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Financial Services and Markets Act 2000

The Authority's general duties

2 The Authority's general duties

(1) In discharging its general functions the Authority must, so far as is reasonably possible, act in a way—

(a) which is compatible with the regulatory objectives; and

(b) which the Authority considers most appropriate for the purpose of meeting those objectives.

(2) The regulatory objectives are—

(a) market confidence;

(b) public awareness;

(c) the protection of consumers; and

(d) the reduction of financial crime.

(3) In discharging its general functions the Authority must have regard to—

(a) the need to use its resources in the most efficient and economic way;

(b) the responsibilities of those who manage the affairs of authorised persons;

(c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

(d) the desirability of facilitating innovation in connection with regulated activities;

(e) the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom;

(f) the need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions;

(g) the desirability of facilitating competition between those who are subject to any form of regulation by the Authority.

(4) The Authority's general functions are—

(a) its function of making rules under this Act (considered as a whole);

(b) its function of preparing and issuing codes under this Act (considered as a whole);

(c) its functions in relation to the giving of general guidance (considered as a whole); and

(d) its function of determining the general policy and principles by reference to which it performs particular functions.

(5) "General guidance" has the meaning given in section 158(5).

Part IV Permission to Carry on Regulated Activities

Application for permission

40 Application for permission

(1) An application for permission to carry on one or more regulated activities may be made to the Authority by—

(a) an individual;

(b) a body corporate;

(c) a partnership; or

(d) an unincorporated association.

(2) An authorised person may not apply for permission under this section if he has a permission—

(a) given to him by the Authority under this Part, or

(b) having effect as if so given,

which is in force.

(3) An EEA firm may not apply for permission under this section to carry on a regulated activity which it is, or would be, entitled to carry on in exercise of an EEA right, whether through a United Kingdom branch or by providing services in the United Kingdom.

(4) A permission given by the Authority under this Part or having effect as if so given is referred to in this Act as "a Part IV permission".

41 The threshold conditions

(1) "The threshold conditions", in relation to a regulated activity, means the conditions set out in Schedule 6.

(2) In giving or varying permission, or imposing or varying any requirement, under this Part the Authority must ensure that the person concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which he has or will have permission.

(3) But the duty imposed by subsection (2) does not prevent the Authority, having due regard to that duty, from taking such steps as it considers are necessary, in relation to a particular authorised person, in order to secure its regulatory objective of the protection of consumers.

Permission

42 Giving permission

(1) "The applicant" means an applicant for permission under section 40.

(2) The Authority may give permission for the applicant to carry on the regulated activity or activities to which his application relates or such of them as may be specified in the permission.

(3) If the applicant—

(a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 39(1) or an order made under section 38(1), but

(b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating to all the regulated activities which, if permission is given, he will carry on.

(4) If the applicant—

(a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 285(2) or (3), but

(b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating only to that other regulated activity.

(5) If the applicant—

(a) is a person to whom, in relation to a particular regulated activity, the general prohibition does not apply as a result of Part XIX, but

(b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating only to that other regulated activity.

(6) If it gives permission, the Authority must specify the permitted regulated activity or activities, described in such manner as the Authority considers appropriate.

(7) The Authority may—

(a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;

(b) specify a narrower or wider description of regulated activity than that to which the application relates;

(c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.

43 Imposition of requirements

(1) A Part IV permission may include such requirements as the Authority considers appropriate.

(2) A requirement may, in particular, be imposed—

(a) so as to require the person concerned to take specified action; or

(b) so as to require him to refrain from taking specified action.

(3) A requirement may extend to activities which are not regulated activities.

(4) A requirement may be imposed by reference to the person's relationship with—

(a) his group; or

(b) other members of his group.

(5) A requirement expires at the end of such period as the Authority may specify in the permission.

(6) But subsection (5) does not affect the Authority's powers under section 44 or 45.

Variation and cancellation of Part IV permission

44 Variation etc. at request of authorised person

(1) The Authority may, on the application of an authorised person with a Part IV permission, vary the permission by—

(a) adding a regulated activity to those for which it gives permission;

(b) removing a regulated activity from those for which it gives permission;

(c) varying the description of a regulated activity for which it gives permission;

(d) cancelling a requirement imposed under section 43; or

(e) varying such a requirement.

(2) The Authority may, on the application of an authorised person with a Part IV permission, cancel the permission.

(3) The Authority may refuse an application under this section if it appears to it—

(a) that the interests of consumers, or potential consumers, would be adversely affected if the application were to be granted; and

(b) that it is desirable in the interests of consumers, or potential consumers, for the application to be refused.

(4) If, as a result of a variation of a Part IV permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the Authority must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(5) The Authority's power to vary a Part IV permission under this section extends to including any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40.

45 Variation etc. on the Authority's own initiative

(1) The Authority may exercise its power under this section in relation to an authorised person if it appears to it that—

(a) he is failing, or is likely to fail, to satisfy the threshold conditions;

(b) he has failed, during a period of at least 12 months, to carry on a regulated activity for which he has a Part IV permission; or

(c) it is desirable to exercise that power in order to protect the interests of consumers or potential consumers.

(2) The Authority's power under this section is the power to vary a Part IV permission in any of the ways mentioned in section 44(1) or to cancel it.

(3) If, as a result of a variation of a Part IV permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the Authority must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(4) The Authority's power to vary a Part IV permission under this section extends to including any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40.

(5) The Authority's power under this section is referred to in this Part as its own-initiative power.

46 Variation of permission on acquisition of control

(1) This section applies if it appears to the Authority that—

(a) a person has acquired control over a UK authorised person who has a Part IV permission; but

(b) there are no grounds for exercising its own-initiative power.

(2) If it appears to the Authority that the likely effect of the acquisition of control on the authorised person, or on any of its activities, is uncertain the Authority may vary the authorised person's permission by—

(a) imposing a requirement of a kind that could be imposed under section 43 on giving permission; or

(b) varying a requirement included in the authorised person's permission under that section.

(3) Any reference to a person having acquired control is to be read in accordance with Part XII.

47 Exercise of power in support of overseas regulator

(1) The Authority's own-initiative power may be exercised in respect of an authorised person at the request of, or for the purpose of assisting, a regulator who is—

(a) outside the United Kingdom; and

(b) of a prescribed kind.

(2) Subsection (1) applies whether or not the Authority has powers which are exercisable in relation to the authorised person by virtue of any provision of Part XIII.

(3) If a request to the Authority for the exercise of its own-initiative power has been made by a regulator who is—

(a) outside the United Kingdom,

(b) of a prescribed kind, and

(c) acting in pursuance of provisions of a prescribed kind,

the Authority must, in deciding whether or not to exercise that power in response to the request, consider whether it is necessary to do so in order to comply with a Community obligation.

(4) In deciding in any case in which the Authority does not consider that the exercise of its own-initiative power is necessary in order to comply with a Community obligation, it may take into account in particular—

(a) whether in the country or territory of the regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;

(b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;

(c) the seriousness of the case and its importance to persons in the United Kingdom;

(d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(5) The Authority may decide not to exercise its own-initiative power, in response to a request, unless the regulator concerned undertakes to make such contribution towards the cost of its exercise as the Authority considers appropriate.

(6) Subsection (5) does not apply if the Authority decides that it is necessary for it to exercise its own-initiative power in order to comply with a Community obligation.

(7) In subsections (4) and (5) "request" means a request of a kind mentioned in subsection (1).

48 Prohibitions and restrictions

(1) This section applies if the Authority—

(a) on giving a person a Part IV permission, imposes an assets requirement on him; or

(b) varies an authorised person's Part IV permission so as to alter an assets requirement imposed on him or impose such a requirement on him.

(2) A person on whom an assets requirement is imposed is referred to in this section as "A".

(3) "Assets requirement" means a requirement under section 43—

(a) prohibiting the disposal of, or other dealing with, any of A's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings; or

(b) that all or any of A's assets, or all or any assets belonging to consumers but held by A or to his order, must be transferred to and held by a trustee approved by the Authority.

(4) If the Authority—

(a) imposes a requirement of the kind mentioned in subsection (3)(a), and

(b) gives notice of the requirement to any institution with whom A keeps an account,

the notice has the effects mentioned in subsection (5).

(5) Those effects are that—

(a) the institution does not act in breach of any contract with A if, having been instructed by A (or on his behalf) to transfer any sum or otherwise make any payment out of A's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement; and

(b) if the institution complies with such an instruction, it is liable to pay to the Authority an amount equal to the amount transferred from, or otherwise paid out of, A's account in contravention of the requirement.

(6) If the Authority imposes a requirement of the kind mentioned in subsection (3)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the Authority.

(7) If, while a requirement of the kind mentioned in subsection (3)(b) is in force, A creates a charge over any assets of his held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and any of A's creditors.

(8) Assets held by a person as trustee ("T") are to be taken to be held by T in accordance with a requirement mentioned in subsection (3)(b) only if—

(a) A has given T written notice that those assets are to be held by T in accordance with the requirement; or

(b) they are assets into which assets to which paragraph (a) applies have been transposed by T on the instructions of A.

(9) A person who contravenes subsection (6) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) "Charge" includes a mortgage (or in Scotland a security over property).

(11) Subsections (6) and (8) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement of the kind mentioned in subsection (3)(b).

Connected persons

49. Persons connected with an applicant.

(1) In considering—

(a)an application for a Part IV permission, or

(b)whether to vary or cancel a Part IV permission,

the Authority may have regard to any person appearing to it to be, or likely to be, in a relationship with the applicant or person given permission which is relevant.

(2) Before—

(a)giving permission in response to an application made by a person who is connected with an EEA firm, or

(b)cancelling or varying any permission given by the Authority to such a person,

the Authority must consult the firm's home state regulator.

(3) A person ("A") is connected with an EEA firm if—

(a)A is a subsidiary undertaking of the firm; or

(b)A is a subsidiary undertaking of a parent undertaking of the firm.

Additional permissions

50. Authority's duty to consider other permissions etc.

(1) "Additional Part IV permission" means a Part IV permission which is in force in relation to an EEA firm, a Treaty firm or a person authorised as a result of paragraph 1(1) of Schedule 5.

(2) If the Authority is considering whether, and if so how, to exercise its own-initiative power under this Part in relation to an additional Part IV permission, it must take into account—

(a)the home State authorisation of the authorised person concerned;

(b)any relevant directive; and

(c)relevant provisions of the Treaty.

Procedure

51. Applications under this Part.

(1) An application for a Part IV permission must—

(a)contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which he wishes to have permission; and

(b)give the address of a place in the United Kingdom for service on the applicant of any notice or other document which is required or authorised to be served on him under this Act.

(2) An application for the variation of a Part IV permission must contain a statement—

(a)of the desired variation; and

(b)of the regulated activity or regulated activities which the applicant proposes to carryon if his permission is varied.

(3) Any application under this Part must—

(a)be made in such manner as the Authority may direct; and

(b)contain, or be accompanied by, such other information as the Authority may reasonably require.

(4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(6) The Authority may require an applicant to provide information which he is required to provide under this section in such form, or to verify it in such a way, as the Authority may direct.

52. Determination of applications.

(1) An application under this Part must be determined by the Authority before the end of the period of six months beginning with the date on which it received the completed application.

(2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it received the application.

(3) The applicant may withdraw his application, by giving the Authority written notice, at any time before the Authority determines it.

(4) If the Authority grants an application for, or for variation of, a Part IV permission, it must give the applicant written notice.

(5) The notice must state the date from which the permission, or the variation, has effect.

(6) If the Authority proposes—

(a)to give a Part IV permission but to exercise its power under section 42(7)(a) or (b) or 43(1), or

(b)to vary a Part IV permission on the application of an authorised person but to exercise its power under any of those provisions (as a result of section 44(5)),

it must give the applicant a warning notice.

(7) If the Authority proposes to refuse an application made under this Part, it must (unless subsection (8) applies) give the applicant a warning notice.

(8) This subsection applies if it appears to the Authority that—

(a)the applicant is an EEA firm; and

(b)the application is made with a view to carrying on a regulated activity in a manner in which the applicant is, or would be, entitled to carry on that activity in the exercise of an EEA right whether through a United Kingdom branch or by providing services in the United Kingdom.

(9) If the Authority decides—

(a)to give a Part IV permission but to exercise its power under section 42(7)(a) or (b) or 43(1),

(b)to vary a Part IV permission on the application of an authorised person but to exercise its power under any of those provisions (as a result of section 44(5)), or

(c)to refuse an application under this Part,

it must give the applicant a decision notice.

53. Exercise of own-initiative power: procedure.

(1) This section applies to an exercise of the Authority's own-initiative power to vary an authorised person's Part IV permission.

(2) A variation takes effect—

(a)immediately, if the notice given under subsection (4) states that that is the case;

(b)on such date as may be specified in the notice; or

(c)if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(3) A variation may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the variation to take effect immediately (or on that date).

(4) If the Authority proposes to vary the Part IV permission, or varies it with immediate effect, it must give the authorised person written notice.

(5) The notice must—

(a)give details of the variation;

(b)state the Authority's reasons for the variation and for its determination as to when the variation takes effect;

(c)inform the authorised person that he may make representations to the Authority within such period as may be specified in the notice (whether or not he has referred the matter to the Tribunal);

(d)inform him of when the variation takes effect; and

(e)inform him of his right to refer the matter to the Tribunal.

(6) The Authority may extend the period allowed under the notice for making representations.

(7) If, having considered any representations made by the authorised person, the Authority decides—

(a)to vary the permission in the way proposed, or

(b)if the permission has been varied, not to rescind the variation,

it must give him written notice.

(8) If, having considered any representations made by the authorised person, the Authority decides—

(a)not to vary the permission in the way proposed,

(b)to vary the permission in a different way, or

(c)to rescind a variation which has effect,it must give him written notice.

(9) A notice given under subsection (7) must inform the authorised person of his right to refer the matter to the Tribunal.

(10) A notice under subsection (8)(b) must comply with subsection (5).

(11) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(12) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

54. Cancellation of Part IV permission: procedure.

(1) If the Authority proposes to cancel an authorised person's Part IV permission otherwise than at his request, it must give him a warning notice.

(2) If the Authority decides to cancel an authorised person's Part IV permission otherwise than at his request, it must give him a decision notice.

References to the Tribunal

55. Right to refer matters to the Tribunal.

(1) An applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal.

(2) An authorised person who is aggrieved by the exercise of the Authority's own-initiative power may refer the matter to the Tribunal.

150 Actions for damages

(1) A contravention by an authorised person of a rule is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) If rules so provide, subsection (1) does not apply to contravention of a specified provision of those rules.

(3) In prescribed cases, a contravention of a rule which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.

(4) In subsections (1) and (3) "rule" does not include—

(a) listing rules; or

(b) a rule requiring an authorised person to have or maintain financial resources.

(5) "Private person" has such meaning as may be prescribed.

Funding

234 Industry funding

(1) For the purpose of funding—

(a) the establishment of the ombudsman scheme (whenever any relevant expense is incurred), and

(b) its operation in relation to the compulsory jurisdiction,

the Authority may make rules requiring the payment to it or to the scheme operator, by authorised persons or any class of authorised person of specified amounts (or amounts calculated in a specified way).

(2) "Specified" means specified in the rules.

Threshold Conditions (COND)

COND 2.2 Threshold condition 2: Location of offices

COND 2.2.1 06/02/2008

Paragraph 2, Schedule 6 to the Act.

(1)	Subject to sub-paragraphs 1(A) and(3), if the person concerned is a body corporate constituted under the law of any part of the United Kingdom	
	(a)	its head office, and
	(b)	if it has a registered office, that office, must be in the United Kingdom.
(1A)	If -	
	(a)	the regulated activity concerned is any of the investment services and activities, and
	(b)	the person concerned is a body corporate with no registered office,
sub-paragraph (1B) applies in place of sub-paragraph (1).		
(1B)	If the person concerned has its head office in the United Kingdom, it must carry on business in the United Kingdom.	
(2)	If the person concerned has its head office in the United Kingdom but is not a body corporate, it must carry on business in the United Kingdom.	
(3)	If the regulated activity concerned is an insurance mediation activity, sub-paragraph (1) does not apply.	
(4)	If the regulated activity concerned is an insurance mediation activity, the person concerned	
	(a)	if he is a body corporate constituted under the law of any part of the United Kingdom, must have its registered office, or if it has no registered office, its head office, in the United Kingdom;
	(b)	if he is a natural person, is to be treated for the purposes of subparagraph (2), as having his head office in the United Kingdom if his residence is situated there.
(5)	"Insurance mediation activity" means any of the following activities	
	(a)	dealing in rights under a contract of insurance as agent;
	(b)	arranging deals in rights under a contract of insurance;
	(c)	assisting in the administration and performance of a contract of

		insurance;
	(d)	advising on buying or selling rights under a contract of insurance;
	(e)	agreeing to do any of the activities specified in sub-paragraph (a) to (d).
(6)	Paragraph (5) must be read with -	
	(a)	section 22;
	(b)	any relevant order under that section; and
	(c)	Schedule 2.
[Note: article 5(4) of MiFID]		

COND 2.2.2 G

Threshold condition 2(1) and (2) (Location of offices), implement the requirements of article 6 of the Post BCCI Directive and article 5(4) of MiFID2 and threshold condition 2(3) and (4) implements article 2.9 of the Insurance Mediation Directive, although the Act extends threshold condition 2 to firms which are outside the scope of the Single Market Directives and the UCITS Directive.3

COND 2.2.3 G

Neither the Post BCCI Directive, MiFID,2 the Insurance Mediation Directive nor the Act define what is meant by a firm's 'head office'. This is not necessarily the firm's place of incorporation or the place where its business is wholly or mainly carried on. Although the FSA will judge each application on a case-by-case basis, the key issue in identifying the head office of a firm is the location of its central management and control, that is, the location of: 3

(1) the directors and other senior management, who make decisions relating to the firm's central direction, and the material management decisions of the firm on a day-to-day basis; and

(2) the central administrative functions of the firm (for example, central compliance, internal audit).

COND 2.4 Threshold condition 4: Adequate resources

COND 2.4.1 Paragraph 4, Schedule 6 to the Act

(1)	The resources of the person concerned must, in the opinion of the [FSA], be adequate in relation to the regulated activities that he seeks to carry on, or carries on.	
(2)	In reaching that opinion, the [FSA] may-	
(a)	take into account the person's membership of a group and any effect which that membership may have; and	
(b)	have regard to-	
	(i)	the provision he makes and, if he is a member of a group, which other members of the group make in respect of liabilities (including contingent and future liabilities); and
	(ii)	the means by which he manages and, if he is a member of a group, which other members of the group manage the incidence of risk in connection with his business

COND 2.4.2 G (1) Threshold condition 4 (Adequate resources), requires the FSA to ensure that a firm has adequate resources in relation to the specific regulated activity or regulated activities which it seeks to carry on, or carries on.

(2) In this context, the FSA will interpret the term 'adequate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.

(3) High level systems and control requirements are in SYSC. Detailed financial resources and systems requirements are in the relevant section of the Prudential Standards part of the Handbook34 , including specific provisions for particular types of regulated activity. The FSA will consider whether the firm is ready, willing and organised

to comply with these requirements when assessing if it has adequate resources for the purposes of this threshold condition.

COND 2.4.3 G (1) When assessing this threshold condition, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, in accordance with section 49 of the Act (Persons connected with an applicant); for example, a firm's controllers, its directors or partners, other persons with close links to the firm (see COND 2.3), and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the threshold conditions and would, therefore, be in a relevant relationship with the firm.

