

September 22, 1993

SUBJECT: INSURANCE

Circular Letter No. 13 (1993)
September 22, 1993

TO: ALL LICENSED INSURANCE BROKERS; EXCESS LINE BROKERS; THE EXCESS LINE ASSOCIATION OF NEW YORK; AND INSURANCE PRODUCER ORGANIZATIONS

RE: REVISIONS IN EXCESS LINE STATUTE AND PROCEDURES

Chapters 663 and 684 of the Laws of 1993 amended, effective August 4, 1993 and October 1, 1993 respectively, certain provisions of the Insurance Law governing excess line transactions. This Circular Letter is intended to explain the changes resulting from Chapters 663 and 684 and to prescribe the use of affidavits adjusted to facilitate compliance with the revised statutory provisions.

REASON TO BELIEVE STANDARD

Pursuant to Section 2118 of the Insurance Law, as amended by Chapter 684 of the Laws of 1993, effective October 1, 1993, declinations may be obtained only from authorized insurers that the broker has reason to believe might consider writing the type of coverage or class of insurance involved. A broker is considered to have the requisite reason to believe if the decision to offer the risk to an authorized insurer is based on one or more of the following:

- (1) Recent acceptance by the insurer of a risk requiring a similar type of coverage or class of insurance;
- (2) Advertising by the insurer or its agent indicating that it is willing to consider writing this or a similar type of coverage or class of insurance;
- (3) Media communications (i.e., newspaper or magazine articles, trade publications, television and radio programming) indicating that the insurer is writing, or is considering writing, this type of coverage or class of insurance;
- (4) Communications with other insurance professionals, risk managers, trade associations, ELANY or the Insurance Department, which indicate that the insurer might consider writing this type of coverage or class of insurance; or
- (5) Any other valid basis for reaching such a determination.

The statute further requires that brokers record on their affidavits the information relied upon that formed the basis for their reason to believe that the authorized insurer might consider writing the type of coverage or class of insurance involved. The attached amended affidavits, Form 41A (ED. 10/93) and Form 41C (ED. 10/93), have sections specifically designed to accommodate this information.

In completing this section of the affidavit, brokers should be as specific as possible. For example, if the broker's reason to believe was based on advertising in a trade publication, the broker should indicate the name of the publication

and the actual or at least approximate publication date. If based on communication with other insurance professionals, etc., the name of the person or organization and date of the communication should be included. For any other valid basis, indicate and explain the basis.

AFFILIATED INSURERS

Effective October 1, 1993, declinations from companies affiliated with each other or with the unauthorized insurer cannot be used, unless the affiliates operate as distinct and autonomous entities and, for underwriting purposes, compete against each other for the same type of coverage or class of insurance. This provision is perhaps best illustrated by the following examples:

Example I - Broker A offers a risk, separately, to Companies X, Y and Z, all of which are within the same holding company system and have directors and corporate officers in common, but which operate out of different profit centers, use separate underwriting staffs, make independent underwriting decisions, etc. Each of these declinations is acceptable, and the risk could be placed with an unauthorized insurer, including one in the same holding company system as X, Y and Z, provided that the unauthorized insurer similarly operates out of a different profit or marketing center.

Example II - Broker B offers a risk to the XCo Assurance Corp., part of the XCo Insurance Group, a holding company which, in addition to XCo Assurance Corp., includes XCo Indemnity Company and XCo Underwriters. Policies for all three insurers are underwritten out of a single office where underwriters accept or reject risks, and accepted business is channeled to the appropriate XCo company. The risk is declined by all three XCo companies. Because these companies do not operate as separate entities for underwriting purposes, only one of these declinations would be considered acceptable. The other declinations from XCo Group companies would not meet the requirements of § 2118. Further, placement with an unauthorized affiliate would not be permitted if such unauthorized affiliate was similarly underwritten out of the same profit center as the licensed insurers.

RESIDUAL MARKETS

Effective October 1, 1993, declinations will generally no longer be required from the New York Automobile Insurance Plan (AIP), the New York Property Insurance Underwriting Association (NYPIUA) and the Medical Malpractice Insurance Association (MMIA), provided that: 1) the insured has been advised of the availability of coverage from the AIP, NYPIUA or MMIA (as applicable); and 2) the insured has consented to the placement with the unauthorized insurer. However, declinations from the appropriate association are still required in connection with the following types of placements, to the extent that insurance is available from the association:

- (1) Policies of non-commercial motor vehicle liability insurance;
- (2) Medical malpractice insurance for hospitals (as defined in § 2801(1) of the New York Public Health Law), physicians and dentists; and
- (3) Insurance which, by law, must be provided by an authorized insurer.

The foregoing is best illustrated by the following examples:

Example III - Broker C has been attempting to obtain fire and allied lines coverage for a commercial building. The risk has been declined by three authorized insurers that Broker C had reason to believe would accept the risk. This risk is now eligible for placement with an unauthorized insurer notwithstanding the fact that the desired coverage is available from NYPIUA, provided that Broker C advises the insured that such coverage could be obtained from NYPIUA and the insured consents to placement with the unauthorized insurer.

Example IV - Broker D is asked to obtain hospital medical malpractice coverage in the amount of \$ 1 million per occurrence/\$ 3 million annual aggregate. Even if the risk is declined by three authorized insurers that Broker D had reason to believe would accept the risk, this risk is not eligible for placement with an unauthorized insurer because the required coverage could be obtained from MMIA, unless such risk is declined by MMIA.

