

RE: DUE CARE REQUIREMENTS

Section 2118 of the New York Insurance Law and New York Regulation 41 provide that a licensed excess line broker is required to use “**due care**” in selecting an unauthorized insurer.

Section 27.13 of NY Regulation 41 lists certain documents an excess line broker is required to obtain, **review** and retain before placing business with an excess line insurer. However, an excess line broker is relieved from obtaining and retaining these documents where such information or materials are maintained by ELANY.

Following is the list of documents that an excess line broker is required to obtain, **review** and retain:

- A copy of a foreign insurer’s most recent Annual Statement.
- If an alien insurer evidence that the insurer is on the current IID Quarterly listing.
- A copy of the insurer’s latest Report on Examination, only if accessible to the excess line broker
- A copy of the Certificate of Authority from the insurer’s home jurisdiction verifying the kinds of insurance the insurer is permitted to underwrite.

Additionally, Section 27.13 advises that excess line brokers shall not place coverage with an excess line insurer unless the insurer’s financial statements or other evidence demonstrates that:

- 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, (currently, a foreign insurer must maintain not less than \$47 million of policyholder surplus),
- its claims practices have been, and continue to be, satisfactory, and
- their management is trustworthy and competent

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, ELANY, any producing broker and each insured, stating reasons why the coverage should be replaced in the excess line broker’s judgment.

To aid excess line brokers in performing their “due care” obligation, ELANY maintains a “List of E&S Insurers” on its website (www.elany.org) along with financial snapshots of each insurer that includes customized financial analysis. ELANY only lists insurers where sufficient information was provided to determine satisfactory financial stability, the proper mitigation of operating risk and ability to support current and future obligations.

Please note that for any unauthorized insurer **not** included on ELANY’s “List of E&S Insurers”, the excess line broker themselves need to obtain, **review** and retain all of the information referenced in Section 27.13 of Regulation 41.

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