insurance if the decision to offer the risk to such authorized insurer was based on any of the following:

(1) recent acceptance by the authorized insurer of a type of coverage or class of insurance similar to that for which coverage is presently being sought;

(2) advertising by the authorized insurer or its agent indicating that the authorized insurer is willing to consider acceptance of this or a similar type of coverage or class of insurance;

(3) media communications (i.e., newspaper or magazine articles, trade publications, television and radio programming) indicating that the authorized insurer is writing, or is considering writing, this or a similar type of coverage or class of insurance;

(4) communication with other insurance professionals, risk managers, trade associations,

the excess line association or the [insurance] department of financial services, which indicates that the authorized insurer might consider writing this type of coverage or class of insurance; or

(5) any other valid basis for making such decision.

(b) Every licensee or affirming broker, in connection with the placement of each risk pursuant to this Part, shall record on the affidavit required pursuant to section 27.5 of this Part, the information relied upon that formed the basis of such licensee's or affirming broker's reason to believe that the authorized insurer might consider writing the type of coverage or class of insurance involved.

(c) Declinations obtained from authorized insurers which are affiliates of, or, as defined in article 15 of the Insurance Law, under common control with, each other or the unauthorized insurer shall not meet the requirements of this subdivision unless such related insurers operate as distinct and autonomous entities, and for underwriting purposes, compete with each other for the same type of coverage or class of insurance.

(d) If less than the full amount of coverage for the risk can be obtained from authorized insurers, the excess line broker may procure coverage from an unauthorized insurer only for the excess portion over the amount obtainable from the authorized insurers.

(e)(1) Unless the licensee obtains a declination from an appropriate residual market facility, no diligent effort will be considered to have been made if the insurance is available from such residual market facility in connection with the placement of:

(i) a policy of noncommercial motor vehicle liability insurance;

(ii) medical malpractice insurance for a general hospital, as defined in section 2801(10) of the public health law, a physician or dentist; or

(iii) insurance which by law must be provided by an authorized insurer.

(2) In connection with the placement of any other kind of insurance, a declination from the appropriate residual market facility shall be required unless, prior to the placement, the insured has been advised of the availability of coverage from the residual market facility, and has, nevertheless, consented in writing to placement with an unauthorized insurer.

(f) The excess line broker shall keep a complete and separate record of all policies procured from unauthorized insurers under its excess line license. [The] Where declinations are required, the excess line broker and the producing broker shall maintain files supporting declinations by authorized insurers obtained by such excess line or producing broker.

(g)(1)(i) Pursuant to the provisions of Section 2118(b)(4) of the Insurance Law, the superintendent has determined that an excess line broker shall not be required to comply with the provisions of subdivisions (a), (b) and (c) of this section with regard to the placement of any of the following coverages:

## Coverage

### Amusement Parks and Carnivals

Property and/or liability coverage for the owners/operators of amusement parks, theme parks and carnivals.

### Amusement Rides and Devices

Property and/or liability coverage for the owners/operators of amusement rides and devices including bumper cars, go-carts and go-cart tracks, giant slides, skateboard tracks, roller-blade tracks, etc.

### Animal Mortality

Coverage against the death of any domesticated or wild animal from any cause.

### Armored Car, Couriers or Check Cashing Operations

Crime coverage for armored car services, couriers transporting valuable documents and securities, and check cashing operations.

### Auto Racing and Automobile Race Track Liability

Coverage for claims of spectators, participants or other third parties in connection with the operation of an automobile race track or drag strip, or the staging or conduct of an automobile race.

### Automobile Personal Injury Protection (PIP) Excess of \$150,000

First party, New York No-Fault PIP benefits, excess of \$150,000.

### Blood Banks; Blood and Organ Facilities Liability

Liability coverage for facilities that primarily deal with the collection, storage and distribution of blood, blood products and human organs.

### Boats and Yachts

1. High Speed Boats - Property and liability coverage for the owners and operators of boats capable of attaining speeds in excess of 40 miles per hour.

2. Boat Rentals - Property and liability coverage for the owners and operators of boat rental facilities.

### Commercial Excess and Umbrella Liability

1. Coverage for commercial excess liability where the underlying policy limits or self insured retention is at least \$10,000,000 per occurrence.

2. Coverage for commercial umbrella liability where the underlying automobile and general liability policies or self-insured retentions contain limits of at least \$10,000,000 per occurrence.

### Commercial Property

1. Coverage for commercial excess property insurance where the policy provides in excess of \$50,000,000 in underlying coverage.

2. Primary or excess property insurance coverage for property used for business purposes when

the total insured values exceed \$200,000,000.

#### Contract Frustration

Coverage as defined in section 1113(a)(17)(E) of the Insurance Law.

#### Employed Lawyers Liability

Employed lawyer's liability insurance for lawyers who are employed as lawyers by a business entity and not a law firm.

#### Environmental Impairment/Pollution Liability

Liability coverage and/or pollution clean-up expense risks or coverages for the following:

- Asbestos Abatement Contractors;
- General Pollution Liability;
- Environmental Impairment;
- Lead Abatement Contractors;
- Hazardous Waste Disposal Sites;
- Hazardous Waste Haulers and Shippers;
- Hazardous Waste Site Mitigation Contractors;
- Radon Mitigation Contractors;
- Radon Testing Firms;
- Underground Storage Tanks - Marketers; and
- Underground Storage Tanks - Non-Marketers.

#### Explosives, Munitions or Fireworks - Manufacturing or Display

Property and/or liability coverage for the manufacturer of explosives, munitions or fireworks and firms that produce fireworks displays and exhibitions.

#### Fine Arts Dealers

All-risk or named perils coverage for property held for sale by fine arts dealers.

#### Flood Insurance

1. Flood Insurance Excess of Maximum Limits available from the Federal Flood Program.
2. Primary Coverage on Property not eligible for Federal Flood Program.

#### General Liability, Owners, Landlords and Tenants and/or Manufacturers and Contractors

1. Primary or excess liability coverage for general contractors, subcontractors, and all construction trades for damages that arise out of the construction, building, demolition or renovation of any building or structure.
2. Owners Contractors Protective - primary or excess liability coverage purchased by a contractor to protect the interests of the property owner relating to a specific construction project.

#### Golf Driving Range Liability

Personal injury or property damage liability coverage associated with the operation of a driving range, e.g., flying golf balls, improperly wielded golf clubs, etc.

#### Horseback Riding Establishments

Coverage for riding academies and pony rides.

#### House Movers and Building Demolition Contractors

Coverage for liability arising out of the moving of a house or the demolition of a building. For example, injury caused by falling brick, flying debris, etc., and structural or other damage to a house being moved.

#### Lead Liability Insurance

Coverage for personal injury resulting from the ingestion or inhalation of lead or lead dust.

#### Liquor Law Liability Coverage

Monoline liquor law liability coverage for taverns and restaurants only where liquor sales exceed 75% of total sales revenue.

#### Prize Indemnification

Coverage as defined in section 1113(a)(27) of the Insurance Law.

#### Product Liability Insurance

Product Liability Coverage for the following classes of risks or coverages only:

- Aircraft Parts Manufacturers;
- Automobile Parts Manufacturers;
- Bioengineered Products;
- Farm Equipment Parts Manufacturers;
- Firearms Manufacturers;
- Helmet Manufacturers; and
- Pharmaceutical Products Manufacturers.

#### Product Recapture or Recall Insurance

Coverage for damages associated with the withdrawal, inspection, repair, replacement or loss of use of the insured's products or work, if such products, work or property are withdrawn from the market or use due to known or suspected defect or deficiency.

#### Recreational Guide Services

Coverage for outfitters and guides for camping, hiking, rafting and similar recreational activities.