Example V - Broker E is asked to obtain hospital malpractice coverage in the amount of \$ 3 million per. occurrence/\$ 9 million annual aggregate. The risk is declined by three authorized insurers that Broker E had reason to believe would accept the risk. Coverage must be sought from MMIA, to the extent that such coverage is available. Since, at the present time, MMIA will write only \$ 1 million/\$ 3 million for hospital malpractice, any amount of desired insurance excess of the level accepted by MMIA (in this case \$ 2 million/\$ 6 million) could be obtained from unauthorized insurers without a further declination from MMIA.

Example VI - Broker F is asked to obtain personal lines liability and physical damage coverage for an expensive automobile. The risk is declined by three authorized insurers that Broker F had reason to believe would accept the risk. In this case, only the physical damage coverage can be placed with an unauthorized insurer (subject to the notice and consent requirements). The liability coverage must be placed with the AIP.

The attached Affidavit by Insured, Form 41B (ED.10/93), has been amended to incorporate the required notice and consent provisions.

DELIVERY OF POLICY BY PRODUCING BROKER

Chapter 684 also amended § 2117 of the Insurance Law to permit, effective October 1, 1993, a non-excess line broker to deliver the policy procured by the excess line broker to the insured. This recognizes the circumstances of the marketplace in which there is often no direct contact between the insured and the excess line broker.

CHANGES REGARDING USE OF FOREIGN GOVERNMENT CONTROLLED INSURERS

Chapter 663 amended §2118 of the Insurance Law to permit, effective August 4, 1993, the placement of risks by excess line brokers, with insurers controlled by foreign governments, unless the Superintendent determines that:

- (1) Such insurer receives a subsidy or other competitive advantage as a result of such control;
- (2) Such insurer is entitled to claim sovereign immunity; or
- (3) The use of such insurer would be detrimental to the interests of the people of this State.

Such insurers must, of course, comply with all other applicable requirements for placement by an excess line broker.

Excess line brokers will not be deemed to be in non-compliance with this provision unless the Superintendent has made a prior determination that the insurer in question should not be used as an excess line insurer in this State, or the broker knew or should have known that such insurer should not be used as an excess line insurer.

OTHER UPCOMING REGULATORY CHANGES

The Insurance Department is in the process of amending Regulation 41 to both incorporate the statutory changes described in this Circular Letter, as well as make a number of other significant changes affecting the placement of excess line risks. The Department's proposed changes will include:

- (1) Establishment of higher minimum capital, surplus and trust fund requirements for excess line

insurers. The increased requirements will apply immediately to insurers newly entering the New York market, and will be phased in, over a three-year period, for insurers already writing;

(2) Exemption of excess line placements from compliance with the provisions of Regulations 107 (Defense-Within-Limits Policies) and 121 (Claims-Made Policies);

(3) Permission for Lloyds of London to continue as an eligible excess line insurer under its plan to accept corporate capital;

(4) Establishment of an "Export List" of types of insurance coverage which the Superintendent determines are generally unavailable from admitted insurers and thus eligible for immediate excess line placement without the need for declinations; and

(5) Establishment of circumstances under which an entire policy may be placed with an excess line insurer if the predominant coverage is unavailable from authorized New York insurers.

Any questions concerning this Circular Letter should be directed to:

Mark Presser (212-602-0386)
Assistant Bureau Chief
Property & Casualty Insurance Bureau
New York State Insurance Department
160 West Broadway - 13th Floor
New York, New York 10013

Very truly yours,

[SIGNATURE]

SALVATORE R. CURIALE

SUPERINTENDENT OF INSURANCE

ATTACHMENTS

PART A - AFFIDAVIT BY EXCESS LINE BROKER

AFFIDAVIT NO. _____

1. EXCESS LINE BROKER INFORMATION:

Name

Address

City State Zip Code

License No. EX-/_/_/_/_/_/_/_/

If the license is in the name of a corporation or partnership, name of sub-licensee:

a) Was the risk whose placement is evidenced by this affidavit, represented by a broker or brokers other than the excess line broker indicated above? Yes No

b) IF THE ANSWER TO (a) IS "YES" A COMPLETED PART C, AFFIDAVIT BY PRODUCING BROKER, MUST BE ATTACHED FOR EACH SUCH PRODUCING BROKER.

Name

Address

2.RISK INFORMATION: (Complete this part if the Excess Line Broker indicated in 1, above is also acting as the producing broker for this risk). Location of Risk (if different from insured)

Name of Insured

Address

City State Zip Code

Address

City State Zip Code

Description of Insured Risk

Type of Coverage

Type of Insurance Code _____(use ELANY Statistical Code. Add suffix "PG" if this insurance was placed pursuant to Regulation 134.)

a) Was this insurance placed pursuant to Regulation 134 governing transactions with risk purchasing groups authorized by the Federal Liability Risk Retention Act of 1986? Yes No

b) If the answer to (c) above is "Yes," indicate:

Name of Purchasing Group

Address

City State Zip Code

(c) Did you personally advise the insured that after a diligent effort to place the required insurance with companies authorized in New York to write coverages of the kind requested, all or a portion of the required insurance would be written by companies NOT authorized in New York? Yes No

(d) Does the insured risk have exposures inside and outside New York for which premium tax allocation is appropriate? Yes No

IF THE ANSWER TO (d) ABOVE IS "YES," NYSID FORM EL-3, TAX ALLOCATION REPORT MUST BE COMPLETED AND ATTACHED

(e) Is coverage for this risk being provided on a claims-made or other non-occurrence basis? Yes No

(f) Is coverage for this risk being provided on a "defense-within limits" basis? Yes No

3. DECLINATION INFORMATION:

(a) Has the Superintendent determined that declinations are not required for this type of risk? Yes No

IF THE ANSWER TO QUESTION (a) IS "YES", SKIP QUESTIONS (b) AND (c) , GO ON TO SECTION 4.

