

February 17, 2021

Mr. Justin Herring
Executive Deputy Superintendent, Cybersecurity Division
New York State Department of Financial Services
One State Street
New York, NY 10004-1151

Re: Inactive Licensed Insurance Producers' Status Under 23 NYCRR 500

Dear Executive Deputy Superintendent Herring:

As the representatives of New York's retail and wholesale insurance producers, we write to urge the Department to amend its *New York's Cybersecurity Frequently Asked Questions – Producers* to address individual insurance agents and brokers who maintain licenses but are not engaged in the process of producing insurance business. Our combined membership includes all New York-licensed wholesale insurance brokers and tens of thousands of retail insurance agents and brokers located throughout the state and country.

23 CRR-NY 500.19 (c) states:

A covered entity that does not directly or indirectly operate, maintain, utilize or control any information systems, and that does not, and is not required to, directly or indirectly control, own, access, generate, receive or possess nonpublic information shall be exempt from the requirements of sections 500.2, 500.3, 500.4, 500.5, 500.6, 500.7, 500.8, 500.10, 500.12, 500.14, 500.15 and 500.16 of this Part.

Currently, individual licensees who are not engaged in the process of producing insurance business are subject to the requirements of this limited exemption. We respectfully submit that these requirements should not apply to inactive individual licensees and believe the *Frequently Asked Questions* should clarify that these producers are fully exempt from the regulation. Specifically, we have heard from a number of producers who are concerned about having to comply with 500.19(c). These producers typically are retired individuals, teachers or trade association Board members who have no involvement with risk placements or access to nonpublic information but wish to maintain their licenses as a credential or prerequisite qualification for the work they do. In short, they maintain licenses for their own personal reasons but they do not engage in any licensed activities.

Because these licensees do not conduct any functions pursuant to their license and do not plan to do so in the future, performing a Risk Assessment, establishing policies and procedures for the secure disposal of certain nonpublic information, and implementing a written third party service

provider security policy are meaningless requirements. These individuals present no exposure to cyber incidents for insurance consumers or the licensee. However, complying with these requirements is a significant and confusing burden on these licensees and some that we have spoken with have pondered whether to forfeit their licenses rather than maintain a compliance program that has no application to them and for which they can be sanctioned if the Department should find them to be out of compliance.

To address this situation, we respectfully request that the Department add the following to its *New York's Cybersecurity Frequently Asked Questions – Producers*:

- **Which exemption do I qualify for pursuant to 23 CRR-NY 500.19 if I do not conduct any business functions under my individual insurance agent or broker license?**

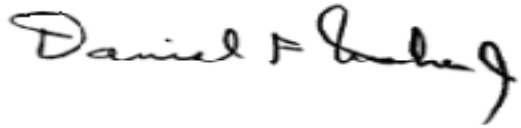
If you do not act or aid in any manner in soliciting, negotiating or selling any insurance, health maintenance organization or annuity contract or in placing risks or taking out insurance on behalf of an insured other than yourself pursuant to Article 21 of the Consolidated Laws of New York - Insurance, and you do not maintain Nonpublic Information or Information Systems as defined in 23 CRR-NY 500.1, you qualify for an exemption under 23 CRR-NY 500.19(b). Qualified licensees must file this exemption with the Department pursuant to 23 CRR-NY 500.19(e). In the event you cease to qualify for this exemption, you must comply with all applicable requirements of 23 CRR-NY 500 in accordance with 23 CRR-NY 500.19(g).

The exemption contained in 23 CRR-NY 500.19(b) does not impose requirements on the licensee other than filing the exemption with the Department. It applies to licensees who are covered by the compliant program of another covered entity. These are licensees the Department has concluded pose no risk to consumers and we suggest that individual licensees who do not conduct licensed activities likewise, by definition, pose no risk.

We strongly believe that this proposed FAQ maintains maximum consumer protection while lifting a needless and confusing burden from individual insurance agents and brokers who are not conducting business functions under their licenses. These licensees engage in no activities, nor maintain any records, that expose the public to cybersecurity risk. We therefore believe the recommended FAQ is fully consistent with the spirit and intent of the Regulation.

If you have any questions, please contact Howard Greene of ELANY at (646) 292-5591 or hgreene@elany.org. We would welcome the opportunity to discuss this further with you and your staff.

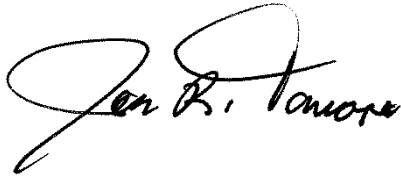
Sincerely,



Daniel F. Maher
Executive Director
**Excess Line Association of
New York**



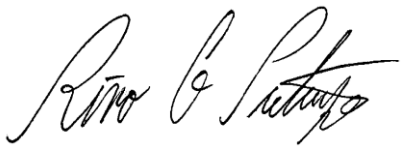
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Gary Cappon
President
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Ilana Arbeit
President
**New York State Association of
Health Underwriters**

Cc: The Honorable Linda A. Laceywell
Superintendent of Financial Services