

REPORT ON EXAMINATION
OF THE
EXCESS LINE ASSOCIATION OF NEW YORK
AS OF
DECEMBER 31, 2003

DATE OF REPORT

May 18, 2005

REVISED DATE

July 16, 2007

EXAMINER

Richard Yuen

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

May 18, 2005

Honorable Howard Mills
Superintendent of Insurance
Albany, NY 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 22257 dated September 30, 2004 attached hereto, I have made an examination into the condition and affairs of the Excess Line Association of New York herein referred to as ELANY, as of December 31, 2003, and submit the following report thereon.

1. Scope of Examination

The previous examination of the Excess Line Association of New York was conducted as of December 31, 1999. This examination covered the four year period from January 1, 2000 through December 31, 2003. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a complete verification of assets and liabilities as of December 31, 2003. The examination included a review of income, disbursements and company records deemed necessary to accomplish such analysis or verification and utilized, to the extent considered appropriate, work performed by ELANY's independent certified public accountants. A review or audit was also made of the following items:

- History
- Membership
- Purposes
- Management
- Records
- Internal Controls
- Accounts and Records
- Financial Statements

A review was also made to ascertain what action was taken by ELANY with regard to the comments and recommendations in the prior Report on Examination.

This Report on Examination is confined to financial statements, internal controls and comments relative to matters which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

2. Description of ELANY

A. History

The Excess Line Association of New York was established as a non-profit association pursuant to Chapter 630 of the Laws of 1988 and began operation on January 1, 1989.

The operating procedures of the administration of ELANY are governed by a Plan of Operation (Plan) approved by the Superintendent pursuant to Section 2130(c) of the New York Insurance Law.

B. Membership

All excess line brokers licensed under Section 2105 of the New York Insurance Law are deemed members of ELANY pursuant to Section 2130(a) of the Insurance Law. New members are added as they become licensed under Section 2105 of the Insurance Law and said membership is ended concurrent with the termination of the broker's excess line license. When brokers become licensed as excess line brokers, the Licensing Bureau of the New York Insurance Department notifies ELANY which in turn sends the new members an information package to assist them in performing their duties as excess line brokers.

The following chart lists the number of excess line brokers licensed by the Insurance Department and those that actively submitted business to ELANY during the period under examination:

	<u>Number of Excess Line Brokers</u>	
	<u>Licensed</u>	<u>Active</u>
As of December 31, 2000	557	350
As of December 31, 2001	690	442
As of December 31, 2002	1046	384
As of December 31, 2003	1246	429

C. Purposes

ELANY was established pursuant to Section 1 of Chapter 630 of the Laws of 1988, "...to facilitate and encourage compliance by its members with the laws of this state and the rules and regulations of the Superintendent relative to excess line insurance." This same section also states that the underlying purposes of ELANY include protecting persons seeking insurance in this state; permitting excess line insurance to be placed with reputable and financially stable unauthorized insurers; and protecting revenues of this state.

Pursuant to Section 2118(b)(1) of the Insurance Law within 45 days after an excess line policy is procured, member brokers are required to submit to ELANY affidavits along with policy declarations pages or cover notes evidencing placements with unauthorized insurers. The submitted documents are then reviewed by ELANY examiners for completeness and accuracy. If the affidavit is not properly prepared or questionable information is noted, the documents evidencing placement are returned unstamped to the broker for correction. Otherwise, the placement is recorded into ELANY's database and the policy declarations page or cover note is stamped and returned to the broker. The affidavits are subsequently submitted to the Insurance Department in accordance with Section 2130(a)(4) of the Insurance Law. The member is then billed .4% of the reported excess line premium for this stamping. At the recommendation of ELANY and following approval of the Department, this stamping fee was later reduced to .3% effective July 1, 2004 and subsequently to .2% effective July 1, 2005.

Section 2118(b)(6) of the Insurance Law prohibits excess line brokers from delivering policies issued by an unauthorized insurer without the ELANY stamp affixed to either the policy declaration page or a cover note. Section 2130(a)(2) requires ELANY notify the Insurance Department if it receives documents evidencing placements with an unauthorized insurer ELANY believes fails to comply with the requirements of the New York Insurance Law. However, any disciplinary action taken against an excess line broker concerning violations of these sections of the law remains the responsibility of the Superintendent, and not ELANY.