Was the risk described above submitted by the excess line broker to companies: (1) each authorized in New York to write coverages of the kind requested; (2) which the licensee has reason to believe might consider writing the type of coverage or class of insurance involved; and, (3) was such risk declined by each such company? Yes No

If the answer to (b) above is "Yes,"

COMPLETE THE FOLLOWING SCHEDULE:
AUTHORIZED COMPANIES DECLINING THE RISK

1. Name of Company:

NAIC Code: /_/_/_/_/_/_/_/_

Declin. Code:* Reason (if Code 3 indicated)

Date of Declin. __/__/__

Reason(s) to believe information:

Name of Representative Declining Risk

Affiliation of Representative

Company Employee Agent Other (Specify)

2. Name of Company:

NAIC Code: /_/_/_/_/_/_/_/_

Declin. Code:* Reason (if Code 3 indicated)

Date of Declin. __/__/__

Reason(s) to believe information:

Name of Representative Declining Risk

Affiliation of Representative

Company Employee Agent Other (Specify)

3. Name of Company:

NAIC Code: /_/_/_/_/_/_/_/_/_/_

Declin. Code:* Reason (if Code 3 indicated)

Date of Declin. __/__/__

Reason(s) to believe information:

Name of Representative Declining Risk

Affiliation of Representative

Company Employee Agent Other (Specify)

*Codes:

1. Insurer presently lacks adequate capacity to write this risk. 2. Specific underwriting reason. 3. Other (specify).

4(a) PLACEMENT INFORMATION: UNAUTHORIZED COMPANIES PROVIDING COVERAGE

NAME OF COMPANY	COD E	AMOUNT OF INSUR- ANCE ACCEPTED	PERCENT OF TOTAL ACCEPTED	INCEPTION DATE OF POLICY	TERM IN MONTHS	TOTAL EXCESS LINE PREMIUM**
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

**Report the N.Y. Excess Line Premium if this risk has exposure both inside and outside New York.

AFFIRMATION

I, _____ (check one of the following)

the licensed excess line broker described in Part 1 of this Affidavit

[] a sub-licensee of the excess line brokerage described in Part 1 of this Affidavit do hereby affirm under penalties of perjury, that all of the information contained in this Affidavit is true to the best of my knowledge and belief, and every policy or contract of insurance covering the the risk described in this Affidavit was procured by me from the foregoing unauthorized insurers in full compliance with all applicable provisions of the New York Insurance Law and all applicable provisions of Title 11 of the New York Code of Rules and Regulations.

(Signature of Affiant)

__/__/__
Date

FORM EL-3 TAX ALLOCATION REPORT

AFFIDAVIT NO. _____

1. EXCESS LINE BROKER INFORMATION:

Name

Address

City State Zip Code

License No. EX- /_/_/_/_/_/_/_/_/

If the license is in the name of a corporation or partnership, indicate name of sub-licensee:

2. UNAUTHORIZED INSURER(S) PROVIDING COVERAGE:

Name
CODE /_/_/_/_/_/_/_/_/

Address

City State Zip Code

Name
CODE /_/_/_/_/_/_/_/_/

Address

City State Zip Code

Name
CODE /_/_/_/_/_/_/_/_

Address

City State Zip Code

3. INSURED INFORMATION (Complete if applicable)

Name of Insured

Address

City State Zip Code

Policy or Certificate No.(s):

Name of Purchasing Group

Address

City State Zip Code

Group Policy No. (s):

4. SUMMARY OF ALLOCATION

TOTAL GROSS POLICY PREMIUM (Part 5, Column 5, Total) \$_____

PREMIUM ALLOCATED TO NEW YORK (Part 5, Column 6, Total) \$_____

PREMIUM TAX DUE TO NEW YORK
(Part 5, Column 7, Total) \$_____

CERTIFICATION

The undersigned certified that the information contained herein, including all attached supporting documentation, is true to the best of my knowledge, belief and information under penalties of perjury.

Signature of licensee or sub-licensee

(Date)

5. Calculation of Premium Tax Allocation:

Note: Does not have to be completed if Affidavit Part C (Form NYSID 41C, (ed.10/93) has been verified

and is attached. If so, licensee certifies that the supporting documentation is true to the best of his knowledge, information and belief under penalties of perjury.

(a)	(1)	(2)	(3)
Elany Statistical Code and Description	Classification Code(s) and Method(s) of Allocation as indicated in the Allocation Schedule *	Total Amount of Exposure**	New York Exposure**
			TOTALS

* (1) If policy covers more than one classification enter each classification code separately.

(2) For any portion of the premium that is not divisible, list all coverages and specify the predominant coverage.

(3) If classification code and method of allocation for all or any portion of the policy is not listed in the Allocation Schedule, attach explanatory memorandum describing the property or risk and supporting the alternative equitable method of allocation used for any such portion.