#### Security Guards - Armed and/or Using Dogs

Professional Liability coverage for security guard firms which provide guards using firearms or dogs.

#### Skating Rinks

Liability coverage for injury to participants and spectators in ice and roller skating rinks.

#### Ski Area Liability

Liability coverage for owners and operators of ski resorts, ski lifts, ski equipment sales and rental, ski lessons, ski trail maintenance, snowmaking operations, etc.



### Special Events

Primary or excess liability coverage for unique exposures of limited duration, which require varied and specialized terms, conditions and coverages generally issued to sponsors, organizers, performers and participants of trade shows, parades, flea markets, concerts, fairs and other similar events.

### Special Multi Peril Coverage

Primary or excess liability coverage for general contractors, subcontractors, and all construction trades for damages that arise out of the construction, building, demolition or renovation of any building or structure when the coverage is packaged along with property coverage.

### Tractor Pulls/Mud Bogs

Liability coverage for claims of spectators, participants or other third parties in connection with the operation of organized exhibitions, races or demonstrations primarily involving "Monster" trucks, tractors and similar off-road vehicles.

### Vacant Commercial Property

Primary or excess property insurance for vacant or unoccupied buildings used for commercial purposes.

### Warehouseman's Liability

Coverage for the liability of a warehouse owner or operator for loss or damage to the lawful goods of others in owner's or operator's care, custody or control.

(ii) Pursuant to the provisions of Section 2118(b)(4) of the Insurance Law, the superintendent has determined that an excess line broker need only obtain two declinations from authorized insurers for the following risks or exposures:

Primary or excess Errors and Omissions/Miscellaneous Professional Liability Coverage (other than Medical Malpractice Insurance as described in subsection (e)(1)(ii) of this section), including general liability coverage (if included in the same policy) with respect to the following risks or coverages:

- Alcohol and/or drug rehabilitation centers;
- Alcohol and/or drug rehabilitation programs;
- Residential facilities including convalescent centers, nursing homes, and assisted care facilities;
- Day care centers for adults, children or the physically or mentally disabled;
- Group homes for adults, children or the physically or mentally disabled;
- Halfway houses for adults, children and/or the physically or mentally disabled;
- Hospices care service providers;
- Social services agencies;
- Foster care service providers; and
- Home health care providers.

(2)(i) Application may be made to the superintendent for the addition of a coverage to the list of coverages enumerated in paragraph (1) of this subdivision. Applications may request

either a total or partial reduction in the number of declinations as provided in section 2118(b)(4) of the Insurance Law.

(ii) Applications to the superintendent made pursuant to subparagraph (i) of this paragraph shall include:

(a) a detailed description of the coverage for which either a total or partial exemption is requested; and

(b) a statement indicating the reasons why the coverage should be considered to be unavailable from authorized insurers.

(iii) In reviewing an application made pursuant to subparagraph (i) of this paragraph, the superintendent shall hold a hearing, on a record and issue a summary of findings and conclusions to determine if another number of declinations is appropriate in regard to the particular coverage. In making such determination, consideration shall be given to relevant market conditions and market surveys.

(iv) Additions to the list of coverages enumerated in paragraph (1) of this subdivision shall be published in the State Register.

(h) Subdivisions (a), (b), and (c) of this Section shall not apply to an excess line broker seeking to procure or place insurance in this State for an exempt commercial purchaser if the broker discloses to the exempt commercial purchaser that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight, and the exempt commercial purchaser has subsequently requested in writing that the licensee procure or place the insurance from an unauthorized insurer.

#### Section 27.4. Binding authority

(a) Section 2118(f) of the Insurance Law provides that an excess line broker may execute an authority to bind coverage for risks located within or outside of the State of New York and may exercise binding authority on behalf of an insurer not licensed or authorized to do business in this State.

(b) No excess line broker shall exercise binding authority [in this State] on behalf of an unauthorized insurer, when the insured's home state is this State, unless:

(1) the placement conforms in all respects with section 2118 of the Insurance Law and this Part; and

(2) the broker has filed with the excess line association, at least 10 business days prior to exercising such binding authority, a signed copy of the written agreement between the broker and the insurer, setting forth all terms, conditions and limitations of the binding authority. A copy of any amendments to, or any notice of cancellation or termination of, the agreement shall be filed with the excess line association no later than 10 business days after adoption thereof.

(c) The binding authority agreements filed pursuant to this section shall describe the authority granted to the excess line broker and include the following items:

- (1) a description of the kinds or classes of insurance which the broker may bind;
- (2) the maximum dollar limits for any policy which the broker may bind and/or a provision requiring the risk to be submitted to the insurer;
- (3) the maximum policy period for which the broker may bind;
- (4) the geographical limits upon the exercise of binding authority by the broker; and
- (5) name and telephone number of the principal insurer contact person.

(d) The excess line association shall provide monthly reports to the superintendent that will include the information contained in paragraphs (c)(1)--(4) of this section.

(e) The excess line association shall, upon request, furnish the superintendent with a copy of any agreement or amendment thereto, filed with it by an excess line broker pursuant to subdivision (b) of this section.

(f) The reports filed pursuant to subdivision (d) of this section and any agreement filed pursuant to subdivision (e) of this section shall be considered confidential documents and shall not be available for inspection by the public.

[(g) No binding authority shall permit an excess line broker to bind before January 18, 1998, and no excess line broker shall so bind.]

#### Section 27.5. Supporting affidavits

(a) For every policy or policy renewal procured from an unauthorized insurer pursuant to section 2118 of the Insurance Law when the insured's home state is this State, affidavits meeting the requirements of this section shall be filed by the excess line broker with the excess line association.

(b) Each affidavit shall be on an affidavit form prescribed by the superintendent, consisting of parts A and C, as follows:

(1) part A is the affidavit by the excess line broker and shall be consecutively numbered; and

(2) part C is the affidavit by the producing broker that shall be submitted in addition to part A, if any of the requisite declinations from authorized insurers has been obtained by the producing broker or if the producing broker provided the insured with the written notice required by subdivision (e) of this section.

(c)(1) The excess line broker shall obtain a properly completed and executed affidavit from the producing broker (part C), if the producing broker has obtained any of the requisite declinations from authorized insurers or if the producing broker provided the insured with the written notice required by subdivision (e) of this section.

(2) The affidavits required by paragraph (1) of this subdivision shall be obtained, whenever practicable, prior to placing coverage with an unauthorized insurer, but in no event more than 45 days following such placement.

(d) As set forth in Part 301 (Regulation 134) of this Title:

(1) a consolidated part A and, when required, a consolidated part C of the required affidavit may be completed and executed by the excess line broker or producing broker, on behalf of more than one member of a purchasing group, where liability insurance (as defined in section 5902 of the Insurance Law for purchasing group members) has been procured during any consecutive 30-day period prior to the filing of the affidavit(s); and

(2) any consolidated affidavit (part A or part C) shall specify all applicable information required for each insured member of the purchasing group.

(e) The excess line broker or the producing broker shall affirm in part A or part C of the affidavit, as true under the penalties of perjury, that the insured was specifically advised in writing, prior to placement, that:

(1) the unauthorized insurer with which the coverage would be placed is not authorized to do an insurance business in this State and is not subject to supervision by this State;

(2) in the event of the insolvency of the unauthorized insurer, losses will not be covered by any New York State security fund; and

(3) the policy may not be subject to all of the regulations of the superintendent pertaining to policy forms. A copy of the written notice provided to the insured shall be attached to the affirming broker's affidavit.

(f) With regard to an exempt commercial purchaser, the excess line broker or the producing broker also shall affirm in part A or part C of the affidavit, as true under the penalties of perjury, that the exempt commercial purchaser was specifically advised in writing, prior to placement, that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight.