(2) In particular, although it is the firm that is being assessed, the FSA may take into consideration the impact of other members of the firm's group on the adequacy of its resources. For example, the FSA may assess the consolidated solvency of the group. The FSA's approach to the consolidated supervision of a firm and its group is in the relevant part of the Prudential Standards part of the Handbook.

COND 2.4.4 G (1) When assessing whether a firm will satisfy and continue to satisfy threshold condition 4, the FSA will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.

(2) Relevant matters may include but are not limited to:

(a) whether there are any indications that the firm may have difficulties if the application is granted (see COND 2.4.6 G), at the time of the grant or in the future, in complying with any of the FSA's prudential rules (see the relevant part of the Prudential Standards part of the Handbook3 4);

(b) whether there are any indications that the firm will not be able to meet its debts as they fall due;

(c) whether there are any implications for the adequacy of the firm's resources arising from the history of the firm; for example, whether the firm has:

(i) been adjudged bankrupt; or

(ii) entered into liquidation; or

(iii) been the subject of a receiving or administration order; or

(iv) had a bankruptcy or winding-up petition served on it; or

(v) had its estate sequestrated; or

(vi) entered into a deed of arrangement or an individual voluntary agreement (or in Scotland, a trust deed) or other composition in favour of its creditors, or is doing so; or

(vii) within the last ten years, failed to satisfy a judgment debt under a court order, whether in the United Kingdom or elsewhere;

(d) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business (see COND 2.4.6 G) and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times; see SYSC 3.1 (Systems and Controls)5 , SYSC 3.2 (Areas covered by systems and controls) and SYSC 4.1.1 R (Organisational requirements); and

(e) whether the firm has conducted enquiries into the financial services sector in which it intends to conduct business (see COND 2.4.6 G) that are sufficient to satisfy itself that:

(i) it has access to adequate capital, by reference to the FSA's prudential requirements, to support the business including any losses which may be expected during its start-up period; and

(ii) Client money, deposits, custody assets and policyholders' rights will not be placed at risk if the business fails.

(3) In the context of threshold condition 4 (Adequate resources), the FSA will only take into account relevant matters which are material (see COND 1.3.3 G). The FSA will consider the materiality of each relevant matter in relation to the regulated activities for which the firm has, or will have, permission, having regard to the regulatory objectives in section 2 of the Act (The FSA's general duties). It should be noted that a series of matters may be significant when taken together, even if each of them in isolation might not be significant.

(4) In making its assessment, the FSA will consider the individual circumstances of each firm on a case-by-case basis.

COND 2.4.5 G In complying with SYSC5 (Systems and controls), a firm should plan its business appropriately so that it is able to identify, measure and manage the likely risks of regulatory concern it will face (SYSC 3.2.17 G (Business strategy) and SYSC 7 (Risk Control)).

COND 2.4.6 G (1) Any newly-formed firm can be susceptible to early difficulties. These difficulties could arise from a lack of relevant expertise and judgment, or from ill-constructed and insufficiently tested business strategies. A firm may also be susceptible to difficulties where it substantially changes its business activities.

(2) As a result, the FSA would expect a firm which is applying for Part IV permission, or a substantial variation of that permission, to take adequate steps to satisfy itself and, if relevant, the FSA that:

(a) it has a well constructed business plan or strategy plan for its product or service which demonstrates that it is ready, willing and organised to comply with the relevant requirements in the Prudential Standards part of the Handbook and SYSC that apply to the regulated activity it is seeking to carry on;

(b) its business plan or strategy plan has been sufficiently tested; and

(c) the financial and other resources of the firm are commensurate with the likely risks it will face.

(3) The FSA would expect the level of detail in a firm's business plan or strategy plan in (2) to be appropriate to the complexity of the firm's proposed regulated activities and unregulated activities and the risks of regulatory concern it is likely to face (see SYSC 3.2.11 G (Management information) and SYSC 7 (Risk control) . Notes on the contents of a business plan are given in the business plan section of the application pack for Part IV permission. A firm requiring specific guidance on the contents and level of detail of its business plan should contact the 7 Firm Contact Centre (020 7066 3954), or, if relevant, its usual supervisory contact at the FSA, or seek professional assistance.

COND 2.5 Threshold condition 5: Suitability

COND 2.5.1 Paragraph 5, Schedule 6 to the Act

The person concerned must satisfy the [FSA] that he is a fit and proper person having regard to all the circumstances, including-	
(a)	his connection with any person;
(b)	the nature of any regulated activity that he carries on or seeks to carry on; and
(c)	the need to ensure that his affairs are conducted soundly and prudently.

COND 2.5.2 G (1) Threshold condition 5 (Suitability), requires the firm to satisfy the FSA that it is 'fit and proper' to have Part IV permission having regard to all the circumstances, including its connections with other persons, the range and nature of its proposed (or current) regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently (see also PRIN and SYSC).

(2) The FSA will also take into consideration anything that could influence a firm's continuing ability to satisfy this threshold condition. Examples include the firm's position within a UK or international group, information provided by overseas regulators about the firm, and the firm's plans to seek to vary its Part IV permission to carry on additional regulated activities once it has been granted that permission by the FSA.

COND 2.5.3 G (1) The emphasis of this threshold condition is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime (see 3 SUP 10 (Approved persons) and FIT). In certain circumstances, however, the FSA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.

(2) When assessing this threshold condition in relation to a firm, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with

the firm, as permitted by section 49 of the Act (Persons connected with an applicant) (see COND 2.4.3 G).

(3) In relation to a firm which is an EEA regulated entity, the Financial Groups Directive provides that the FSA should consult other competent authorities when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity in the same group.

COND 2.5.4 G (1) When determining whether the firm will satisfy and continue to satisfy threshold condition 5, the FSA will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.

(2) Relevant matters include, but are not limited to, whether a firm:

(a) conducts, or will conduct, its business with integrity and in compliance with proper standards;

(b) has, or will have, a competent and prudent management; and

(c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

(3) The FSA will take into account relevant matters only to the extent that they are significant (see COND 1.3.3 G). In determining whether relevant matters are significant to the firm, the FSA will consider significance in the context of the suitability of the firm, having regard to the regulatory objectives in section 2 of the Act (The FSA's general duties); a series of matters may be significant when taken together, even if each of them in isolation may not be significant.

(4) In making its assessment, the FSA will, therefore, consider the individual circumstances of each firm on a case-by-case basis.

COND 2.5.5 G Where a firm is applying for Part IV permission or a substantial variation of that permission, the guidance in COND 2.4.6 G is relevant. For the purpose of threshold condition 5, however, the FSA would expect the firm's business plan or strategy plan to take into account the interests of consumers and demonstrate that it is

ready, willing and organised to comply with the relevant requirements in the Handbook that apply to the regulated activity it is seeking to carry on.

Conducting business with integrity and in compliance with proper standards

COND 2.5.6 G In determining whether a firm will satisfy, and continue to satisfy, threshold condition 5 in respect of conducting its business with integrity and in compliance with proper standards, the relevant matters, as referred to in COND 2.5.4 G (2), may include but are not limited to whether:

(1) the firm has been open and co-operative in all its dealings with the FSA and any other regulatory body (see Principle 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the regulatory system and other legal, regulatory and professional obligations; the relevant requirements and standards will depend on the circumstances of each case, including the regulated activities which the firm has permission, or is seeking permission, to carry on;

(2) the firm has been convicted, or is connected with a person who has been convicted, of any criminal offence; this must include, where provided for by the Exceptions Order to the Rehabilitation of Offenders Act 1974, any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence whether or not in the United Kingdom or other offences under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking and or other financial services, insolvency, consumer credit companies, insurance, and consumer protection, money laundering, market manipulation or insider dealing3 ;

(3) the firm has been the subject of, or connected to the subject of, any existing or previous investigation or enforcement proceedings by the FSA, the Society of Lloyd's or by other regulatory authorities (including the FSA's predecessors), clearing houses or exchanges, professional bodies or government bodies or agencies; the FSA will, however, take both the nature of the firm's involvement in, and the outcome of, any

investigation or enforcement proceedings into account in determining whether it is a relevant matter;

(4) the firm has contravened, or is connected with a person who has contravened, any provisions of the Act or any preceding financial services legislation, the regulatory system or the rules, regulations, statements of principles or codes of practice (for example the Society of Lloyd's Codes) of other regulatory authorities (including the FSA's predecessors), clearing houses or exchanges, professional bodies, or government bodies or agencies or relevant industry standards (such as the Non-Investment Products Code); the FSA will, however, take into account both the status of codes of practice or relevant industry standards and the nature of the contravention (for example, whether a firm has flouted or ignored a particular code);

(5) the firm, or a person connected with the firm, has been refused registration, authorisation, membership or licence to carry out a trade, business or profession or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body; whether the FSA considers such a refusal relevant will depend on the circumstances;

(6) the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system that apply to the firm and the regulated activities for which it has, or will have, permission (see SYSC 3.2.6 R to SYSC 3.2.8 R (Compliance) and SYSC 6.1.1 R to SYSC 6.1.5 R5);

(7) the firm has put in place procedures which are reasonably designed to:

(a) ensure that it has made its employees aware of, and compliant with, those requirements and standards under the regulatory system that apply to the firm and the regulated activities for which it has, or will have permission;

(b) ensure that its approved persons (whether or not employed by the firm) are aware of those requirements and standards under the regulatory system applicable to them;

(c) determine that its employees are acting in a way compatible with the firm adhering to those requirements and standards; and

(d) determine that its approved persons are adhering to those requirements and standards;

(8) the firm or a person connected with the firm has been dismissed from employment or a position of trust, fiduciary relationship or similar or has ever been asked to resign from employment in such a position; whether the FSA considers a resignation to be relevant will depend on the circumstances, for example if a firm is asked to resign in circumstance that cast doubt over its honesty or integrity; and

(9) the firm or a person connected with the firm has ever been disqualified from acting as a director.

Competent and prudent management and exercise of due skill, care and diligence

COND 2.5.7 G In determining whether a firm will satisfy and continue to satisfy 6 threshold condition6 5 in respect of having competent and prudent management and exercising due skill, care and diligence, relevant matters, as referred to in COND 2.5.4 G (2), may include, but are not limited to whether:

(1) the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities;

(2) if appropriate, the governing body of the firm includes non-executive representation, at a level which is appropriate for the control of the regulated activities proposed, for example, as members of an audit committee (see COND 3.2.15G (Audit Committee));

(3) the governing body of the firm is organised in a way that enables it to address and control the regulated activities of the firm, including those carried on by managers to whom particular functions have been delegated (see SYSC 2.1 (Apportionment of responsibilities) and SYSC 3.2 (Areas covered by systems and controls) and SYSC 4.1.1 R (General organisational requirements));

(4) those persons who perform controlled functions under certain arrangements entered into by the firm or its contractors (including appointed representatives or, where applicable, tied agents6) act with due skill, care and diligence in carrying our their

controlled function (see APER 4.2 (Statement of Principle 2) or managing the business for which they are responsible (see APER 4.7 (Statement of Principle 7));

(5) the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards under the regulatory system (see SYSC 3.1 (Systems and Controls) and SYSC 4.1 (General organisational requirements));

(6) the firm has approached the control of financial and other risk in a prudent manner (for example, by not assuming risks without taking due account of the possible consequences) and has taken reasonable care to ensure that robust information and reporting systems have been developed, tested and properly installed (see SYSC 3.2.10 G(Risk assessment) and SYSC 7.1 (Risk control));

(7) the firm, or a person connected with the firm, has been a director, partner or otherwise concerned in the management of a company, partnership or other organisation or business that has gone into insolvency, liquidation or administration while having been connected with that organisation or within one year of such a connection;

(8) the firm has developed human resources policies and procedures that are reasonably designed to ensure that it employs only individuals who are honest and committed to high standards of integrity in the conduct of their activities (see, for example, SYSC 3.2.13 G (Employees and agents) and SYSC 5.1 (Employees, agents and other relevant persons));

(9) the firm has conducted enquiries (for example, through market research or the previous activities of the firm) that are sufficient to give it reasonable assurance that it will not be posing unacceptable risks to consumers or the financial system;

(10) the firm has in place systems and controls against money laundering of the sort described in SYSC 3.2.6 R to SYSC 3.2.6J G7 and SYSC 6.3 (Financial crime)

(11) where appropriate, the firm has appointed auditors and actuaries, who have sufficient experience in the areas of business to be conducted (see SUP 3.4 (Auditors' qualifications) and SUP 4.3.8 G to 9SUP 4.3.10 G (9 Actuary's qualifications)); and

(12) in the case of 10 a firm that carries on insurance mediation activity

(a) a reasonable proportion of the persons within its management structure who are responsible for the insurance mediation activity; and8

(b) all other persons directly involved in its insurance mediation activity; demonstrate the knowledge and ability necessary for the performance of their duties; and

(c) all the persons in its management structure and any staff directly involved in insurance mediation activity are of good repute (see 11 MIPRU 2.3.1 R11 (Knowledge, ability and good repute)).

Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

Application and general provisions (MIPRU 1)

MIPRU 1.1 Application

MIPRU 1.1.1 G This sourcebook applies to a firm with Part IV permission to carry on:

(1) insurance mediation activity;

(2) home finance mediation activity;

(3) home financing;

(4) home finance administration; and

(5) insurance business; as specified in the beginning of each of the remaining chapters.

MIPRU 1.2 Actions for damages

MIPRU 1.2.1 R A contravention of the rules in this sourcebook does not give rise to a right of action by a private person under section 150 of the Act (and each of those rules is specified under section 150(2) of the Act as a provision giving rise to no such right of action).

Insurance mediation activity: responsibility, knowledge, ability and good repute (MIPRU 2)

MIPRU 2.1 Application and purpose

Application

MIPRU 2.1.1 R This chapter applies to a firm with Part IV permission to carry on insurance mediation activity.

Purpose

MIPRU 2.1.2 G The main purpose of this chapter is to implement in part the provisions of the Insurance Mediation Directive as these apply to firms regulated by the FSA.

MIPRU 2.2 Allocation of the responsibility for insurance mediation activity

Responsibility for insurance mediation activity

MIPRU 2.2.1 R A firm1, other than a sole trader, must allocate the responsibility for the firm's insurance mediation activity to a director or senior manager.

[**Note**: Article 3(1), fourth paragraph, of the 2 Insurance Mediation Directive2]

MIPRU 2.2.2 R 01/11/2007 The firm may allocate the responsibility for its insurance mediation activity to an approved person (or persons) performing:

(1) a governing function (other than the non-executive director function); or

(2) the apportionment and oversight function; or

(3) 3the significant management function in so far as it relates to dealing in investments as principal, disregarding article 15 of the Regulated Activities Order
(Absence of holding out etc) (or agreeing to do so) or an activity which is not designated investment business.3

MIPRU 2.2.3 G (1) Typically 1 a firm1 will appoint a person performing a governing function (other than the non-executive director function) to direct its insurance mediation activity. Where this responsibility is allocated to a person performing another function, the person performing the apportionment and oversight function with responsibility for the apportionment of responsibilities must ensure that the firm's insurance mediation activity is appropriately allocated.

(2) The descriptions of significant influence functions, other than the required functions, do not extend to activities carried on by an insurance intermediary with permission only to carry on insurance mediation activity and whose principal purpose is to carry on activities other than regulated activities (see SUP 10.1.21 R). In this case, the firm may allocate the responsibility for the firm's insurance mediation activity to one or more of the persons performing the apportionment and oversight function who will be required to be an approved person.

(3) In the case of a sole trader, the sole trader will be responsible for the firm's insurance mediation activity.3

MIPRU 2.2.4 G Where a firm has appointed an appointed representative to carry on insurance mediation activity on its behalf, the person responsible for the firm's insurance mediation activity will also be responsible for the insurance mediation activity carried on by an appointed representative.

MIPRU 2.2.5 GThe FSA will specify in the FSA Register the name of the persons to whom the responsibility for the firm's insurance mediation activity has been allocated by inserting after the relevant controlled function the words "(insurance mediation)". In the case of a sole trader, the FSA will specify in the FSA Register the name of the sole trader as the 'contact person' in the firm.

MIPRU 2.3 Knowledge, ability and good repute

MIPRU 2.3.1 R A firm (other than a connected travel insurance intermediary) must establish on reasonable grounds that:

(1) a reasonable proportion of the persons within its management structure who are responsible for insurance mediation activity; and

(2) all other persons directly involved in its insurance mediation activity;

demonstrate the knowledge and ability necessary for the performance of their duties; and

(3) all the persons in its management structure and any staff directly involved in insurance mediation activity are of good repute.

[**Note**: Article 4(1) and (2) of the Insurance Mediation Directive]

MIPRU 2.3.2 G In determining a person's knowledge and ability, the firm should have regard to matters including, but not limited to, whether the person:

(1) has demonstrated by experience and training that he is able or will be able to perform his duties related to the firm's insurance mediation activity; and

(2) satisfies the relevant requirements in the FSA's Training and Competence sourcebook and the Senior Management Arrangements, Systems and Controls sourcebook

MIPRU 2.3.3 R In considering a person's repute the firm must ensure that the person:

(1) has not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent convictions under the Rehabilitation of Offenders Act 1974 or any other national equivalent); and

(2) has not been adjudged bankrupt (unless the bankruptcy has been discharged);

under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom.

[**Note**: Article 4(2) of the Insurance Mediation Directive]

MIPRU 2.3.4 G The firm should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.

MIPRU 2.3.5 G Firms are reminded that Principle 3 requires firms to take reasonable care to organise and control their affairs responsibly and effectively. Principle 3 is amplified by the rule which requires firms to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (SYSC 3.1.1 R and SYSC 4.1.1 R).5 A firm's systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (SYSC 3.2.13 G and SYSC 5.1.2 G).5 This includes the assessment of an individual's honesty and competence. In addition, the 4 competent employees rule (SYSC 3.1.6 R and SYSC 5.1.1 R)5 sets out a high-level competence requirement which every firm should follow.

Professional indemnity insurance (MIPRU 3)

MIPRU 3.1 Application and purpose

Application

MIPRU 3.1.1 R This chapter applies to a firm with Part IV permission to carry on any of the activities:

(1) insurance mediation activity;

(2) 2home finance mediation activity; unless any of the following exemptions apply:

(3) in relation to insurance mediation activity, this chapter does not apply to a firm if another authorised person which has net tangible assets of more than £10 million provides a comparable guarantee; for this purpose:

(a) if the firm is a member of a group in which there is an authorised person with net tangible assets of more than £10 million, the comparable guarantee must be from that person;

(b) A 'comparable guarantee' means a written agreement on terms at least equal to those in a contract of professional indemnity insurance (see MIPRU 3.2.4 R) to finance the claims that might arise as a result of a breach by the firm of its duties under the regulatory system or civil law.

(4) in relation to home finance mediation activity,2 this chapter does not apply to a firm if:

(a) it has net tangible assets of more than £1 million; or

(b) the comparable guarantee provisions of (3) apply (as if the firm was carrying on insurance mediation activity) but substituting £1 million for £10 million in (3)(a) and (b);

(5) This chapter does not apply to:

(a) an insurer; or

(b) a managing agent; or

(c) a firm to which IPRU(INV) 13.1.4(1) (Financial resource requirements for personal investment firms: requirement to hold professional indemnity insurance) applies; or

(d) an exempt CAD firm to which IPRU(INV) 9.2.5R (Initial capital and professional indemnity insurance requirements - exempt CAD firms that are also IMD insurance intermediaries) applies.