** Indicate the units, insured values, numbers, etc. upon which the allocation is made

(4)	(5)	(6)	(7)
Ratio of Col.3 Col.2	Total Gross Policy Premium	Premium Allocated to New York Multiply Col. 4 by Col. 5	Tax Due to New York Multiply Col. 6 by 3.6% (.036)

*(1) If policy covers more than one classification enter each classification code separately.

(2) For any portion of the premium that is not divisible, list all coverages and specify the predominant coverage.

(3) If classification code and method of allocation for all or any portion of the policy is not listed in the

Allocation Schedule, attach explanatory memorandum describing

(4)	(5)	(6)	(7)
Ratio	Total	Premium	Tax Due to
of	Gross	Allocated	New York
Col.3	Policy	to New York	Multiply
Col.2	Premium	Multiply Col.	Col. 6 by
		4 by Col. 5	3.6% (.036)

the property or risk and supporting the alternative equitable method of allocation used for any such portion.

** Indicate the units, insured values, numbers, etc. upon which the allocation is made

PART B - AFFIDAVIT BY INSURED

AFFIDAVIT NO. _____

Location of Insured Risk:

Name of Insured

Address

City State Zip Code

Complete if applicable:

Name of Purchasing Group

Description of Insured Risk

Type of Coverage

I, _____ hereby affirm as true under the penalties of perjury that
(Name of Insured)

(Check one of the following):

I reside at _____
Address City State Zip Code

I am a member of the firm of _____, A partnership, having its principal place of business at _____

Address City State Zip Code

I am an officer of _____ a corporation having its principal place of business at

address City State Zip Code

hereinafter called the insured or purchasing group member.

On _____ 19____ the insured directed _____ to obtain insurance coverage herein described. Said broker advised the insured that (check one of the following)

after diligent effort (only part of) or (no part of) the full amount of insurance required by the insured could be obtained from insurance companies authorized to transact business in the State of New York, and that such insurance had been declined by authorized insurers which the broker had reason to believe would consider accepting such insurance risk.

the Superintendent of Insurance has, pursuant to regulation, determined that insurance for this risk was unavailable from insurers authorized to transact business in the State of New York.

On being informed by said broker that such part of the desired insurance as had not been accepted by, or was unavailable from, authorized insurers might be obtained from insurers not authorized to transact business in the State of New York, the insured directed said broker to attempt to obtain such insurance from unauthorized insurers.

THE INSURED WAS ADVISED BY SAID BROKER THAT:

(1) THE INSURER(S) ACCEPTING OR ISSUING THE POLICY(IES) TO THE INSURED COVERING THE AFORESAID RISK(S) IS (ARE) NOT AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OF NEW YORK;

(2) SUCH UNAUTHORIZED INSURER(S) IS (ARE) NOT SUBJECT TO THE SUPERVISION OR REGULATION OF THE NEW YORK STATE INSURANCE DEPARTMENT;

(3) POLICIES ISSUED BY SUCH UNAUTHORIZED INSURER(S) MAY NOT BE SUBJECT TO ALL INSURANCE DEPARTMENT REGULATIONS GOVERNING MINIMUM POLICY PROVISIONS; AND

(4) IN THE EVENT OF THE INSOLVENCY OF SUCH UNAUTHORIZED INSURER(S) THE INSURANCE EVIDENCED BY SUCH POLICY OR POLICIES IS NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS.

OPTIONAL TOTAL COST FORM MAY BE ATTACHED HERE

(Check if applicable)

The insured was advised that part or all of this coverage for this risk was available from:

The Automobile Insurance Plan (Assigned Risk Auto Plan)

The New York Property Insurance Underwriting Association (The FAIR Plan)

The Medical Malpractice Insurance Association

Notwithstanding the availability of coverage from these admitted residual market facilities, the insured consented to the placement of this risk with unauthorized insurers.

Where the policy contains an assessment provision, the insured was informed that the policy issued or to be issued by the unauthorized insurer contains assessment provisions subjecting the insured to possible liability for assessment

pursuant to the terms of the policy.

The insured was advised that said broker has no right to receive or collect from the insured, in connection with said broker's procurement or attempt to procure such insurance from one or more unauthorized insurers, any greater sum than the premiums fixed therefore by such insurer or insurers; unless, pursuant to Section 2119 of the Insurance Law, said broker shall have obtained a written memorandum signed by the insured, specifying or clearly defining the amount or extent of such compensation. The insured was also advised that this does not affect the right of said broker to deduct from the amount of any such premium payable to such unauthorized insurer or insurers, commissions payable to said broker by such unauthorized insurer or insurers. The insured was also advised that said broker is required to pay a tax of 3.6% on all gross premiums charged for insurance procured by the broker from unauthorized insurers.

Certain insurance documents will bear a stamp affixed by the Excess Line Association of New York (ELANY). The ELANY was established pursuant to Section 2130 of the New York Insurance Law and Regulations. The stamp signifies that the excess line broker has reported the placement to ELANY. Such report does not, however, relieve or modify the broker's obligation to comply with Sections 2105 and 2118 of the Insurance Law and Regulation 41.

Affirmed as True Under Penalties of Perjury

(Signature of Insured)

__/__/__

(Date)

PART C - AFFIDAVIT BY PRODUCING BROKER

AFFIDAVIT NO.