(g) In part A of the affidavit, the excess line broker shall:

(1) identify each authorized insurer and its representative declining to issue or renew the coverage;

(2) identify any producing broker acting on behalf of the insured;

- (3) identify the insured being placed with the unauthorized insurer;
- (4) describe the type and extent of, and the premium for, the coverage to be placed;
- (5) identify the unauthorized insurer with which the coverage has been placed;

(6) specify, if coverage has been placed with more than one unauthorized insurer, the separate participation and proportionate premium of each such insurer, except that for purposes of this paragraph placement with Lloyd's shall be treated as if the placement was made with one unauthorized insurer;

(7) identify, in the case of an association of insurance underwriters or insurance exchange entity, each syndicate participating in the coverage; [and]

(8) identify the insured's home state; and

(9) indicate when coverage has been placed through participation in a purchasing group.

[(g) Where] (h) For insurance contracts that have an effective date prior to July 21, 2011, where the premium tax is to be allocated in accordance with section 27.9 of this Part, the excess line broker shall also specify the bases for allocation, using a form prescribed by the superintendent that shall be attached to part A of the affidavit and, if an alternative equitable method of allocation is utilized, additional information to substantiate such method shall be provided.

#### Section 27.6. Documents to be filed with excess line association

##### When the insured's home state is this State:

(a) [Within] within 45 days after date of procurement of a policy from an unauthorized insurer, the excess line broker shall submit to the excess line association, for recording and stamping, all documents required by section 2118 of the Insurance Law, including all affidavits required by section 27.5 of this Part[-]; and

(b) [No] an excess line broker shall not deliver, [~~nor~~] or provide to any producing broker for delivery, an excess line insurance policy declarations page or cover note unless the first page of the declarations page or cover note bears the stamp applied by the [Excess Line Association of New York] excess line association or a duplicate copy of the declarations page or cover note bearing the stamp is attached to the original.

#### Section 27.7. Reports to be filed by excess line association

(a) The excess line association shall submit the following:

(1) monthly reports, by the 15th day of every month, including aggregate premium data, drawn from excess line brokers' affidavits and classified by type of coverage, relating to policies

stamped by the excess line association during the preceding calendar month, together with affidavits, pertaining to each policy stamped, as required by section 27.5 of this Part;

(2) bi-monthly reports, identifying excess line brokers that failed to comply with any of the provisions of this Part or section 2118 of the Insurance Law, including placement of any policy with an unauthorized insurer that does not meet eligibility standards for stamping by the excess line association (and, if so, also identifying such insurer), based upon the association's examination of insurance documents submitted by the excess line brokers, whether or not stamped by the association, during the preceding two-month period; and

(3) an annual report, by March 15th, concerning excess line business, including the number of policies presented to, but not stamped by, the excess line association, and a delineation of the classes and kinds of business procured during the preceding calendar year.

(b) The reports required by this section shall be submitted, in a format and utilizing such written or electronic media as prescribed by or satisfactory to the superintendent, to:

New York State [Insurance] Department of Financial Services  
Property Bureau  
Attention: Excess Line Unit  
25 Beaver Street  
New York, NY 10004

#### Section 27.8. Annual premium tax statement

(a) In compliance with section 2118(d) of the Insurance Law, a licensed excess line broker shall execute and electronically file [in duplicate] an annual premium tax statement, by March 15, on a form prescribed by the superintendent, [and available at the [Insurance] Department[']s of Financial Service's Albany and New York City offices. The form shall be filed with the New York State [Insurance] Department of Financial Services, Bureau of Taxes and Accounts, located in Albany, NY] except as provided in Section 27.23 of this Part.

(b) The annual premium tax statement shall:

(1) report excess line premiums on a written basis (and not on a cash received basis), or indicate that there are no excess line premiums to report; and

(2) report all additional premiums charged and all return premiums paid to an insured due to cancellations, adjustments made on deposit or minimum premiums, audit premiums as determined at the end of the policy period, premiums received as the result of endorsements to existing policies, installment premiums, or any premiums that vary from those reported on the excess line broker's affidavit during the year.

(c) Every excess line broker shall pay to the superintendent a sum equal to three and six-tenths percent (0.036) of the total gross premium charged the insured, less the amount of premiums returned to the insured.

(d) Checks [in] or electronic payment of the premium tax shall be [drawn] payable to the order of the Superintendent of [Insurance] Financial Services and accompany the annual premium tax statement.

(e) No excess line broker shall file an affidavit or pay any premium tax in connection with an insurance policy issued by an unauthorized insurer unless the licensed excess line broker has placed the policy with the insurer in compliance with all applicable provisions of this Part.

#### Section 27.9. Premium tax allocation

(a) [Section 9102(b) of the Insurance Law provides that the premium tax to be paid to the superintendent on an excess line insurance policy covering property or risks located or resident both in and out of this State shall be computed on that portion of the policy premium attributable to property or risks located or resident in this State.

(b) The] For insurance contracts that have an effective date prior to July 21, 2011, an excess line broker shall determine the taxable portion of the premium by using the method of allocation, prescribed in the allocation schedule contained in Appendix 4 of this Part, pertaining to the appropriate classification for the property or risk.

[(c) As provided in section 9102(b)(2) of the Insurance Law, if] (b) If the allocation schedule does not identify a classification appropriate to the property or risk being insured, the excess line broker shall use an alternative equitable method of allocation for the property or risk.

(c) For insurance contracts that have an effective date on or after July 21, 2011, where the property or risk is located in both the United States and outside the United States, an excess line broker shall determine the taxable portion of the premium by using the method of allocation, prescribed in the allocation schedule contained in Appendix 5 of this Part, pertaining to the appropriate classification for the property or risk.

(d) If a policy covers more than one classification:

(1) for any portion of the coverage identified by a classification on the allocation schedule, the premium tax shall be computed by using the allocation schedule for the corresponding portion of the premium;

(2) for any portion of the coverage not identified by a classification on the allocation schedule, the premium tax shall be computed in accordance with subdivision [(c)] (b) of this section; and

(3) for any portion of the coverage where the premium is indivisible, the tax shall be computed by using the method of allocation pertaining to the classification describing the predominant coverage.

(e) If the information provided by the excess line broker is insufficient to substantiate the excess line broker's method of allocation, or in the event that the superintendent determines the

broker's method is incorrect or inequitable, the superintendent shall determine the equitable and appropriate amount of premium tax due to this State, as follows:

(1) where the allocation schedule identifies a classification appropriate to the coverage, the superintendent shall use the method prescribed in subdivision [(b)] (a) of this section; and

(2) where the allocation schedule does not identify a classification appropriate to the coverage, the superintendent, in determining the equitable and appropriate amount of tax due to this State, shall give significant weight to documented evidence of the underwriting bases and other criteria used by the insurer and shall also consider other available information, to the extent sufficient and relevant, including:

(i) for insurance contracts that have an effective date prior to July 21, 2011, the percentage of the insured's physical assets in this State, percentage of the insured's employee payroll in this State, percentage of the insured's sales in this State, and the amount of premium tax paid to another jurisdiction for the policy[.]; and

(ii) for insurance contracts that have an effective date on or after July 21, 2011, where the property or risk is located in both the United States and outside the United States, the percentage of the insured's physical assets in the United States, percentage of the insured's employee payroll in the United States, percentage of the insured's sales in the United States, and the amount of premium tax paid to another jurisdiction for the policy.

#### Section 27.10. Policy form compliance

(a) Policies issued by unauthorized insurers pursuant to this Part are exempt from the provisions of Part 71 (Regulation 107) and Part 73 (Regulation 121) of this Title.

(b) [A] When the insured's home state is this State, a complete copy of any liability insurance policy shall be maintained by the excess line broker, provided, however, the broker need not maintain a copy of any policy [which] that provides liability coverage:

(1) only on an occurrence basis; and

(2) only with unlimited legal defense costs outside the limits of liability stated in the policy.

