



**COMPLIANCE
ADVISOR**

**Excess Line Broker -
The Most
Important Document**

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COMPLIANCE

The acquisition of an excess line license appears to suggest the licensee is capable of meeting the compliance requirements of the law when making excess line placements. Unfortunately, this is not always the case. The Excess Line Association of New York (ELANY) exists to help you meet these legal requirements when accessing the E&S market, but keep in mind **Rule No. 1 – As the licensee, the legal burden falls on the broker**. Therefore, please take the following into consideration: help staff understand how documents can be returned by ELANY or stamped on the first try, and how to avoid committing mistakes which will only slow the process and create unnecessary frustration.

Every initial excess line transaction involves the filing of a batch file report, one or two affidavits, a notice of excess line placement and a document evidencing coverage.

Let's focus on the **MOST IMPORTANT DOCUMENT**.

DECLARATIONS PAGE, COVER NOTE, BINDER OR CONFIRMATION OF PLACEMENT OF COVERAGE

The document, which evidences coverage, is the key document for all interested parties, the insured, the insurer(s), the excess line broker and other producers (where applicable) as well as ELANY.

The law requires the excess line broker to file a copy of the declarations page or cover note within 45 days of the inception of coverage. (If you will not have the final policy within 45 days you can file a copy of a binder or confirmation of placement (discussed below) and then file the copy of the declarations page or cover note subsequently.)

Documents other than those described above are not acceptable. ELANY will reject “applications,” “quotes,” “proposed wording,” “invoices” and other documents because they do not confirm, nor represent on anyone's behalf, that coverage has been bound and is in effect. The use of white out and a pen to add the word binder or confirmation at the top does not change the effect of the document and, therefore, cannot be processed by ELANY. ELANY has also recently started to receive Reinsurance Cover Notes. Advise staff that just because it is a Lloyd's Cover Note, it does not necessarily mean it is an excess line transaction. ELANY does not process reinsurance transactions since, by definition, a transaction can never be both excess line insurance and reinsurance at the same time.

a) EXCESS LINE INSURER IDENTIFICATION

While this would appear to be an easy piece of information to capture, ELANY's records contradict that thought. Documents are regularly submitted with insurer names which are so incomplete or inaccurate that the documents cannot be processed. Here are some examples of the problem: Axis, Lexington, Ace Westchester and AIG have all appeared as the excess line insurer on documents. The problem is Axis has licensed insurers, eligible excess line insurers and insurers with no standing to issue policies in New York, so which Axis company is providing this coverage? **The proper legal name of the insurer must be set forth for the insured in order to obtain the ELANY stamp.** While the affidavit contains the specific insurer names, the insurance document nevertheless remains ambiguous and is not corrected by correct information in the affidavit. ELANY can only stamp documents wherein it is certain that the excess line insurer(s) are eligible at the time coverage incepts.

For those excess line brokers which make more complicated placements where both eligible excess line and admitted (licensed) insurers are used, the broker should know that ELANY is required to verify that the insurers, other than the excess line insurer(s), are in fact licensed in New York. When

multiple insurers appear on the coverage document, ELANY cannot stamp a document which includes ineligible unauthorized insurers because the stamp indicates the transaction complies with the excess line law regarding carrier eligibility.

Also, where multiple carriers are involved, the insuring document must clearly indicate gross premium and also premium by each insurer especially where the coverage is layered. In layered coverage, the premiums are not proportional so the insuring document needs to specify each carrier's proportion of each layer and the premium for the layer or for each insurer.

Finally, remember, any placement with Lloyd's must show each eligible syndicate by number and the percentage of risk assumed by each syndicate.

b) INSURED'S NAME AND ADDRESS

Two additional fields of information, which are required, create occasional problems. The named insured and addresses on all documents (affidavits, notice of excess line placements, etc.) should match.

ELANY requires the mailing address of the insured and the location of the risk address in New York if it is different from the mailing address.

If there is no risk/exposure in New York, it is possible that the policy falls under one of the exemptions under Insurance Law [§2117](#). For instance, if a policy provides coverage exclusively for real property located entirely in another state, the excess line law does not apply even when the policy is delivered to a New York address. These exemptions are interpreted narrowly, so if you have any doubt, do not assume one applies.

c) TYPE OR CLASS OF COVERAGE

The insuring documents are not always clear regarding what type of coverage is being provided. ELANY needs to verify the type of coverage because, first and foremost, not all coverages can be placed nonadmitted. For example, workers' compensation cannot be placed for New Yorkers in the excess line market. ELANY also needs to verify the type of coverage for correct coding purposes.

The types of coverage and the applicable coverage codes are prominently displayed on ELANY's [website](#) and are built into fields in ELANY's electronic affidavit filing system.