(6) in relation to home finance mediation activity, this chapter does not apply to an authorised professional firm:

(a) that is required by another rule to hold professional indemnity insurance (see IPRU(INV) 2.3.1R); and

(b) whose2home finance mediation activity, is incidental to its main business.

MIPRU 3.1.2 G 01/01/2007

The definition of insurance mediation activity is any of several activities 'in relation to a contract of insurance' which includes a contract of reinsurance. This chapter, therefore, applies to a reinsurance intermediary in the same way as it applies to any other insurance intermediary.

Purpose

MIPRU 3.1.3 G The purposes of this chapter are to:

(1) implement article 4.3 of the Insurance Mediation Directive in so far as it requires insurance intermediaries to hold professional indemnity insurance, or some other

comparable guarantee, against any liability that might arise from professional negligence; and

(2) meet the regulatory objectives of consumer protection and maintaining market confidence by ensuring that firms have adequate resources to protect themselves, and their customers, against losses arising from breaches in its duties under the regulatory system or civil law.

MIPRU 3.1.4 G Any breach in the duty of a firm or of its agents under the regulatory system or civil law can give rise to claims being made against the firm. Professional indemnity insurance has an important role to play in helping to finance such claims. In so doing, this chapter amplifies threshold condition 4 (Adequate resources). This threshold condition provides that a firm must have, on a continuing basis, resources that are, in the opinion of the FSA, adequate in relation to the regulated activities that the firm carries on.

MIPRU 3.1.5 G Under Principles 3 and 4 a firm is required to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems and to maintain adequate financial resources. Under Principle 9 a firm is obliged to take reasonable care to ensure the suitability of its advice on investments and discretionary decisions for any customer who is entitled to rely upon its judgement.

MIPRU 3.1.6 G Although financial resources and appropriate systems and controls can generally mitigate operational risk, professional indemnity insurance has a role in mitigating the risks a firm faces in its day to day operations, including those arising from not meeting the legally required standard of care when advising on investments. The purpose of this chapter is to ensure that a firm has in place the type, and level, of professional indemnity insurance necessary to mitigate these risks.

MIPRU 3.2 Professional indemnity insurance requirements

MIPRU 3.2.1 R A firm must take out and maintain professional indemnity insurance that is at least equal to the requirements of this section from:

(1) an insurance undertaking authorised to transact professional indemnity insurance in the EEA; or

(2) a person of equivalent status in:

(i) a Zone A country; or

(ii) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.

[**Note**: Article 4(3) of the1 Insurance Mediation Directive1]

MIPRU 3.2.2 G The minimum limits of indemnity for a firm whose Part IV permission covers both insurance mediation activity and 2home finance mediation activity 2is the higher of the limits of indemnity for these activities. If the firm opts for a single comparable guarantee to finance the claims which might arise as a result of both activities, the requirements for insurance mediation activity apply.

MIPRU 3.2.3 G A non-EEA firm (such as a captive insurance company outside the EEA) will be able to provide professional indemnity insurance only if it is authorised to do so in one of the specified countries or territories.. The purpose of this provision is to balance the level of protection required for the policyholder against a reasonable level of flexibility for the firm.

Terms to be incorporated in the insurance

MIPRU 3.2.4 R The contract of professional indemnity insurance must incorporate terms which make provision for:

(1) cover in respect of claims for which a firm may be liable as a result of the conduct of itself, its employees and its appointed representatives (acting within the scope of their appointment);

(2) the minimum limits of indemnity per year set out in this section;

(3) an excess as set out in this section;

(4) appropriate cover in respect of legal defence costs;

(5) continuous cover in respect of claims arising from work carried out from the date on which the firm was given Part IV permission for the insurance mediation activity or2 home finance mediation activity2 concerned; and

(6) cover in respect of Ombudsman awards made against the firm.

MIPRU 3.2.5 G A firm is responsible for the conduct of all of its employees. The firm's employees include, but are not limited to, its partners, directors, individuals that are self-employed or operating under a contract hire agreement and any other individual that is employed in connection with its business.

MIPRU 3.2.6 G A firm is responsible for the conduct of all of its appointed representatives.

Minimum limits of indemnity: insurance intermediary

MIPRU 3.2.7 R If the firm is an insurance intermediary, then the minimum limits of indemnity are:

(1) for a single claim, €1,120,200; and

(2) in aggregate, €1,680,300 or, if higher, 10% of annual income up to £30 million.

[**Note**: Article 4(3) of the1 Insurance Mediation Directive1]

MIPRU 3.2.7A G article 4(7) of the Insurance Mediation Directive requires the limits of indemnity to be reviewed every five years to take into account movements in European consumer prices. These limits will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.

MIPRU 3.2.8 R If a policy is denominated in any currency other than euros, a firm must take reasonable steps to ensure that the limits of indemnity are, when the policy is effected and at renewal, at least equivalent to those required.

Minimum limits of indemnity: home finance intermediary

MIPRU 3.2.9 R

If the firm is a 2home finance intermediary, then the minimum limit of indemnity is the higher of 10% of annual income up to £1 million, and:

(1) for a single claim, £100,000; or

(2) in aggregate, £500,000.

Excess

MIPRU 3.2.10 R In this chapter, "client assets" includes a document only if it has value, or is capable of having value, in itself (such as a bearer instrument).

MIPRU 3.2.11 R For a firm which does not hold client money or other client assets, the excess must not be more than the higher of:

(1) £2,500; and

(2) 1.5% of annual income.

MIPRU 3.2.12 R

For a firm which holds client money or other client assets, the excess must not be more than the higher of:

(1) £5,000; and

(2) 3% of annual income.

Policies covering more than one firm

MIPRU 3.2.13 R

If a policy provides cover to more than one firm, then:

(1) the limits of indemnity must be calculated on the combined annual income of all the firms named in the policy; and

(2) each firm named in the policy must have the benefit of the relevant minimum limits of indemnity.

Capital resources (MIPRU 4)

MIPRU 4.1 Application and purpose

Application

MIPRU 4.1.1 R This chapter applies to a firm with Part IV permission to carry on any of the following activities, unless an exemption in this section applies:

(1) insurance mediation activity;

(2) home finance mediation activity

(3) home financing;

(4) home finance administration .

MIPRU 4.1.2 G As this chapter applies only to a firm with Part IV permission, it does not apply to an incoming EEA firm (unless it has a top-up permission). An incoming EEA firm includes a firm which is passporting into the United Kingdom under the 4Insurance Mediation Directive.

MIPRU 4.1.3 G The definition of insurance mediation activity refers to several activities 'in relation to a contract of insurance' which includes a contract of reinsurance. This chapter, therefore, applies to a reinsurance intermediary in the same way as it applies to any other insurance intermediary.

Application: firms carrying on designated investment business only

MIPRU 4.1.6 R This chapter does not apply to a firm whose Part IV permission is limited to regulated activities which are designated investment business.

MIPRU 4.1.7 G A firm which carries on designated investment business, and no other regulated activity, may disregard this chapter. For example, a firm with permission limited to dealing in investments as agent in relation to securities is only carrying on designated investment business and the Interim Prudential sourcebook for investment businesses or the Prudential sourcebook for Banks, Building Societies and Investment Firms, as appropriate, will apply. However, if its permission is varied to enable it to arrange motor insurance as well, this activity is not designated investment business so the firm will be subject to the higher of the requirements in this chapter and those sourcebooks (see MIPRU 4.2.5 R).

Application: professional firms

MIPRU 4.1.10 R

(1) This chapter does not apply to an authorised professional firm:

(a) whose main business is the practice of its profession; and

(b) whose regulated activities covered by this chapter are incidental to its main business.

(2) A firm's main business is the practice of its profession if the proportion of income it derives from professional fees is, during its annual accounting period, at least 50% of

the firm's total income (a temporary variation of not more than 5% may be disregarded for this purpose).

(3) Professional fees are fees, commissions and other receipts receivable in respect of legal, accountancy, actuarial, conveyancing and surveying services provided to clients but excluding any items receivable in respect of regulated activities.

Application: Lloyd's managing agents

MIPRU 4.1.11 R This chapter does not apply to a managing agent.

MIPRU 4.1.12 G The reason for excluding managing agents from the provisions of this chapter is twofold: first, a member will have accepted full responsibility for those activities under the Society's managing agent agreement. Secondly, the member is itself subject to capital requirements which are equivalent to those applying to an insurer (to which this chapter is also disapplied).

Capital resources (MIPRU 4)

MIPRU 4.2 Capital resources requirements

MIPRU 4.2.10 R Table: Application of capital resources requirements

	Regulated activities	Provisions
1.	(a) insurance mediation activity; or (b) home finance mediation activity (or both); and no other regulated activity.	MIPRU 4.2.11 R
4.	insurance mediation activity; and (a)1 1 home financing ; or (b)1 1 home finance administration1 (or both).	MIPRU 4.2.20 R

Capital resources requirement: mediation activity only

MIPRU 4.2.11 R (1) If a firm carrying on insurance mediation activity or 1 home finance mediation activity 1 (and no other regulated activity) does not hold client money

or other client assets in relation to these activities, its capital resources requirement is the higher of:

(a) £5,000; and

(b) 2.5% of the annual income from its insurance mediation activity or 1home finance mediation activity 1(or both).

(2) If a firm carrying on insurance mediation activity or 1 home finance mediation activity 1 (and no other regulated activity) holds client money or other client assets in relation to these activities, its capital resources requirement is the higher of:

(a) £10,000; and

(b) 5% of the annual income from its insurance mediation activity or home finance mediation activity 1 (or both).

Capital resources requirement: insurance mediation activity and home financing or home finance administration

MIPRU 4.2.20 R The capital resources requirement for a firm carrying on insurance mediation activity and home financing1 or home finance administration1 is the sum of the requirements which are applied to the firm by:

(1) the capital resources rule for a firm carrying on insurance mediation activity or home finance mediation activity1 (and no other regulated activity) (see MIPRU 4.2.11 R); and

(2) (a) the capital resources requirement rule for a firm carrying onhome financing1 or home financing1 and home finance administration1 (and no other regulated activity) (see MIPRU 4.2.12 R); or

(b) if, in addition to its insurance mediation activity, the firm carries on home finance administration1 with all the assets that it administers off balance sheet, the capital resources rule for such a firm (see MIPRU 4.2.19 R).

MIPRU 4.3 Calculation of annual income

Annual income

MIPRU 4.3.1 R This section contains provisions relating to the calculation of annual income for the purposes of:

(1) the limits of indemnity for professional indemnity insurance; and

(2) the capital resources requirements.

MIPRU 4.3.2 R 'Annual income' is the annual income given in the firm's most recent annual financial statement from the relevant regulated activity or activities.

MIPRU 4.3.3 R For a firm which carries on insurance mediation activity or home finance mediation activity1 , annual income is the amount of all brokerage, fees, commissions and other related income (for example, administration charges, overriders, profit shares) due to the firm in respect of or in relation to those activities.

MIPRU 4.3.4 G (1) The purpose of the rule on annual income that applies to insurance intermediaries and mortgage intermediaries is to ensure that the capital resources requirement is calculated on the basis only of brokerage and other amounts earned by a firm which are its own income.

(2) Annual income includes commissions and other amounts the firm may have agreed to pay to other persons involved in a transaction, such as sub-agents or other intermediaries.

(3) A firm's annual income does not, however, include any amounts due to another person (for example, the product provider) which the firm has collected on behalf of that other person.

MIPRU 4.3.5 R If a firm is a principal, its annual income includes amounts due to its appointed representative in respect of activities for which the firm has accepted responsibility.

MIPRU 4.3.6 G If a firm is a network, it should include the relevant income due to all of its appointed representatives in its annual income

Insurance undertakings and home finance providers using insurance or home finance mediation services (MIPRU 5)

IPRU 5.1 Application and purpose

Application

MIPRU 5.1.1 R This chapter applies to a firm with a Part IV permission to carry on:

(1) insurance business; or

(3) and which uses, or proposes to use, the services of another person consisting of:

(a) insurance mediation; or

(b) insurance mediation activity; or

(c) home finance mediation activity.

Purpose

MIPRU 5.1.2 G The purpose of this chapter is to implement article 3.6 of the Insurance Mediation Directive in relation to insurance undertakings. The provisions of this chapter have been extended to1 home finance providers1 in relation to insurance mediation activity, and to insurance undertakings and1 home finance providers in relation to1 home finance mediation activity1 , to ensure that firms using these services are treated in the same way and to ensure that clients have the same protection. To avoid the loss of protection where an intermediary itself uses the services of an unauthorised person, this chapter also ensures that each person in the chain of those providing services is authorised.

MIPRU 5.1.3 G This chapter supports the more general duties in Principles 2 and 3, and the relevant rule in the Senior Management Arrangements, Systems and Controls sourcebook (see SYSC 3.1.1 R and SYSC 4.1.1 R).

MIPRU 5.2 Use of intermediaries

MIPRU 5.2.1 R A firm must not use, or propose to use, the services of another person consisting of:

(1) insurance mediation; or

(2) insurance mediation activity; or

(3) 1 home finance mediation activity;1

unless 2 MIPRU 5.2.2 R is 2satisfied.

[**Note**: Article 3(6) of the3 Insurance Mediation Directive3]

MIPRU 5.2.1A G The FSA regards a firm as 'using' the services of, in particular, its immediate counterparty (typically the intermediary that passed the business to the firm)

and of all other persons who have been granted the right or authority directly by the firm to effect a contract of insurance or enter into a home finance transaction.

MIPRU 5.2.2 R For the purposes of MIPRU 5.2.1 R, the person, in relation to the activity must:

(1) havepermission; or

(2) be an exempt person; or

(3) be an exempt professional firm; or

(4) be registered in another EEA State for the purposes of the Insurance Mediation Directive; or

(5) in relation to insurance mediation activity not be carrying this activity on in the EEA; or

(6) in relation tohome finance mediation activity, ot be carrying this activity on in the United Kingdom.

[**Note**: Article 3(6) of theInsurance Mediation Directive3]

MIPRU 5.2.3 E (1) A firm should:

(a) before using the services of the intermediary, check:

(i) the FSA Register; or

(ii) in relation to insurance mediation carried on by an EEA firm, the register of its Home State regulator; for the status of the person; and

(b) use the services of that person only if the relevant register indicates that the person is registered for that purpose.

(2) (a) Checking the FSA Register before using the services of the intermediary and using the services of that person only if the FSA Register indicates that the person is registered for that purpose may be relied on as tending to establish that:

(i) the person, in relation to the activity, has permission; or

(ii) the person, in relation to insurance mediation activity, also is an exempt person or an authorised professional firm.

(b) In relation to insurance mediation carried on by an EEA firm, checking the register of the firm's Home State regulator and using the services of the EEA firm only if the register

indicates that the firm is registered for that purpose may be relied on as tending to establish that the firm is registered for the purposes of the3 Insurance Mediation Directive3 .

MIPRU 5.2.6 G The FSA Register can be accessed through the FSA website under the link www.fsa.gov.uk/register

Conduct of Business Sourcebook (COBS)

Insurance mediation (COBS 7)

COBS 7.1 Application

COBS 7.1.1 R This chapter applies to a firm carrying on insurance mediation in relation to a life policy, but only if the State of the commitment is an EEA State. [Note: articles 1 and 12 (4) and (5) of the Insurance Mediation Directive]

COBS 7.2 Information to be provided by the insurance intermediary

COBS 7.2.1 R (1) Prior to the conclusion of any initial life policy and, if necessary, on amendment or renewal, a firm must provide a client with at least the following information:

(a) its name and address;

(b) the fact that it is registered on the FSA register and its FSA register number (or, if it is not on the FSA register, the register in which it has been included and the means for verifying that it has been registered);

(c) whether it has a direct or indirect holding representing more than 10% of the voting rights or capital in a given insurance undertaking (that is not a pure reinsurer);

(d) whether a given insurance undertaking (other than a pure reinsurer) or its parent undertaking has a direct or indirect holding representing more than 10% of the voting rights or capital in the firm; and

(e) the procedures which allow a client and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service

or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its clients.

(2) In addition, a firm must inform a client, concerning the life policy that is provided, whether:

(a) it gives advice on the basis of a fair analysis of the market; or

(b) it is contractually obliged to conduct its insurance mediation business exclusively with one or more insurance undertakings and, if that is the case, that the client can request the names of those insurance undertakings; or

(c) it is not contractually obliged to conduct its insurance mediation business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair analysis of the market and, if that is the case, that the client can request the names of the insurance undertakings with which the firm may and does conduct business.

(3) If a client asks a firm to provide the names of the insurance undertakings with which the firm conducts, or may conduct, business (COBS 7.2.1R (2)), the firm must provide it.

[Note: article 12(1) of the Insurance Mediation Directive]

Interface with the services and costs disclosure document

COBS 7.2.2 G A firm will satisfy elements of the requirement immediately above if it provides2 a services and costs disclosure document or a combined initial disclosure document2 to a client (see COBS 6.3).

COBS 7.2.2B G A firm may provide a services and costs disclosure document or a combined disclosure document to a client who buys a non-advised life policy.

Fair analysis for advised sales

COBS 7.2.3 R When a firm informs a client that it gives advice on the basis of a fair analysis of the market, it must give that advice on the basis of an analysis of a sufficiently large number of life policies available on the market to enable the firm to make a recommendation, in accordance with professional criteria, regarding which life

policy would be adequate to meet the client's needs. [Note: article 12(2) of the Insurance Mediation Directive]

Specifying demands and needs

COBS 7.2.4 R (1) Prior to the conclusion of any specific life policy, a firm must at least specify, in particular on the basis of the information provided by the client, the demands and needs of that client. Those demands and needs must be modulated according to the complexity of the relevant policy.

(2) This rule does not apply when a firm makes a personal recommendation in relation to a life policy.

[Note: article 12(3) of the Insurance Mediation Directive]

COBS 7.2.5 G Firms are reminded that they are obliged to take reasonable steps to ensure that a personal recommendation is suitable for the client and that, whenever a personal recommendation relates to a life policy, a suitability report is required (COBS 9).

Means of communication to clients

COBS 7.2.6 R All information to be provided to a client in accordance with the rules in this chapter must be communicated:

(1) in a durable medium available and accessible to the client;

(2) in a clear and accurate manner, comprehensible to the client; and

(3) in an official language of the State of the commitment or in any other language agreed by the parties.

[Note: article 13(1) of the Insurance Mediation Directive]

Additional requirement: telephone selling

COBS 7.2.7 R In the case of telephone selling, the prior information given to a client must be in accordance with the distance marketing disclosure rules (COBS 5.1). Moreover, information must be provided to the client in accordance with the means of

communication to clients rule (COBS 7.2.6 R) immediately after the conclusion of the life policy.[Note: article 13(3) of the Insurance Mediation Directive]

Exceptions: client request or immediate cover

COBS 7.2.8 R The information referred to in the means of communication to clients rule (COBS 7.2.6 R) may be provided orally where the client requests it, or where immediate cover is necessary. In those cases, the information must be provided to the client in accordance with that rule immediately after the conclusion of the life policy. [Note: article 13(2) of the Insurance Mediation Directive]

Insurance: Conduct of Business sourcebook (ICOBS)

ICOBS 3.1 Distance marketing

Application

ICOBS 3.1.1 R 06/01/2008

1This section applies to a firm that carries on any distance marketing activity from an establishment in the United Kingdom, with or for a consumer in the United Kingdom or another EEA State.

