

December 5, 2022

**RE: BROKERS BEWARE: VERIFY INSURER ELIGIBILITY BEFORE PLACING BUSINESS**

A large number of new insurer startups have entered the E&S Market recently. Several of these insurers have issued quotes on New York risks without first establishing that the insurer meets New York's eligibility requirements.

**BROKERS: DON'T BIND BUSINESS WITH A NEW INSURER WITHOUT FIRST VERIFYING INSURER ELIGIBILITY BY CONTACTING ELANY.**

Excess line placements made with ineligible insurers violate the insurance law, cannot be processed by ELANY, and may subject the broker to discipline by the Department of Financial Services.

In order for an insurer to establish that it meets New York eligibility requirements for a foreign insurer it must provide sufficient documentation to establish it is a legitimately formed and licensed insurer under the laws of any state other than New York and that the insurer maintains a minimum policyholder surplus of no less than \$48 million. Typically, an insurer can establish eligibility by submitting to ELANY a certificate of authority (a home state license or its equivalent) and certain audited and statutory financial statements. Some insurers are too new to have audited financial statements in which case alternative documentation may be considered.

Several insurers which have quoted business it turns out, did not meet the minimum requirements after submitting documents to ELANY. This is one more reason brokers should verify eligibility before placing business with a new/start up insurer.

Insurance Regulation 41 states in 27.13 (a) "Prior to placing business with an unauthorized insurer an excess line broker shall make inquiry sufficient to ascertain the insurer's financial stability..." It further provides that an excess line broker must obtain, review and retain a number of financial documents and records pertaining to each insurer.

Brokers need not obtain those documents and records for insurers published on ELANY's list of E&S insurers because ELANY has those documents and provides excess line brokers access to them.

Excess line brokers are required to maintain those financial documents and records for eligible insurers not published on ELANY's list of E&S insurers.

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