

**Bulletin No. 2014-08**

**March 31, 2014**

**Re: EXCESS LINE BROKER LICENSE REQUIRED WHEN BINDING/UNDERWRITING  
FROM A NEW YORK OFFICE FOR AN ELIGIBLE EXCESS LINE INSURER**

When you are acting as a cover holder, managing general agent<sup>1</sup>, managing general underwriter, or program administrator (collectively: “Manager”) from a New York office, pursuant to a binding authority agreement entered into with an eligible excess line insurer you **must be properly licensed as an excess line broker and must file the binding authority agreement** with ELANY.

Some “Managers” with binding authority are under the mistaken impression that if they only issue policies to licensed excess line brokers and are not the excess line broker on the transaction who files the affidavit and related insurance documents with ELANY that they do not have to be a licensed excess line broker and do not have to file the binding authority agreement with ELANY for these types of excess line transactions. **This is not true**, if you are an intermediary between the filing excess line broker and the excess line insurer, operating from a New York office, you are involved in the selling, soliciting or negotiating chain in the excess line insurance transaction. You therefore **must** be licensed as an excess line broker and must file the related binding authority agreement with ELANY. Additionally, if the “Manager” with binding authority is an entity it must be properly licensed as an entity excess line broker even if individual members of the entity have individual excess line broker licenses.

New York Insurance Law (NYIL) Section 1101 broadly defines what constitutes “doing an insurance business” for which an insurer must be licensed. However, NYIL Section 1101(b)(2)(F) carves out an exemption for eligible excess line insurers which transact business with licensed excess line brokers.

Therefore, if an eligible excess line insurer were to enter into a binding authority agreement with a person or entity that was not a licensed excess line broker, the insurer would no longer enjoy the benefit of the exemption under NYIL Section 1101 and consequently, would be “doing an insurance business” without a license subject to any penalties the New York State Department of Financial Services (DFS) could impose for such violations.

NYIL Section 2117 states it is illegal for any person to act as an agent for an unauthorized insurer. However, licensed excess line brokers may hold binding authority agreements as an exception to this law.<sup>1</sup>

Accordingly, obtain an excess line license and file your binding authority with ELANY if you operate a New York office even if you only issue policies to New York licensed excess line brokers.

<sup>1</sup> The DFS objects to the use of the word “agent” of the company in binding authority agreements because excess line brokers owe their duty to the insured not the insurer under New York law. So do not use the word “agent” in any binding authority agreement.

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