

**COMPARISON OF THE CURRENT VERSION OF THE 14TH AMENDMENT TO
REGULATION 41 TO NEW AMENDMENTS PROPOSED BY
DEPARTMENT OF FINANCIAL SERVICES**

WHAT CURRENTLY EXISTING REQUIREMENTS WILL BE OMITTED?

Neither Elany nor excess line brokers will be required to obtain:

- an insurer's prospective three year business plan,
- an executed copy of the insurer's trust agreement and periodic "funds in trust statement" from the trustee,

Foreign insurers will no longer be required to put up a \$2.5m trust.

The following duties will become a direct duty of the insurer.

- the insurer will be directly required to file an electronic EL-1 report on March 15th each year setting forth each New York excess line transaction bound in the prior calendar year,
- insurers will be directly prohibited from selling 1) types of coverage which the excess line law bars excess line brokers from selling, 2) coverages which are not recognized as legal types of insurance in New York, 3) coverages which are prohibited by public policy,
- insurers will be directly required to treat payment of premium to the excess line broker as payment to the insurer.

The following provisions remain unchanged and excess line brokers will continue to be required to obtain the following unless ELANY obtains these documents.

- a copy of the insurer's most recent Annual Statement (foreign insurer) or IID Standard Financial Statement (alien insurer),
- evidence that the insurer is on the current IID Quarterly listing (alien insurers only),
- a copy of the insurer's latest Report on Examination,
- a certificate of authority from the insurer's home jurisdiction verifying the kinds of insurance the insurer is permitted to underwrite.

The following provisions will still apply to excess line insurers.

- foreign insurers must maintain at least \$45M of policyholder surplus to be eligible,
- insurance policies must stipulate that the Superintendent is appointed as the company's agent for receipt of process and must file a Power of Attorney with the Department of Financial Services appointing the Superintendent.

Also, excess line brokers shall not place coverage with an insurer unless:

- the insurer's Financial Statements or other evidence demonstrates:
 - the insurer is solvent and otherwise complies with the solvency requirements for authorized insurers,
 - has surplus sufficient to support its writings, reasonable in relation to its outstanding liabilities and adequate to its financial needs,
 - claims practices have been, and continue to be, satisfactory,
 - management is trustworthy and competent.

Anytime an excess line insurer does not meet the standards noted above, an excess line broker must:

- cease procuring from such insurer and
- notify in writing within ten days, the Superintendent, excess line association, any producing broker and each insured, that coverage should be replaced in the excess line broker's judgment.