Guidance on the Distance Marketing Directive

ICOBS 3.1.2 G 06/01/2008

Guidance on expressions derived from the Distance Marketing Directive and on the Directive's application in the context of insurance mediation activity can be found in ICOBS 3 Annex 1 G.

The distance marketing disclosure rules

ICOBS 3.1.3 R 06/01/2008

A firm must provide a consumer with the distance marketing information (ICOBS 3 Annex 2 R) in good time before conclusion of a distance contract.

[**Note:** article 3(1) of the Distance Marketing Directive]

ICOBS 3.1.4 G 06/01/2008

The rules setting out the responsibilities of insurers and insurance intermediaries for producing and providing information apply to requirements in this section to provide information (see ICOBS 6.1.1 R).

ICOBS 3.1.5 R 06/01/2008

A firm must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal

principles governing the protection of those who are unable to give their consent, such as minors.

[**Note:** article 3(2) of the Distance Marketing Directive]

ICOBS 3.1.6 R 06/01/2008

When a firm makes a voice telephony communication to a consumer, it must make its identity and the purpose of its call explicitly clear at the beginning of the conversation.

[**Note:** article 3(3)(a) of the Distance Marketing Directive]

ICOBS 3.1.7 R 06/01/2008

A firm must ensure that the information on contractual obligations to be communicated to a consumer during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the distance contract if that contract is concluded.

[**Note:** article 3(4) of the Distance Marketing Directive]

Terms and conditions, and form

ICOBS 3.1.8 R 06/01/2008

A firm must communicate to the consumer all the contractual terms and conditions and the information referred to in the distance marketing disclosure rules in writing or another durable medium available and accessible to the consumer in good time before conclusion of any distance contract.

[**Note:** article 5(1) of the Distance Marketing Directive]

ICOBS 3.1.9 G 06/01/2008

A firm will provide or communicate information or contractual terms and conditions to a consumer if another person provides or communicates it to the consumer on its behalf.

Commencing performance of the distance contract

ICOBS 3.1.10 R 06/01/2008

The performance of the distance contract may only begin after the consumer has given his approval.

[**Note:** article 7(1) of the Distance Marketing Directive]

Exception: distance contract as a stage in the provision of another service

ICOBS 3.1.11 R 06/01/2008

This section does not apply to a distance contract to act as insurance intermediary, if the distance contract is concluded merely as a stage in the provision of another service by the firm or another person.

[**Note:** recital 19 to the Distance Marketing Directive]

Exception: successive operations

ICOBS 3.1.12 R 06/01/2008

In the case of a distance contract comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the rules in this section only apply to the initial agreement.

[**Note:** article 1(2) of the Distance Marketing Directive]

ICOBS 3.1.13 R 06/01/2008

If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure rules will only apply:

(1) when the first operation is performed; and

(2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed to be the first in a new series of operations).

[**Note:** recital 16 and article 1(2) of the Distance Marketing Directive]

Exception: voice telephony communications

ICOBS 3.1.14 R 06/01/2008

(1) In the case of a voice telephony communication, and subject to the explicit consent of the consumer, only the abbreviated distance marketing information (ICOBS 3 Annex 3 R) needs to be provided during that communication.

(2) However, unless another exemption applies (such as the exemption for means of distance communication not enabling disclosure) a firm must still provide the distance

marketing information (ICOBS 3 Annex 2 R) in writing or another durable medium available and accessible to the consumer in good time before conclusion of any distance contract.

[**Note**: articles 3(3)(b) and 5(1) of the Distance Marketing Directive]

Exception: Means of distance communication not enabling disclosure

ICOBS 3.1.15 R 06/01/2008

A firm may provide the distance marketing information (ICOBS 3 Annex 2 R) and the contractual terms and conditions in writing or another durable medium immediately after the conclusion of a distance contract, if the contract has been concluded at a consumer's request using a means of distance communication that does not enable the provision of that information in that form in good time before conclusion of any distance contract.

[**Note**: article 5(2) of the Distance Marketing Directive]

Consumer's right to request paper copies and change the means of communication

ICOBS 3.1.16 R 06/01/2008

At any time during the contractual relationship the consumer is entitled, at his request, to receive the contractual terms and conditions on paper. The consumer is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[**Note**: article 5(3) of the Distance Marketing Directive]

Unsolicited services

ICOBS 3.1.17 R 06/01/2008

(1) A firm must not enforce, or seek to enforce, any obligations under a distance contract against a consumer, in the event of an unsolicited supply of services, the absence of reply not constituting consent.

(2) This rule does not apply to the tacit renewal of a distance contract.

[**Note**: article 9 of the Distance Marketing Directive]

Mandatory nature of consumer's rights

ICOBS 3.1.18 R 06/01/2008

If a consumer purports to waive any of the consumer's rights created or implied by the rules in this section, a firm must not accept that waiver, nor seek to rely on or enforce it against the consumer.

[**Note**: article 12 of the Distance Marketing Directive]

ICOBS 3.1.19 R 06/01/2008

If a firm proposes to enter into a distance contract with a consumer that will be governed by the law of a country outside the EEA, the firm must ensure that the consumer will not lose the protection created by the rules in this section if the distance contract has a close link with the territory of one or more EEA States.

[**Note**: articles 12 and 16 of the Distance Marketing Directive]

Information about the firm, its services and remuneration (ICOBS 4)

ICOBS 4.1 General requirements for insurance intermediaries

Application: who?

ICOBS 4.1.1 R 06/01/2008

This section applies to an insurance intermediary.

Status disclosure: general

ICOBS 4.1.2 R 06/01/2008

Prior to the conclusion of an initial contract of insurance and, if necessary, on its amendment or renewal, a firm must provide the customer with at least:

(1) its name and address;

(2) the fact that it is included in the FSA Register and the means for verifying this;

(3) whether it has a direct or indirect holding representing more than 10% of the voting rights or capital in a given insurance undertaking (that is not a pure reinsurer);

(4) whether a given insurance undertaking (that is not a pure reinsurer) or its parent undertaking has a direct or indirect holding representing more than 10% of the voting rights or capital in the firm; and

(5) the procedures allowing customers and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its customers.

[**Note**: article 12(1) of the Insurance Mediation Directive]

Status disclosure exemption: introducers

ICOBS 4.1.3 R 06/01/2008

A firm whose contact with a customer is limited to effecting introductions (see PERG 5.6) need only provide its name and address and whether it is a member of the same group as the firm to which it makes the introduction.

ICOBS 4.1.4 G 06/01/2008

If a firm goes further than putting a customer in contact with another person (for example, by advising him on a particular policy available from the firm) the full status disclosure requirements will apply.

Status disclosure exemption: connected travel insurance

ICOBS 4.1.5 R 01/01/2009

2 In relation to a connected travel insurance contract, a firm need only provide the procedures allowing customers and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its customers.2

Scope of service

ICOBS 4.1.6 R 01/01/2009

(1) Prior to the conclusion of an initial contract of insurance (other than a connected travel insurance contract)2 and, if necessary, on its amendment or renewal, a firm must tell the customer whether:

(a) it gives advice on the basis of a fair analysis of the market; or

(b) it is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings; or

(c) it is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair analysis of the market.

(2) A firm that does not advise on the basis of a fair analysis of the market must inform its customer that he has the right to request the name of each insurance undertaking with which the firm may and does conduct business. A firm must comply with such a request.

[**Note:** article 12(1) of the Insurance Mediation Directive]

ICOBS 4.1.7 R 06/01/2008

Prior to conclusion of an initial contract of insurance with a consumer a firm must state whether it is giving a personal recommendation or information.

Guidance on using panels to advise on the basis of a fair analysis

ICOBS 4.1.8 G 06/01/2008

(1) One way a firm may give advice on a fair analysis basis is by using 'panels' of insurance undertakings which are sufficient to enable the firm to give advice on a fair analysis basis and are reviewed regularly.

(2) A firm which provides a service based on a fair analysis of the market (or from a sector of the market) should ensure that its analysis of the market and the available contracts is kept adequately up-to-date. For example, a firm should update its selection of contracts if aware that a contract has generally become available offering an improved product feature, or a better premium, compared with its current selection. The update frequency will depend on the extent to which new contracts are made available on the market.

(3) The panel selection criteria will be important in determining whether the panel is sufficient to meet the 'fair analysis' criteria. Selection should be based on product features, premiums and services offered to customers, not solely on the benefit offered to the firm.

Means of communication to customers

ICOBS 4.1.9 R 06/01/2008

(1) All information to be provided to a customer in accordance with this chapter must be communicated:

(a) on paper or on any other durable medium available and accessible to the customer;

(b) in a clear and accurate manner, comprehensible to the customer; and

(c) in an official language of the State of the commitment or in any other language agreed by the parties.

(2) The information may be provided orally where the customer requests it, or where immediate cover is necessary.

(3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure rules (see ICOBS 3.1.14 R).

(4) If the information is provided orally, it must be provided to the customer in accordance with (1) immediately after the conclusion of the contract of insurance.

[**Note**: article 13 of the Insurance Mediation Directive]

Identifying client needs and advising (ICOBS 5)

ICOBS 5.2 Statement of demands and needs

Application: who? what?

ICOBS 5.2.1 R 01/01/2009

This section applies to:

(1) an insurance intermediary in relation to any policy (other than a connected travel insurance contract);1 and

(2) an insurer when it has given a personal recommendation to a consumer on a payment protection contract or a pure protection contract.

Statement of demands and needs

ICOBS 5.2.2 R 06/01/2008

(1) Prior to the conclusion of a contract, a firm must specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on that policy.

(2) The details must be modulated according to the complexity of the policy proposed.

[**Note**: article 12(3) of the Insurance Mediation Directive]

Means of communication to customers

ICOBS 5.2.3 R 06/01/2008

(1) A statement of demands and needs must be communicated:

(a) on paper or on any other durable medium available and accessible to the customer;

(b) in a clear and accurate manner, comprehensible to the customer; and

(c) in an official language of the State of the commitment or in any other language agreed by the parties.

(2) The information may be provided orally where the customer requests it, or where immediate cover is necessary.

(3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure rules (see ICOBS 3.1.14 R).

(4) If the information is provided orally, it must be provided to the customer in accordance with (1) immediately after the conclusion of the contract of insurance.

[**Note**: article 13 of the Insurance Mediation Directive]

Statement of demands and needs: non-advised sales

ICOBS 5.2.4 G 06/01/2008

The format of a statement of demands and needs is flexible. Examples of approaches that may be appropriate where a personal recommendation has not been given include:

(1) providing a demands and needs statement as part of an application form, so that the demands and needs statement is made dependent upon the customer providing personal information on the application form. For instance, the application form might include a statement along the lines of: "If you answer 'yes' to questions a, b and c your demands and needs are those of a pet owner who wishes and needs to ensure that the veterinary needs of your pet are met now and in the future";

(2) producing a demands and needs statement in product documentation that will be appropriate for anyone wishing to buy the product. For example, "This product meets the demands and needs of those who wish to ensure that the veterinary needs of their pet are met now and in the future";

(3) giving a customer a record of all his demands and needs that have been discussed; and

(4) providing a key features document.

Product Information (ICOBS 6)

ICOBS 6.1 General

Responsibilities of insurers and insurance intermediaries

ICOBS 6.1.1 R 06/01/2008

1An insurer is responsible for producing, and an insurance intermediary for providing to a customer, the information required by this chapter and by the distance communication rules (see ICOBS 3.1). However, an insurer is responsible for providing information required on mid-term changes, and an insurance intermediary is responsible for producing price information if it agrees this with an insurer.

ICOBS 6.1.2 R 06/01/2008

If there is no insurance intermediary, the insurer is responsible for producing and providing the information.

ICOBS 6.1.3 R 06/01/2008

An insurer must produce information in good time to enable the insurance intermediary to comply with the rules in this chapter, or promptly on an insurance intermediary's request.

ICOBS 6.1.4 R 06/01/2008

These general rules on the responsibilities of insurers and insurance intermediaries are modified by ICOBS 6 Annex 1 R if one of the firms is not based in the United Kingdom, and in certain other situations.

Ensuring customers can make an informed decision

ICOBS 6.1.5 R 06/01/2008

A firm must take reasonable steps to ensure a customer is given appropriate information about a policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed.

ICOBS 6.1.6 G 06/01/2008

The appropriate information rule applies pre-conclusion and post-conclusion, and so includes matters such as mid-term changes and renewals. It also applies to the price of the policy.

ICOBS 6.1.7 G 06/01/2008

The level of information required will vary according to matters such as:

(1) the knowledge, experience and ability of a typical customer for the policy;

(2) the policy terms, including its main benefits, exclusions, limitations, conditions and its duration;

(3) the policy's overall complexity;

(4) whether the policy is bought in connection with other goods and services;

(5) distance communication information requirements (for example, under the distance communication rules less information can be given during certain telephone sales than in a sale made purely by written correspondence (see ICOBS 3.1.14 R)); and

(6) whether the same information has been provided to the customer previously and, if so, when.

ICOBS 6.1.8 G 06/01/2008

In determining what is "in good time", a firm should consider the importance of the information to the customer's decision-making process and the point at which the information may be most useful. Distance communication timing requirements are also

relevant (for example, the distance communication rules enable certain information to be provided post-conclusion in telephone and certain other sales (see ICOBS 3.1.14 R and ICOBS 3.1.15 R)).

ICOBS 6.1.9 G 06/01/2008

Cancellation rights do not affect what information it is appropriate to give to a customer in order to enable him to make an informed purchasing decision.

ICOBS 6.1.10 G 06/01/2008

A firm dealing with a consumer may wish to provide information in a policy summary or as a key features document (see ICOBS 6 Annex 2).

Providing evidence of cover

ICOBS 6.1.11 G 06/01/2008

Under Principle 7 a firm should provide evidence of cover promptly after inception of a policy. Firms will need to take into account the type of customer and the effect of other information requirements, for example those under the distance communication rules (ICOBS 3.1).

Group policies

ICOBS 6.1.12 G 06/01/2008

Under Principle 7, a firm that sells a group policy should provide appropriate information to the customer to pass on to other policyholders. It should tell the customer that he should give the information to each policyholder.

Price disclosure: connected goods or services

ICOBS 6.1.13 R 06/01/2008

(1) If a policy is bought by a consumer in connection with other goods or services a firm must, before conclusion of the contract, disclose its premium separately from any other prices and whether buying the policy is compulsory.

(2) In the case of a distance contract, disclosure of whether buying the policy is compulsory may be made in accordance with the timing requirements under the

distance communication rules (see ICOBS 3.1.8 R, ICOBS 3.1.14 R and ICOBS 3.1.15 R).

Exception to the timing rules: distance contracts and voice telephony communications

ICOBS 6.1.14 R 06/01/2008

Where a rule in this chapter requires information to be provided in writing or another durable medium before conclusion of a contract, a firm may instead provide that information in accordance with the distance communication timing requirements (see ICOBS 3.1.14 R and ICOBS 3.1.15 R).

GRAMM-LEACH-BLILEY ACT

TITLE III--INSURANCE

Subtitle A--State Regulation of Insurance

SEC. 301. <<NOTE: 15 USC 6711.>> FUNCTIONAL REGULATION OF INSURANCE.

The insurance activities of any person (including a national bank exercising its power to act as agent under the eleventh undesignated paragraph of section 13 of the Federal Reserve Act) shall be functionally regulated by the States, subject to section 104.

SEC. 302. <<NOTE: 15 USC 6712.>> INSURANCE UNDERWRITING IN NATIONAL BANKS.

(a) In General.--Except as provided in section 303, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) Authorized Products.--For the purposes of this section, a product is authorized if--

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(c) Definition.--For purposes of this section, the term ``insurance'' means--

(1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1999, which--

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is--

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal--

(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, if the bank were subject to tax as an insurance company under section 831 of that Code; or

(3) any annuity contract, the income on which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(d) Rule of Construction.--For purposes of this section, providing insurance (including reinsurance) outside the United States that insures, guarantees, or indemnifies insurance products provided in a State, or that indemnifies an insurance company with regard to insurance products provided in a State, shall be considered to be providing insurance as principal in that State.

SEC. 303. TITLE <<NOTE: 15 USC 6713.>> INSURANCE ACTIVITIES OF NATIONAL BANKS AND THEIR AFFILIATES.

(a) General Prohibition.--No national bank may engage in any activity involving the underwriting or sale of title insurance.

(b) Nondiscrimination Parity Exception.--

(1) In general.--Notwithstanding any other provision of law (including section 104 of this Act), in the case of any State in which banks organized under the laws of such State are authorized to sell title insurance as agent, a national bank may sell title insurance as agent in such State, but only in the same manner, to the same extent, and under the same restrictions as such State banks are authorized to sell title insurance as agent in such State.

(2) Coordination with ``wildcard'' provision.--A State law which authorizes State banks to engage in any activities in such State in which a national bank may engage shall not be treated as a statute which authorizes State banks to sell title insurance as agent, for purposes of paragraph (1).

(c) Grandfathering With Consistent Regulation.--

(1) In general.--Except as provided in paragraphs (2) and (3) and notwithstanding subsections (a) and (b), a national bank, and a subsidiary of a national bank, may conduct title insurance activities which such national bank or subsidiary was actively and lawfully conducting before the date of the enactment of this Act.

(2) Insurance affiliate.--In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank

and any subsidiary of the national bank may not engage in the underwriting of title insurance pursuant to paragraph (1).

(3) Insurance subsidiary.--In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate other than a subsidiary which provides insurance as principal, the national bank may not directly engage in any activity involving the underwriting of title insurance.

(d) ``Affiliate'' and ``Subsidiary'' Defined.--For purposes of this section, the terms ``affiliate'' and ``subsidiary'' have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(e) Rule of Construction.--No provision of this Act or any other Federal law shall be construed as superseding or affecting a State law which was in effect before the date of the enactment of this Act and which prohibits title insurance from being offered, provided, or sold in such State, or from being underwritten with respect to real property in such State, by any person whatsoever.

SEC. 305. INSURANCE CUSTOMER PROTECTIONS.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 46, as added by section 121(d) of this Act, the following new section:

``SEC. 47. <<NOTE: 12 USC 1831x.>> INSURANCE CUSTOMER PROTECTIONS.

``(a) Regulations Required.--

``(1) In general.--The <<NOTE: Publication.>> Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act, customer protection regulations (which the agencies jointly determine to be appropriate) that--

``(A) apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any depository institution or any person that is engaged in such activities at an office of the institution or on behalf of the institution; and

``(B) are consistent with the requirements of this Act and provide such additional protections for customers to whom such sales, solicitations, advertising, or offers are directed.

``(2) Applicability to subsidiaries.--The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiary of a depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the consumer protections provided by this section.

``(3) Consultation and joint regulations.--The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.

``(b) Sales Practices.--The regulations prescribed pursuant to subsection (a) shall include antitying and anticoercion rules applicable to the sale of insurance products that prohibit a depository institution from engaging in any practice that would lead a customer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon--

``(1) the purchase of an insurance product from the institution or any of its affiliates; or

``(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

``(c) Disclosures and Advertising.--The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:

``(1) Disclosures.--

``(A) In general.--Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iii), at the time of application for an extension of credit:

``(i) Uninsured status.--As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the depository institution.

``(ii) Investment risk.--In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

``(iii) Coercion.--The approval of an extension of credit may not be conditioned on--

``(I) the purchase of an insurance product from the institution in which the application for credit is pending or of any affiliate of the institution; or

``(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

``(B) Making disclosure readily understandable.--Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

``(i) `NOT FDIC--INSURED'.

