



February 12, 2009

Hon. Eric R. Dinallo
Superintendent
NYS Insurance Department
25 Beaver Street
New York, New York 10004

BY ELECTRONIC MAIL

edinallo@ins.state.ny.us

Re: Draft Regulation on Producer Compensation Transparency

Dear Superintendent Dinallo:

Please be advised that I am President of the Council of Insurance Brokers of Greater New York, Inc. (CIB), the leading professional independent insurance brokers association in the New York metropolitan region, including Long Island and the Lower Hudson Valley.

I write to voice CIB's deep concerns with the referenced New York State Insurance Department (NYSID) Draft Regulation, which would pose serious restrictions and burdens upon the business of independent insurance brokers, while seemingly leaving captive agents and direct writers exempt. The independent broker distribution channel should not be placed at such a competitive disadvantage.

We're concerned that there seems to be no justification for the promulgation of such a regulation, since to our knowledge, there have been no consumer complaints registered with the Department.

Moreover, the thrust of the Draft Reg. is totally prescriptive in nature, which flies in face of principles-based regulation. The required Notice is highly prejudicial as it assumes a producer is biased toward placement of insurance policies with preferred carriers from the start.

Some in the Department have been recently quoted as saying the Reg. would "level the playing field" between Main Street brokers and the mega-brokers whose litigation settlement agreements require such disclosures now. But the Main Street, independent insurance brokers have not engaged in fraudulent bid-rigging or illegal steering of their clients to preferred carriers in exchange for kickbacks, like some of the mega-brokers have in the recent past.

A New York Reg. such as this would once again exacerbate the "49 & 1" issue, wherein New York's insurance regulatory regime is more restrictive than the rest of the states'.

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We're also concerned, that should this Reg. be promulgated, it would lead to illegal rebating. Some insurance consumers would surely attempt to shave commissions as a condition of purchasing a policy from a given broker, if commission rates or other compensation were disclosed in advance, either as a percentage of premium or in whole dollar amounts. Unfortunately, the cutthroat competition in the insurance marketplace would encourage such behavior.

Any such regulation would also place burdensome new costs of compliance upon small brokers, such as estimating contingent compensation amounts based on volume, profitability and retention, and the production, distribution and storage of documentation.

We still maintain that Circular Letter 22 (1998) sets forth the appropriate guidance with respect to disclosure of contingent compensation arrangements. We support voluntary disclosure of compensation arrangements, including fixed commissions, to existing and potential clients. Such voluntary disclosures may well be utilized as a marketing tool to gain a competitive advantage. We also support mandatory disclosure of compensation upon written request of a client or potential client.

Our Legislative Counsel, Thomas W. Faist, Esq. of Faist Government Affairs Group, has already contacted NYSID Special Counsel Matthew Gaul, requesting that CIB be included in any work group established to examine this Draft Reg. I hereby respectfully reiterate that request.

Aside from any work group discussions, we also stand with the other broker and agent associations, together with the insurance carrier groups, to respectfully ask for a joint meeting with the Department to discuss the need for this Draft Regulation.

Very truly yours,

Anthony Aquilino
President

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