1. PRODUCING BROKER INFORMATION:

Name

Address

City State Zip Code

License No. BR-__/__/__/__/__/__

If the license is in the name of a corporation or partnership, name of sub-licensee:

2. RISK INFORMATION:

Name of Insured

Address

City State Zip Code

Description of Insured Risk

Location of Risk (if different from insured)

Address

City State Zip Code

Type of Coverage

Type of Insurance Code _____(use ELANY Statistical Code. Add suffix "PG" if this insurance was placed pursuant to Regulation 134.)

a) Was this insurance placed pursuant to Regulation 134 governing transactions with risk purchasing groups authorized by the Federal Liability Risk Retention Act of 1986? Yes No

b) If the answer to (c) above is "Yes," indicate:

Name of Purchasing Group

Address

City State Zip Code

(c) Did you personally advise the insured that after a diligent effort to place the required insurance with companies authorized in New York to write coverages of the kind requested, all or a portion of the required insurance would be written by companies NOT authorized in New York? Yes No

(d) Does the risk described above have exposures inside and outside New York for which premium tax allocation is appropriate? Yes No

IF THE ANSWER TO (d) ABOVE IS "YES," COMPLETE SECTION 4, CALCULATION OF PREMIUM TAX ALLOCATION, OF FORM EL-3

(e) Is coverage for this risk being provided on a claims-made or other non-occurrence basis? Yes No

(f) Is coverage for this risk being provided on a "defense-within-limits" basis? Yes No

3. DECLINATION INFORMATION:

(a) Has the Superintendent determined that declinations are not required for this type of risk? Yes No

IF THE ANSWER TO QUESTION (a) IS "YES", SKIP QUESTIONS (b) AND (c), AND GO ON TO THE AFFIRMATION.

(b) Was the risk described above submitted by the producing broker to companies: (1) each authorized in New York to write coverages of the kind requested; (2) which the licensee has reason to believe might consider writing the type of coverage of insurance involved; and, (3) was such risk declined by each such company? Yes No

(c) If the answer to (b) above is "Yes," complete the following schedule:

AUTHORIZED COMPANIES DECLINING THE RISK

1. Name of Company:

NAIC Code: /_/_/_/_/_/_/_/_/

Declin. Code:* Reason (if Code 3 indicated)

Date of Declin. __/__/__

Reason(s) to believe information:

Name of Representative Declining Risk

Affiliation of Representative

Company Employee Agent Other (Specify)

2. Name of Company:

NAIC Code: /_/_/_/_/_/_/_/_/

Declin. Code:* Reason (if Code 3 indicated)

Date of Declin. __/__/__

Reason(s) to believe information:

Name of Representative Declining Risk

Affiliation of Representative

Company Employee Agent Other (Specify)

3. Name of Company:

NAIC Code: /_/_/_/_/_/_/_/_/

Declin. Code:* Reason (if Code 3 indicated)

Date of Declin. __/__/__

Reason(s) to believe information:

Name of Representative Declining Risk

Affiliation of Representative

Company Employee Agent Other (Specify)

*Codes:

1. Insurer presently lacks adequate capacity to write this risk. 2. Specific underwriting reason. 3. Other (specify).

AFFIRMATION

I, _____ (check one of the following)
 the licensed broker described in Part 1 of this Affidavit

a sub-licensee of the brokerage described in Part 1 of this Affidavit

do hereby affirm under penalties of perjury, that all of the information contained in this Affidavit is true to the best of my knowledge and belief.

(Signature of Affiant)

___/___/___
 Date

4. Calculation of Premium Tax Allocation:

(a)	(1)	(2)	(3)
Elany Statistical Code and Description	Classification Code(s) and Method(s) of Allocation as indicated in the Allocation Schedule*	Total Amount of Exposure**	New York Exposure**

TOTALS

- * (1) If policy covers more than one classification enter each classification code separately.
- (2) For any portion of the premium that is not divisible, list all coverages and specify the predominant coverage.
- (3) If classification code and method of allocation for all or any portion of the policy is not listed in the Allocation Schedule, attach explanatory memorandum describing the property or risk and supporting the alternative equitable method of allocation used for any such portion.

** Indicate the units, insured values, numbers, etc. upon which the allocation is made

(4)	(5)	(6)	(7)
Ratio	Total	Premium	Tax Due to
of	Gross	Allocated	New York
Col.3	Policy	to New York	Multiply
Col.2	Premium	Multiply Col. 4	Col. 6 by
		by Col. 5	3.6% (.036)

* (1) If policy covers more than one classification enter each classification code separately.

(2) For any portion of the premium that is not divisible, list all coverages and specify the predominant coverage.

(3) If classification code and method of allocation for all or any portion of the policy is not listed in the

Allocation Schedule, attach explanatory memorandum describing the property or risk and supporting the alternative equitable method of allocation used for any such portion.

** Indicate the units, insured values, numbers, etc. upon which the allocation is made

INSTRUCTIONS FOR COMPLETION OF AFFIDAVITS REQUIRED IN CONNECTION WITH EXCESS LINE PLACEMENTS

APPLICABILITY

Pursuant to the provisions of Article 21 of the Insurance Law and Part 27 of 11 NYCRR (Regulation 41), Part A - Affidavit by Excess Line Broker, Part B - Affidavit by Insured and, where applicable, Part C - Affidavit by Producing Broker must be completed and executed by the respective parties, and submitted to the Excess Line Association of New York, in connection with any policy or policy renewal procured pursuant to Section 2118. Except for placements involving the members of purchasing groups (discussed on page 9 of these instructions), separate affidavits are required for each excess line placement.