#### Section 27.11. Prohibited activities

##### When the insured's home state is this State:

(a) [No] an excess line broker shall not procure coverage from an unauthorized insurer if [such] the coverage is prohibited by law, including if [such] the coverage:

(1) does not constitute insurance within the meaning of section 1101 or other sections of the Insurance Law;



(2) involves a kind of insurance not authorized under section 1113 or other sections of the Insurance Law;

(3) is not within the scope of section 2105 of the Insurance Law;

(4) is determined by any Appellate Division of the New York State Supreme Court or the New York State Court of Appeals to be against public policy in this State; or

(5) has been otherwise proscribed by law[.];

(b) [Every] an excess line broker is subject to section 2122(a) of the Insurance Law, which prohibits any advertisement or the making of any public announcement that calls attention to an unauthorized insurer[.]; and

(c) [No] an excess line broker shall not solicit for, bind coverage on behalf of, or act as an agent or representative of, an unauthorized insurer, except as provided for in section 27.4 of this Part.

#### Section 27.12. Service fees

[No] A producing broker or excess line broker, when the insured's home state is this State, shall not charge the insured any amount (including reimbursement for premium taxes or stamping fees), other than the premiums for the policy or insurer's policy fee, if any, unless the broker obtains a written memorandum, signed by the insured, specifying the amount and purpose in accordance with section 2119 of the Insurance Law.

#### Section 27.13. Duty to inquire about unauthorized insurers

(a) Prior to placing business with an unauthorized insurer, when the insured's home state is this State, an excess line broker shall make inquiry sufficient to ascertain the insurer's financial stability and capacity adequate to its business and, in order to support such inquiry, shall except as provided by subdivision [(k)] (j) of this section obtain, review and retain at least the following:

(1) a copy of the insurer's most recent annual financial statement as of a date in no event earlier than 18 months prior to placement, in the form filed with its home jurisdiction and, if a alien insurer, the standard financial statement filed with the National Association of Insurance Commissioners ("NAIC") to satisfy NAIC requirements for an alien insurer's inclusion on the NAIC International Insurers Department ("IID") list;

(2) evidence, if an alien insurer, that such insurer appears in the most recent NAIC IID list of alien insurers;

(3) a copy of the insurer's latest available report on examination, if any, in English (or true translation) and stated in United States dollars, as conducted by its home jurisdiction;

(4) a certification, in English (or true translation), from the insurer's home jurisdiction verifying that such insurer is authorized to write, both by and within its home jurisdiction, the kinds of insurance sought to be placed;

(5) if the insurer seeks an exemption from section 1213 of the Insurance Law, then an executed copy of the trust agreement provided under section 27.14 of this Part;

(6) a certification from the unauthorized insurer that it agrees to comply with the provisions of section 27.11 of this Part and subdivisions (g) and (h) [and (j)] of this section;

(7) if the insurer seeks an exemption from section 1213 of the Insurance Law, then a statement from the trustee, specifying the amount and nature of the funds maintained in compliance with the provisions of paragraph (b)[(3)](4) of this section, and affirming that the trustee is a qualified United States financial institution; and

(8) a copy of the unauthorized insurer's prospective business plan (including the lines of business the insurer intends to write, its anticipated premium volume, the markets it intends to serve, and any other pertinent information) covering at least a three-year period.

(b) [No] When the insured's home state is this State, an excess line broker shall not place coverage with a unauthorized insurer, unless the insurer's financial statements or other evidence demonstrate that the insurer:

(1) is solvent and otherwise substantially complies with solvency requirements for authorized insurers;

(2) has surplus to policyholders sufficient to support its writings, reasonable in relation to its outstanding liabilities, adequate to its financial needs and:

(i) for an individual incorporated foreign excess line insurer that:

(a) is eligible prior to January 1, 2011, the insurer maintains surplus to policyholders of not less than US\$25,000,000 as of July 1, 2011, US\$35,000,000 as of January 1, 2012, and US\$45,000,000 as of January 1, 2013; or

(b) becomes eligible on or after January 1, 2011, the insurer maintains surplus to policyholders of not less than US\$45,000,000;

(ii) [for an association of insurance underwriters consisting of individual incorporated excess line insurers located outside the United States, each insurer maintains surplus to policyholders of not less than US\$45,000,000 and the association maintains an aggregate surplus to policyholders of not less than US\$10,000,000,000; or

(iii)] for a partnership of unlicensed foreign insurers, each licensed in its domicile and which partnership is duly authorized by its domiciliary jurisdiction to insure risks on a joint and several basis that:

(a) is eligible prior to January 1, 2011, each insurer maintains surplus to policyholders of not less than US\$25,000,000 as of July 1, 2011, US\$35,000,000 as of January 1, 2012, US\$45,000,000 as of January 1, 2013; or

(b) becomes eligible on or after January 1, 2011; each insurer maintains surplus to policyholders of not less than US\$45,000,000;

(3) as of January 1, 2016 and every three years thereafter, the minimum surplus to policyholders requirements in subparagraphs (i), (ii) and (iii) of paragraph (2) of this subdivision shall be increased by US\$1,000,000; and

(4) if the insurer seeks an exemption from section 1213 of the Insurance Law, then maintains a trust fund in compliance with section 27.14 of this Part.

(c) For purposes of subdivision (b) of this section, in the case of an insurance exchange created by the laws of a state other than this State, no excess line broker shall procure coverage from that exchange or any of its syndicates, unless:

(1) the insurance exchange maintains funds in trust or custodial accounts, under terms acceptable to the superintendent, in an amount not less than US \$75,000,000 in the aggregate provided that an amount at least equal to the greater of US\$30,000,000 or one-third of the aggregate, is maintained on a joint and several basis for the protection of all insurance exchange policyholders;

(2) the syndicates of such insurance exchange maintain total capital and surplus, or their substantial equivalent, not less than US\$100,000,000 in the aggregate; and

(3) each syndicate with which excess line insurance is placed has surplus to policyholders sufficient to support its writings, reasonable in relation to its outstanding liabilities, adequate to its financial needs; and if the syndicate:

(i) is eligible prior to January 1, 2011, the syndicate maintain minimum capital and surplus, or their substantial equivalent, of not less than US\$25,000,000 as of July 1, 2011, US\$35,000,000 as of January 1, 2012, US\$45,000,000 as of January 1, 2013, or

(ii) becomes eligible on or after January 1, 2011 and the syndicate maintains minimum capital and surplus, or their substantial equivalent, or not less than US\$45,000,000; and

(4) as of January 1, 2016 and every three years thereafter, the minimum capital and surplus requirements in subparagraphs (i) and (ii) of paragraph (3) of this subdivision shall be increased by US \$1,000,000.

(d) [In the case of an association of insurance underwriters consisting of individual incorporated insurers located outside the United States; a group located outside the United States whose members consist of individual incorporated insurers who are not engaged in any business

other than underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group's domiciliary regulator; or a partnership of unlicensed insurers, each licensed in its domicile and which partnership is duly authorized by its domiciliary jurisdiction to insure risks on a joint and several basis:

(1) prior to placing business with any of such entities that includes one or more unauthorized insurers, an excess line broker shall obtain financial statements or reports on examination, with respect to each unauthorized insurer that is a member of such entity, showing the information required in paragraphs (a)(1) and (3) of this section; and

(2) if the excess line broker after due care and a diligent effort has been unable to obtain the insurer's financial statement or report on examination, but has obtained financial and other information giving such broker a reasonable belief that placing coverage with such insurer is nonetheless appropriate, the excess line broker may procure coverage from the insurer, provided that the excess line broker has given, or caused to be given by a producing broker, written notice to the insured of such facts prior to placement.

