

**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. Lawsky, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, 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, 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 is amended as follows:**

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(s) is amended as follows:**

(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].

**Subdivisions (t), (u) and (v) are added to Section 27.1 as follows:**

(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(a) is amended as follows:**

(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] that may be obtained, upon request, from the Licensing Bureau.

**Section 27.3(a) is amended as follows:**

(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.

**Section 27.3(f) is amended as follows:**

(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.

**Subdivision (h) is added to Section 27.3 as follows:**

(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(b) is amended as follows:**

(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.

**Subdivision (g) of Section 27.4 is repealed.**

**Section 27.5 (a) is amended as follows:**

(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.

**Section 27.5 (f), (g) and (h) are amended as follows:**

(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 is amended as follows:**

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(b) is amended as follows:**

(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] One State Street  
New York, NY 10004

**Section 27.8(a) is amended as follows:**

(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 Albany and New York City offices. The form shall be filed with the New York State Insurance Department, Bureau of Taxes and Accounts, located in Albany, NY] except as provided in Section 27.23 of this Part.

**Section 27.8(d) is amended as follows:**

(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.

**Section 27.9 is amended as follows:**

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(b) is amended as follows:**

(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 is amended as follows:**

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 is amended as follows:**

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 is amended as follows:**

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)[,] and (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 [that] 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] of 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.

[1)](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(a) is amended as follows:**

(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.

**Section 27.14(f)(3) is amended as follows:**

(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).

**Section 27.14(j)(6), (7) and (8) are amended as follows:**

(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

**Section 27.15(b) is amended as follows:**

(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.

**Section 27.16 is amended as follows:**

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 is amended as follows:**

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(a) is amended as follows:**

(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.

**Section 27.19(a) is amended as follows:**

(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.

**Section 27.20 is amended as follows:**

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(a) is amended as follows:**

(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.

**Section 27.21(c) is amended as follows:**

(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 27.23 is repealed and a new section 27.23 is added 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.

**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 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.





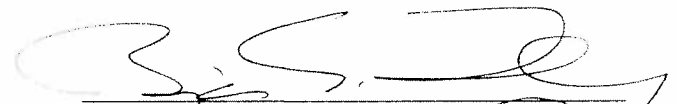
NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawskey  
Superintendent

I, Benjamin M. Lawskey, 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 February 21, 2014 pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, 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, 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, April 16, 2012, July 13, 2012, October 10, 2012, January 7, 2013, April 5, 2013, July 3, 2013, August 30, 2013, October 28, 2013, and December 26, 2013. The regulation was also proposed in June 2013 and was published in the State Register on July 17, 2013.

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.



Benjamin M. Lawskey  
Superintendent of Financial Services

Date: February 21, 2014

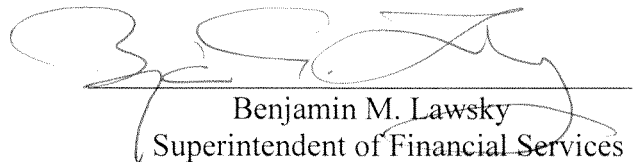
**Statement of the Reasons for Emergency Measure**  
**Fourteenth Amendment to 11 NYCRR 27 (Insurance Regulation 41)**

This regulation governs the placement of excess line insurance. Article 21 of the Insurance Law and Regulation 41 enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from unauthorized insurers (known as “excess line insurers”) if the unauthorized insurers are “eligible,” and an excess line broker places the insurance.

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 Insurance Law to implement the provisions of the NRRA.

The sections of Part I of Chapter 61 that amend the Insurance Law to bring New York into conformance with the NRRA took effect on July 21, 2011, which is when the NRRA took effect. The regulation was previously promulgated on an emergency basis on July 22, 2011, October 19, 2011, January 16, 2012, April 16, 2012, July 13, 2012, October 10, 2012, January 7, 2013, April 5, 2013, July 3, 2013, August 30, 2013, October 28, 2013, and December 26, 2013. The regulation was also proposed in June 2013, and was published in the State Register on July 17, 2013.

For the reasons stated above, emergency action is necessary for the general welfare.

  
Benjamin M. Lawskey  
Superintendent of Financial Services

Date: February 21, 2014