

RE: FINANCIALLY SECURE INSURERS

Education to assist excess line brokers in meeting their legal duties and obligations is a primary objective of ELANY. The financial strength and solvency of each excess line insurer is of paramount importance as a consumer protection to both insureds and claimants. It is also extremely important to excess line brokers since the first sentence in the insurance law regarding excess line broker duties reads, **“Every licensee...shall be required to use due care in selecting the unauthorized insurer from whom policies are procured...”**.

There is now a two-step approach at ELANY when it makes a determination regarding an insurer’s application for eligibility. Any foreign insurer which seeks to establish that it meets the **minimum standards** of eligibility must establish that it is a legitimately formed insurer that meets the minimum capital standard (currently \$48 million of policyholder surplus) and is licensed to write lines of business in its state of domicile in order to write those same lines of business on an excess basis in New York. Once this is established, ELANY will process transactions submitted by excess line brokers underwritten by that insurer.

Standards for an Excess Line Insurer to be published on ELANY’s list of E&S Insurers.

In order to be published on the ELANY list of E&S insurers a foreign insurer must meet higher financial standards set by the ELANY Board of Directors. These objective standards and analytics include but are not limited to review of historical underwriting and investment results, overall profitability, group capital, debt service, liquidity, reinsurance quality and structure, risk-based capital (RBC) ratios, and stress testing reserves. Excess line brokers are relieved from maintaining listed insurer financial records where such records are maintained by ELANY because ELANY conducts a thorough financial analysis of all insurers and publishes them on the ELANY website.

While excess line brokers are relieved from maintaining insurer financial records and have access to ELANY’s analysis, the duty of an excess line broker to use “due care” is nondelegable.

“A Greater Duty exists on Excess Line Brokers when placing business with eligible insurers not listed by ELANY.”

Over the past three years ELANY has received applications for eligibility from over 36 mostly newly formed insurers. A number of these insurers have not yet been listed by ELANY because they do not yet meet the ELANY standards for listing.

Excess line brokers have additional duties under [§27.13](#) of Regulation 41 to maintain records and review the financial condition of such insurers.

While nothing in this bulletin is intended to nor should it be construed in any way as impugning the reputation or financial condition of any insurer not yet listed by ELANY, **it is imperative that brokers understand the**

additional duties imposed upon them and the greater potential for legal and regulatory exposures when doing business with an unlisted or unrated insurer.

New York has an enviable [record](#) in regard to financial security and solvency of excess line insurers utilized by excess line brokers. To maintain that enviable record, ELANY is providing this bulletin to remind you of the additional duties imposed upon excess line brokers when placing business with eligible insurers not yet listed by ELANY.

ELANY's List of E&S Insurers can be accessed [here](#) at the ELANY website along with financial snapshots of each insurer that include a customized financial analysis.

Should you have any questions regarding the content of this bulletin, please direct them to Howard Greene at hgreene@elany.org or (646) 292-5591.

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