NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES

THIRD AMENDMENT TO 11 NYCRR 16
(INSURANCE REGULATION 86)

SPECIAL RISK INSURANCE

I, Benjamin M. Lawsky, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, and Sections 301, 307 and 308 and Article 63 of the Insurance Law, do hereby promulgate the following Third Amendment to Part 16 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Insurance Regulation 86) to take effect upon publication in the State Register, to read as follows:

(Matter Underlined is New; Matter in Brackets is Deleted)

Section 16.0 is amended to read as follows:

Section 16.0 Introduction.

This Part implements article 63 of the Insurance Law and establishes methods, procedures and reports for licensing, facilitating, monitoring and verifying compliance with the requirements of the Insurance Law. In effect, article 63 allows special risks that are jumbo in dimensions or exotic in nature to be written, free of filing rates or policy forms <u>with the superintendent</u>, in what is sometimes called the "Free Trade Zone". <u>In addition, article 63 allows certain coverage for "large commercial insureds" to be written as special risks.</u> Although filing is not required <u>except as specified in section 6303</u>, rates and policy forms applied to special risks must still satisfy governing standards set forth in the Insurance Law and regulations.

Section 16.1 is amended to read as follows:

Section 16.1 Definitions.

For purposes of this Part:

(a) *Accident and health insurer* has the meaning set forth in section 107(a)(1) of the Insurance Law.

(b) *Authorized insurer* has the meaning set forth in section 107(a)(10) of the Insurance Law.

<u>(c) *Large commercial insured* has the meaning set forth in section 6303((b)(1) of the Insurance Law.</u>

<u>(d)</u> *Life insurer* has the meaning set forth in section 107(a)(28) of the Insurance Law.

<u>(e) *Major type of insurance* as used in this Part means the annual statement line of business based on the coverage part with the highest estimated premium at the time of issuance of the certificate of insurance.</u>

<u>(f) *Medical malpractice insurance* has the meaning set forth in section 5501(b) of the Insurance Law.</u>

[(d)] (g) *Net premiums written* means gross premiums (direct and assumed premiums, including policy and membership fees, less return premiums and premiums for policies not taken) less reinsurance ceded.

[(e)] (h) *Property/casualty insurer* means an insurer licensed pursuant to article 41 or 61 of the Insurance Law.

[(f)] (i) *Special risk manager* has the meaning set forth in section 6303(b)(2) of the Insurance Law.

(j) *Special risk means:*

(1) Class 1. Where all or part of the insured's business operations, for which coverage is authorized by the kinds of insurance defined in section 1113(a) of the Insurance Law, is insured in a single policy written in accordance with section 6303 of the Insurance Law, and which is written with or is reasonably expected to produce a billed annual premium of at least:

(i) $100,000 for at least one kind of insurance; or

(ii) $200,000 for more than one kind where the premium for any one kind of insurance does not exceed $100,000.

(2) Class 2. Coverages that are:

(i) of an unusual nature, a high loss hazard or difficult to place; and

(ii) enumerated in the list contained in section 16.12(e) of this Part, or additions thereto made pursuant to section 16.8(f) of this Part.

(3) Class 3. Coverage other than medical malpractice issued to a large commercial insured that employs or retains a special risk manager to assist in the negotiation and purchase of a policy exempted under this article, provided, however, that:

(i) the special risk manager is not employed by the insurer issuing the policy or any person in the insurer's holding company system; and

(ii) the special risk manager is licensed as an insurance producer in this state pursuant to Insurance Law article twenty-one, unless exempted from licensing therein.

Section 16.3 is amended to read as follows:

Section 16.3. Disclosure to insureds.

(a) The following notice shall appear conspicuously on the front page of each binder, policy, contract, rider or endorsement, and on all subsequent additions thereto, issued or renewed under Class 1 or 2 pursuant to section 6303(a)(1) or (2) of the Insurance Law:

NOTICE: THESE POLICY FORMS AND THE APPLICABLE RATES ARE EXEMPT FROM THE FILING REQUIREMENTS OF THE NEW YORK STATE INSURANCE [DEPARTMENT] LAW AND REGULATIONS. HOWEVER, [SUCH] THE FORMS AND RATES MUST MEET THE MINIMUM STANDARDS OF THE NEW YORK INSURANCE LAW AND REGULATIONS.

