

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**



**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**BEFORE THE COMMISSIONER
OF INSURANCE**

**IN THE MATTER OF THE LICENSURE OF
NEW ENGLAND EXCESS
EXCHANGE, LTD.
(NPN 2330408)**

**VOLUNTARY SETTLEMENT
AGREEMENT**

NOW COME New England Excess Exchange, Ltd. ("NEEE") and the North Carolina Department of Insurance ("Department") and voluntarily and knowingly enter into the following Voluntary Settlement Agreement ("Agreement"):

WHEREAS, the Department has the authority and responsibility for enforcement of the insurance laws of this State, and the Agent Services Division for regulating and licensing insurance agents and agencies; and

WHEREAS, NEEE holds Corporation Business Entity and Surplus Lines Business Entity licenses issued by the Agent Services Division; and

WHEREAS, Agent Services Division investigators previously initiated a compliance check of NEEE for the period from 2022 to August 31, 2023, to verify that all agency employees were appropriately licensed, to analyze the agency's financials, and to randomly review files to verify proper underwriting. The routine review was modified to a targeted review based on violations observed. Investigators determined that agency employees had procured coverage for policies without being properly licensed and without the required company appointments and did not consistently charge service fees to customers; and

WHEREAS, Agent Services Division investigators were provided policy files by NEEE on November 6, 2023. Agent Services investigators randomly selected 100 policy files. Of the 100 policy files, ten (10) files were written through admitted insurers, and 90 were written through non-admitted insurers. All ten (10) admitted policy files indicated that employees were unlicensed and/or did not have company appointments. All 90 non-admitted policy files indicated unlicensed employees had procured coverage; and

WHEREAS, Agent Services Division investigators observed inconsistent service fees applied to admitted policies. Two (2) of the admitted policy files included charged service fees, but not the other eight (8) admitted policy files. Agent Services investigators also observed that NEEE had not obtained signed consent forms for the service fees.

WHEREAS, N.C. Gen. Stat. § 58-21-65(a) provides that: "no agent or broker licensed by the Commissioner shall directly procure any contract of surplus lines insurance with any

nonadmitted domestic surplus lines insurer or nonadmitted insurer, unless he possesses a current surplus lines insurance license issued by the commissioner;" and

WHEREAS, N.C. Gen. Stat. § 58-33-26(a) and (b) provide that:

- (a) No person shall act or hold himself or herself out to be an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser unless duly licensed.
- (b) No agent, broker, or limited representative shall make application for, procure, negotiate for, or place for others, any policies for any kinds of insurance as to which that person is not then qualified and duly licensed; and

WHEREAS, N.C. Gen. Stat. § 58-33-40(a) provides that "no individual who holds a valid insurance agent's license issued by the commissioner shall, either directly or for an insurance agency, solicit, negotiate, or otherwise act as an agent for any insurer by which the individual has not been appointed;" and

WHEREAS, N.C. Gen. Stat. § 58-33-85(b) provides that:

No insurer, agent, broker, or limited representative shall knowingly charge to or demand or receive from an applicant for insurance any money or other consideration in return for the processing of applications or other forms or for the rendering of services associated with a contract of insurance, which money or other consideration is in addition to the premium for such contract, unless the applicant consents in writing before any services are rendered. This subsection does not apply to the charging or collection of any fees otherwise provided for by law; and

WHEREAS, pursuant to N.C. Gen. Stat. § 58-33-80, "no agent or representative of any company doing the business of insurance as defined in G.S. 58-7-15 shall make any discrimination in favor of any person;" and

WHEREAS, pursuant to NCAC 4.0120:

An agent, broker, or limited representative who deals directly with an applicant and who intends to charge a policy or service fee in accordance with G.S. 58-33-85(b) shall not do so unless he complies with the following: (1) a sign that informs the applicant in large bold print that a policy or service fee of (amount) will be charged, shall be displayed in a prominent place so as to be seen and read from any part of the office lobby. (2) The applicant's consent in writing is obtained on a separate form each time a policy or service fee is charged. The form shall be entitled, "Policy or Service Fee Consent" and shall include the date and amount of each fee charged. (3) A dated receipt for the payment of a policy or service fee shall be issued either separately from the policy premium receipt or stated separately on the receipt issued for the policy premium;" and

