



November 4, 2011

Ms. Martha Lees  
Deputy Superintendent and General Counsel  
New York State Department of Financial Services, Insurance Division  
25 Beaver Street  
New York, NY 10004

**PROFESSIONAL  
INSURANCE  
AGENTS**

RE: DRAFT REGULATION 86 AND RELATED CIRCULAR LETTER

Dear Ms. Lees:

Thank you for the opportunity to comment on the drafts of the Department of Financial Service's proposed Regulation 86 and Circular Letter. We appreciate the opportunity to share with you the comments and concerns of New York State licensed independent producers who bring to the table years of experience placing risks in the Free Trade Zone.

From the outset, you should know that The Professional Insurance Agents of New York State Inc. was opposed to this legislation because it means insurance producers and some of their main-street clients would be exposed to insurance contracts that had not been vetted by the New York State Insurance Department. PIANY does not, however, oppose the deregulation of rates for these types of policies; and does not oppose deregulation of contract forms for truly sophisticated risks. However, PIANY believes this particular bill did not provide adequate safeguards, and could expose garden-variety, main-street type risks to coverage terms that are unfair or prejudicial to the interests of the policyholder. Moreover, flaws in the coverage provisions might not come to light until long after the policy has gone into effect. Finally, other provisions ("size" tests for accounts and "special risk manager" qualification tests applicable to producers) raise practical, business-related issues that could affect a number of members' accounts.

### **SRM credentials**

Of primary concern to the PIANY is the provision that would require the policyholder to employ or retain a **special risk manager** "to assist in negotiation and purchase" of a policy exempt from rate and form regulation. (Section 6303(b)(2))

Risk managers who perform this function cannot be insurance company employees. They must be licensed as insurance producers unless they are exempt from licensing (such as risk managers acting on behalf of their employer pursuant to Section 2102(a)(10)). The risk manager must be either an employee of, or a consultant retained by the insured.

Our concern arises from the fact that not every insurance producer will be able to qualify to perform this function on a consultant basis. It may, in fact, exclude the very producer (the incumbent) who is most thoroughly familiar with the risk. This professional may be

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a small business owner whose largest accounts are affected by this new law. As with the “size”-related criteria, the bill creates a complex matrix of possible combinations, by which a licensed producer is qualified to perform the “special risk manager” role. These combinations include factors such as a bachelor’s or graduate degree in certain fields (but not others), certain professional designations (but not others), and various amounts of required experience, with the number of years depending on other qualifications the individual holds. Fulfillment of some criteria (designations, degrees) may be easier to document than others (applicable experience).

Because of the various, confusing combinations by which producers can qualify, plus a heavy reliance on designations and degrees, it is likely that a certain number of incumbent producers who, in fact, have the requisite knowledge may find themselves unable to perform their usual role of negotiating and placing coverage on behalf of their clients without the assistance of a special risk manager.

This would, of necessity, introduce an additional producer into the transaction, if it becomes a question of considering placement as a “large commercial insured.” Nothing in the bill prohibits the risk-manager producer from also placing the coverage.

Because of these concerns with the legislation, PIANY would encourage the Department to utilize the authority granted in Section 6303(b)(2)(C)(i) [*any other designation, certification, or license determined by the superintendent to demonstrate minimum competency in risk management*] to include the designation as a **Certified Insurance Counselor (CIC)** issued by the National Alliance for Insurance Education & Research.

The Commercial Casualty, Commercial Property, and Personal Lines Institutes teach insurance policy analysis and test on the ability to respond properly, given an exposure or claim situation, with the proper insurance coverage. This is the application of the risk finance technique. Identifying the exposures, analyzing the exposure, then placing and maintaining the proper coverage are all steps in the Risk Management Process. In addition, the Agency Management and Life & Health Institutes also address Risk Management steps.

The CIC is nationally recognized as a rigorous designation program with a strong continuing education requirement. To avoid disadvantageous consequences to small businesses that have invested in earning this credential, we urge the Department of Financial Services to exercise its discretion and deem this an acceptable designation for purposes of the SRM credentialing.

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### **\$25,000 threshold**


We commend the Department on a well-crafted draft of the new Regulation 86 and related Circular Letter. One observation we had, however, concerns Page 6, Section 16.8(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 16.1(f) of this Part.*] Although the language technically works for both class 1 and class 3 threshold determinations, it, nonetheless, blurs the distinction that there are in fact two separate and distinctly different tests associated with placing risks in the two classes. As we understand the new law, while the eligibility of a class 1 risk is predicated upon the total premium of the risk being placed in the Free Trade Zone exceeding \$100,000, the determination of eligibility of placing a class 3 risk is not at all dependent upon the level of **FTZ** premium associated with that particular risk. Instead a policy with a premium in any amount (no matter how small) may be placed under class 3 rules if the insured demonstrates that it meets the eligibility requirements of being a “Large Commercial Insured.” While the clarification that both of these determinations may be met by utilizing both New York and non-New York exposures is appropriate and appreciated, we believe that the distinction in the different threshold tests would be illustrated more clearly if this section were amended to clarify that one test refers to premium associated with the class 1 policy—while the other functions as a preliminary “size test” that is ultimately unrelated to the premium amount of the policy or policies eventually issued under class 3 rules.

### **Checklist**

Finally, with regard to the Supplemental Checklist and Certification Form, the checkbox section for the qualifications of the risk manager includes a blank to be filled, presumably with the name of the risk manager: “*The risk manager, \_\_\_\_\_, meets the qualifications required by Insurance Law § 6303(b)(2).*” Since the risk manager is identified in significantly more detail in the preceding sections, this fill-in-the-blank seems redundant and unnecessary. We would suggest that it be eliminated and the form utilized in the special license and large commercial insured checkbox sections be incorporated into this section as follows: “*The above named risk manager meets the qualifications required by Insurance Law § 6303(b)(2).*”

Once again, thank you for the opportunity to comment on the drafts of the Department of Financial Service's proposed Regulation 86 and circular letter. We appreciate the opportunity to share with you the comments and concerns of New York State licensed independent producers who bring to the table years of experience placing risks in the Free Trade Zone and look forward to the opportunity to further discuss these concerns with you via conference call on Mon., Nov. 7, 2011.

Sincerely,



Matthew F. Guilbault, Esq.  
Director of Government & Industry Affairs