3. Plan of Operation

A. Management

The Plan of Operation (Plan) as approved by the Superintendent of Insurance governs the management of ELANY. The Plan has granted management of ELANY to a Board of Directors (Board). The Board consists of not less than five nor more than nine persons who are elected to serve for non-concurrent terms of three years. The Plan provides that the Board shall hold regular meetings at least quarterly as well as special meetings under certain conditions and/or emergencies.

As of December 31, 2003, the Board of Directors consisted of the following members:

<u>Name</u>	<u>Affiliation</u>
Margaret Beirne (Chairman)	AON Group, Inc.
David Isenberg	DC White Agency
Donald Privett	Privett Special Risks, LLC
Kevin McGill	Willis of New York, Inc.
John A. Buckley	NIF Services of New York, Inc.
Kurt C. Bingeman	Russell Bond & Co., Inc.
Thomas J. Derella	The Kingstar Company, Inc.
Lee A. Orabona	New Century Global Inc.
Robert Shapiro	Global Facilities, Inc.

There were 16 Board of Directors meetings during the examination period. In general, attendance was good except for Les Ross, who attended 54% of the meetings held during the period under examination. It should be noted that Mr. Ross was not re-elected to the board after his term expired in May 2003.

B. Administration

The Plan of Operation of ELANY provides that an Executive Director shall be the chief operating officer of ELANY. The Executive Director's duties shall be to implement the policies of the Board of Directors. The Plan also provides that ELANY may employ such persons, firms etc. as needed for the performance of the duties of ELANY.

As of December 31, 2003, the officers of ELANY were as follows:

<u>Name</u>	<u>Title</u>
Daniel F. Maher	Executive Director
Nancy Born	Office Manager
Theresa Hetherington	Stamping Office Manager
Richard Schlesinger	Financial Director

4. Financial Statements

The financial statements presented in this report consist of a balance sheet reflecting the assets and liabilities as of December 31, 2003, a statement of income for the period January 1, 2000 through December 31, 2003, and a statement of fund balance as of December 31 for the years 2000 through 2003.

ELANY's financial statements were audited by McGladrey & Pullen, CPA. McGladrey & Pullen expressed an unqualified opinion that the financial statements present fairly, in all material respects, the financial positions of ELANY as of December 31 of the respective years under examination and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

A. Balance Sheet

The following shows the assets, liabilities and fund balance at December 31, 2003 as reported by ELANY.

Assets

Current Assets

Cash	\$5,597,021	
Investments	2,545,327	
Accounts receivable	1,528,626	
Prepaid expenses (including accrued interest)	<u>74,711</u>	
Total Current Assets		\$ 9,745,685

Fixed Assets

Furniture and fixtures	\$229,319	
Leasehold improvements	68,266	
Computers	<u>563,744</u>	
Total fixed assets, at cost	861,329	
Less: Accumulated depreciation	<u>558,040</u>	
Total Fixed Assets		303,289

Security deposit and artwork		<u>134,443</u>
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Total Assets		<u>\$10,183,417</u>
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Liabilities and Fund Balance

Current Liabilities

Accounts payable and accrued expenses	\$ <u>241,764</u>	
Total Current Liabilities		\$ 241,764

Other Liabilities

Deferred rent credit	<u>950</u>	
Total Other Liabilities		<u>950</u>

Total Liabilities		242,714
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Fund Balance		<u>9,940,703</u>
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Total Liabilities and Fund Balance		<u>\$10,183,417</u>
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B. Statement of Income

Illustrated below is a statement of the revenues and expenses as reported by ELANY for the period January 1, 2000 through December 31, 2003:

<u>Revenues</u>		
Stamping fees	\$18,539,131	
Annual filing fees	40,400	
Financial review fees	40,800	
Interest and dividends	315,335	
Gain (Loss) on investments	(28,461)	
Insurance recovery	<u>29,860</u>	
Total revenues		\$18,937,065
<u>Expenses</u>		
Payroll	\$4,347,291	
Payroll taxes and employee benefits	1,005,117	
Profit-sharing plan (401k)	253,518	
Temporary help	555,921	
Rent and utilities	802,963	
Professional fees	784,402	
Computer charges	469,931	
Industry trade meetings	230,303	
Travel and entertainment	87,619	
Insurance	127,791	
Postage, printing and stationery	436,768	
Telephone	120,492	
Office supplies	209,593	
Repairs and maintenance	133,222	
Dues and subscriptions	138,085	
Board of Directors meetings	199,073	
Members' education	169,935	
Document storage and retrieval	131,625	
NYID examination	33,992	
Depreciation	115,621	
Contributions	29,675	
Miscellaneous	<u>122,539</u>	
Total expenses		<u>10,505,476</u>
Excess (deficiency) of revenues over expenses		<u>\$ 8,431,589</u>