As with each of these requirements, brokers need to communicate with their customer service assistants who may not understand different types of coverage and may not possess all the necessary technical insurance knowledge.

d) POLICY TERM

The policy term is the inception date to the expiration date and both must appear on the policy.

Excess line policies can be issued for any number of years or periods of time. However, the excess line tax and stamping fee are applicable/payable for the entire coverage period for the year in which the policy is first reported. If the policy shows a three-year term, you cannot file the affidavit for the first year and treat the next two years as renewals or installments. When a policy document is internally inconsistent regarding the policy term, ELANY cannot process it.

e) **GROSS PREMIUM**

The gross premium must be set forth on the coverage document and not combined with taxes, stamping fees, or other charges. For most policies, this is straightforward where there is one insurer. If the insured has risk exposures or locations in more than one state, New York taxes 100% of the premium when New York is the Home State of the insured.

International risks, layered risks and risks involving multiple insurers are more complicated. On international risks, taxes may be allocated and reduced by the premium attributable to non-U.S. exposures.

Similarly, for layered risks and risks involving multiple insurers, the premium for each layer must be stated and the sum must equal the gross premium. Each participating insurer's percentage (and percentage of each layer) along with the applicable proportion of the premium, should be set forth. If the document does not make it clear which premium is apportioned to each layer and each insurer, the transaction cannot be processed due to inadequate information.

f) **BOLD DISCLOSURE LEGEND/ORIGINAL DOCUMENT**

The excess line broker is responsible for placing the disclosure legend required by [11 CRR-NY Part 27¹](#) on each coverage document which you forward to ELANY for stamping.

g) **AVOID HANDWRITTEN CHANGES TO ORIGINAL COVERAGE DOCUMENTS**

ELANY will reject declarations pages and cover notes when they are marked with handwritten changes. It is never clear who made the changes, when the changes were made and whether or not the changes were made with the permission of the insurer. At best, a sloppy, ambiguous trail has been created, at worst, ELANY and all parties to the transaction may be made party to unauthorized changes to the terms of coverage.

h) **CONFIRMATION OF PLACEMENT OF COVERAGE**

At the fingertips of every excess line broker is an easy answer to any documentation problem described above. An excess line broker is allowed to confirm the terms of coverage to an insured consistent with the commitments made to you by the insurers. It differs from a binder in that a binder is used when an insurance producer has authority to commit or bind an insurer to a transaction or the insurer issues the binder. An excess line broker with a filed binding authority can issue a binder. For open market placements, the excess line broker can "confirm" the essential terms of the placement to an insured by setting forth, in appropriate detail, the information referred to above and have ELANY stamp that document for delivery to the insured. Copies of the declarations page or cover note can be submitted for stamping subsequently.

Issuing Confirmations of Placement of Coverage is a method by which the excess line broker can control their own fate. Control the timing and the quality of the submission and stamping of these documents by not waiting for someone else to send documents which might have minor deficiencies.

1 11 CRR-NY Part 27 is also commonly referred to as Regulation 41.

i) **ENDORSEMENTS, STAMP ONLYS AND SUSPENSE ITEMS**

Copies of all premium bearing endorsements must be submitted to ELANY for stamping in order to track changes to the premium upon which the broker must pay excess line taxes. Other types of endorsements need not be stamped.

Stamp Onlys - After having submitted the initial transaction as a binder or confirmation of placement of coverage, submit copies of the declarations page or cover notes received subsequently.

Finally, a **suspended item** is one which is rejected by ELANY and returned to the broker unstamped. These must be resubmitted with a new batch file report unless corrections are made in the same month the transaction was submitted. Failure to correct and resubmit suspended items is likely to result in omissions of premiums from the year-end tax report. This could result in an underpayment of taxes with penalties and interest owed by the time the mistake is actually caught.

CONCLUSIONS

Excess line brokers are burdened by the mandates of the law. Submission of documents to ELANY is part and parcel of the obligations of your excess line license.

[11 CRR-NY §27.6\(b\)](#) states, “An excess line broker shall not deliver, or provide to any producing broker for delivery, an excess line insurance policy declarations page or cover note unless the first page of the declarations page or cover note bears the stamp applied by the excess line association or a duplicate copy of the declarations page or cover note bearing the stamp is attached to the original.”

Copies of all declarations pages and cover notes should be submitted for stamping even when a binder or confirmation of coverage on the same transaction was previously stamped. Endorsements can only be processed after a declarations page has been submitted and stamped.

This *Compliance Advisor* is designed to highlight the obvious pitfalls in documenting excess line transactions. The focus is on the insuring document because, by and large, if the insuring document is correct, the other documents, the affidavits, notice of excess line placement, etc., need only mirror the coverage document and are easily corrected.

Incomplete and erroneous documents bottleneck the process for the broker and ELANY. Good staff supervision and close attention to document detail will avoid most of these errors.



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