

**RE: “EXEMPT COMMERCIAL PURCHASER” VERSUS “FREE TRADE ZONE” NEW CLASS 3 --
LARGE COMMERCIAL INSURED**

Recent amendments to the New York Insurance Law (NYIL) now allow exemptions from certain provisions of the NYIL regarding large commercial insured risks written in either the excess line market (Exempt Commercial Purchaser) or the licensed market (Free Trade Zone – Class 3 risk). So as not to be confused please note the following:

I) “EXEMPT COMMERCIAL PURCHASER” (See NYIL Section 2101(x)(2) for definition)

The new “Exempt Commercial Purchaser” provisions in the insurance law **Do Not** exempt any transactions from the excess line tax or affidavit filing requirements.

Section 2118(b)(3)(F) of the New York Insurance Law was enacted to implement changes required by the Nonadmitted and Reinsurance Reform Act (NRRA). The law **only exempts the broker/excess line broker from the “diligent search” (3 declinations) requirement** when procuring excess line insurance coverage for a qualified “exempt commercial purchaser” client. Any insured, who meets the definition of an “exempt commercial purchaser”, can essentially sign a waiver permitting its excess line broker to access the E&S market without first making a diligent search of the admitted market.

All other excess line transaction affidavit/document filing requirements, related premium tax and stamping fee collection and payment responsibilities are still required pursuant to the provisions of New York Insurance Law and Regulation 41.

For a more comprehensive understanding of the “Exempt Commercial Purchaser” provision, please see ELANY’s April 2011 Compliance Advisor titled “NEW YORK STATE’S IMPLEMENTATION OF THE NONADMITTED AND REINSURANCE REFORM ACT (NRRA),” which can be found on our website www.elany.org under the “Hot News” section.

II) FREE TRADE ZONE (“FTZ”) – NEW “CLASS 3” CATEGORY FOR A “LARGE COMMERCIAL INSURED” (See NYIL Section 6303(b)(1) for definition)

New York Insurance Law Article 63 and related NY Regulation 86 [11 NYCRR 16] were recently amended to add a new “Class 3” category for certain exempt commercial policies issued by **LICENSED INSURERS** to a “large commercial insured” that employs or retains a special risk manager and meets various other provisions as specified in the amended law and regulation.

ELANY IS ISSUING THIS BULLETIN BECAUSE MANY IN THE INSURANCE INDUSTRY ARE UNDER THE MISTAKEN IMPRESSION THAT FREE TRADE ZONE BUSINESS IS A FORM OF EXCESS LINE INSURANCE. IT IS NOT.

New York Insurance Law Article 63, Section 6301 through Section 6304, authorizes the placement of certain risks **WITH LICENSED INSURERS** which obtain a second, additional license from the NYS Department of Financial Services. Risks that qualify for placement in the FTZ are subject to an exemption from the filing requirements and/or prior approval requirements of rates and forms, where applicable, as follows:

Class 1 and 2 coverages – policy forms and applicable rates are exempt from the filing requirements of NY insurance law and regulations.

Class 3 coverages – policy forms are not subject to the prior approval requirements but are subject to some filing requirements, and applicable rates are exempt from the filing requirements of NY insurance law and regulations.

However, all FTZ policies issued must still meet the other statutory requirements applicable to all New York insurance policies.

LICENSED INSURERS must meet certain financial and solvency standards in order to obtain this FTZ license, the business must be underwritten and transacted from an office within New York State, and one of two notices must be affixed to such policies advising that the policies are exempt from the requirements noted above.

Because these risks are being underwritten by **LICENSED INSURERS**, any licensed broker can place these risks. Since “FTZ” insurers are LICENSED INSURERS ---**THE EXCESS LINE LAW DOES NOT APPLY**; and therefore, NO affidavits and related policy documentation need to be filed with ELANY, and NO excess line premium taxes need to be paid on these “FTZ” transactions.

See ELANY’s website update on the Free Trade Zone for more details.

Should you have any questions regarding the content of this bulletin, please direct them to elanyinfo@elany.org.