C. Statement of Fund Balance

The fund balance increased \$8,431,589 during the examination period January 1, 2000 through December 31, 2003, detailed as follows:

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Beginning fund balance	\$1,509,114	\$1,917,407	\$2,439,570	\$4,906,100
Excess (deficiency) of revenues over expenses	<u>408,293</u>	<u>522,163</u>	<u>2,466,530</u>	<u>5,034,603</u>
Ending fund balance	<u>\$1,917,407</u>	<u>\$2,439,570</u>	<u>\$4,906,100</u>	<u>\$9,940,703</u>

5. ELANY Functions

A. Processing and Stamping of Affidavits

ELANY members submit their affidavits and policy endorsements (changes) in groupings referred to as batches. During this examination period the examiners, utilizing a scientific statistical sample, reviewed 481 batches which contained 1,578 files. Since the batches consisted of endorsements and affidavits all items were reviewed. Eighty five percent of the batches were affidavits (1,339); the other 15% were endorsements/stamp only. The affidavit review focused on the timeliness of filing by the brokers and the adherence to Department Regulation 41 requirements.

Late Submissions

Following is a table reflecting the findings of the affidavit review:

	<u>Total Reviewed</u>	<u>Late</u>	<u>Percentage</u>
2000	169	12	7%
2001	230	40	17%
2002	406	74	18%
2003	534	87	16%
Totals	1,339	213	16%

ELANY Board of Directors' minutes indicated that the late filing affidavit problem where excess line brokers were submitting affidavits more than 45 days after procuring a policy was improving over time. Notwithstanding the discussions between the Department and ELANY that certain brokers affected by the World Trade Center attack would be exempt from penalties for late filing violations, it appears that late filings were still problematic.

It is again recommended that ELANY continue to promote member compliance with the provisions of Section 2118(b)(1) of the Insurance Law. It is also recommended that ELANY notify the Department when brokers persistently fail to submit affidavits within 45 days of inception date of the policy.

Export List

The second amendment to Regulation 41 contains a list (aka the "export list") of types of coverage that can be exported to eligible excess lines insurers without the excess line broker having to obtain declinations. The sample reviewed contained only 17 affidavits which indicated that the risk was on the export list. No discrepancies were noted.

Declination Procedures

Absent an item qualifying for the export list, an excess line broker is required to obtain three declinations from licensed insurers prior to the placement of a risk in the excess line market. A review of the declination information contained in the 1,339 affidavit sample disclosed the following problem areas: some declinations were not obtained and some declinations appeared to be questionable. These questionable declinations could be subdivided into the following categories: notice of excess line placement dates preceding declination dates and inception dates of excess line placements preceding declination dates.

It was found that declination dates were not listed on 29 affidavits, which is about 2% of the total population for the sample.

More significantly, in 97 instances or almost 7% of the total population, the declination date was later than the notification date. It appears that the risks were bound before declinations

were obtained which would suggest a violation of Section 2118 of the New York Insurance Law and Department Regulation 41. The percentage of affidavits where the notice of excess line placement date precedes the declination date is as follows:

<u>Year</u>	<u>Affidavits</u>	<u>Percentage</u>
2000	16	9%
2001	11	5%
2002	16	4%
2003	54	10%

It is recommended that any affidavit where the notice of excess line placement date precedes the declination date be sent back to the broker for an explanation and that the Department be notified of any broker who continues to utilize such practice.

Additionally, with respect to some of the declinations, approximately 7.75% of the total affidavit sample population was dated subsequent to the inception date of the policy. The findings here once again heighten the Department's concern regarding questionable declinations. The percentage of affidavits where the inception date precedes the declination date is as follows:

<u>Year</u>	<u>Affidavits</u>	<u>Percentage</u>
2000	12	7%
2001	22	10%
2002	30	7%
2003	36	7%

It is recommended that any affidavit where the inception date precedes the declination date be sent back to the broker for an explanation and that the Department be notified of any broker who continues to utilize such practice.

