



EXCESS LINE ASSOCIATION  
OF NEW YORK

# BULLETIN

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New York, New York, 10006-3728

**Bulletin No. 2017-36**

**November 8, 2017**

## **RE: BINDERS AND BINDING AUTHORITY FILING REQUIREMENTS**

The following is a reminder to ELANY members on the proper use of “binders” and your duty to file binding authorities with ELANY, as required by § 2118(f) of the New York Insurance Law and § 27.4 of New York Regulation 41.

A “**binder**” provides temporary evidence of insurance coverage to an insured until a formal policy replaces it. The “binder” may **only** be issued by an eligible **excess line insurer**, a New York licensed **excess line broker**, who has a proper binding authority from an eligible excess line insurer, or by a **third party with a legitimate binding authority**. For example, a London broker may not be licensed in New York but may have a Lloyds binding authority.

An excess line broker, who **does not** have a binding authority agreement, is not legally permitted to act on behalf of an eligible excess line insurer as they have no authority to do so.

An excess line broker is permitted to exercise binding authority delegated by an eligible excess line insurer provided the agreement is in writing, contains the provisions required by statute, is signed by both parties, and is filed with ELANY prior to use.

The Department of Financial Services (DFS) interprets these binding authorities as facilitating the transaction of excess line business but not as changing the legal duty of loyalty an excess line broker owes to an insured. Therefore, the term “**agent**” should not be used to describe an excess line broker in such agreements.

If a New York licensed excess line broker does not have binding authority, they should issue a “**confirmation of placement of coverage**” (“**confirmation**”) to the insured since they do not have “authority” to bind the insurer as a broker. A “**confirmation**” is the broker’s representation of what the insurer did but is not acting on the insurer’s behalf like an agent. Like a “**binder**”, the “**confirmation**” is treated as temporary insurance coverage for a specified time until a formal policy is issued to replace it. The “**confirmation**” must identify the insurer by name and address, accurately describe the coverage, premium and terms, and bear across its face conspicuously, the proper 10 point legend contained in § 27.4 of New York Regulation 41.

Please remember that even though you initially submitted a “**binder**” or “**confirmation**” to ELANY for review and stamping, you are still required by statute to submit the subsequently received declarations page to ELANY for review and stamping as soon as possible.

The DFS recently completed an examination of the records of New York excess line transactions submitted by broker members. The DFS determined that “**binders**” were sometimes being issued by excess line brokers who either had **not filed** binding authority agreements with ELANY as is required by New York Insurance law and regulation, or who had **no** binding authority whatsoever. Using “**confirmations**” when appropriate will avoid these concerns raised by the DFS.

Please be advised that the DFS may decide to take disciplinary action when excess line brokers issue “**binders**” improperly or fail to file “**binding authority**” agreements with ELANY.

For more details on “**Binding Authorities**” see the Lexicon/FAQ Topics Section of ELANY’s website [www.elany.org](http://www.elany.org).