(b) The following notice shall appear conspicuously on the front page of each binder, policy, contract, rider or endorsement, and on all subsequent additions thereto, issued or renewed under Class 3 pursuant to section 6303(a)(3) of the Insurance Law:

NOTICE: THESE POLICY FORMS ARE NOT SUBJECT TO THE APPROVAL REQUIREMENTS AND THE APPLICABLE RATES ARE EXEMPT FROM THE FILING REQUIREMENTS OF THE NEW YORK STATE INSURANCE LAW AND REGULATIONS. HOWEVER, THE FORMS AND RATES MUST MEET THE MINIMUM STANDARDS OF THE NEW YORK INSURANCE LAW AND REGULATIONS.

(c) [The] Each "Notice" required by subdivision (a) or (b) of this section shall be in bold capital letters, no less than three-eighths of an inch in height, enclosed in a border.

Section 16.4 is amended to read as follows:

Section 16.4 Policy forms, certificate of insurance and other standards.

(a) Every binder, policy, contract, rider and endorsement issued pursuant to section 6301 of the Insurance Law on special risks located or resident in New York State shall comply with minimum standard policy provisions of the Insurance Law and this Title.

(b) For a coverage coded as a class 3 risk pursuant to Section 16.12 of this Part, the insurer shall electronically file with the superintendent, in a form and manner acceptable to the superintendent:

(1) Within one business day of binding the insurance coverage, a certificate of insurance evidencing the existence and terms of the policy;

(2) Within 30 days from the inception date of the policy:

(i) the certificate of insurance specified in Section 16.4(b)(1) of this part; and

(ii) the following information:

(*a*) The identity of the insured and a statement that the insured meets the minimum commercial risk premium and financial condition standards for a "large commercial insured" pursuant to Section 6303(b) of the Insurance Law;

(*b*) Major type of insurance;

(*c*) Rate services organization classification (such as Insurance Service Organization classification), if applicable, or, if not applicable, a description of the class to be written;

(*d*) Risk manager name, employer and contact information, including mailing address, phone number and email address, and a statement that the insurer has verified that the risk manager who assisted in the negotiation and purchase of the policy on behalf of the insured meets the qualifications required by section 6303(b)(2) of the Insurance Law; and

(*e*) The New York producer license number, if the risk manager is required to be a New York licensed producer; and

(3) with respect to a policy form that has not been previously filed with the superintendent, the policy form, within three business days after first delivery of a policy using the form, but no later than 60 calendar days after the inception date of the policy.

(c)(1) An insurer required to make a filing or a submission to the superintendent electronically pursuant to this Part may apply to the superintendent for an exemption from the electronic filing requirement by submitting a written request to the superintendent for approval at least 30 days in advance of making the filing or submission.

(2) The request for an exemption shall:

(i) Identify the time period for which the insurer is requesting the exemption, and

(ii) Specify whether the insurer is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request.

Section 16.6(a) is amended to read as follows:

(a) An authorized insurer may apply for a special risk license to transact business written pursuant to section 6302 of the Insurance Law by completing an application form, prescribed by the superintendent and available from the Property [Companies] Bureau of the [Insurance] Department of Financial Services.

Section 16.8 is amended to read as follows:

Section 16.8 Operational requirements.

(a) Class 1[or], class 2 or class 3 coverages may be provided only to:

(1) a single entity; or

(2) two or more related entities, in each of which the same person, group of persons, or corporation holds a controlling interest.

(b) Class 1, [or] class 2 or class 3 coverages may not be provided in a manner that would constitute a group policy within the meaning of Part 153 of this Title.

(c) [Covered policies as defined in section 3425(a)(1) and (2) of the Insurance Law shall not be written as class 1 or class 2 risks.