It is recommended that ELANY contact those members who submit questionable affidavits and provide them with appropriate training.

B. Unauthorized Insurer Files

As part of the application process to be accepted as an eligible unauthorized insurer in New York, ELANY requires an unauthorized insurer intending to do business in New York to submit financial statements and other pertinent documentation for analysis and evaluation. If ELANY determines that the insurer qualifies for eligibility, ELANY notifies the insurer in writing of its acceptance and places the insurer on ELANY's stamping list of eligible insurers. Once on the stamping list, eligible insurers are monitored for financial strength and viability and are subject to an annual re-qualification process.

On the other hand, if ELANY determines that an insurer does not qualify for eligibility, the insurer is notified of the said ineligibility. However, the insurer can later submit updated financial information and documentation to ELANY for its reconsideration.

The purpose for reviewing the unauthorized insurers' application files was to determine whether ELANY has fulfilled its statutory obligations of admitting unauthorized insurers who are financially sound and has treated applicants fairly and equally. In this connection, the examiners reviewed three (3) unauthorized insurers' files and noted that documentation was adequate. In addition, the files contained supporting evidence that an analysis of the financial information had been performed.

C. Expenditures

Political Contributions

During the period under examination, it was found that ELANY made political contributions to state and local politicians in the total amount of \$28,575. The following reflects ELANY's contributions for the examination period:

<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
\$5,000	\$6,000	\$9,050	\$8,525

It should be noted that in its past three reports on examination, the Department questioned the propriety of ELANY making political contributions to state and local politicians. The prior reports pointed out that "...in view of ELANY's unique status as a quasi-public entity created by, and whose continued existence is within the purview of, the New York State Legislature, the payment of political contributions to members of that body may give an appearance of impropriety." The reports further requested ELANY's "Board of Directors review the matter of continuing to make political contributions in view of the public policy questions raised by this issue."

In a letter to the Department dated April 30, 2007, ELANY stated that it understands that the Department is of the view that ELANY lacks the statutory authority to make political contributions. ELANY added that its Board has voluntarily determined that ELANY will not make any such contributions in the future, and that should ELANY change its position, it will notify the Department and seek its approval before undertaking to make any political contribution in the future. ELANY's current position and particularly its pledge not to make future political contribution without first seeking Department assent is satisfactory to the Department.

Charitable Contribution

During the course of the examination it was noted that on June 19, 2003, ELANY made a donation of \$25,000 to the Insurance Industry Charitable Fund (IICF), in apparent violation of Section 2130 of the New York Insurance Law. The donation was made for the purpose of exploring the possibility of creating a New York chapter of the IICF for the Northeastern states.

In a letter to the Department dated April 30, 2007, ELANY asked whether it may lawfully make limited and *de minimis* charitable contributions to certain narrowly circumscribed causes, including organizations (like IICF) established by the insurance industry for charitable work.

In a legal opinion dated June 7, 2007, the Department's Office of General Counsel (OGC) determined that within certain narrow parameters, *de minimis* charitable contributions

may be considered to be “incidental or related” to ELANY’s purposes. OGC therefore concluded that: (1) ELANY may make no charitable contributions whatsoever, except to an organization providing humanitarian aid in the wake of a natural disaster or terrorist act, or to an organization established by the insurance industry for charitable works; (2) ELANY must limit its total contributions to any given charitable organization to \$1,000 in any calendar year; (3) ELANY must limit its aggregate charitable contributions to \$15,000 in any calendar year; (4) ELANY must itemize each charitable contribution it made during the year under review in the annual audited statement that ELANY files with the Department, and specify the organization to whom the contribution was made, the date of the contribution, the amount of the contribution, and that nature and purpose of the gift; and (5) ELANY must ensure that its Board approves each donation, no matter what amount.

Within the carefully drawn parameters, the Department has no objection to ELANY periodically making charitable contributions.