Affidavit Numbers

The upper left corner of each required form contains a space for an Affidavit Number. Affidavits must be consecutively numbered by the excess line broker, and the same affidavit number should appear on each part (A, B, C and EL-3) executed in connection with an excess line transaction. The excess line broker may use any sequential numbering system the broker wishes, provided that it does not exceed 10 characters in length. The excess line broker must maintain a log of each affidavit executed, including the affidavit number assigned to the transaction.

NYSID FORM 41A (Ed. 10/93)

This form must be completed in connection with all excess line placements and renewals.

Section 1. Excess Line Broker Information

The identifying information should refer to the excess line broker who made the placement. If the broker's license is held in the name of a corporation or partnership, the name of the sub-licensee should be indicated in the space provided. Please note that if the broker's license number does not begin with the letters "EX" the broker is not an excess line broker, and should not make any excess line placements except through a licensed excess line broker. If you have any questions regarding your licensing status, contact:

New York State Insurance Department
Licensing Bureau
Agency Building One
Empire State Plaza
Albany, NY 12257
(518) 474-6631

(a) Indicate whether, in connection with this insurance transaction, the insured was represented by a broker or brokers other than the excess line broker who made the placement.

(b) If the answer to (a) was "Yes", indicate the name and address of the producing broker. (If more than one producing broker was involved, attach the names and addresses of any additional producing brokers on a separate sheet.)

Section 2. Risk Information

Complete this section if the excess line broker is also acting as the producing broker for this transaction.

Description of Insured Risk - Give a brief description of the insured's business or operations, or the nature of the insured risk (e.g., "Apartment Building", "Asbestos Abatement Contractor", "Retail Jeweler").

Type of Coverage - Indicate the type of coverage which was obtained (e.g., "Prem/Ops Liab.", "Asbestos Liability", "Jewelers Block").

Type of Insurance Code - Use the ELANY Stastical Code which applies to this type of Insurance. Append the letters "PG" to the code applicable to any purchasing group transaction.

(a) Indicate whether this placement was pursuant to Part 301 of Title 11 NYCRR (Regulation 134) governing transactions with risk purchasing groups authorized by the Federal Liability Risk Retention Act of 1986.

(b) If the answer to (a) is "Yes", indicate the name and address of the risk purchasing group.

NOTE: See Special Instructions for Purchasing Group Transactions on Page 9 of these instructions.

(c) Indicate whether the excess line broker personally advised the insured that all or a portion of the required insurance would be obtained from unauthorized insurers.

NOTE: While the excess line broker does not, in many cases, deal directly with the insured or personally notify the insured regarding an excess line placement, the broker is obligated to ensure that the notification is, in fact, given. Therefore, in cases where the excess line broker does not personally advise the insured, the excess line broker should carefully review any applicable Part(s) C - Affidavit by Producing Broker.

(d) Indicate whether the insured risk has exposures both within and outside New York, for which premium allocation is appropriate.

IF THE ANSWER TO (d) IS "YES", NYSID FORM EL-3, TAX ALLOCATION REPORT, MUST BE COMPLETED AND ATTACHED.

(e) Indicate whether any portion of the coverage obtained for this insured is on a claims-made or other non-occurrence basis .

(f) Indicate whether any portion of the coverage obtained for this insured is on a defense-within-limits basis.

QUESTIONS (e) AND (f) ARE FOR INFORMATIONAL PURPOSES ONLY.

Section 3. Declination Information

(a) Indicate whether the Superintendent has determined that declinations are not required for this type of risk (i.e., the risk is on the Export List).

If the answer to question (a) is "Yes", skip questions (b) and (c) and go on to Section 4, Placement Information.

(b) Indicate whether, before placing this risk with a non-admitted insurer, the excess line broker submitted the risk to insurers, each authorized in New York to write the kind of insurance requested, and which the excess line broker had reason to believe would consider writing the type of coverage or class of insurance requested.

SPECIAL NOTE REGARDING AFFILIATED COMPANIES - Pursuant to the provisions of Section 2118 as amended by Chapter 684 of the Laws of 1993, declinations from companies affiliated with each other or with the unauthorized insurer, cannot be used unless the affiliates operate as distinct and autonomous entities and, for underwriting purposes, compete against each other for the same type of coverage or class of insurance. This is best illustrated by the following examples:

Example I - Broker A offers a risk, separately, to Companies X, Y and Z, all of which are within the same holding company system and have directors and corporate officers in common, but which operate out of different profit centers, use separate underwriting staffs, make independent underwriting decisions, etc. Each of these declinations is acceptable, and the risk could be placed with an unauthorized insurer, including one in the same holding company system as X, Y and Z, provided that the unauthorized insurer similarly operates out of a different profit or marketing center.

Example II - Broker B offers a risk to the XCo Assurance Corp., part of the XCo Insurance Group, a holding company which, in addition to XCo Assurance Corp., includes XCo Indemnity Company and XCo Underwriters. Policies for all three insurers are underwritten out of a single office where underwriters accept or reject risks, and accepted business is channeled to the appropriate XCo company. The risk is declined by all three XCo companies. Because these companies do not operate as separate entities for underwriting purposes, only one of these declinations would be considered acceptable. The other declinations from XCo Group companies would not meet the requirements of § 2118. Further, placement with an unauthorized affiliate would not be permitted if such unauthorized affiliate was similarly underwritten out of the same profit center as the authorized insurers.

(c) If the answer to (b) is "Yes", complete the schedule, providing the requested information for each declination obtained. Indicate the name of the specific insurer to which the risk was offered, and the name of the specific person representing such company which declined the risk.

