

**NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
PROPOSED 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, 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 publication in the State Register, 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, applicable when the insured's home state is this State, 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.

[(c) In] (d) When the insured's home state is this State, in the absence of satisfactory explanation, failure by an excess line broker to comply with the requirements of this Part 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 is amended as follows:

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

[(m)] (k) *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)] (l) *Special risk insurer* means an insurer pursuant to article 63 of the Insurance Law.

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

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

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

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

[(s)] (q) *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].

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

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

(t) *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 may be obtained, upon request, from the Licensing Bureau.

Section 27.3(a) is amended as follows:

(a) [Except] When the insured's home state is this State, 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, 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] When the insured's home state is this State, an excess line broker shall not exercise binding authority [in this State] on behalf of an unauthorized insurer, 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.

Section 27.4(g) is amended as follows:

[(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(a) is amended as follows:

(a) [For] When the insured's home state is this State, for every policy or policy renewal procured from an unauthorized insurer pursuant to section 2118 of the Insurance Law, 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 27.8(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 27.21 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 and the insurer shall not provide coverage 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] When the insured's home state is this State, a producing broker or excess line broker 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] When the insured's home state is this State, prior to placing business with an unauthorized insurer, 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)] (h) 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; and

(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) 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 (h) and (j) of this section;

(7) a statement from the trustee, specifying the amount and nature of the funds maintained in compliance with the provisions of paragraph (b)(3) 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] an 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; and

(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) 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] When the insured's home state is this State, 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, then 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) Before] (e) When the insured's home state is this State, before placing business with an unauthorized insurer, 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) Whenever] (f) When the insured's home state is this State, 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:

- (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 excess line broker shall place coverage with an unauthorized insurer, unless such insurer has filed 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) effective date of coverage and policy number;
- (4) type and amount of coverage; and
- (5) such other information as the superintendent may require.

(i) The listing required by subdivision (h) of this section shall be annually submitted by March 15, 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 excess line broker shall 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] (g) When the insured's home state is this State, before placing business with an unauthorized insurer, an excess line broker shall make inquiry sufficient to demonstrate that the insurer has complied with section 27.14 of this Part.

[(k)] (h) [The] 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)] (i)(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 is hereby repealed and a new section 27.14 is added to read as follows:

Section 27.14. Duty of Unauthorized Insurers.

(a) When the insured's home state is this State, an unauthorized insurer shall file electronically with the superintendent by March 15 of each year, on a form prescribed by 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 the insured;

(3) effective date of coverage and policy number;

(4) type of coverage; and

(5) such other information as the superintendent may require.

(b) Pursuant to section 2121 of the Insurance Law, any unauthorized insurer that delivers in this State to any excess line broker or any insured represented by such broker a contract of insurance pursuant to the application or request of such broker, acting for an insured other than himself or herself, shall be deemed to have authorized such broker to receive on its behalf payment of any premium that is due on such contract at the time of its issuance or delivery or payment of any installment of such premium or any additional premium that becomes due or payable thereafter on such contract, provided such payment is received by such broker within 90 days after the due date of such premium or installment thereof or after the date of delivery of a statement by the insurer of such additional premium.

Sections 27.15 and 27.16 are hereby repealed.

Section 27.17 is renumbered as section 27.15 and amended as follows:

Section [27.17] 27.15 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 is renumbered as section 27.16 and amended as follows:

Section [27.18] 27.16 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)] 27.15(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 is renumbered as section 27.17 and subdivision (a) is amended as follows:

Section [27.19] 27.17 Assessment policies.

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

Section 27.20 is renumbered as section 27.18 and amended as follows:

Section [27.20] 27.18 Return premiums.

[In] When the insured's home state is this State, 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.

Section 27.21 is renumbered as section 27.19 and amended as follows:

Section [27.21] 27.19 Recordkeeping requirements.

(a) [For] When the insured's home state is this State, for each insurance policy procured by an excess line broker pursuant to section 2118 of the Insurance Law and this Part, 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)] 27.15(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] When the insured's home state is this State, 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.

Section 27.22 is renumbered as section 27.20.

Section 27.23 is hereby repealed and a new section 27.21 is added as follows:

Section 27.21 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 is renumbered as section 27.22.

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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 |
|----|------------------|--------------------------------|

RESIDUAL VALUE INSURANCE:

| | | |
|----|--------------------------|--|
| 31 | Residual Value Insurance | Allocate to value of underlying property |
|----|--------------------------|--|

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 |
|-----------------------------|---|--|
| PROPERTY INSURANCE: | | |
| 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 |
| FIDELITY AND SURETY: | | |
| 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. |