D. Stamping Fee

During the period under examination, ELANY experienced an unprecedented growth in stamping fee revenue as a result of a rapid growth of premium volume in the excess line market. This growth in premium volume was primarily attributed to the hardening of the insurance market. At the time of the examination, the trend of growth in premium seemed to be continuing and so was the growth in stamping fee revenue. The following table reflects the changes in annual revenues, expenses and fund balances during the examination period:

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Total Revenues	\$2,227,115	\$2,877,018	\$5,375,289	\$8,457,643
Total Expenses	\$1,818,822	\$2,354,855	\$2,908,759	\$3,423,040
Excess of Revenues over Expenses	\$408,293	\$522,163	\$2,466,530	\$5,034,603
Fund Balance	\$1,917,407	\$2,439,570	\$4,906,100	\$9,940,703

The prior report of examination indicated that ELANY's fund balance as of December 31, 1999 was \$1,509,114. This examination indicated that ELANY's fund balance as of December 31, 2003 was \$9,940,703, an increase of \$8,431,589 over the balance of the last examination period. This record amount of fund balance far exceeds the current operational needs of ELANY. Although ELANY had since instituted a 25% reduction in stamping fee effective July 1, 2004, its fund balance is still expected to grow at a rate of approximately \$3 million a year assuming the stamping fee revenue remains at the 2003 level.

After this matter was brought to their attention, ELANY sent a letter dated February 3, 2005 to the Superintendent of Insurance seeking to further reduce the stamping fee charged brokers to two tenths of one percent (.2%). On March 15, 2005, the Superintendent approved ELANY's reduction request to be effective as of July 1, 2005.

It is recommended the Board of Directors of ELANY continue to monitor the fund balance in order to assure that the accumulated fund balance will be able to satisfy the reasonable operational needs of ELANY.

E. Internal Controls

As part of the examination, the internal control procedures of ELANY were reviewed. The review revealed a number of weaknesses in the internal control procedures specifically relating to segregation of duties, maintenance of authorization documentation, job descriptions, formalized internal control procedures, and audit committee responsibilities.

a) Segregation of duties

The review revealed that the Office Manager is responsible for the following duties: authorization of expenditures, maintenance of accounting records and custody of assets. This violates the principle of segregation of duties

The last examination report recommended that a non-signatory perform ELANY's bank reconciliation. The Office Manager continues to perform bank reconciliations (with verification by an outside consultant) in addition to maintaining accounting records. It is recommended that ELANY incorporate the principle of segregation of duties into appropriate job functions in order to ensure that ELANY's assets are safeguarded and its obligations and liabilities are properly authorized and recorded.

b) Maintenance of documentation of authorization

ELANY reported that authorization of expenses were mostly effected verbally following discussions between the Office Manager and the Executive Director with little or no documentation being maintained. The documentation of authorization allows accountability to management and broker members for its actions. It is recommended that ELANY properly record and maintain all documentation of authorization for expenses.

c) Job description

Since its creation in 1988, ELANY has grown into a much larger organization and job descriptions for various managerial positions have not been updated since 1993. Many responsibilities not originally contemplated are now necessary parts of an individual manager's duties. These additional responsibilities should be incorporated into the new job description write-up. Also over the years new positions have been created. For example, a new Information Technology (IT) Manager position was created to serve the current needs of electronic processing. It is recommended that ELANY review the job descriptions of its employees and rewrite or adapt them to meet the current needs of the Association.

d) Formalized internal control procedures

Internal control procedures are neither formalized nor written. ELANY reported that it has hired an outside consultant to analyze its internal control and security needs. It is recommended that ELANY establish formal written internal control procedures. It is also recommended that ELANY provide the Department with a copy of the internal control report and steps taken by ELANY to alleviate any problems noted in the report.

e) Audit committee responsibilities

ELANY reported that there was no audit committee to oversee matters relating to internal and external audits. ELANY advised that it had recently changed the name of “Finance Committee” to “Audit and Finance Committee” to reflect the increased responsibilities of this committee. It is recommended that ELANY formalize the additional responsibilities of the Audit and Finance Committee in writing.

F. Binding Authority Agreements

Section 2118(f) of the Insurance Law states that, “an excess line broker licensed pursuant to Section 2105 of this article may execute an authority to bind coverage and may exercise binding authority on behalf of an insurer not licensed or authorized to do business in this state... and shall set forth the terms, conditions and limitations governing the exercise of binding authority by the excess line broker.”

As of December 31, 2003, ELANY reviewed and accepted 189 binding authority agreements from 65 excess line brokers. ELANY’s procedures according to the Finance Director is to personally review the agreements, to send out an acceptance notice to the individual brokers whereby the onus is placed upon the broker to comply with their agreements, and to subsequently file them. In regard to the affidavit question, “Does the broker have binding authority?”, no review is made to determine whether the brokers have filed agreements or are adhering to them.