(e) If the excess line broker satisfies the superintendent that placing coverage with the insurer is necessary and will not be detrimental to the public and the policyholder when the insured's home state is this State, the requirement set forth in paragraph (a)(2) of this section may be waived by the superintendent, in light of such factors as the length of time the insurer has been authorized in its home jurisdiction and elsewhere, its financial condition, and unavailability of particular coverages from authorized insurers or unauthorized insurers meeting the requirements of this Part.

[(f)] (e) Before placing business with an unauthorized insurer, when the insured's home state is this State, an excess line broker shall make inquiry sufficient to demonstrate that such insurer's:

- (1) claims practices have been, and continue to be, satisfactory; and
- (2) management is trustworthy and competent.

[(g)] (f) Whenever an excess line broker knew or should have known that an unauthorized insurer is not in compliance with any requirement of this section, the excess line broker shall, when the insured's home state is this State:

- (1) cease procuring coverage from such insurer; and
- (2) notify, in writing and within 10 days, the superintendent, excess line association, any producing broker and each insured having a policy placed by the excess line broker with such insurer that, in the excess line broker's judgment, replacement of coverage is warranted, stating reasons supporting that judgment. Proof of mailing of the excess line broker's notice to replace coverage, to the first named insured at the address shown in the policy, shall be sufficient proof of notice required by this paragraph.

~~[(h) No]~~ (g) When the insured's home state is this State, an excess line broker shall not place coverage with an unauthorized insurer, unless such insurer has electronically filed with the superintendent a current listing that sets forth the following individual policy details:

(1) written premium (gross premiums, including policy fees, less return premiums plus additional premiums and premiums on policies not taken) charged on each policy covering property or risks located or resident in this State;

(2) name and address of the excess line broker and[, wherever practicable,] the insured;

(3) the insured's home state;

(4) effective date of coverage and policy number;

~~[(4)]~~ (5) type and amount of coverage; and

~~[(5)]~~ (6) such other information as the superintendent may require.

~~[(i)]~~ (h) The listing required by subdivision ~~[(h)]~~ (g) of this section shall be [annually] submitted electronically to the superintendent by March 15 of each year[, in duplicate] on a form prescribed by the superintendent[, and addressed to: New York State Insurance Department Property Bureau Attention: Excess Line Unit 25 Beaver Street, New York, NY 10004].

~~[(j) No]~~ (i) When the insured's home state is this State, an excess line broker shall not place coverage with an unauthorized insurer, unless such insurer has agreed in writing to be bound by the provisions of section 2121 of the Insurance Law.

~~[(k) The]~~ (j) When the insured's home state is this State, an excess line broker's need to obtain and retain any information or materials specified in this section may be waived to the extent that the excess line association:

(1) maintains such information or materials; and

(2) makes the information and materials available, during normal business hours and at reasonable cost, to excess line brokers, producing brokers, insureds or prospective insureds, provided, however, that nothing in this paragraph shall be interpreted in any way to relieve or diminish the obligation of the excess line licensee to inquire about unauthorized insurers and review all the relevant material required by this section.

~~[(l)]~~(k)(1) The requirements of paragraph (b)(2) or (c)(3) of this section may be satisfied by an unauthorized insurer possessing less than the surplus to policyholders required, and the requirements of paragraph (c)(1) of this section regarding the maintenance of funds on a joint and several basis may be satisfied by an insurance exchange possessing less than the amount of funds in trust or custodial accounts required to be maintained on a joint and several basis for the protection of all insurance exchange policyholders, upon an affirmative finding of acceptability by the superintendent. The finding shall be based upon such factors as quality of management,

capital and surplus of any parent company, the unauthorized insurer's or insurance exchange's underwriting profit and investment income trends, unauthorized insurer or insurance exchange record and reputation within the industry, whether the unauthorized insurer or insurance exchange will provide capacity for risks for which coverage is not readily available in the admitted market or from unauthorized insurers which satisfy the requirements of paragraph (b)(2) or (c)(3) of this section, and insurance exchanges which satisfy the requirements of paragraph (c)(1) of this section, and the degree to which a finding of acceptability would benefit insurance consumers in this State.

(2) An unauthorized insurer or insurance exchange seeking an affirmative finding of acceptability from the superintendent shall file a business plan with the superintendent detailing the unauthorized insurer's or insurance exchange's proposed underwriting activity on New York risks. Any affirmative finding of acceptability pursuant to this subdivision shall be conditioned upon the unauthorized insurer's or insurance exchange's adherence to the business plan as filed with the superintendent. Any unauthorized insurer's or insurance exchange's granted an affirmative finding of acceptability pursuant to this subdivision may file a revised business plan with the superintendent seeking to alter its underwriting activity on New York risks.

(3) In no event shall the superintendent make an affirmative finding of acceptability when the unauthorized insurer's surplus to policyholders is less than US \$25,000,000; provided, that as of January 1, 2016, and every three years thereafter, the minimum surplus to policyholders requirement amount shall be increased by US\$1,000,000.

#### Section 27.14. Trust fund

(a) [No excess line broker shall place coverage with] In order to be exempt from section 1213 of the Insurance Law pursuant to section 27.16 of this Part, an unauthorized insurer [unless such insurer has established and maintains] shall establish and maintain a trust fund in compliance with the requirements set forth in this section and section 27.15 of this Part.

(b) Except in connection with the trust fund specified in paragraph (i)(1) of this section, a trust agreement form designed for these purposes and prescribed by the superintendent, or the NAIC standard trust form agreement designed for these purposes as amended by any New York supplement prescribed by the superintendent, shall be utilized to comply with the requirements of this section and section 27.15 of this Part.

(c) The trust fund shall at all times be established and maintained in the United States in a qualified United States financial institution.

(d) The funds in trust shall be in the form of cash, letter of credit, or assets satisfactory to the superintendent and in conformity with section 1404(a)(1) and (2) of the Insurance Law.

(e) In the case of an insurer domiciled in the United States and licensed by at least one state, the amount of funds in trust shall be no less than US \$2,500,000.

(f)(1) In the case of an alien insurer, except as provided for in subdivisions (g), (h) and (i) of this section, the amount of funds in trust shall be, for liabilities arising from business written on or after January 1, 1998, 30 percent of the first US \$200,000,000 plus 25 percent of the next US \$300,000,000 plus 20 percent of the next US \$500,000,000 plus 15 percent of the amount in excess of US \$1,000,000,000 of estimated gross liabilities, as of the end of each calendar year, attributable to excess line business written in the United States (exclusive of marine insurance as set forth in section 2117(b)(3) of the Insurance Law). In no event shall the trust fund minimum amount be less than US \$5,400,000.

(2) Notwithstanding paragraph (1) of this subdivision, an insurer that has written United States excess line business between January 1, 1998 and January 1, 2007 shall not be required to maintain more than US \$100,000,000 in the trust fund until December 31, 2011.

(3) The liabilities of the insurer are to be determined no less than annually and reported to the trustee and the Superintendent of [Insurance] Financial Service of the State of New York no later than seven months after the insurer's accounting year-end. Such liabilities shall also be certified by an actuary who is a [member of a recognized professional actuarial society] fellow of the Casualty Actuarial Society (FCAS) or a fellow in the Society of Actuaries (FSA).

(g) In the case of an association of insurance underwriters consisting of individual incorporated alien insurers, the amount of funds in trust shall be an aggregate sum of no less than US\$100,000,000 maintained on a joint and several basis for the payment of the United States excess line liabilities (exclusive of marine insurance as set forth in section 2117(b)(3) of the Insurance Law) of each individual incorporated alien insurer.