(d) The kinds of business defined in the following numbered paragraphs of section 1113(a) of the Insurance Law shall not be written as class 1 risks:

(1) life insurance;

(2) annuities;

(3) accident and health insurance;

(15) workers' compensation and employers' liability;

(18) title insurance;

(23) mortgage guaranty insurance;

(24) credit unemployment insurance; or

(25) financial guaranty insurance.] (1) Except as provided in subparagraph (2) of this subdivision, a policy may be written pursuant to Insurance Law article 63 and this Part if the policy provides only one or more of the kinds of insurance specified in Insurance Law section 1113(a)(4) through (14), (16), (17), (19) through (22), (27) and (29).

(2) A covered policy, as defined in section 3425(a)(2) of the Insurance Law or a policy providing coverage pursuant to Insurance Law section 1113(a)(1), (2), or (3) may be written as a class 2 risk if the coverage is included in the list of eligible class 2 risks contained in section 16.12(e) of this Part.

(3) A medical malpractice insurance policy may not be written as a class 3 risk.

(d) Notwithstanding any other provision of this Part, a policy may not be written pursuant to Insurance Law article 63 and this Part with respect to:

(1) Insurance specified in Insurance Law section 2328;

(2) Insurance specified in Insurance Law section 2305(b) except medical malpractice insurance may be written as a class 1 or 2 risk; or

(3) Insurance required to satisfy any financial responsibility requirement of this State.

(e) Where a policy includes coverage for both New York and non-New York exposures, the total premium for all exposures may be used for purposes of determining class 1 or class 3 eligibility pursuant to section 16.1(j) of this Part. However, a report filed with the superintendent showing special risk premiums and losses shall only include risks related to New York exposures unless the statement filing instructions specify otherwise.

(f)(1) Application may be made to the superintendent for adding a class to the list of eligible class 2 risks enumerated in section 16.12(e) of this Part.

(2) In reviewing such an application, the superintendent shall consider the following factors:

(i) whether the insurance coverage provided protects from perils or risks that are neither contained in, nor conducive to the use of, generic policy forms or filed rate schedules;

(ii) whether the type of insurance risk contains a substantial degree of peril or hazard that makes use of generic policy forms or filed rate schedules impractical; and

(iii) the extent to which the type of coverage is unavailable from authorized insurance markets.

(3) Class 2 additions shall be published in the State Register.

(4) Applications to the superintendent to add classes to the class 2 risk list shall include:

(i) a detailed description of the class for which filing exemptions are requested;

(ii) a statement indicating the reasons why the class should be considered unusual, having a high loss hazard, or difficult to place; and

(iii) a statement explaining why the filing requirements of the Insurance Law with regard to rates and forms would impose an undue impediment to the effective writing of the particular class of business in this State.

(g) Coverages qualifying as class 2 risks may be provided by separate individual policies or incorporated by endorsement into other policies. When coverages for class 2 risks are provided by endorsement, only the policy forms and rates applicable to such endorsement qualify for filing exemptions pursuant to this Part.

(h) No policy may be issued or renewed pursuant to class 3 on or after the date specified in Insurance Law section 6303(a)(3).

Section 16.12 (a) is amended to read as follows:

Section 16.12. Coding of class 1, [and] class 2, and class 3 risks.

(a) The principal operations of class 1 and class 3 risks shall be coded in accordance with the classification codes filed by the Insurance Services Office under the commercial statistical plan.

Subdivision (d) of Section 16.12 is amended to read as follows:

(d)(1) Special risks classified under class 2 [which generates] that generate a premium in [the] an amount that qualifies as a class 1 risk shall, for reporting purposes, be designated as class 2 risks; and

(2) Special risks classified under class 2 that also qualify as class 3 risks shall, for reporting purposes, be designated as class 2 risks.

Section 16.13 is repealed.

STATE OF NEW YORK
DEPARTMENT OF FINANCIAL SERVICES
ONE STATE STREET
NEW YORK, NEW YORK 10004

I, Benjamin M. Lawsky, Superintendent of Financial Services, do hereby certify that the foregoing is the Third Amendment to Part 16 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 86), promulgated by me on March 21, 2012, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 307 and 308 and Article 63 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed regulation was published in the State Register on December 28, 2011. No other publication or prior notice is required by statute.

Benjamin M. Lawsky
Superintendent of Financial Services

March 21, 2012