WHEREAS, the Agent Services Division has determined that such activities on the part of such employees of NEEE set forth above were in violation of the provisions of N.C. Gen. Stat. § 58-21-65(a), 58-33-26(a) and (b), 58-33-40(a), 58-33-85(b), 58-33-80, and NCAC 4.0120; and

WHEREAS, NEEE neither admits nor denies the allegations contained in this Agreement but has agreed to its terms to settle and resolve this matter; and

WHEREAS, NEEE has filed a corrective action plan with the Agent Services Division which sets forth the actions already taken and/or to be taken to prevent future occurrences of the violations set forth herein; and

WHEREAS, N.C. Gen. Stat. § 58-33-46(a)(2) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license issued under Article 58 of the N.C. Gen. Stat. for violating any insurance law of this or any other state, violating any administrative rule, subpoena, or order of the Commissioner or another state's regulator; and

WHEREAS, N.C. Gen. Stat. § 58-2-70 provides that whenever the Commissioner has reason to believe that any person has violated any law that would subject the license or certification of that person to suspension or revocation, the Commissioner is authorized, in lieu of a hearing, to negotiate a mutually acceptable agreement as to the status of the person's license or certificate, or to any civil penalty or restitution; and

WHEREAS, NEEE has agreed to settle, compromise, and resolve the matters reference in this Agreement, and the Agent Services Division has agreed not to pursue additional civil ramifications, including penalties, sanctions, remedies, or restitution based on these matters against NEEE; and

WHEREAS, the parties to this Agreement mutually wish to resolve this matter by consent to avoid the cost and expense of protracted litigation and have reached a mutually agreeable resolution of this matter as set out in this Agreement.

NOW THEREFORE, in exchange for, and in consideration of the promises and agreements set out herein, NEEE and the Agent Services Division hereby agree to the following:

1. Immediately upon signing this Agreement, NEEE shall pay a civil penalty of \$5,500.00 to the Department. The form of payment shall be by certified check, cashier's check or money order. The check or money order for the payment of this civil penalty shall be payable to the "North Carolina Department of Insurance." NEEE shall remit the civil penalty by certified mail, return receipt requested, to the Agent Services Division along with a copy of this signed Agreement. The civil penalty and the signed Agreement must be received by the Agent Services Division no later than September 21, 2024. The civil penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of public schools.

2. This Agreement does not in any way affect the Agent Services Division's disciplinary power in any future examination of NEEE, provided however, that this Agreement

resolves all outstanding violations alleged by the Department, or that could have been alleged by the Department, in connection with its examination of NEEE up to the date of this Agreement. This Agreement constitutes the voluntary settlement of disputed claims and nothing in this Agreement may be construed as an admission of wrongdoing.

3. NEEE enters into this Agreement freely and voluntarily and with the knowledge of its right to have an administrative hearing on this matter. NEEE understands it may consult with an attorney prior to entering into this Agreement, and in fact is represented by attorney David L. Brown of the Goldberg Segalla Law Firm.

4. The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner. NEEE understands that N.C.G.S. § 58-33-46(a)(2) provides that a Corporate (business entity) and/or Surplus Lines (business entity) license may be revoked for violating an Order of the Commissioner.

5. This Agreement, when finalized, will be a public record and is not confidential. Following the execution of this Agreement, all licenses issued by the Agent Services Division to NEEE shall reflect that Regulatory Action has been taken against it. The Department is free to disclose the contents of this Agreement with third parties upon request or pursuant to any law or policy providing for such disclosure. The Agent Services Division, upon request, routinely provides a copy of the voluntary settlement agreement to all companies that have licensed the producer.

6. The parties have read and understand this Agreement and agree to abide by the terms and conditions stated herein.

7. Be aware that if a state or federal regulator other than the Agent Services Division has issued an occupational or professional license to you, that regulator may require you to report this Administrative Action to it. The Agent Services Division cannot give you legal advice as to the specific reporting requirements of other state or federal regulators.

NEW ENGLAND EXCESS
EXCHANGE, LTD.

By: _____

Todd Wood

Date: _____

10/10/24

NORTH CAROLINA DEPARTMENT OF
INSURANCE
AGENT SERVICES DIVISION

By: _____

Joe Wall

Date: _____

10/11/2024