It was noted and discussed with the Finance Director that there were a number of instances where the ELANY examiners were incorrectly inputting binding authority information from the affidavit to ELANY’s database, i.e. answering “yes” to the question regarding binding authority agreement when in fact the broker does not have an agreement. It is recommended that ELANY implement procedures requiring its examiners to verify the existence of a binding authority agreement and that ELANY perform periodic review of the examiners work to ensure they are following such procedures.

6. Compliance with Prior Report on Examination

The following matters were the subject of recommendations in the prior Report on Examination (page numbers shown refer to the prior Report):

It should be noted that items A, D, I and N below are recommendations which ELANY has failed to implement.

<u>Item</u>	<u>Page No.</u>
A. It is again recommended that ELANY continue its procedures with respect to promoting member compliance with the provisions of Section 2118 of the Insurance Law, but more importantly, notify the Department when the law is violated.	9

ELANY has not fully complied with this recommendation.

B. It is recommended that when a broker contends that “no market exists” for a permissible kind of excess line risk, ELANY should return the affidavit and advise the excess line broker to contact the Department for further guidance.	9
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It appears that ELANY has complied.

C. It is recommended that ELANY examiners verify that a risk is actually on the “export list” and return any affidavits to the broker with a notice that the risk is not exempt from the declination procedures.	9
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It appears that ELANY has complied.

D. It is recommended that ELANY examiners test check declinations for risks of similar type and report brokers who consistently obtain	10
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declinations from the same company and underwriter to the Department for further investigation.

ELANY has not complied. ELANY stated that its 16 examiners review affidavits and endorsements submitted by thousands of brokers. It is difficult to identify those individual brokers who repeatedly use the same licensed companies in the declinations portion of affidavits. Furthermore, it claims some level of repeated use of particular licensed insurers as declining carriers is expected and does not create a sufficient level of incredibility in and of itself to attempt to impeach the broker's sworn statement.

E. It is recommended that ELANY examiners report incidences of certificate numbers on non purchasing group policies to the Department for further investigation. 10

In its response dated April 11, 2003 to the recommendations of the Department, ELANY agreed to reexamine its procedures for reviewing group insurance policies which are not purchasing groups under the Federal Risk Retention Act. It appears that ELANY has complied with this recommendation.

F. It is recommended that when signatures of identical names do not match, copies of these affidavits should be sent to the Department for further investigation. 10

It appears that ELANY has complied with this recommendation.

G. It is recommended that affidavits with stamped signatures be returned to the excess line broker for appropriate signature. 10

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ELANY submitted that its examiners regularly enforce Department policy that only affidavits with wet signatures be processed. However, it stated that identifying whether a signature is original can be difficult when soft point, fine markers with black ink are used to sign a document. The examiners routinely reject affidavits stamped with a facsimile signature. Furthermore, ELANY indicated that it is in the process of migrating to legal electronic signatures within two years which will make signature verification irrelevant. It appears that ELANY has complied with this recommendation.

H. It is recommended that ELANY train its examiners to recognize which coverages are permitted to be placed in the excess line market. 10

ELANY said its policy is to regularly engage in the training of its examiners to identify types of coverage and which types are permitted to be placed in the excess line market. It is also in the process of establishing an examiners' procedures manual. It appears that ELANY has complied with this recommendation.

I. It is further recommended that ELANY establish and maintain an affidavit filing procedures manual for use by ELANY examiners. 10

ELANY has not complied with this recommendation.

J. It is recommended that ELANY establish formal written guidelines with regard to the application process for excess line insurer eligibility, and retain all required documentation in the company files. 11

ELANY has complied with this recommendation. It has established written application requirements for companies seeking eligibility and re-

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eligibility. It also performs financial analysis and maintains a worksheet on companies analyzed.

K. It is again recommended that the Board of Directors establish formal written guidelines for travel and entertainment expenses for Board members and officers. 11

ELANY has complied with this recommendation. The Travel and Entertainment guidelines were amended in response to this suggestion.

L. It is again recommended that the Board of Directors continue to review the issue of political contributions in view of the public policy considerations. 13

ELANY has complied with this recommendation, and has agreed to cease making political contributions. Moreover, ELANY has pledged that should it change its position, it will seek the Department's approval before undertaking to make any additional political contributions in the future.

