

**Summary of the Revised Provisions Contained in the Final Adoption of the
14th Amendment to Regulation 41 -- Effective as of October 8, 2014**

I) Revised Changes Included in the Final Adopted Version of the 14th Amendment to Regulation 41:

1) 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,
- alien insurer IID Standard Financial Statements. [See II, 3 below]

2) Foreign insurers will no longer be required to put up a \$2.5 million trust fund. Such trust funds which currently exist may be terminated in accordance with the terms of the trust agreement [See Supplement No. 1 to Circular Letter No. 9 (2011)].

3) Service of Process/Consent to Jurisdiction.

- §27.16 of Regulation 41 is deleted. This removes from the regulation **but Not From the Insurance Law** requirements regarding consent to service of process and appointing the superintendent as agent for service of process. Eligible insurers should note that New York Insurance Law §1213(e) exempts unauthorized insurers from posting collateral or pre-answer security in litigation on risks placed through excess line brokers when the policy designates the superintendent as the lawful attorney upon whom lawful process may be served.

4) The following obligations are now directed at insurers where previously the excess line broker was responsible to verify the insurers conduct.

- 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,
- unauthorized 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.

II) The Following Provisions of Regulation 41 Remain Unchanged:

1) Excess line brokers will continue to be required to obtain the following unless ELANY obtains these documents.

- a copy of a foreign insurer's most recent Annual Statement
- evidence that the insurer is on the current IID Quarterly listing (alien insurers only),

- a copy of the insurer's latest Report on Examination, only if accessible to the excess line broker
- a certificate of authority from the insurer's home jurisdiction verifying the kinds of insurance the insurer is permitted to underwrite.

2) Foreign insurers must maintain at least \$45M of policyholder surplus to be eligible.

3) 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.

4) 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.