``(ii) `NOT GUARANTEED BY THE BANK'.

``(iii) `MAY GO DOWN IN VALUE'.

``(iv) `NOT INSURED BY ANY GOVERNMENT AGENCY'.

``(C) Limitation.--Nothing in this paragraph requires the inclusion of the foregoing disclosures in advertisements of a general nature describing or listing the services or products offered by an institution.

``(D) Meaningful disclosures.--Disclosures shall not be considered to be meaningfully provided under this paragraph if the institution or its representative states that disclosures required by this subsection were available to the customer in printed material available for distribution, where such printed material is not provided and such information is not orally disclosed to the customer.

``(E) Adjustments for alternative methods of purchase.--In prescribing the requirements under subparagraphs (A) and (F), necessary adjustments shall

be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.

``(F) Consumer acknowledgment.--A requirement that a depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer of such product, an acknowledgment by such consumer of the receipt of the disclosure required under this subsection with respect to such product.

``(2) Prohibition on misrepresentations.--A prohibition on any practice, or any advertising, at any office of, or on behalf of, the depository institution, or any subsidiary, as appropriate, that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to--

``(A) the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution;

``(B) in the case of a variable annuity or insurance product that involves an investment risk, the investment risk associated with any such product; or

``(C) in the case of an institution or subsidiary at which insurance products are sold or offered for sale, the fact that--

``(i) the approval of an extension of credit to a customer by the institution or subsidiary may not be conditioned on the purchase of an insurance product by such customer from the institution or subsidiary; and

``(ii) the customer is free to purchase the insurance product from another source.

``(d) Separation of Banking and Nonbanking Activities.--

``(1) Regulations required.--The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity.

``(2) Requirements.--Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

``(A) Separate setting.--A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted.

``(B) Referrals.--Standards that permit any person accepting deposits from the public in an area where such transactions are routinely conducted in a depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

``(C) Qualification and licensing requirements.-- Standards prohibiting any depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

``(e) Domestic Violence Discrimination Prohibition.--

``(1) In general.--In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or payment of insurance claims, except as required or expressly permitted under State law.

``(2) Scope of application.--The prohibition contained in paragraph (1) shall apply to any life or health insurance product which is sold or offered for sale, as principal, agent, or broker, by any depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution.

``(3) Domestic violence defined.--For purposes of this subsection, the term `domestic violence' means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

``(A) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault.

``(B) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm.

``(C) Subjecting another person to false imprisonment.

``(D) Attempting to cause or cause damage to property so as to intimidate or attempt to control the behavior of another person.

``(f) Consumer <<NOTE: Establishment.>> Grievance Process.--The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and expeditiously addressing consumer complaints alleging a violation of regulations issued under the section, which shall--

``(1) establish a group within each regulatory agency to receive such complaints;

``(2) develop procedures for investigating such complaints;

``(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and

``(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

``(g) Effect on Other Authority.--

``(1) In general.--No provision of this section shall be construed as granting, limiting, or otherwise affecting--

``(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or

``(B) except as provided in paragraph (2), any authority of any State insurance commission (or any agency or office performing like functions), or of any State securities commission (or any agency or office performing like functions), or other State authority under any State law.

``(2) Coordination with state law.--

``(A) In general.--Except as provided in subparagraph (B), insurance customer protection regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any depository institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

``(B) Preemption.--

``(i) In <<NOTE: Notification.>> general.--If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Board of Directors of the Corporation determine jointly that the protection afforded by such provision for customers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, the appropriate State regulatory authority shall be notified of such determination in writing.

``(ii) Considerations.--Before making a final determination under clause (i), the Federal agencies referred to in clause (i) shall give appropriate consideration to comments submitted by the appropriate State regulatory authorities relating to the level of protection afforded to consumers under State law.

``(iii) Federal <<NOTE: Notice.>> preemption and ability of states to override federal preemption.--If the Federal agencies referred to in clause (i) jointly determine that any provision of the regulations prescribed under this section

affords greater protections than a comparable State law, rule, regulation, order, or interpretation, those agencies shall send a written preemption notice to the appropriate State regulatory authority to notify the State that the Federal provision will preempt the State provision and will become applicable unless, not later than 3 years after the date of such notice, the State adopts legislation to override such preemption.

``(h) Non-Discrimination Against Non-Affiliated Agents.--The Federal banking agencies shall ensure that the regulations prescribed pursuant to subsection (a) shall not have the effect of discriminating, either intentionally or unintentionally, againstany person engaged in insurance sales or solicitations that is not affiliated with a depository institution.''.

Subtitle C--National Association of Registered Agents and Brokers

SEC. 321. <<NOTE: 15 USC 6751.>> STATE FLEXIBILITY IN MULTISTATE LICENSING REFORMS.

(a) In <<NOTE: Effective date.>> General.--The provisions of this subtitle shall take effect unless, not later than 3 years after the date of the enactment of this Act, at least a majority of the States--

(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or

(2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.

(b) Uniformity Required.--States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) if the States--

(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the

qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;

(2) establish uniform continuing education requirements for licensed insurance producers;

(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);

(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and

(5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(c) Reciprocity Required.--States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) if the following conditions are met:

(1) Administrative licensing procedures.--At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent that such producer is permitted to sell or solicit the purchase of insurance in its State, if the producer's home State also awards such licenses on such a reciprocal basis, without satisfying any additional requirements other than submitting--

(A) a request for licensure;

(B) the application for licensure that the producer submitted to its home State;

(C) proof that the producer is licensed and in good standing in its home State; and

(D) the payment of any requisite fee to the appropriate authority.

(2) Continuing education requirements.--A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education satisfaction of continuing education requirements on such a reciprocal basis.

(3) No limiting nonresident requirements.--A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(4) Reciprocal reciprocity.--Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.

(d) Determination.--

(1) NAIC determination.--At the end of the 3-year period beginning on the date of the enactment of this Act, the National Association of Insurance Commissioners (hereafter in this subtitle referred to as the ``NAIC'') shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity or reciprocity required by subsections (b) and (c) has been achieved.

(2) Judicial review.--The appropriate United States district court shall have exclusive jurisdiction over any challenge to the NAIC's determination under this section and such court shall apply the standards set forth in section 706 of title 5, United States Code, when reviewing any such challenge.

(e) Continued Application.--If, at any time, the uniformity or reciprocity required by subsections (b) and (c) no longer exists, the provisions of this subtitle shall take effect 2 years after the date on which such uniformity or reciprocity ceases to exist, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.

(f) Savings Provision.--No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to satisfy the uniformity or reciprocity required by subsections (b) and (c), unless any such law, regulation, provision, or action is inconsistent with a specific requirement of any such subsection and then only to the extent of such inconsistency.

(g) Uniform Licensing.--Nothing in this section shall be construed to require any State to adopt new or additional licensing requirements to achieve the uniformity necessary to satisfy subsection (a)(1).

SEC. 322. NATIONAL <<NOTE: 15 USC 6752.>> ASSOCIATION OF REGISTERED AGENTS AND BROKERS.

(a) Establishment.--There is established the National Association of Registered Agents and Brokers (hereafter in this subtitle referred to as the ``Association'').

(b) Status.--The Association shall--

(1) be a nonprofit corporation;

(2) have succession until dissolved by an Act of Congress;

(3) not be an agent or instrumentality of the United States Government; and

(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29y-1001 et seq.).

SEC. 323. <<NOTE: 15 USC 6753.>> PURPOSE.

The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.

SEC. 324. <<NOTE: 15 USC 6754.>> RELATIONSHIP TO THE FEDERAL GOVERNMENT.

The Association shall be subject to the supervision and oversight of the NAIC.

SEC. 325. <<NOTE: 15 USC 6755.>> MEMBERSHIP.

(a) Eligibility.--

(1) In general.--Any State-licensed insurance producer shall be eligible to become a member in the Association.

(2) Ineligibility for suspension or revocation of license.-- Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer's license in that State during the 3-year period preceding the date on which such producer applies for membership.

(3) Resumption of eligibility.--Paragraph (2) shall cease to apply to any insurance producer if--

(A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or

(B) the suspension or revocation is subsequently overturned.

(b) Authority To Establish Membership Criteria.--The Association shall have the authority to establish membership criteria that--

(1) bear a reasonable relationship to the purposes for which the Association was established; and

(2) do not unfairly limit the access of smaller agencies to the Association membership.

(c) Establishment of Classes and Categories.--

(1) Classes of membership.--The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.

(2) Categories.--The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the types of licensing categories that exist under State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are depository institutions or for their employees, agents, or affiliates.

(d) Membership Criteria.--

(1) In general.--The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.

(2) Minimum standard.--In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(e) Effect of Membership.--Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.

(f) Annual Renewal.--Membership in the Association shall be renewed on an annual basis.

(g) Continuing Education.--The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.

(h) Suspension and Revocation.--The Association may--

(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and

(2) suspend or revoke the membership of an insurance producer if--

(A) the producer fails to meet the applicable membership criteria of the Association; or

(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.

(i) Office of Consumer Complaints.--

(1) In <<NOTE: Establishment.>> general.--The Association shall establish an office of consumer complaints that shall--

(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and

(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.

(2) Records and referrals.--The office of consumer complaints of the Association shall--

(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State

insurance regulator for the State of residence of the consumer who filed the complaint; and

(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.

(3) Telephone and other access.--The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet home page.

SEC. 326. <<NOTE: 15 USC 6756.>> BOARD OF DIRECTORS.

(a) Establishment.--There is established the board of directors of the Association (hereafter in this subtitle referred to as the ``Board'') for the purpose of governing and supervising the activities of the Association and the members of the Association.

(b) Powers.--The Board shall have such powers and authority as may be specified in the bylaws of the Association.

(c) Composition.--

(1) Members.--The Board shall be composed of 7 members appointed by the NAIC.

(2) Requirement.--At least 4 of the members of the Board shall each have significant experience with the regulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial-lines insurance is placed in the United States.

(3) Initial board membership.--

(A) In general.--If, by the end of the 2-year period beginning on the date of the enactment of this Act, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the greatest total dollar amount of commercial-lines insurance in place as of the end of such period.

(B) Alternate composition.--If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.

(C) Inoperability.--If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 332.

(d) Terms.--The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with one-third of the directors to be appointed each year.

(e) Board Vacancies.--A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.

(f) Meetings.--The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.

SEC. 327. <<NOTE: 15 USC 6757.>> OFFICERS.

(a) In General.--

(1) Positions.--The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the Association, and such other officers and assistant officers as may be deemed necessary.

(2) Manner of selection.--Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.

(b) Criteria for Chairperson.--Only individuals who are members of the NAIC shall be eligible to serve as the chairperson of the board of directors.

SEC. 328. <<NOTE: 15 USC 6758.>> BYLAWS, RULES, AND DISCIPLINARY ACTION.

(a) Adoption and Amendment of Bylaws.--

(1) Copy required to be filed with the naic.--The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.

(2) Effective date.--Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect--

(A) 30 days after the date of the filing of a copy with the NAIC;

(B) upon such later date as the Association may designate; or

(C) upon such earlier date as the NAIC may determine.

(3) Disapproval by the naic.--Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing--

(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subtitle and provides notice to the Association setting forth the reasons for such disapproval; or

(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such subsection.

(b) Adoption and Amendment of Rules.--

(1) Filing proposed regulations with the naic.--

(A) In general.--The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the

Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

(B) Other rules and amendments ineffective.--No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.

(2) Initial <<NOTE: Deadline.>> consideration by the naic.-- Not later than 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date, if the NAIC finds such longer period to be appropriate and sets forth its reasons for so finding, or as to which the Association consents, the NAIC shall--

(A) by order approve such proposed rule or amendment; or

(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.

(3) NAIC proceedings.--

(A) In general.--Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall--

(i) <<NOTE: Notice.>> include notice of the grounds for disapproval under consideration;

(ii) provide opportunity for hearing; and

(iii) <<NOTE: Deadline.>> be concluded not later than 180 days after the date of the Association's filing of such proposed rule or amendment.

(B) Disposition of proposal.--At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.

(C) Extension of time for consideration.--The NAIC may extend the time for concluding any proceeding under subparagraph (A) for--

(i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or

(ii) such longer period as to which the Association consents.

(4) Standards for review.--

(A) Grounds for approval.--The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.

(B) Approval before end of notice period.--The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date on which the Association files proposed rules or amendments in accordance with paragraph (1), unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.

(5) Alternate procedure.--

(A) In general.--Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relating to the administration or organization of the Association shall take effect--

(i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the NAIC shall for good cause determine.

(B) Abrogation by the naic.--

(i) In general.--At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or clause (ii) of this subparagraph, the NAIC may repeal such rule or amendment and require that the rule or amendment be refiled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subtitle.

(ii) Effect of reconsideration by the naic.-- Any action of the NAIC pursuant to clause (i) shall--

(I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and

(II) not be considered to be a final action.

(c) Action Required by the NAIC.--The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subtitle, require the Association to adopt, amend, or repeal any bylaw, rule, or amendment of the Association, whenever adopted.

(d) Disciplinary Action by the Association.--

(1) Specification <<NOTE: Notification. Records.>> of charges.--In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed (hereafter in this section referred to as a ``disciplinary action''), the Association shall bring specific charges, notify such member of such charges, give the member an opportunity to defend against the charges, and keep a record.

(2) Supporting statement.--A determination to take disciplinary action shall be supported by a statement setting forth--

(A) any act or practice in which such member has been found to have been engaged;

(B) the specific provision of this subtitle, the rules or regulations under this subtitle, or the rules of the Association which any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for such sanction.

(e) NAIC Review of Disciplinary Action.--

(1) Notice to the naic.--If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.

(2) Review by the naic.--Any disciplinary action taken by the Association shall be subject to review by the NAIC--

(A) on the NAIC's own motion; or

(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of--

(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or

(ii) the date the notice of the disciplinary action was received by such aggrieved person.

(f) Effect of Review.--The filing of an application to the NAIC for review of a disciplinary action, or the institution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.

(g) Scope of Review.--

(1) In general.--In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall--

(A) determine whether the action should be taken;

(B) affirm, modify, or rescind the disciplinary sanction; or

(C) remand to the Association for further proceedings.

(2) Dismissal of review.--The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that--

(A) the specific grounds on which the action is based exist in fact;

(B) the action is in accordance with applicable rules and regulations; and

(C) such rules and regulations are, and were, applied in a manner consistent with the purposes of this subtitle.

SEC. 329. <<NOTE: 15 USC 6759.>> ASSESSMENTS.

(a) Insurance Producers Subject to Assessment.--The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b), except that, in setting such fees, the Association may not discriminate against smaller insurance producers.

(b) NAIC Assessments.--The NAIC may assess the Association for any costs that the NAIC incurs under this subtitle.

SEC. 330. <<NOTE: 15 USC 6760.>> FUNCTIONS OF THE NAIC.

(a) Administrative Procedure.--Determinations of the NAIC, for purposes of making rules pursuant to section 328, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.

(b) Examinations and Reports.--

(1) Examinations.--The NAIC may make such examinations and inspections of the Association and require the Association to furnish to the NAIC such reports and records or copies thereof as the NAIC may consider necessary or appropriate in the public interest or to effectuate the purposes of this subtitle.

(2) Report by association.--As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.

SEC. 331. LIABILITY <<NOTE: 15 USC 6761.>> OF THE ASSOCIATION AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.

(a) In General.--The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) Liability of the Association, Its Directors, Officers, and Employees.--Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this subtitle.

SEC. 332. <<NOTE: 15 USC 6762.>> ELIMINATION OF NAIC OVERSIGHT.

(a) In General.--The Association shall be established without NAIC oversight and the provisions set forth in section 324, subsections (a), (b), (c), and (e) of section 328, and sections 329(b) and 330 of this subtitle shall cease to be effective if, at the end of the 2-year period beginning on the date on which the provisions of this subtitle take effect pursuant to section 321--

(1) at least a majority of the States representing at least 50 percent of the total United States commercial-lines insurance premiums have not satisfied the uniformity or reciprocity requirements of subsections (a), (b), and (c) of section 321; and

(2) the NAIC has not approved the Association's bylaws as required by section 328 or is unable to operate or supervise the Association, or the Association is not conducting its activities as required under this Act.

(b) Board Appointments.--If the repeals required by subsection (a) are implemented, the following shall apply:

(1) General <<NOTE: President. Congress.>> appointment power.--The President, with the advice and consent of the Senate, shall appoint the members of the Association's Board established under section 326 from lists of candidates recommended to the President by the NAIC.

(2) Procedures for obtaining naic appointment recommendations.--

(A) Initial determination and recommendations.-- After the date <<NOTE: Deadline.>> on which the provisions of subsection (a) take effect, the NAIC shall, not later than 60 days thereafter, provide a list of recommended candidates to the President. If the NAIC fails to provide a list by that date, or if any list that is provided

does not include at least 14 recommended candidates or comply with the requirements of section 326(c), the President shall, with the advice and consent of the Senate, make the requisite appointments without considering the views of the NAIC.

(B) Subsequent <<NOTE: Deadline.>> appointments.-- After the initial appointments, the NAIC shall provide a list of at least six recommended candidates for the Board to the President by January 15 of each subsequent year. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least six recommended candidates or comply with the requirements of section 326(c), the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.

(C) Presidential oversight.--

(i) Removal.--If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board for the remainder of the term to which the members of the Board were appointed and appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.

(ii) Suspension of rules or actions.--The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.

(c) Annual Report.--As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to the Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

SEC. 333. <<NOTE: 15 USC 6763.>> RELATIONSHIP TO STATE LAW.

(a) Preemption of State Laws.--State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted as provided in subsection (b).

(b) Prohibited Actions.--No State shall--

(1) impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

(2) impose any requirement upon a member of the Association that it pay different fees to be licensed or otherwise qualified to do business in that State, including bonding requirements, based on its residency;

(3) impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section; or

(4) implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 325.

(c) Savings Provision.--Except as provided in subsections (a) and (b), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or other action of any State which purports to regulate insurance producers, including any such law, regulation, provision,or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws.

SEC. 334. <<NOTE: 15 USC 6764.>> COORDINATION WITH OTHER REGULATORS.

(a) Coordination With State Insurance Regulators.--The Association shall have the authority to--

(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 333;

(2) establish a central clearinghouse through which members of the Association may apply for the issuance or renewal of licenses in multiple States; and

(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

(b) Coordination With the National Association of Securities Dealers.--The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subtitle and the Federal securities laws.

SEC. 335. <<NOTE: 15 USC 6765.>> JUDICIAL REVIEW.

(a) Jurisdiction.--The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this subtitle. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.

(b) Exhaustion of Remedies.--An aggrieved person shall be required to exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.

(c) Standards of Review.--The standards set forth in section 553 of title 5, United States Code, shall be applied whenever a rule or bylaw of the Association is under

judicial review, and the standards set forth in section 554 of title 5, United States Code, shall be applied whenever a disciplinary action of the Association is judicially reviewed.

SEC. 336. <<NOTE: 15 USC 6766.>> DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) Home state.--The term ``home State'' means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.

(2) Insurance.--The term ``insurance'' means any product, other than title insurance, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(3) Insurance producer.--The term ``insurance producer'' means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.

(4) State.--The term ``State'' includes any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(5) State law.--The term ``State law'' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

New York Insurance Law

§ 375. Definitions—Insurance broker

An insurance broker is defined to be any person, firm, association, or corporation who or which for any compensation, commission, or other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance or annuity contract or in placing risks or taking out insurance, on behalf of an insured other than himself or itself or on behalf of a licensed insurance broker.