(h) In the case of a partnership of unlicensed insurers, licensed in their domicile and which partnership is duly authorized by its domiciliary jurisdiction to insure risks on a joint and several basis, the amount of funds in trust shall be no less than US \$75,000,000 maintained on a joint and several basis for the payment of the United States excess line liabilities (exclusive of marine insurance as set forth in section 2117(b)(3) of the Insurance Law) of the partnership.

(i)(1) In the case of a group whose members consist of individual incorporated alien insurers who are not engaged in any business other than underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group's domiciliary regulator:

(i) each syndicate in the group shall maintain a trust fund in the form of a trustee account representing the syndicate's gross liabilities attributable to excess line business written in the United States (exclusive of marine insurance as set forth in section 2117(b)(3) of the Insurance Law); and

(ii) the group shall maintain in the form of a trustee account a surplus in the amount of US \$100,000,000 which shall be held jointly for the benefit of United States excess line policyholders of any member of the group.

(2) The superintendent may determine that a syndicate need not maintain in trust the full amount required by subparagraph (1)(i) of this subdivision, based on such factors as the amount and nature of the business written by the syndicate, the quality and completeness of financial information provided to the superintendent, information provided to the superintendent by the group's domiciliary regulator, and the amount of jointly held funds which the group maintains in excess of the amount required by subparagraph (1)(ii) of this subdivision. In no event, however, shall the superintendent determine that a syndicate may maintain an amount less than 30 percent of the first US \$200,000,000 plus 25 percent of the next US \$300,000,000 plus 20 percent of the next \$500,000,000 plus 15 percent of an amount in excess of US \$1,000,000,000 of its gross United States excess line liabilities.

(j) The trust fund shall be established pursuant to a trust agreement consistent with section 27.15 of this Part and containing the following minimum provisions in a form satisfactory to the superintendent:

(1) the trust fund is for the exclusive protection of all direct policyholders and beneficiaries of direct policies covering property or risks located within the United States (exclusive of any marine insurance business, excluded from excess line business pursuant to section 2117(b)(3) of the Insurance Law) where the insurer does business on an unauthorized basis;

(2) the trust fund must be irrevocable for a term of at least five years, unless during such term the insurer becomes an authorized insurer in this State or the termination of the trust is approved by the superintendent and such unauthorized insurer is:

(i) entering into a merger agreement with an authorized insurer in this State;

(ii) entering into an assumption and assignment agreement, approved by the superintendent, transferring all liabilities covered by the trust fund to an authorized insurer in this State or another eligible excess line insurer; or

(iii) transferring, with the approval of the superintendent, the trust fund to another qualified trustee;

(3) in the event of termination of a trust for a reason other than those specified in paragraph (2) of this subdivision, the termination shall not become effective until five years elapse from the date that the insurer provides written notice to the trustee of the insurer's intention to terminate the trust;

(4) in the event that the trust is to be renewed for an additional period of at least five years or to be replaced by another trust at expiration, the trustee must be notified of the decision to renew or replace the trust at least one year prior to the expiration of the trust;

(5) the superintendent and excess line association shall be notified by the trustee, within 30 days of its receipt of notice from the insurer, that a trust has been amended or will not be renewed or replaced;



(6) in the event of termination of a trust, an independent certified public accountant (CPA) or actuary who is a fellow of the Casualty Actuarial Society (FCAS) or a fellow in the Society of Actuaries (FSA) shall be appointed by the trustee as auditor, and an audit shall be made of the trust fund as of the date of such termination;

(7) the CPA audit or actuarial review shall estimate any outstanding liability of the insurer for unpaid losses (both reported and unreported) and unearned premiums on policies issued by the insurer to United States policyholders during the term of the trust, up to the date of termination;

(8) the auditor or actuary shall, upon completion of the CPA audit or actuarial review, and from time to time thereafter at the request of the trustee, issue a certificate to the trustee certifying the amount of any outstanding liability at the date of the termination or at a later date specified in the certificate; and

(9) the trustee shall retain in trust, following the date of termination by the insurer, such funds as may be necessary to pay losses and unearned premiums consistent with the audit.

(k) Upon receipt of a notice from the trustee that a trust will not be renewed or replaced:

(1) the superintendent may, or the excess line association at the superintendent's request shall, issue a notice to excess line brokers of the termination; and

(2) the superintendent may also direct excess line brokers to cease placing or renewing policies of insurance with the insurer on property or risks located or resident in this State and, in that event, no new or renewal policies issued by such insurer shall be stamped by the excess line association.

#### Section 27.15. Trust fund disbursements

(a) The trust agreement shall provide that disbursements from the trust fund shall be made only if:

(1) a judgment has been obtained by the policyholder or third-party claimant against the unauthorized insurer in any court of competent jurisdiction within the United States;

(2) such judgment has become final in that the particular litigation has been concluded, either through failure to appeal within the time permitted or through final disposition of any appeal or similar procedure for review permitted by applicable law;

(3) the trustee has been duly served with a certified copy of the judgment, together with such proof as to its finality as the trustee may reasonably request;

(4) the trustee receives certified written statements from the policyholder, third-party claimant or legal counsel for such policyholder or claimant stating, without qualification other

than with respect to the passage of time period described in paragraph (5) of this subdivision, that:

(i) the claim does not include exemplary or punitive damages;

(ii) the part, if any, of the claim, for unearned premium; and

(iii) the policyholder or claimant has complied with paragraphs (1), (2), (3) and (4) of this subdivision; and

(5) 30 days elapse from the date the trustee receives the documents required by paragraph (3) of this subdivision without the judgment having been satisfied, except, in the event that the termination date of the trust is less than 30 days following such receipt, a period of time expires equal to the amount of time left before that termination date.

(b) The trust agreement shall also provide that in the event the insurer is found insolvent pursuant to the laws of its home jurisdiction, the trustee shall disburse the trust funds at the direction of the Superintendent of [Insurance] Financial Services of the State of New York in accordance with article 74 of the New York Insurance Law.

(c) Notwithstanding subdivisions (a) and (b) of this section, a trust fund that meets the requirements of the NAIC will be deemed to satisfy the provisions of this section.

(d) Disbursements from the trust fund shall be made only for the following purposes and only in the following priority:

(1) bona fide claims resulting from covered losses under direct policies issued within the United States by the insurer on an unauthorized basis; and

(2) after all such claims have been paid, then return of unearned premiums on such policies.

(e) Notwithstanding the provisions of subdivision (d) of this section, the trust agreement may provide that the trustee maintains a first priority security interest in and lien upon the trust to ensure the payment of the reasonable expenses of the trustee, but the amount of such first priority security interest and lien may not exceed the lesser of 10 percent of the value of the trust or US \$250,000.

(f) In the event that a claim is payable pursuant to another existing trust fund, the other trust fund shall be considered primary and only an amount not paid by that trust fund may be paid in accordance with subdivision (d) of this section.

(g) The trustee may request information that the claim has not been satisfied by another source and that a claimant has no knowledge of any source of recovery other than the insurer.

Section 27.16. Exemption from section 1213 of the insurance law; Consent to service of process

[No excess line broker shall place coverage with an] An unauthorized insurer shall be subject to section 1213 of the Insurance Law unless [the insurer]:

(a) the contract of insurance is effectuated in accordance with section 2105 of the Insurance Law and this Part;

(b) the insurer stipulates in its insurance policy that the insurer appoints the superintendent to be its true and lawful attorney upon whom may be served all lawful process in any proceeding instituted by or on behalf of an insured or beneficiary arising out of the insurance policy issued pursuant to this Part, and signifies its agreement that service of process in such manner is of the same legal force and validity as personal service of process in this State upon the insurer; [and]

[(b)] (c) the insurer files in the New York City office of the [Insurance] Department of Financial Services its power of attorney, executed by the insurer, accompanied by the insurer's written certificate of designation of the name and address of the insurer's officer, agent or other person to whom process shall be forwarded by the superintendent[.]; and

(d) the insurer maintains a trust fund in accordance with sections 27.14 and 27.15 of this Part.