Declination Code - Indicate which one of the following declination codes best describes the reason why the company declined the risk:

- 1 - Insurer presently lacks adequate capacity to write this risk;
- 2 - While the insurer does write this type of coverage or class of insurance, this particular risk does not meet the insurer's underwriting criteria;
- 3 - Any other reason for declining the risk (indicate the reason in the space provided).

Date of Declination - Indicate the date the authorized insurer formally declined to accept the risk.

Reason to Believe Information - Pursuant to the provisions of Section 2118 of the Insurance Law, as amended by Chapter 684 of the Laws of 1993, declinations may be obtained only from authorized insurers which the broker has reason to believe might consider writing the type of coverage or class of insurance involved. A broker is considered to have such reason to believe if the decision to offer the risk to an authorized insurer is based on one of the following:

- 1) Recent acceptance by the insurer of a risk requiring a similar type of coverage or class of insurance;
- 2) Advertising by the insurer or its agent indicating that the insurer is willing to consider writing this or a similar type of coverage or class of insurance;
- 3) Media communications (i.e., newspaper or magazine articles, trade publications, television and radio programming) indicating that the insurer is writing, or is considering writing, this type of coverage or class of insurance;
- 4) Communications with other insurance professionals, risk managers, trade associations, ELANY or the Insurance Department, which indicates that the insurer might consider writing this type of coverage or class of insurance; or
- 5) Any other valid basis for making such determination.

In completing this section of the affidavit, be as specific as possible. For example, if the broker's reason to believe was based on advertising in a trade publication, indicate the name of the publication and the actual or at least approximate publication date. If based on communication with other insurance professionals, etc., indicate the name of

the person or organization and the approximate date of the communication. For any other valid basis, indicate and explain the basis. Attach additional sheets if more space is required.

SPECIAL NOTE REGARDING RESIDUAL MARKETS - Effective October 1, 1993, declinations will, generally, no longer be required from the New York Automobile Insurance Plan (AIP), the New York Property Insurance Underwriting Association (NYPIUA) and the Medical Malpractice Insurance Association (MMIA), provided that 1) the insured has been advised of the availability of coverage from the AIP, NYPIUA or MMIA (as applicable) and 2) the insured has consented to the placement with the unauthorized insurer. However, declinations from the appropriate association are still required in connection with the following placements to the extent that insurance is available from the association:

1. Policies of non-commercial motor vehicle liability insurance;
2. Medical malpractice insurance for hospitals (as defined in § 2801(1) of the New York Public Health Law), physicians and dentists; and
3. Insurance which, by law, must be provided by an authorized insurer.

This foregoing is best illustrated by the following examples:

Example III - Broker C has been attempting to obtain fire and allied lines coverage for a commercial building. The risk has been declined by three authorized insurers which Broker C had reason to believe would accept the risk. This risk is now eligible for placement with an unauthorized insurer notwithstanding the fact that the desired coverage is available from NYPIUA, provided that Broker C advises the insured that such coverage could be obtained from NYPIUA and the insured consents to placement with the unauthorized insurer.

Example IV - Broker D is asked to obtain hospital medical malpractice coverage in the amount of \$ 1 million per occurrence/\$ 3 million annual aggregate. The risk is declined by three authorized insurers which Broker D had reason to believe would accept the risk. This risk is not eligible for placement with an unauthorized insurer because the required coverage could be obtained from the MMIA, unless such risk is declined by the MMIA.

Example V - Broker E is asked to obtain hospital malpractice coverage in the amount of \$ 3 million per occurrence/\$ 9 million annual aggregate. The risk is declined by three authorized insurers which Broker E had reason to believe would accept the risk. Coverage must be sought from MMIA, to the extent that such coverage is available. Since, at the present time, MMIA will write only \$ 1 million/\$ 3 million for hospital malpractice, any amount of desired insurance in excess of the level accepted by MMIA (in this case \$ 2 million/\$ 6 million) could be obtained from unauthorized insurers without a further declination from MMIA.

Example VI - Broker F is asked to obtain personal lines liability and physical damage coverage for an expensive automobile. The risk is declined by three authorized insurers which Broker F had reason to believe would accept the risk. In this case, only the physical damage coverage could be placed with an unauthorized insurer (subject to the notice and consent requirements). The liability coverage would have to be placed with the AIP.

Section 4. Placement Information

Complete the schedule, providing the requested information for each unauthorized insurer. If more space is required, attach additional sheets.

AFFIRMATION

The affirmation must be completed and signed by the excess line broker or the sub-licensee if the brokerage is a partnership or corporation. Be sure to include the date the affirmation is signed.

NYSID FORM 41C (Ed. 10/93)

This form must be completed by any producing broker (i.e., a non-excess line broker who represented an insured) in connection with an excess line placement or renewal.

Section 1. Producing Broker Information

The identifying information should refer to the producing broker which represented the insured in the excess line transaction. If the broker's license is held in the name of a corporation or partnership, the name of the sub-licensee should be indicated in the space provided. If the insured was represented solely by the excess line broker, and no separate producing broker was involved, Form 41C should not be completed, and all required information should be provided on Form 41A - Affidavit by Excess Line Broker.

Section 2. Risk Information

Description of Insured Risk - Give a brief description of the insured's business or operations, or the nature of the insured risk (e.g., "Apartment Building", "Asbestos Abatement Contractor", "Retail Jeweler").