The term does not include any regular salaried employee of an insured or of any subsidiary or affiliate of a corporation insured whose duties are to negotiate for or procure insurance or render other services on behalf of the employer in connection with the procuring or maintaining of insurance on the property or risks of the employer provided the employee does not receive compensation, commission, or other thing of value from any insurance agent, insurance broker, or insurer in connection with such services. Neither does the term include regular salaried employees of a licensed insurance broker who are engaged in the performance of clerical or administrative duties in the office of the broker provided they do not receive for their services a commission or other compensation directly dependent upon the amount of business done. Also excluded, under certain specified circumstances, are foreign freight forwarders registered with the federal maritime commission and custom house brokers licensed by the Federal Treasury Department, as well as service contract providers. A "licensed insurance broker" is an insurance broker who is the licensee or a sublicensee named in a valid license.

An insurance broker is an agent of the insured and not the insurer. An insurance broker is one who acts as a middleman between the insured and the insurer, and who solicits insurance from the public under no employment from any special company, but having secured an order, either places the insurance with a company selected by the insured, or in the absence of any selection by him, then with a company selected by such broker.

§ 376. Distinction between insurance agent and insurance broker

The New York courts have historically held that insurance brokers are agents of the insured, while insurance agents are agents of the insurer, and this distinction has been codified in the Insurance Law. Although this distinction between an insurance agent and an insurance broker is important, the mere description of a person as "agent" or "broker" is not conclusive of the nature of the relationship which he occupies. The acts of a person, not the label attached to that person, determine the category into which the person falls; thus while it is well-established that in New York an insurance broker is the agent of the insured, such a broker will be held to have acted as the insurer's agent where there is some evidence of action on the insurer's part, or facts from which a general authority to represent the insurer may be inferred. Where there is no evidence that a broker was acting as an insurer's agent, however, there is no basis for imputing such broker's knowledge to that insurer.] In general, an individual, whether labeled an agent or a broker, may be the representative of the insurer as well as of the insured, or may even act in a dual capacity.

§ 380. Insurance broker—as representative of insured

By statutory definitionand judicial interpretation, it is well established in New York that an insurance broker is the agent of the insured. Under certain circumstances and for certain purposes, however, an insurance broker may represent either the insured or the insurer, or both; the question is one of fact and the test usually applied is whether the broker at the time of effecting the insurance was actually or ostensibly affiliated with and employed by the insurer or whether he was acting independently of the insurer. In this connection the fact that the broker is not on the payroll of any particular company, either directly or indirectly, is significant in determining that the broker is not the agent of the insurer. However, ordinarily the mere fact that the broker receives commissions for placing the insurance policy does not affect his being the agent of the insured.

An insurance broker, like other brokers, is primarily the agent of the first person who employs him, and is therefore ordinarily the agent of the insured as to all matters within the scope of his employment. Acts or knowledge of such broker bind the insured and not the company. Specifically, a broker is the agent of the insured where he is employed by the insured to procure insurance, including the making of the application, even though the application is submitted by the broker to the insurer on a form supplied by the insurer; to pay the premiums and receive a receipt from the insurer; to obtain a new policy upon cancellation of the one obtained by him; or in general to maintain insurance protection in force and effect upon the property. In general, then, when acting for the insured the broker is deemed the insured's agent.

If insurance is obtained from a company which the agent does not represent, he is generally regarded as acting as a broker and as the agent of the insured in procuring such insurance, whereas if it is obtained from a company which he does represent, he is usually held to be the agent of the company and not of the insured. Thus where an insured's practice was to advise a broker of the amount of insurance desired without indicating what company to obtain it from, leaving to the broker all the matters in reference thereto (and with the broker paying the premium and the insured paying the broker), the broker acted as the agent of the insured (and not of the insurer) in writing the policy. And one who procured an application for insurance and caused an accredited agent of the insurer to sign the policy is a mere broker and not the agent of the insurer in taking representations from the insured.

Brokers in "surplus line" insurance are agents of the insured and not of the foreign insurer.

§ 399. Excess line broker—licensing

Special licensing provisions and policy procurement procedures apply to so-called "excess line brokers." An excess line broker is licensed by the Superintendent and thereby authorized, subject to certain restrictions, to procure insurance policies (of specified kinds of insurance) from insurers which are not authorized to transact business

in this state. An excess line broker is required to use due care in selecting the unauthorized insurer from whom policies are procured under his license, and his license may be suspended or revoked by the Superintendent if such is in the public interest.

A prerequisite for the issuance or renewal of a license is a proper application and the payment of the prescribed fee. The license must be renewed biannually, and a license issued to a firm, association, or corporation authorizes as sublicensee only the sublicensees named in the license as insurance broker who may act thereunder only in the name of and on behalf of the licensee. A bond is also required.

400. Excess line broker—Procedures for procuring policies

The standards of conduct required of excess line brokers by the legislature are couched in general terms of due care and diligent effort rather than in specific terms because it is impossible for the legislature to appraise beforehand the myriad situations in which a particular excess line policy is to be applied and to formulate specific rules for each situation. However, restrictions are placed on the right to procure insurance from a foreign or alien insurer controlled by a government which provides subsidies or other competitive advantages.

When procuring an insurance policy, the excess line broker and the insured must submit the declarations page or cover note of every policy procured to the excess line association.The submission of insurance documents to the excess line association must be accompanied by a statement subscribed to, and affirmed by, the licensee or sublicensee as true and correct under the penalties of perjury that, after diligent effort, the full amount of insurance required could not be procured, from authorized insurers, each of which is authorized to write insurance of the kind requested and which the licensee has reason to believe might consider writing the type of coverage or class of insurance involved, and further showing that the amount of insurance procured from an unauthorized insurer is only the excess over the amount procurable from an authorized insurer. Such submissions must be made by the licensee with the Superintendent within 45 days after a relevant policy is procured. The excess line broker must keep complete

records of all policies procured, which the Superintendent has the right to examine. Moreover, such licensee must pay to the Superintendent a certain percentage of the gross premiums charged the insured by the insurer to be distributed by the Superintendent in a specified manner.

Before placing business with an unauthorized insurer, each licensee must ascertain and verify that such insurer is authorized in its domiciliary jurisdiction to write the insurance policy proposed to be procured, and it is unlawful for a licensee to deliver a declarations page or cover note evidencing insurance unless such insurance document is stamped by the excess line association or is exempt from such requirements.The broker must also advise the insured in writing that the insurer is unauthorized, and that an insolvency of such insurer is not covered by the New York state insolvency fund.

The statutory provisions relating to surplus line insurance do not have the effect of authorizing foreign insurance companies to transact business in the state, but merely allow brokers to procure such insurance from a foreign insurance company. Therefore, when the agreement of an insured to procure other insurance is conditional upon the fact that the insurer is not authorized to do business in the state, such insurer cannot contend that it had a limited authority to do business in the state by force of the above statutory provisions so as to make the contract one which was perfected in this state.

A complaint in an action by a professional corporation against a liability insurer for a declaration that defendant was obligated to defend and indemnify with respect to a malpractice action instituted against plaintiff must be dismissed where the complaint failed to allege that defendant ever issued a policy and was at most an excess line broker and not an insurer.

The Superintendent may issue a replacement for a currently in force license which has been lost or destroyed.

§ 402. Brokers for unlicensed or unauthorized insurers

Although, as a general rule a broker may not act for or aid an unlicensed or unauthorized insurer, an insurance broker may negotiate a contract of insurance or place insurance in an unauthorized insurer, as to a contract of reinsurance on risks produced by such broker, insurance against loss of or damage to property having a permanent situs outside of the state, and in the case of certain marine insurance risks. A licensed insurance broker may also negotiate a contract of insurance or place insurance in an unauthorized insurer in regard to certain types of liability and fidelity insurance regarding property or risks outside the borders of the state provided the unauthorized insurer is one in which the insurance could be placed if the negotiation and placing were done in the state where the risk is located.

A licensed reinsurance intermediary may negotiate a contract of reinsurance, or place reinsurance, in an insurer not authorized to do business in the state.

§ 455. Duty to use care, skill, and diligence

An agent or broker employed to effect insurance for another is generally chargeable with a duty of reasonable diligence in effecting the insurance; thereafter, under the common law, insurance agents have no continuing duty to advise, guide, or direct a client to obtain additional coverage. Evidence of the customary practices of other insurance brokers is admissible to establish the standard of skill and knowledge normally possessed by members of that profession.

Observation: Exceptional and particularized situations may arise in which insurance agents, through their conduct or by express or implied contract with customers and clients, may assume or acquire duties in addition to those fixed at common law. Whether such additional responsibilities should be recognized and given legal effect is governed by the particular relationship between the parties and is best determined on a case-by-case basis. The uniqueness of customary and ordinary insurance relationships and transactions is manifested by the absence of obligations arising from the speaker's professional status with regard to the procurement of additional coverage; it is well-settled that agents have no continuing duty to advise,

guide, or direct a client to obtain additional coverage, and thus public policy considerations will have to be weighed on the question of whether to override this settled principle by recognizing additional advisement duties on insurance agents and brokers.

If the broker or agent acts in good faith and with reasonable care, skill, and diligence to effect the insurance, he is not liable for damages which are not due to his fault. But any negligence on his part in procuring the insurance renders him liable to his principal for the resulting loss, except where the insured has waived the broker's breach of duty, or where there is no proximate cause. Although, those who provide or procure insurance have no duty to defend someone who is not insured due to a claim against him occurring outside the time period of the relevant policy, where an insurance agent affirmatively represents that a defense has been undertaken on behalf of the uninsured, that agent has a duty to use reasonable care to assure that the uninsured's interests are protected.

Practice Guide: Allegations of negligence against an insurance agent for allegedly failing to procure proper coverage in performance of its contractual obligations are governed by a 6-year statute of limitations.

§ 459. Duty to procure insurance; broker liable

The law is reasonably settled on initial principles that an insurance agent has a common-law duty to obtain requested coverage for a client within a reasonable time or inform the client of the inability to do so, but such an agent has no continuing duty to advise, guide, or direct a client to obtain additional coverage. Thus, an agent must exercise reasonable skill and ordinary diligence in doing what is necessary to effect a policy, seeing that it effectually covers the property to be insured, selecting the insurer and ascertaining that he is of good credit and standing, and obtaining the best possible terms; in all, he is obligated to exercise the strictest veracity, candor, and good faith toward both his employer and the insured. This is so because an insurance agent or broker, by holding himself out as being in the business of effecting insurance, is presumed to have the requisite knowledge, information, and skill to accomplish such

purpose on behalf of his patrons. Accordingly, a broker or agent who, with a view to compensation for his services, undertakes to procure insurance for another, is under a duty to do so, and if he unjustifiably and through his fault or neglect fails to do so, he will be held liable for any damage resulting therefrom.

The liability of the broker is limited to the amount that would have been borne by the insurer had the policy been in force.

The inability of the agent to procure the insurance required by his instructions is not a defense where he falsely informs the applicant that the insurance has been obtained. Where defendant agent has negligently failed to procure any insurance, he is barred from asserting that plaintiff was not the sole owner of the property and was therefore not entitled to recover on the policy.

The question whether insured's agent failed to procure an insurance policy in accordance with his agreement to do so presents a question of fact for the jury.

There is a doctrine in New York law that a declaratory judgment action brought against an insurer seeking to determine the availability of coverage is not premature prior to the existence of a rejected claim if there is a likelihood of exposure, but while some authorities hold that the doctrine applies in actions against brokers for failure to procure insurance, other authorities have held the doctrine is inapplicable.

§ 2101. Definitions

……(c) In this article, “insurance broker” means any person, firm, association or corporation who or which for any compensation, commission or other thing of value acts or aids in any manner in soliciting, negotiating or selling, any insurance or annuity contract or in placing risks or taking out insurance, on behalf of an insured other than himself, herself or itself or on behalf of any licensed insurance broker, except that such term shall not include:

(1) any salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission;

(2) an officer, director or employee of a licensed insurance producer, provided that the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state and:

(A) the officer, director or employee's activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance; or

(B) the officer, director or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(C) the officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting licensed insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

(3) any foreign freight forwarder registered with the federal maritime commission or any custom house broker licensed by the United States treasury department, when such forwarder or broker negotiates, issues or delivers a certificate or other evidence of a contract of insurance under an open marine policy naming the forwarder or broker as the insured and covering exports or imports serviced by such forwarder or broker on behalf of others, provided that such forwarder or broker takes or receives no money or other thing of value when acting as hereinafter specified, from any insurer or representative thereof, unless the receipt of money or thing of value is authorized under this chapter;

(4) any service contract provider or any administrator or person designated by a service contract provider who in this state markets, sells, offers for sale, issues, makes, proposes to make or administers service contracts pursuant to article seventy-nine of this chapter;

(5) a person who secures and furnishes information for the purpose of group life insurance, group property/casualty insurance, group annuities, group or blanket

accident and health insurance; or for the purpose of enrolling individuals under plans, issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass marketed property/casualty insurance, where no commission is paid to the person for the service;

(6) an employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, fraternal benefit society or health maintenance organization, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(7) a person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state; or

(8) a person who is not a resident of this state who sells, solicits or negotiates a contract for commercial property/casualty risks to an insured with risks located in more than one state insured under that contract, provided that such person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

(e) In this article, “non-resident insurance broker”, means an individual who is a non-resident of this state and who is licensed or authorized to act as an insurance broker in the state in which he resides, or in which he, or the firm or association of which he is a member or employee, or the corporation of which he is an officer, director or employee, maintains an office as an insurance broker.

§ 2102. Acting without a license

…(b)(1) Unless licensed as an insurance agent, insurance broker or insurance consultant, no person, firm, association or corporation shall in this state identify or hold himself or itself out to be an insurance advisor, insurance consultant or insurance counselor.

(2) No person, firm, association or corporation shall use any other designation or title which is likely to mislead the public or shall hold himself or itself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified.

(3) Unless licensed as an insurance agent, insurance broker or insurance consultant with respect to the relevant kinds of insurance, no person, firm, association or corporation shall receive any money, fee, commission or thing of value for examining, appraising, reviewing or evaluating any insurance policy, annuity or pension contract, plan or program or shall make recommendations or give advice with regard to any of the above.

…(e) (1) No person shall accept any commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

(2) Renewal or other deferred commissions may be paid to a person or other entity for selling, soliciting or negotiating insurance in this state if the person or other entity was required to be licensed under this article at the time of the sale, solicitation or negotiation and was so licensed at that time.

(3) An insurer, fraternal benefit society, health maintenance organization or licensed insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance producer or to persons who do not sell, solicit or negotiate a contract of insurance in this state, unless the payment would violate any provision of this chapter.

(f) Every licensee shall notify the superintendent upon changing his, her or its legal name. Except for an individual licensee's own legal name, no licensee shall use any name, in conducting a business regulated by this article that has not been previously approved by the superintendent.

§ 2104. Insurance brokers; licensing

(a)(1) The superintendent may issue an insurance broker's license to any individual, firm, association or corporation, hereinafter designated as “licensee,” who or which is deemed by him trustworthy and competent to act as a broker in such manner as to safeguard the interests of the insured, and who or which is otherwise qualified as herein required, and who or which has complied with the prerequisites herein prescribed.

(2) The purpose of this section is to protect the public by requiring and maintaining professional standards of conduct on the part of all insurance brokers acting as such within this state.

(b)(1) Such license shall confer upon the licensee authority to act in this state as insurance broker, and upon every natural person named as sub-licensee in such license authority to act in this state as insurance broker in the name of and on behalf of such licensee, with respect to the following lines of authority:

(A) life insurance, variable life and variable annuity products, accident and health insurance and sickness or any other line of authority deemed to be similar by the superintendent, including for this purpose, health maintenance organization contracts and legal services insurance; or

(B) any and every line of authority, except life insurance and variable life and variable annuity products.

(2) A license issued to a corporation may name as sub-licensees only the officers and directors of such corporation, and a license issued to a firm or association may name as sub-licensees only the individual members of such firm or association. Each sub-licensee named in such license must be qualified to obtain a

license as an insurance broker, and for each such sub-licensee a fee must be paid at the times and at the rates hereinafter specified.

(3) The license shall contain the licensee's name, address, personal identification number, the date of issuance, the licensee's lines of authority, the expiration date and any other information the superintendent deems necessary.

(c)(1) Every individual applicant for such license and every proposed sub-licensee shall be of the age of eighteen years or over at the time of the issuance of such license. No individual shall be deemed qualified to obtain such license or to be named as sub-licensee therein unless he shall comply with the requirements of subparagraph (A), (B) or (C) following:

(A) He shall have successfully completed a course or courses, approved as to method and content by the superintendent, covering the principal branches of the insurance business and requiring, in the case of a license under subparagraph (B) of paragraph one of subsection (b) of this section, not less than ninety hours, and in the case of a license under subparagraph (A) of paragraph one of subsection (b) of this section, not less than forty hours of classroom work or the equivalent thereof in correspondence work. Such course or courses either were given by a degree conferring college or university which has, when such course is taken by such individual, a curriculum or curricula registered with the state education department, whether such course be given as a part of any such curriculum or separately, or were given by the The College of Insurance, or by any other institution which maintains equivalent standards of instruction, which has been continuously in existence for not less than five years prior to the taking of such course by such individual, and which shall have been approved for such purpose by the superintendent.

(B) He shall have been regularly employed by an insurance company or an insurance agent or an insurance broker, for a period or periods aggregating not less than one year during the three years next preceding the date of application, in the case of a license under subparagraph (B) of paragraph one of subsection (b) of this section, in responsible insurance duties relating to the underwriting or adjusting of

losses in any one or more of the following branches of insurance: fire, marine, liability and workers' compensation, and fidelity and surety; in the case of a license under subparagraph (A) of paragraph one of subsection (b) of this section in responsible insurance duties relating to the use of life insurance, accident and health insurance and annuity contracts in the design and administration of plans for estate conservation and distribution, employee benefits and business continuation; and he shall submit with his application a statement subscribed and affirmed as true under the penalties of perjury by such employer or employers stating facts which show compliance with this requirement.

(C) He shall have been regularly employed by an insurance company or an insurance agent or an insurance broker, for a period or periods aggregating not less than one year, during the three years next preceding the date of entrance into the service of the armed forces of the United States or immediately following his discharge therefrom, in the case of a license under subparagraph (B) of paragraph one of subsection (b) of this section, in responsible insurance duties relating to the underwriting or adjusting of losses in any one or more of the following branches of insurance: fire, marine, liability and workers' compensation, and fidelity and surety; in the case of a license under subparagraph (A) of paragraph one of subsection (b) of this section in responsible insurance duties relating to the use of life insurance, accident and health insurance and annuity contracts in the design and administration of plans for estate conservation and distribution, employee benefits and business continuation; provided the application for such license is filed within one year from the date of discharge; and he shall submit with his application a statement subscribed and affirmed as true under the penalties of perjury by such employer or employers stating facts which show compliance with this requirement.

(2) The requirements of subparagraphs (A), (B) and (C) of paragraph one hereof shall not apply to any non-resident insurance broker.

(d)(1) Before any such license shall be issued by the superintendent and before each renewal, there shall be filed in his office a written application therefor by the proposed licensee and by each proposed sub-licensee. Such application shall be in the form or forms and supplements prescribed by the superintendent and contain such information as he or she shall require and for each business entity, the sub-licensee or sub-licensees named in the application shall be designated responsible for the business entity's compliance with the insurance laws, rules and regulations of this state. In connection with any such application the superintendent shall have power to examine under oath any person who has or appears to have relevant information, and to make an examination of the books, records and affairs of any such applicant.