Section 27.17. Advice to insureds and evidence of coverage

When the insured's home state is this State:

(a) [If] if coverage cannot be placed with an authorized insurer, then within 10 days after receipt by the excess line broker of a request for coverage to be placed with an unauthorized insurer, the excess line broker shall give, or cause to be given by the producing broker, written notice to the person or entity requesting the coverage setting forth the status in regard to the request[-];

(b) [No] an excess line broker shall not deliver, or cause to be delivered by the producing broker to a person or entity requesting coverage from an unauthorized insurer any memorandum, certificate or other document evidencing insurance coverage, unless the document constitutes an insurance policy or contract of insurance actually issued by the insurer, except that the excess line broker or producing broker may deliver written confirmation of placement of coverage with the unauthorized insurer if the confirmation identifies the insurer by name and address, accurately describes the coverage, premium and terms, and bears across its face conspicuously, in not less than ten point bold type, the following legend:

THE INSURER(S) NAMED HEREIN IS (ARE) NOT LICENSED BY THE STATE OF NEW YORK, NOT SUBJECT TO ITS SUPERVISION, AND IN THE EVENT OF THE INSOLVENCY OF THE INSURER(S), NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS. THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS OF THE

[INSURANCE] DEPARTMENT OF FINANCIAL SERVICES PERTAINING  
TO POLICY FORMS.;

(c) [No] an excess line broker shall not deliver, or cause to be delivered by the producing broker any evidence of insurance or represent that insurance will be or has been written by any unauthorized insurer, unless the excess line broker is exercising binding authority pursuant to section 27.4 of this Part or has received confirmation from the insurer that the insurance has been bound[-];

(d) [If] if, after delivery of evidence of insurance, there is any change in the identity of the unauthorized insurer, in the proportion of the risk assumed by the insurer, or any other material change in coverage as stated in the original evidence of insurance, the excess line broker shall promptly issue and deliver to the insured and any producing broker an appropriate substitute for (or endorsement to) the original document:

(1) accurately showing the current status of the coverage and identity of the unauthorized insurer; and

(2) informing the insured of the insured's right to cancel the policy and to obtain a premium refund on a pro-rata basis, unless such change is made at the insured's request[.]; and

(e) [No] an insurance policy or contract of insurance placed with an unauthorized insurer shall not be binding upon the insured, and no premium charged therefor shall be due and payable, until the excess line broker has provided, or caused to be provided by the producing broker, written notice to the insured that:

(1) the unauthorized insurer with which the excess line broker has placed the insurance is not licensed by this State and is not subject to its supervision;

(2) in the event of the insolvency of the unauthorized insurer, losses will not be covered by the New York State security funds; and

(3) the policy may not be subject to all of the regulations of the superintendent pertaining to policy forms.

Section 27.18. Delivery of policy or other documents and required legend; required notification

(a) [The] When the insured's home state is this state, an excess line broker or producing broker shall promptly deliver every insurance policy placed with an unauthorized insurer to the insured, and every such policy shall bear across its face conspicuously, in not less than ten point bold type, language as specified in Section 27.17(b) of this Part.

(b)(1) Pursuant to the provisions of Sections 1101(b)(5) and 2117(i) of the New York Insurance Law, any document issued by, or on behalf of, an unauthorized insurer, which is affiliated with an authorized insurer, that indicates any location within this state in which it conducts its operations shall include a notice, in not less than 10 point type, but in all cases

prominently displayed, as follows:

THIS INSURER IS NOT LICENSED IN THE STATE OF NEW YORK AND IS NOT SUBJECT TO ITS SUPERVISION.

(2) An insurer may substitute its name in the notice for the words “this insurer”.

(c) Any unauthorized insurer, affiliated with an authorized insurer, that maintains an office in this state pursuant to Section 1101(b)(5) of the New York Insurance Law, shall notify the superintendent of the address and telephone number of every such address and the name, title, address, telephone number and e-mail address of a person who has the authority to respond to inquiries from the superintendent. The insurer shall provide the information within 15 business days of the date of the establishment of the office. Any change in this information shall be submitted to the superintendent when it occurs.

#### Section 27.19. Assessment policies

(a) If an insurance policy placed by the excess line broker with an unauthorized insurer contains assessment provisions when the insured’s home state is this State, then the excess line broker or producing broker shall notify the insured.

(b) Each insurance policy placed with an unauthorized insurer by an excess line broker shall contain a clear statement describing any liability of the policyholder for the payment of the policyholder's proportionate share of any deficiency or impairment as provided by law within the limit provided by the policy.

(c) Every assessment policy placed with an unauthorized insurer by an excess line broker shall bear across its face a statement clearly showing that the policy is an assessment policy and that the policyholder may be subject to a liability for assessment as set forth in the policy.

#### Section 27.20. Return premiums

In the event of cancellation of an insurance policy placed by an excess line broker with an unauthorized insurer, the excess line broker shall apply best efforts to collect for the insured all unearned premiums due, when the insured’s home state is this State.

#### Section 27.21. Recordkeeping requirements

(a) For each insurance policy procured by an excess line broker pursuant to section 2118 of the Insurance Law and this Part, when the insured’s home state is this State, the excess line broker shall retain, for a period of no less than five years after policy expiration, copies of all affidavits required by section 27.5 of this Part and a complete and separate record showing:

(1) the exact amount of each kind of insurance procured;

(2) the gross premiums for each kind of insurance;

(3) the amount of premiums returned to the insured for each kind of insurance;

(4) the name of the unauthorized insurer or insurers that issued the policy and, in the case of a placement with Lloyd's, the names and the separate participation and proportionate premium of each such underwriter;

(5) the effective date of the policy;

(6) the material terms of the policy or a complete copy of any policy required by section 27.10(b) of this Part;

(7) the basis for premium tax allocation, if any;

(8) a copy of the notice required in section 27.17(e) of this Part;

(9) the cities and villages within this State in which the insured risks are located or resident; and

(10) in the case of fire insurance coverage, the name of the city, village, fire district or fire protection district in which the insured property is located.

(b) Where group insurance is permitted, the records required by subdivision (a) of this section shall be maintained on both a group and an individual basis.

(c) An excess line broker licensed pursuant to section 5911(c) of the Insurance Law shall maintain the records required by this section at its principal place of business, when the insured's home state is this State.

#### Section 27.22. Unauthorized insurer's contractual obligations

Nothing herein shall nullify any agreement by an unauthorized insurer to fulfill its contractual obligations.

**Section 27.23 of this Part is hereby repealed and a new section 27.23 is added to read as follows:**

#### Section 27.23. Exemptions from electronic filing and submission requirements.

(a) An insurer or excess line broker required to make an electronic filing or a submission pursuant to this Part may apply to the superintendent for an exemption from the requirement that the filing or submission be electronic by submitting a written request to the superintendent for approval at least 30 days before the insurer or excess line broker shall submit to the superintendent the particular filing or submission that is the subject of the request.

(b) The request for an exemption shall:

(1) set forth the insurer's NAIC number or the excess line broker's New York license number;

(2) identify the specific filing or submission for which the insurer or excess line broker is applying for the exemption;

(3) specify whether the insurer or excess line broker is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request; and

(4) specify whether the request for an exemption extends to future filings or submissions, in addition to the specific filing or submission identified in paragraph (2) of this subdivision.

(c) The insurer or excess line broker requesting an exemption shall submit, upon the superintendent's request, any additional information necessary for the superintendent to evaluate the insurer or excess line broker's request for an exemption.