Type of Coverage - Indicate the type of coverage which was obtained (e.g., "Prem/Ops Liab.", "Asbestos Liability", "Jewelers Block").

Type of Insurance Code - Use the ELANY Stastical Code which applies to this type of Insurance. Append the letters "PG" to the code applicable to any purchasing group transaction.

(a) Indicate whether this placement was pursuant to Part 301 of Title 11 NYCRR (Regulation 134) governing transactions with risk purchasing groups authorized by the Federal Liability Risk Retention Act of 1986.

(b) If the answer to (a) is "Yes", indicate the name and address of the risk purchasing group.

NOTE: See Special Instructions for Purchasing Group Transactions on Page 9 of these instructions.

(c) Indicate whether the producing broker personally advised the insured that all or a portion of the required insurance would be obtained from unauthorized insurers.

(d) Indicate whether the insured risk has exposures both within and outside New York, for which premium allocation is appropriate.

IF THE ANSWER TO (d) IS "YES", SECTION 4, CALCULATION OF PREMIUM TAX ALLOCATION REPORT of NYSID FORM EL-3, MUST BE COMPLETED AND ATTACHED.

(e) Indicate whether any portion of the coverage obtained for this insured is on a claims-made or other non-occurrence basis.

(f) Indicate whether any portion of the coverage obtained for this insured is on a defense-within-limits basis.

QUESTIONS (e) AND (f) ARE FOR INFORMATIONAL PURPOSES ONLY.

Section 3. Declination Information

(a) Indicate whether the Superintendent has determined that declinations are not required for this type of risk (i.e., the risk is on the Export List).

If the answer to question (a) is "Yes", skip questions (b) and (c) and go on to the Affirmation.

(b) Indicate whether, before placing this risk with a non-admitted insurer, the producing broker submitted the risk to insurers, each authorized in New York to write the kind of insurance requested, and which the producing broker had reason to believe would consider writing the type of coverage or class of insurance requested.

SEE SPECIAL NOTE REGARDING AFFILIATED COMPANIES ON PAGE 3 OF THESE INSTRUCTIONS

(c) If the answer to (b) is "Yes", complete the schedule, providing the requested information for each declination obtained. Indicate the name of the specific insurer to which the risk was offered, and the name of the specific person representing such company which declined the risk.

Declination Code - Indicate which one of the following declination codes best describes the reason why the company declined the risk:

- 1 - Insurer presently lacks adequate capacity to write this risk;
- 2 - While the insurer does write this type of coverage or class of insurance, this particular risk does not meet the insurer's underwriting criteria;
- 3 - Any other reason for declining the risk (indicate the reason in the space provided).

Date of Declination - Indicate the date the authorized insurer formally declined to accept the risk.

Reason to Believe Information - Pursuant to the provisions of Section 2118 of the Insurance Law, as amended by Chapter 684 of the Laws of 1993, declinations may be obtained only from authorized insurers which the broker has reason to believe might consider writing the type of coverage or class of insurance involved. A broker is considered to have such reason to believe if the decision to offer the risk to an authorized insurer is based on one of the following:

- 1) Recent acceptance by the insurer of a risk requiring a similar type of coverage or class of insurance;
- 2) Advertising by the insurer or its agent indicating that the insurer is willing to consider writing this or a similar type of coverage or class of insurance;
- 3) Media communications (i.e., newspaper or magazine articles, trade publications, television and radio programming) indicating that the insurer is writing, or is considering writing, this type of coverage or class of insurance;
- 4) Communications with other insurance professionals, risk managers, trade associations, ELANY or the Insurance Department, which indicate that the insurer might consider

writing this type of coverage or class of insurance; or

5) Any other valid basis for making such determination.

In completing this section of the affidavit, be as specific as possible. For example, if the broker's reason to believe was based on advertising in a trade publication, indicate the name of the publication and the approximate publication date. If based on communication with other insurance professionals, etc., indicate the name of the person or organization and the approximate date of the communication. For any other valid basis, indicate and explain the basis. Attach additional sheets if more space is required.

SEE SPECIAL NOTE REGARDING RESIDUAL MARKETS ON PAGE 5 OF THESE INSTRUCTIONS

AFFIRMATION

The affirmation must be completed and signed by the producing broker or the sub-licensee if the brokerage is a partnership or corporation. Be sure to include the date the affirmation is signed.

SPECIAL INSTRUCTIONS FOR RISK PURCHASING GROUPS AUTHORIZED BY THE FEDERAL RISK RETENTION ACT OF 1986

Normally, each placement of an insured with an unauthorized insurer is considered a separate transaction, requiring a separate Part A - Affidavit by Excess Line Broker. However, because of the unique circumstances surrounding excess line placements of federal purchasing group members, an alternative procedure is acceptable.

(1) Each purchasing group member (insured) is required to complete Part B - Affidavit by Insured.

(2) A single Part A - Affidavit by Excess Line Broker, and (if applicable) a single Part C - Affidavit by Producing Broker, may apply to all purchasing group member placements made during the 30 days immediately preceding the date of the broker affidavit(s). As new members are added to the purchasing group, the required affidavits are filed every 30 days. The affidavit number on Part A should correspond with affidavit numbers on Part B.

For example, 10 members join the XYZ Purchasing Group on June 1st. On June 15th, another 5 members join, and on June 25th, another 3. On June 30th, the excess line broker completes a single Part A, which is applicable to all eighteen members which joined the purchasing group during the month of June. A similar procedure would ensue for all July, August, etc., placements.