(2) The superintendent may require from every applicant and from every proposed sub-licensee, before issuing any such license or renewal license, a statement subscribed and affirmed by the applicant and proposed sub-licensee as true under the penalties of perjury as to the ownership of any interest in an applicant firm, association or corporation and as to facts indicating whether any applicant has been by reason of an existing license, if any, or will be by reason of the license applied for, receiving any benefit or advantage in violation of section 2324 of this chapter, and also as to such facts as he may deem pertinent to the requirements of this subsection.

(3) The superintendent may refuse to issue a license or renewal license, as the case may be, to any applicant if he finds that such applicant has been or will be, as aforesaid, receiving any benefit or advantage in violation of section 2324 of this chapter, or if he finds that more than ten percent of the aggregate net commissions, received during the term of the existing license, if any, or to be received during the term of the license applied for, by the applicant, resulted or will result from insurance on the property and risks set forth in subparagraphs (A), (B) and (C) of paragraph one of subsection (i) of section 2103 of this article.

(4) Nothing herein shall be deemed to disqualify any applicant by reason of acts done or facts existing at a time when the same did not, under the law then in force, constitute or contribute to constituting such a disqualification.

(e)(1)(A) The superintendent shall, in order to determine the competency of each applicant for an insurance broker's license, other than a renewal license, and of each proposed sub-licensee, to act as insurance broker, require every such person to submit to, and pass to the satisfaction of the superintendent, a personal written examination on the branches of the insurance business relevant to such license. Such examination shall be held at such times and places as the superintendent shall from time to time determine.

(B) An exemption may be granted, at the discretion of the superintendent, as to all or any part of the written examination or the prerequisite course specified in subparagraph (A) of paragraph one of subsection (c) of this section, of any individual seeking to be named a licensee or sub-licensee, upon whom has been conferred, in the case of a license under subparagraph (B) of paragraph one of subsection (b) of this section, the Chartered Property Casualty Underwriter (C.P.C.U.) designation by the American Institute for Property and Liability Underwriters, or on whom has been conferred, in the case of a license under subparagraph (A) of paragraph one of subsection (b) of this section, the Chartered Life Underwriter (C.L.U.), Chartered Financial Consultant (Ch.F.C.) or the Master of Science in Financial Services (M.S.F.S.) designations by the American College of Financial Service Professionals.

(2) Every individual applying to take any written examination shall, at the time of applying therefor, pay to the superintendent, or, at the discretion of the superintendent, directly to any organization that is under contract to provide examination services, an examination fee of an amount which is the actual documented administrative cost of conducting said qualifying examination as certified by the superintendent from time to time. An examination fee represents an administrative expense and is not refundable. The superintendent may, whenever in his judgment it appears advisable in order to determine the competency of any applicant for a renewal license, or of any proposed sub-licensee to be named therein, require such person to pass to the satisfaction of the superintendent, a similar written examination.

(3) The superintendent may issue a license to any person seeking to be named as licensee or sub-licensee who:

(A) has since July first, nineteen hundred twenty-eight, passed the examination given by the superintendent for that insurance broker's license and was licensed as such;

(B) within three years from the date of the receipt of his application was a similarly licensed insurance broker;

(C) within ten years from the date of the receipt of his application was, in the case of a license under subparagraph (B) of paragraph one of subsection (b) of this section, a similarly licensed insurance broker and during the period of three years next preceding the receipt of his application was licensed as a property/casualty insurance agent and, in the case of a license under subparagraph (A) of paragraph one of subsection (b) of this section, was a similarly licensed insurance broker and during the period of three years next preceding the receipt of his application was licensed as a life and accident and health insurance agent;

(D) has regularly and continuously acted, in the case of a license under subparagraph (B) of paragraph one of subsection (b) of this section, as a licensed resident property/casualty and accident and health insurance agent and, in the case of a license under subparagraph (A) of paragraph one of subsection (b) of this section, acted as a licensed life and accident and health insurance agent for a period of at least five years immediately preceding the date of receipt of his application;

(E) is a non-resident insurance broker for similar lines;

(F) served as a member of the armed forces of the United States at any time, and shall have been discharged under conditions other than dishonorable and who within three years prior to his entry into the armed forces held a license as insurance broker for similar lines, provided his application for such license is filed before one year from the date of final discharge; or

(G) was previously licensed for the same line or lines of authority in another state, provided, however, that the applicant's home state grants non-resident

licenses to residents of this state on the same basis. Such individual shall also not be required to complete any prelicensing education. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the date of cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested. An individual or entity licensed in another state who moves to this state shall make an application within ninety days of establishing legal residence to become a resident licensee. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the superintendent determines otherwise by regulation.

(f)(1) At the time of application for every such license, and for every biennial renewal thereof, there shall be paid to the superintendent for each individual applicant and for each proposed sub-licensee the sum of forty dollars for each year or fraction of a year in which a license shall be valid. If, however, the applicant or a proposed sub-licensee should withdraw his or its application or the superintendent should deny his or its application before the license applied for is issued, the superintendent may refund the fee paid by the applicant for the license applied for, excepting any examination fees required pursuant to subsection (e) of this section.

(2) No license fee shall be required of any person who served as a member of the armed forces of the United States at any time, and who shall have been discharged, under conditions other than dishonorable, in a current licensing period, for the duration of such period.

(g)(1) Every insurance broker's license issued pursuant to this section to a business entity shall be for a term expiring on the thirty-first day of October of even-numbered years. On and after January first, two thousand seven, every license issued pursuant to this section to an individual, and every license in effect prior to January first,

two thousand seven that was issued pursuant to this section to an individual, who was born in an odd numbered year, shall expire on the individual's birthday in each odd numbered year. On and after January first, two thousand seven, every license issued pursuant to this section to an individual, and every license in effect prior to January first, two thousand seven that was issued pursuant to this section to an individual, who was born in an even numbered year, shall expire on the individual's birthday in each even numbered year. Every such license may be renewed for the ensuing period of twenty-four months upon the filing of an application in conformity with this section.

(2) An application for a renewal license shall be filed with the superintendent not less than sixty days prior to the date the license expires or the applicant shall be required to pay, in addition to the fee required in subsection (f) of this section, a further fee for late filing of ten dollars.

(3) If an application for a renewal license shall have been filed with the superintendent before the expiration of such license, the license sought to be renewed shall continue in full force and effect either until the issuance by the superintendent of the renewal license applied for or until five days after the superintendent shall have refused to issue such renewal license and given notice of such refusal to the applicant and to each proposed sub-licensee.

(4) Before refusing to renew any such license, except on the ground of failure to pass a written examination required pursuant to subsection (e) hereof, the superintendent shall notify the applicant of his intention so to do and shall give such applicant a hearing.

(5) (A) The superintendent may in issuing a renewal license dispense with the requirement of a verified application by any individual licensee or sub-licensee who, by reason of being engaged in any military service for the United States, is unable to make personal application for such renewal license, upon the filing of an application on behalf of such individual, in such form as the superintendent shall prescribe, by some person or persons who in his judgment have knowledge of the facts and who make affidavit

showing such military service and the inability of such insurance broker to make personal application.

(B) An individual licensee or sub-licensee who is unable to comply with license renewal procedures due to other extenuating circumstances, such as a long-term medical disability, may request a waiver of such procedures, in such form as the superintendent shall prescribe. The licensee or sub-licensee may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(h) Any corporation, association or firm licensed as an insurance broker under this section may at any time make an application to the superintendent for the issuance of a supplemental license authorizing additional officers or directors of such corporation, or additional members of such firm or association, as the case may be, to act as sub-licensees, and, if the requirements of this section are fully complied with as to each of such proposed sub-licensees, the superintendent may issue to such licensee a supplemental license naming such additional person or persons as sub-licensees.

(i) If an application for a license under this section be rejected, or if such a license be suspended or revoked by the superintendent, he shall forthwith give notice thereof to the applicant, or to the licensee.

(j) The superintendent may issue a replacement for a currently in force license which has been lost or destroyed. Before such replacement license shall be issued, there shall be on file in the office of the superintendent a written application for such replacement license, affirming under penalty of perjury that the original license has been lost or destroyed, together with a fee of fifteen dollars.

§ 2105. Excess line brokers; licensing

(a) The superintendent may issue an excess line broker's license to any person, firm, association or corporation who or which is domiciled or maintains an office in this state and is licensed as an insurance broker under section 2104 of this article, or who or which is licensed as an excess line broker in the licensee's home state,

provided, however, that the applicant's home state grants non-resident licenses to residents of this state on the same basis, except that reciprocity is not required in regard to the placement of liability insurance on behalf of a purchasing group or any of its members; authorizing such person, firm, association or corporation to procure, subject to the restrictions herein provided, policies of insurance from insurers which are not authorized to transact business in this state of the kind or kinds of insurance specified in paragraphs 4 through 14,16,17,19,20,22,27,28 and 31 of subsection (a) of section 1113 of this chapter and in subsection (h) of this section, provided, however, that the provisions of this section and section 2118 of this article shall not apply to ocean marine insurance and other contracts of insurance enumerated in subsections (b) and (c) of section 2117 of this article. Such license may be suspended or revoked by the superintendent whenever in his judgment such suspension or revocation will best promote the interests of the people of this state.

(b) Before the superintendent issues any such license or renewal, there shall be filed in the superintendent's office an application by the person, firm, association or corporation desiring such license, in such form or forms, and supplements thereto, and containing information the superintendent prescribes. For each business entity, the sub-licensee or sub-licensees named in the application shall be designated responsible for the business entity's compliance with the insurance laws, rules and regulations of this state. A person or entity licensed as an excess line broker in his, her or its home state may receive a non-resident excess line broker license pursuant to subsection (a) of this section with the submission of the application.

(c)(1) At the time of application for every such license, and for every renewal, each applicant shall pay the superintendent the following fees:

(A) Two hundred dollars for each year or fraction of a year in which a license shall be valid, if the applicant maintains an office in, or acts as an excess line broker in placing insurance on risks located in, any county in this state having a population of one hundred thousand or more inhabitants.

(B) Twenty-five dollars for each year or fraction of a year in which a license shall be valid in all other cases.

(2) The population of any county shall be determined by the most recent official census, whether by the United States or by this state.

(d) Every license issued pursuant to this section shall be for a term expiring with the expiration of the qualifying broker license and may be renewed for the ensuing period of twenty-four months upon the filing of an application in conformity with subsection (b) of this section and paying the fee prescribed by subsection (c) of this section.

(e) Any such license issued to a firm, association or corporation shall authorize as sub-licensee only the sub-licensees named in its license as insurance broker, and each such sub-licensee may act thereunder only in the name of and on behalf of the licensee.

(g) The superintendent may issue a replacement for a currently in force license which has been lost or destroyed. Before such replacement license shall be issued, there shall be on file in the office of the superintendent a written application for such replacement license, affirming under penalty of perjury that the original license has been lost or destroyed, together with a fee of fifteen dollars.

(h) Pursuant to subsection (a) of this section, an excess line broker may procure policies of insurance from insurers which are not authorized to transact business in this state for personal accident insurance and accident disability insurance, in which the insured is a non-resident of this state, and the nature of the risk to be insured is related to the operation of motor vehicles at high speeds for the enjoyment of spectators, is unusual and difficult to place and where such broker, after diligent effort, could not procure substantially similar coverage from an insurer authorized to do business in this state.

§ 2109. Agents and brokers; temporary license in case of death, service in armed forces or disability

(a) The superintendent may issue a temporary insurance agent's or insurance broker's license, or both, without requiring the applicant to pass a written examination or to satisfy the requirements of subsection (c) of section 2101 of this article except as to age, in the case of a license issued pursuant to paragraph two hereof, in the following cases:

(1) in the case of the death of a person who at the time of his death was a licensed accident and health insurance agent under subsection (a) of section 2103 of this article, a licensed insurance agent under subsection (b) of such section or a licensed insurance broker:

(A) to the executor or administrator of the estate of such deceased agent or broker;

(B) to a surviving next of kin of such deceased agent or broker, where no administrator of his estate has been appointed and no executor has qualified under his duly probated will;

(C) to the surviving member or members of a firm or association, which at the time of the death of a member was such a licensed insurance agent or licensed insurance broker; or

(D) to an officer or director of a corporation upon the death of the only officer or director who was qualified as a sub-licensee or to the executor or administrator of the estate of such deceased officer or director;

(2) to any person who may be designated by a person licensed pursuant to this chapter as an insurance agent, or an insurance broker, or both, and who is absent because of service in any branch of the armed forces of the United States, including a partnership or corporation which is licensed pursuant to this chapter as an insurance agent, or as an insurance broker, or both, in a case where the sub-licensee or all sub-licensees, if more than one, named in the license or licenses issued to such partnership or corporation is or are absent because of service in any branch of the armed forces of the United States; and

(3) to the next of kin of a person who has become totally disabled and prevented from pursuing any of the duties of his or her occupation, and who at the commencement of his or her disability was a licensed accident and health insurance agent under subsection (a) of section 2103 of this article, a licensed insurance agent under subsection (b) of such section or a licensed insurance broker.

(b)(1) Before any such license or licenses shall be issued, there shall be filed in the office of the superintendent a written application by the person or persons desiring such license or licenses, together with a written designation of such person or persons, in the case of a license issued pursuant to paragraph two of subsection (a) hereof, in such form or forms and supplements thereto, and containing such information, as the superintendent prescribes.

(2) No fee shall be charged for any such license or any renewal thereof, except that fees for the renewals of any license issued pursuant to paragraph two of subsection (a) hereof shall be one-half of the fees otherwise required by this chapter for such license.

(c) Such license or licenses shall authorize the person or persons named therein to renew the business of the deceased, absent or disabled agent or broker, or both, as the case may be, or of the firm or, in the case of a license issued pursuant to paragraph one or three of subsection (a) hereof, the association whose business is being continued thereunder, each such agent, broker, firm or association being referred to in this section as “original licensee”, expiring during the period in which such temporary license or licenses are in force, to collect premiums due and payable to the original licensee or, in the case of a license issued pursuant to paragraph one of subsection (a) hereof, to his estate, and to perform such other acts as an insurance agent or as an insurance broker, or both, as the case may be, as are incidental to the continuance of the insurance business of such original licensee.

(d) A person eligible for such a temporary agent's license may be licensed only as an agent of the insurer or insurers which such original licensee was licensed to represent at the time of such death, entrance upon military or naval duty or disability.

(e)(1) In the case of a license or licenses issued pursuant to paragraph one of subsection (a) of this section, the license or licenses may be issued for a term not exceeding ninety days from the death of such deceased, and the superintendent may in his discretion renew such license or licenses for an additional term or terms of ninety days each, not exceeding in the aggregate fifteen months.

(2) The superintendent may issue renewal licenses for an additional term or terms of ninety days each exceeding the aggregate period of fifteen months when in his judgment it will best serve the interests of any person serving in the armed forces of the United States.

(3) A license issued to the next of kin shall not be renewed if, before the expiration of its term, an administrator or executor of the deceased shall have applied for and qualified for such a license.

(4) No person or persons so licensed shall, by virtue of such license, be authorized to solicit, negotiate or sell new insurance.

(f)(1) In the case of a license or licenses issued pursuant to paragraph two of subsection (a) hereof, the license or licenses may be issued for a term not exceeding six months, and the superintendent may in his discretion renew such license or licenses for an additional term or terms of six months each.

(2) The term of any such license or renewal shall in no event extend beyond sixty days after the final discharge of such absent insurance producer from military or naval duty, and each such license or renewal shall expire on such day as if that were the day specified therein for the expiration thereof.

(3) No person so licensed shall solicit new business under such license.

(g)(1) In the case of a license or licenses issued pursuant to paragraph three of subsection (a) hereof, the license or licenses may be issued for a term not exceeding ninety days from the disability of such person, and the superintendent may in his discretion renew such license or licenses for an additional term or terms of ninety days each, not exceeding in the aggregate fifteen months.

(2) No person or persons so licensed shall, by virtue of such license, be authorized to solicit, negotiate or sell new insurance.

§ 2110. Revocation or suspension of license of insurance producer, insurance consultant or adjuster

(a) The superintendent may refuse to renew, revoke, or may suspend for a period the superintendent determines the license of any insurance producer, insurance consultant or adjuster, if, after notice and hearing, the superintendent determines that the licensee or any sub-licensee has:

(1) violated any insurance laws, or violated any regulation, subpoena or order of the superintendent of insurance or of another state's insurance commissioner, or has violated any law in the course of his dealings in such capacity;

(2) provided materially incorrect, materially misleading, materially incomplete or materially untrue information in the license application;

(3) obtained or attempted to obtain a license through misrepresentation or fraud;

(4)(A) used fraudulent, coercive or dishonest practices;

(B) demonstrated incompetence;

(C) demonstrated untrustworthiness; or

(D) demonstrated financial irresponsibility in the conduct of business in this state or elsewhere;

(5) improperly withheld, misappropriated or converted any monies or properties received in the course of business in this state or elsewhere;

(6) intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance;

(7) has been convicted of a felony;

(8) admitted or been found to have committed any insurance unfair trade practice or fraud;

(9) had an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(10) forged another's name to an application for insurance or to any document related to an insurance transaction;

(11) improperly used notes or any other reference material to complete an examination for an insurance license;

(12) knowingly accepted insurance business from an individual who is not licensed;

(13) failed to comply with an administrative or court order imposing a child support obligation; or

(14) failed to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(b) Before revoking or suspending the license of any insurance producer or other licensee pursuant to the provisions of this article, the superintendent shall, except when proceeding pursuant to subsection (f) of this section, give notice to the licensee and to every sub-licensee and shall hold, or cause to be held, a hearing not less than ten days after the giving of such notice.

(c) If an insurance producer's license or other licensee's license pursuant to the provisions of this article is revoked or suspended by the superintendent, he shall forthwith give notice to the licensee.

(d) The revocation or suspension of any insurance producer's license or other licensee's license pursuant to the provisions of this article shall terminate forthwith such producer's license or other licensee's license and the authority conferred thereby upon all sub-licensees.

(e) (1) No individual, corporation, firm or association whose license as an insurance producer or other licensee subject to subsection (a) of this section has been revoked, and no firm or association of which such individual is a member, and no corporation of which such individual is an officer or director, shall be entitled to obtain any license under the provisions of this chapter for a period of one year after such revocation, or, if such revocation be judicially reviewed, for one year after the final determination thereof affirming the action of the superintendent in revoking such license.

(2) If any such license held by a firm, association or corporation be revoked, no member of such firm or association and no officer or director of such corporation shall be entitled to obtain any license, or to be named as a sub-licensee in any such license, for the same period of time, unless the superintendent determines, after notice and hearing, that such member, officer or director was not personally at fault in the matter on account of which such license was revoked.

(f) (1) As used in this subsection, “non-resident insurance producer's license or sub-license” means a license or sub-license in such capacity issued pursuant to paragraph five of subsection (g) of section 2103 or subsection (e) of section 2104 of this article.

(2) A non-resident insurance producer's license or sub-license may be summarily revoked in the event that the licensee's license as an agent, broker, adjuster or in any other capacity under the insurance law of the licensee's home state of domicile or such license of the firm or association of which the licensee is a member, employee or sub-licensee, or such license of the corporation of which the licensee is an officer, director, employee or sub-licensee has been suspended or revoked or renewal thereof denied in the licensee's home state of domicile by a procedure affording to the licensee or it a statutory right to a hearing, for action or conduct which, if it had been established upon a hearing before the superintendent, would have constituted grounds for revocation of a license under subsection (a) of this section.

