

Bulletin No. 2020-18

April 21, 2020

RE: CHANGE IN DFS POSITION ON CANCELLATION AND NON-RENEWAL MORATORIUM/GRACE PERIOD/NOTIFICATIONS EMERGENCY REGULATION APPLICABILITY TO COMMERCIAL E&S POLICIES AND POLICYHOLDERS

The New York Department of Financial Services (“DFS”) has published a new [FAQ](#) changing its position on the applicability of its cancellation and non-renewal moratorium/grace period/notice [emergency regulation](#) to commercial E&S policies and policyholders. The DFS’s original guidance excluded all commercial E&S policies and policyholders from the emergency regulation’s requirements and is reflected in ELANY [Bulletin 2020-17 Revised](#). The DFS’s revised policy states:

Do the moratorium and Emergency Regulation apply to a commercial lines insurance policy issued by an excess line insurer?

The moratorium and Emergency Regulation do not apply to a commercial lines insurance policy issued by an excess line insurer and will not affect any such policy’s cancellation provisions, *except as respects any excess line commercial fire insurance policy*. [Emphasis added]

THE DFS HAS THEREFORE ADDED A CAVEAT TO ITS TOTAL COMMERCIAL E&S EXEMPTION SUBJECTING E&S FIRE INSURANCE POLICIES TO THE EMERGENCY REGULATION’S MORATORIUM, PREMIUM PAYMENT GRACE PERIOD, AND NOTIFICATION REQUIREMENTS. These duties apply to individual and small business policyholders (any business that is resident in New York, independently owned and operated, and employs 100 or fewer individuals).

ELANY advises all E&S brokers and insurers to review the emergency regulation, as well as ELANY [Bulletin 2020-17 Revised](#), to ensure compliance with requirements as they now apply to commercial fire insurance E&S policies and policyholders as quickly as practicable.