(d) The insurer or excess line broker shall be exempt from the electronic filing or submission requirement upon the superintendent's written determination so exempting the insurer or excess line broker, where the determination specifies the basis upon which the superintendent is granting or denying the request and to which filings or submissions the exemption applies.

(e) If the superintendent denies an insurer or excess line broker's request for an exemption from the electronic filing or submission requirement, then the insurer or excess line broker shall make a physical filing in a form acceptable to the superintendent.

#### Section 27.24. Separability provision

If any provision of this Part or the application of any such provision to any person or circumstance is held unauthorized by law, the remainder of the Part and the application of the provision to other persons or circumstances shall not be affected.

**Ch. II, Pt. 27, App. 4**

Appendix 4.

**EXCESS LINE PREMIUM TAX ALLOCATION SCHEDULE**

Criteria for Tax Allocation of Multi-State Risks for Insurance Contracts That Have an Effective Date Prior to July 21, 2011

Code	Classification	Allocate to State by
PROPERTY INSURANCE:		
01	Real Property (including buildings and other permanent additions)	Insured value of structures and other property in state
02	Personal Property (including inland marine)	Insured value of property permanently or principally situated in state
03	Business Interruption, Time Element, or similar time valued coverages	Insured time valued elements in state
04	Farmowners, Homeowners, and Businessowners (BOP)	Insured value of structures and other property in state
05	Aircraft	Insured value of aircraft principally hangared or principally used in state
06	Motor Vehicle	Insured value of motor vehicles principally garaged or principally used in state
07	Kidnap & Ransom	Number of insured employees principally employed in state
08	Ocean Marine	None to state
FIDELITY AND SURETY:		
11	Fidelity, Forgery, and other Indemnity Bonds	Number of insured employees in state
12	Bankers Blanket Bonds	Number of insured employees in state



13	Performance Bonds	Total bond value of contracts in state
14	Other Surety Bonds	Total bond value of contracts in state

CREDIT INSURANCE:

21	Credit Insurance	Value of insured debt in state
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RESIDUAL VALUE INSURANCE:

31	Residual Value Insurance	Allocate to value of underlying property
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LIABILITY INSURANCE:

41	Manufacturers and Contractors	Payroll in state
42	Premises Operations	Square footage of premises in state
43	Owners and Contractors Protective	Cost of contract in state
44	Products	Number of units manufactured in state
45	Completed Operations	Receipts in state
46	Municipalities, Public Authorities and other Political Subdivisions	Number of municipalities, etc. in state
47	Child Care	Number of children in state
48	Contractual	If "stand alone" policy, value of sales in State
49	Recreational	Amount of gate receipts in state
50	Environmental Impairment	Number of units of exposure in state
51	Asbestos Abatement	Payroll in state
52	Employee/Member Benefit Program	Number of employees/members in state

53	Special Events	Number of events in state
54	Professional Liability	Number of insureds in state
55	Errors and Omissions Directors and Officers:	Revenues generated in state
56-A	For-Profit Organization	Revenues generated in state
56-B	Not-for-Profit Organization	Number of directors and officers based in state
57	Hospital, Nursing Home, and Adult Home	Number of beds in state plus one additional bed for each 100 outpatient visits at locations in state
58	Liquor Liability	Receipts from sales of alcoholic beverages in state
59	Railroad Protective	Miles of track in state
60	Aircraft	Number of aircraft principally hangared or principally used in state
61	Motor Vehicle	Number of motor vehicles principally garaged or principally used in state
62	Umbrella	Classification of predominant coverage; except if underlying coverages are divisible, then use underlying classifications
63	Excess Liability	If directly over primary, use underlying classifications. If over umbrella, use method in Code 62.

**A new Appendix 5 is added to read as follows:**

(All Matter New)

**EXCESS LINE PREMIUM TAX ALLOCATION SCHEDULE**  
Criteria for Tax Allocation of Risks Located Both Inside and Outside the United States for  
Insurance Contracts That Have an Effective Date On or After July 21, 2011

Code	Classification	Allocate to New York by
<b>PROPERTY INSURANCE:</b>		
01	Real Property (including buildings and other permanent additions)	Insured value of structures and other property in United States
02	Personal Property (including inland marine)	Insured value of property permanently or principally situated in United States
03	Business Interruption, Time Element, or similar time valued coverages	Insured time valued elements in United States
04	Farmowners, Homeowners, and Businessowners (BOP)	Insured value of structures and other property in United States
05	Aircraft	Insured value of aircraft principally hangared or principally used in United States
06	Motor Vehicle	Insured value of motor vehicles principally garaged or principally used in United States
07	Kidnap & Ransom	Number of insured employees principally employed in United States
08	Ocean Marine	None to New York
<b>FIDELITY AND SURETY:</b>		
11	Fidelity, Forgery, and other Indemnity Bonds	Number of insured employees in United States
12	Bankers Blanket Bonds	Number of insured employees in United States
13	Performance Bonds	Total bond value of contracts in United States

14 Other Surety Bonds Total bond value of contracts in United States

CREDIT INSURANCE:

21 Credit Insurance Value of insured debt in United States

RESIDUAL VALUE INSURANCE:

31 Residual Value Insurance Allocate to value of underlying property

LIABILITY INSURANCE:

41 Manufacturers and Contractors Payroll in United States

42 Premises Operations Square footage of premises in United States

43 Owners and Contractors Protective Cost of contract in United States

44 Products Number of units manufactured in United States

45 Completed Operations Receipts in United States

46 Municipalities, Public Authorities and other Political Subdivisions Number of municipalities, etc. in United States

47 Child Care Number of children in United States

48 Contractual If “stand alone” policy, value of sales in United States

49 Recreational Amount of gate receipts in United States

50 Environmental Impairment Number of units of exposure in United States

51 Asbestos Abatement Payroll in United States

52 Employee/Member Benefit Program Number of employees/members in United States

53 Special Events Number of events in United States

54	Professional Liability	Number of insureds in United States
55	Errors and Omissions Directors and Officers:	Revenues generated in United States
56-A	For-Profit Organization	Revenues generated in United States
56-B	Not-for-Profit Organization	Number of directors and officers based in United States
57	Hospital, Nursing Home, and Adult Home	Number of beds in state plus one additional bed for each 100 outpatient visits at locations in United States
58	Liquor Liability	Receipts from sales of alcoholic beverages in United States
59	Railroad Protective	Miles of track in United States
60	Aircraft	Number of aircraft principally hangared or principally used in United States
61	Motor Vehicle	Number of motor vehicles principally garaged or principally used in United States
62	Umbrella	Classification of predominant coverage; except if underlying coverages are divisible, then use underlying classifications
63	Excess Liability	If directly over primary, use underlying classifications. If over umbrella, use method in Code 62.



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

I, Benjamin M. Lawsky, Superintendent of Financial Services, do hereby certify that the foregoing is the Fourteenth Amendment to Part 27 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 41), entitled "Excess Line Placements Governing Standards" signed by me on July 13, 2012, pursuant to the authority granted by Sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2130, 3103, 5907, 5909, 5911, 9102, and Articles 21 and 59 of the Insurance Law, Sections 202 and 302 of the Financial Services Law, Chapter 225 of the Laws of 1997, Chapter 587 of the Laws of 2002, and Chapter 61 of the Laws of 2011, to take effect upon filing with the Secretary of State of New York. This regulation was previously promulgated on an emergency basis on July 22, 2011, October 19, 2011, January 16, 2012 and April 16, 2012.

Pursuant to Section 202(6) of the State Administrative Procedure Act, 11 NYCRR 27 (Insurance Regulation 41) is being promulgated as an emergency measure. A statement of the specific reasons for the finding of the need for emergency action is attached.

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Benjamin M. Lawsky  
Superintendent of Financial Services

Date: July 13, 2012