

**Re: NY Regulation 194 (Producer Compensation Transparency) and its Relevance to Excess Line Transactions**

A number of our members have asked if New York Regulation 194, the new producer compensation disclosure regulation which became effective on January 1, 2011, applies to excess line brokers and/or excess line insurers.

Regulation 194 states in pertinent part that any insurance producer as defined in Section 2101(k) of the NY insurance law "...selling an insurance policy ... shall disclose the following information to the purchaser...." However, Regulation 194 contains exceptions to the disclosure in certain circumstances including when "... an insurance producer...has no direct sales or solicitation contact with the purchaser, which may include wholesale brokers or managing general agents..."

**Wholesale Excess Line Transactions:**

In order to qualify as a wholesale transaction:

- An excess line broker files its Affidavit Part A and the producing broker's Affidavit Part C with ELANY.
- An excess line broker is **exempt** from the disclosure requirements of Regulation 194 since he/she has **no** direct contact with the insured.
- The producing broker **must** comply with the disclosure requirements of Regulation 194, since he/she is dealing directly with the insured and is responsible for advising and providing the insured with the Notice of Excess Line Placement and Total Cost Form requirements.

**Retail Excess Line Transactions:**

- When an excess line broker has direct contact with the insured and files only Affidavit Part A with ELANY this is a retail transaction.
- An excess line broker **must** comply with the disclosure requirements of Regulation 194, since he/she is dealing directly with the insured and is responsible for advising and providing the insured with the Notice of Excess Line Placement and Total Cost Form requirements.

**Any excess line transaction submitted without Affidavit Part C – retail Producer Affidavit – will be presumed to be subject to Regulation 194.**

**Obligations of Eligible Excess Line Insurers:**

Regulation 194 clearly imposes certain legal obligations on authorized (licensed) insurers. However, it **does not** impose any requirements on NY eligible excess line insurers.

Attached are copies of NY Regulation 194 and Circular Letter No. 18 (2010).

Also, note that PIANY, IIBANY, and other producer associations have very detailed guidance to comply with Regulation 194 available to their members.

If you have any questions please contact Eugene Nunziata, Education/Communications Director, by e-mail [enunziata@elany.org](mailto:enunziata@elany.org) or by phone (646) 292-5584.

All current ELANY bulletins and other current ELANY publications can be found on our website at <http://www.elany.org>.

[elany@elany.org](mailto:elany@elany.org)  
[www.elany.org](http://www.elany.org)



phone 646-292-5500