M. It is again recommended that the fund balance and stamping fee rate be monitored by the Board of Directors so that if the fund balance approaches a threshold in excess of \$1,800,000, consideration should be given to reducing the stamping fee rate at that time. 14

ELANY has complied with this recommendation. During the current examination period, ELANY experienced an explosion in premium growth due to hardening in the insurance market. The fund balance as of the end of year 2004 exceeded a record amount of \$15.4 million. The Board of

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Directors was fully aware of it. It requested and received approval from the Superintendent of Insurance, a stamping fee reduction to .3% of premiums written for policies incepting prior to July 1, 2004. After the conclusion of the current examination, ELANY requested and received approval for a second reduction in stamping fee to .2% for policies incepting after July 1, 2005.

N. It is again recommended that a non-signatory perform the bank reconciliations. 14

ELANY has not complied with this recommendation. The monthly bank statement reconciliation was still carried out by the Office Manager who also maintained accounting records and had custody of assets of the Association. However, ELANY claimed the monthly bank statement reconciliation was verified by an outside CPA firm.

O. Binding authority thresholds should be monitored by ELANY examiners and any significant discrepancies should be reported to the Department. 14

ELANY advised the Department that it is beyond their expertise to monitor business bound under the binding authorities for compliance with the contract. ELANY contends that it is the proper function of the carriers which extend such authority.

7. Summary of Recommendations

The following summarizes the recommendations contained in this Report on Examination:

<u>Item</u>	<u>Page No.</u>
A. It is again recommended that ELANY continue to promote member compliance with the provisions of Section 2118(b)(1) of the Insurance Law. It is also recommended that ELANY notify the Department when brokers persistently fail to submit affidavits within 45 days of inception date of the policy.	9
B. It is recommended that any affidavit where the notice of excess line placement date precedes the declination date be sent back to the broker for an explanation and that the Department be notified of any broker who continues to utilize such practice.	10
C. It is recommended that any affidavit where the inception date precedes the declination date be sent back to the broker for an explanation and that the Department be notified of any broker who continues to utilize such practice.	10
D. It is recommended that ELANY contact those members who submit questionable affidavits and provide them with appropriate training.	10
E. It is recommended the Board of Directors of ELANY continue to monitor the fund balance in order to assure that the accumulated fund balance will be able to satisfy the reasonable operational needs of ELANY.	14
F. It is recommended that ELANY incorporate the principle of segregation of duties into appropriate job functions in order to ensure that ELANY's assets are safeguarded and its obligations and liabilities are properly	15

<u>Item</u>	<u>Page No.</u>
authorized and recorded.	
G. It is recommended that ELANY properly record and maintain all documentation of authorization for expenses.	15
H. It is recommended that ELANY review the job descriptions of its employees and rewrite or adapt them to meet the current needs of the Association.	15
I. It is recommended that ELANY establish formal written internal control procedures. It is also recommended that ELANY provide the Department with a copy of the internal control report and steps taken by ELANY to alleviate any problems noted in the report.	15
J. It is recommended that ELANY formalize the additional responsibilities of the Audit and Finance Committee in writing.	16
K. It is recommended that ELANY implement procedures requiring its examiners to verify the existence of a binding authority agreement and that ELANY perform periodic review of the examiners work to ensure they are following such procedures.	16

Respectfully submitted,

Richard Yuen
Senior Insurance Examiner

STATE OF NEW YORK)
)
) SS.
COUNTY OF NEW YORK)

Richard Yuen, being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

Richard Yuen
Richard Yuen

Subscribed and sworn to before me
this 14th day of November 2005.

Ademola Oluwo
ADEMOLA OLUWO
Notary Public, State of New York
No. 01OL6062914
Qualified in Kings County
Commission Expires August 20, 2009

Appointment No 22257

**STATE OF NEW YORK
INSURANCE DEPARTMENT**

I, Gregory V. Serio , *Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:*

Richard Yuen

as proper person to examine into the affairs of the

Excess Line Association of New York

and to make a report to me in writing of the condition of the said

Association

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by the name and affixed the official Seal of this Department, at the City of New York,

this 30th day of September, 2004





GREGORY V. SERIO
Superintendent of Insurance