(3) Before revoking the license of any non-resident insurance producer in accordance with this section, the superintendent shall give ten days' notice in writing to such producer of the action proposed to be taken, which notice shall be given in accordance with the applicable provisions of subsections (a) and (d) of section 303 of this chapter.

(4) Upon submission to the superintendent of satisfactory proof that a suspension or revocation of a license issued by a home state to act as an insurance agent, insurance broker, adjuster or in another licensed capacity under the insurance law of such other state or a denial of renewal thereof has been duly withdrawn, set

aside, reversed or voided, the superintendent shall thereupon reinstate and restore any and all licenses revoked in accordance with the provisions of this subsection.

(g) If any licensed insurance producer or any person aggrieved shall file with the superintendent a verified complaint setting forth facts tending to show sufficient ground for the revocation or suspension of any insurance producer's license, or if any licensed adjuster or any person aggrieved files with the superintendent a verified complaint setting forth facts showing sufficient grounds for the suspension or revocation of any adjuster's license, the superintendent shall, after notice and a hearing, determine whether such license shall be suspended or revoked.

(h) The superintendent shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter against any person or entity who is under investigation for or charged with a violation of this chapter, even if the person's or entity's license or registration has been surrendered, or has expired or has lapsed by operation of law.

(i) A licensee subject to this article shall report to the superintendent any administrative action taken against the licensee in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

(j) Within thirty days of the initial pretrial hearing date, a licensee subject to this article shall report to the superintendent any criminal prosecution of the licensee taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

§ 2111. Revoked licensees

(a)(1) No individual, corporation, partnership, association, firm or entity subject to the provisions of this chapter whose license under this article has been revoked, or whose license to engage in the business of insurance in any capacity has been revoked by any other state or territory of the United States shall become employed

or appointed as an officer, director, manager, controlling person or for other services, without the prior written approval of the superintendent, unless such services are for maintenance or are clerical or ministerial in nature.

(2) No individual, corporation, partnership, association, firm or entity subject to the provisions of this chapter shall knowingly employ or appoint any person or entity whose license issued under this article has been revoked, or whose license to engage in the business of insurance in any capacity has been revoked by any other state or territory of the United States, as an officer, director, manager, controlling person or for other services, without the prior written approval of the superintendent, unless such services are for maintenance or are clerical or ministerial in nature.

(3) No corporation or partnership subject to the provisions of this chapter shall knowingly permit any person whose license issued under this article has been revoked, or whose license to engage in the business of insurance in any capacity has been revoked by any other state, or territory of the United States, to be a shareholder or have an interest in such corporation or partnership, nor shall any such person become a shareholder or partner in such corporation or partnership, without the prior written approval of the superintendent.

(4) For the purpose of this section a “controlling person” is any person who or which, directly or indirectly, has the power to direct or cause to be directed the management, control or activities of such licensee.

(b) The superintendent may approve the employment, appointment or participation of any such person whose license has been revoked:

(1) if he determines that the duties and responsibilities of such person are subject to appropriate supervision and that such duties and responsibilities will not have an adverse effect upon the public, other licensees, or the licensee proposing employment or appointment of such person; or

(2) if such person has filed an application for relicensing pursuant to this article and the application for relicensing has not been approved or denied within one hundred twenty days following the filing thereof, unless the superintendent determines

within the said time that employment or appointment of such person by a licensee in the conduct of an insurance business would not be in the public interest.

(c) The provisions of this section shall not apply to the ownership of shares of any corporation licensed pursuant to this article if the shares of such corporation are publicly held and traded in the over-the-counter market or upon any national or regional securities exchange.

(d) The provisions of this section shall apply to relationships created or proposed on or after September first, nineteen hundred eighty-two, as well as to any person whose license is revoked on or after such date.

(e) The provisions of section one hundred thirty of the former insurance law, as added by chapter four hundred twenty-seven of the laws of nineteen hundred eighty and repealed and added by chapter four hundred eighty-four of the laws of nineteen hundred eighty-two, shall be deemed to be and remain in full force and effect and be so applicable with respect to relationships created or proposed, and germain to such section prior to September first, nineteen hundred eighty-two, as well as to any person whose license was revoked on or before such date.

§ 2112. Certificate of appointment of an insurance producer to act as an agent and notice of termination of an insurance producer

(a) Every insurer, fraternal benefit society or health maintenance organization doing business in this state shall file a certificate of appointment in such form as the superintendent may prescribe in order to appoint insurance agents to represent such insurer, fraternal benefit society or health maintenance organization.

(b) To appoint a producer, the appointing insurer shall file, in a format approved by the superintendent, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted.

(c) Certificates of appointment shall be valid until (i) terminated by the appointing insurer after a termination in accordance with the provisions of the agency contract; (ii) the license is suspended or revoked by the superintendent; or (iii) the license expires and is not renewed.

(d) Every insurer, fraternal benefit society or health maintenance organization or insurance producer or the authorized representative of the insurer, fraternal benefit society, health maintenance organization or insurance producer doing business in this state shall, upon termination of the certificate of appointment as set forth in subsection (a) of this section of any insurance agent licensed in this state, or upon termination for cause for activities as set forth in subsection (a) of section two thousand one hundred ten of this article, of the certificate of appointment, of employment, of a contract or other insurance business relationship with any insurance producer, file with the superintendent within thirty days a statement, in such form as the superintendent may prescribe, of the facts relative to such termination for cause. The insurer, fraternal benefit society, health maintenance organization, insurance producer or the authorized representative of the insurer, fraternal benefit society, health maintenance organization or insurance producer shall provide, within fifteen days after notification has been sent to the superintendent, a copy of the statement filed with the superintendent to the insurance producer at his, or her or its last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier. Every statement made pursuant to this subsection shall be deemed a privileged communication.

(e) The insurer, fraternal benefit society, health maintenance organization, insurance producer or the authorized representative of the insurer, fraternal benefit society, health maintenance organization or insurance producer shall promptly notify the superintendent in a format acceptable to the superintendent if, upon further review or investigation, the insurer, fraternal benefit society, health maintenance organization or insurance producer or the authorized representative of the insurer, fraternal benefit society, health maintenance organization or insurance producer discovers additional information that would have been reportable to the superintendent had the insurer then known of its existence. Every statement made pursuant to this subsection shall be deemed a privileged communication.

(f)(1) Within fifteen days after making the notification required by subsection (e) of this section the insurer, fraternal benefit society, health maintenance organization or insurance producer or the authorized representative of the insurer, fraternal benefit society, health maintenance organization or insurance producer shall mail a copy of the notification to the insurance producer at his, her or its last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(2) Within thirty days after the insurance producer has received the original or additional notification, the insurance producer may file written comments concerning the substance of the notification with the superintendent. The insurance producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, fraternal benefit society, health maintenance organization or insurance producer or the authorized representative of the insurer, fraternal benefit society, health maintenance organization or insurance producer and the comments shall become a part of the superintendent's file and accompany every copy of a report distributed or disclosed for any reason about the insurance producer as permitted by section one hundred ten of this chapter.

(g)(1) In the absence of fraud, bad faith or gross negligence, an insurer, fraternal benefit society or health maintenance organization, or the authorized representative of the insurer, fraternal benefit society or health maintenance organization, an insurance producer, the superintendent, or an organization of which the superintendent is a member and that compiles the information and makes it available to other insurance superintendents or commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the superintendent, from an insurer, fraternal benefit society or health maintenance

organization or the authorized representative of the insurer, or insurance producer, or a statement by a terminating insurer, fraternal benefit society or health maintenance organization or the authorized representative of the insurer, fraternal benefit society or health maintenance organization, or insurance producer to an insurer, fraternal benefit society or health maintenance organization or the authorized representative of the insurer, fraternal benefit society or health maintenance organization, or insurance producer, limited solely and exclusively to whether a termination for cause was reported to the superintendent, provided that the propriety of any termination for cause is certified in writing by an officer or authorized representative of the insurer, fraternal benefit society or health maintenance organization or the authorized representative of the insurer, fraternal benefit society or health maintenance organization or insurance producer terminating the relationship.

(2) In any action brought against a person that may have immunity under paragraph one of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the superintendent, the party bringing the action shall plead specifically in any allegation that paragraph one of this subsection does not apply because the person making the statement or providing the information did so fraudulently, in bad faith or through gross negligence.

(3) Paragraphs one and two of this subsection shall not abrogate or modify any existing statutory or common law privileges or immunities.

(h)(1) Any documents, materials or other information in the control or possession of the superintendent that is furnished by an insurer, fraternal benefit society or health maintenance organization, the authorized representative of the insurer, fraternal benefit society or health maintenance organization, or insurance producer, or an employee or agent thereof acting on behalf of the insurer, fraternal benefit society or health maintenance organization, authorized representative of the insurer, fraternal benefit society or health maintenance organization or insurance producer relating to the termination of an insurance producer pursuant to this section or obtained by the

superintendent in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to freedom of information requests, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the superintendent is authorized to use the documents, materials or other information in furtherance of any regulatory or legal action brought as a part of the superintendent's duties. Further, this paragraph shall not apply to any documents, materials or other information in the control or possession of any person or entity other than the superintendent or the department, regardless of whether or not such documents, materials or other information are identical or similar to documents, materials or other information in the superintendent's control or possession to which the confidentiality restrictions of this paragraph apply.

(2) Neither the superintendent nor any person who received documents, materials or other information while acting under the authority of the superintendent shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to the provisions of paragraph one of this subsection.

(3) Nothing in this article shall prohibit the superintendent from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to article six of the public officers law to a data base or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(i) An insurer, fraternal benefit society or health maintenance organization, authorized representative of an insurer, fraternal benefit society or health maintenance organization or an insurance producer that fails to report as required under the provisions of this section or that is found to have reported fraudulently, in bad faith or through gross negligence by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with the provisions of this chapter, provided, however, that an

insurer may be fined up to five thousand dollars. In the case of a domestic insurer, the provisions of article seventy-four of this chapter shall all also apply.

§ 2116. Insurance brokers; commissions

No insurer authorized to do business in this state, and no officer, agent or other representative thereof, shall pay any money or give any other thing of value to any person, firm, association or corporation for or because of his or its acting in this state as an insurance broker, unless such person, firm, association or corporation is authorized so to act by virtue of a license issued or renewed pursuant to the provisions of section 2104 of this article. For the purposes of this section, “acting as insurance broker” shall not include the referral of a person to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions and where the compensation for referral is not based upon the purchase of insurance by such person.

§ 2118. Excess line brokers; duties

(a)(1) Every licensee licensed pursuant to section 2105 of this article shall be required to use due care in selecting the unauthorized insurer from whom policies are procured under his license.

(2)(A) No policy of insurance may be procured by a licensee from any foreign or alien insurer which is controlled, by a foreign government or by a political subdivision thereof, or which is an agency of any such government or subdivision if the superintendent determines that: (i) such insurer receives a subsidy or other competitive advantage, as a result of such control or status, that would enable it to compete unfairly with similarly situated insurers which are not so controlled or constituted; (ii) such insurer is entitled to claim sovereign immunity as a result of such control and the insurer has not waived the sovereign immunity; or (iii) the use of such insurer would be detrimental to the interests of the people of this state.

(B) No licensee shall be deemed to be in noncompliance with this subsection unless: (i) the superintendent has made a prior determination that the foreign or alien insurer from which the licensee procured a policy of insurance should not be

used as an excess line insurer in this state in accordance with the provisions of this subsection; or (ii) the licensee knew or should have known that such insurer should not be used as an excess line insurer in accordance with the provisions of this subsection. The superintendent may promulgate regulations to provide guidance to the licensee.

(C) Every such insurer shall otherwise satisfy all applicable requirements for placement by an excess line broker.

(b) (1) Within forty-five days after a policy is procured, a licensee shall submit the declarations page or cover note of every policy procured under his or her license to the excess line association established pursuant to section 2130 of this article for recording and stamping. In the event that no declarations page or cover note is available to the licensee, within forty-five days after the policy is procured, the licensee shall submit a binder to the excess line association in lieu of such declarations page or cover note. In the event that a binder is submitted to the excess line association, the licensee shall submit the declarations page or cover note to the excess line association promptly upon receipt. Every insurance document submitted to the excess line association pursuant to this subsection shall set forth:

(A) the name and address of the insured;

(B) the gross premium charged;

(C) the name of the unauthorized insurer; and

(D) the kind of insurance procured.

(2) Subsequent endorsements which do not affect the premium charged are exempted from stamping.

(3)(A) The submission of insurance documents to the excess line association shall be accompanied by a statement subscribed to, and affirmed by, the licensee or sublicensee as true under the penalties of perjury that, after diligent effort, the full amount of insurance required could not be procured, from authorized insurers, each of which is authorized to write insurance of the kind requested and which the licensee has reason to believe might consider writing the type of coverage or class of insurance involved, and further showing that the amount of insurance procured from an

unauthorized insurer is only the excess over the amount procurable from an authorized insurer. The licensee, however, shall be excused from affirming that a diligent effort, as defined above, was made to procure the coverage from authorized insurers if the licensee's affidavit is accompanied by the affidavit of another broker involved in the placement affirming as true under the penalties of perjury that, after diligent effort by the affirming broker, the required insurance could not be procured from an authorized insurer which the affirming broker had reason to believe might consider writing the type of coverage or class of insurance involved. The licensee and the affirming broker shall be excused from affirming that a diligent effort was made if the superintendent determines, pursuant to paragraph four of this subsection, that no declinations are required.

(B) A licensee or affirming broker shall be considered to have the reason to believe required by subparagraph (A) of this paragraph if the decision to offer the risk to the authorized insurer was based on any of the following:

(i) Recent acceptance by the authorized insurer of a type of coverage or class of insurance similar to that for which coverage is presently being sought;

(ii) Advertising by the authorized insurer or its agent indicating that the authorized insurer is willing to consider acceptance of this or a similar type of coverage or class of insurance;

(iii) Media communications (i.e., newspaper or magazine articles, trade publications, television and radio programming) indicating that the authorized insurer is writing, or is considering writing, this type of coverage or class of insurance;

(iv) Communications with other insurance professionals, risk managers, trade associations, the excess line association or the insurance department, which indicates that the authorized insurer might consider writing this type of coverage or class of insurance; or

(v) Any other valid basis for making such decision.

(C) Every licensee, or affirming broker, in connection with the placement of each risk pursuant to this section, shall record on the affidavit required pursuant to subparagraph (A) of this paragraph the information relied upon that formed the basis of such licensee's or affirming broker's reason to believe that the authorized insurer might consider writing the type of coverage or class of insurance involved.

(D) Declinations obtained from authorized insurers which are affiliates of, or, as defined in article fifteen of this chapter, under common control with, each other or the unauthorized insurer shall not meet the requirements of this subsection unless such related insurers operate as distinct and autonomous entities, and for underwriting purposes, compete with each other for the same type of coverage or class of insurance.

(E) The superintendent, in a regulation, may determine whether there are circumstances where it may be appropriate, due to the unavailability from an authorized insurer of the leading type of coverage or the leading class of insurance required by the insured, to waive the requirement in subparagraph (A) of this paragraph that a licensee may procure from an unauthorized insurer only the amount of insurance which is excess over the amount procurable from an authorized insurer, and to instead permit the licensee to procure from an unauthorized insurer the full amount of insurance required by the insured.

(4) The number of declinations constituting diligent effort in regard to placement of coverage with authorized insurers for purposes of paragraph three of this subsection shall be three, unless the superintendent after a hearing, on a record, upon findings and conclusions, determines that another number of such declinations is appropriate in regard to particular coverages. In making such determinations, the superintendent shall consider relevant market conditions, including unavailability of particular coverages from authorized insurers, and may conduct market surveys. Any such determination shall be reviewed at least annually by the superintendent.

(5) Before placing business with an unauthorized insurer, each licensee shall ascertain and verify the fact that such insurer is authorized in its domiciliary jurisdiction to write the insurance policy proposed to be procured from it by the licensee. No

unauthorized insurer shall be deemed unacceptable for placement of business solely on the ground that it has been so authorized to write such business in its domiciliary jurisdiction for a period of less than three years preceding the placement of such risk by the licensee. In determining whether business may be placed with such unauthorized insurer, the superintendent shall consider such factors as: the interests of the public and policyholders, the length of time such insurer has been authorized in its domiciliary jurisdiction and elsewhere, its financial condition, and unavailability of particular coverages from authorized insurers.

(6) It shall be unlawful for a licensee as defined in section 2101 of this article and pursuant to sections 2104 and 2105of this article to deliver in this state any declarations page of an insurance policy or cover note evidencing insurance unless such insurance document is stamped by the excess line association or is exempt from such requirements; provided, however, that a licensee's failure to comply with the requirements of this subsection shall not affect the validity of the coverage.

(7) Compliance by a licensee with the requirements set forth in this section in connection with submitting for recording and stamping declarations pages, cover notes, binders, endorsements, affidavits, notices of excess line placement and other excess line insurance documents may be accomplished by means of electronic or other media transmission, provided the superintendent first approves such methods of submitting for recording and stamping.

(8) For purposes of this article, unless exempt under the provisions of section 2117 of this article, a policy of insurance obtained from an insurer not authorized to transact business in this state must be procured pursuant to an excess line license when the entire property or risk exposure insured or any part thereof, is located in this state and:

(A) the insured negotiated to acquire the coverage from within this state; or

(B) the policy was delivered to the insured in this state.

(9) Nothing in this article shall prohibit an excess line licensee from placing risks under the excess or surplus line law of another state provided that the excess line licensee:

(A) is licensed under the applicable state law as an excess or surplus line broker or places such risk through a licensed excess or surplus line broker in such state; and

(B) either no portion of the property or risk exposure is in this state, or the insured has property or risk exposure both in this state and in another state where the insured maintains a bona fide office from which it negotiated to acquire the coverage and to which the policy is delivered.

(c)(1) The licensee shall keep a complete and separate record of all policies procured from unauthorized insurers under such license. The licensee shall also maintain files supporting declinations by authorized insurers. An authorized insurer need not maintain underwriting submissions or other records with respect to any declination, unless the superintendent, after a hearing on a record, finds substantial abuses of the provisions of this section and determines that recordkeeping or reporting requirements in regard to authorized insurers are necessary to redress or eliminate such abuses.

(2) Such records shall be open to examination by the excess line association as provided for in section 2130 of this article and by the superintendent, as provided in section 310 of this chapter, at all reasonable times and shall show:

(A) the exact amount of each kind of insurance permitted under this section which has been procured for each insured;

(B) the gross premiums charged by the insurers for each kind of insurance permitted under this section;

(C) the amount of each kind of premiums of insurance permitted by this section which were returned to each insured;

(D) the name of the insurer or insurers which issued each of said policies;

(E) the effective dates of such policies;

(F) the terms for which they were issued; and

(G) the cities and villages within this state in which the insured risks, respectively, are located.

(d)(1) Every person, firm, association or corporation licensed pursuant to the provisions of section 2105 of this article shall pay to the superintendent a sum equal to three and six-tenths percent of the gross premiums charged the insureds by the insurers for insurance procured by such licensee pursuant to such license, less the amount of such premiums returned to such insureds. Where the insurance covers property or risks located or resident both in and out of this state, the sum payable shall be computed on that portion of the gross premiums allocated to this state pursuant to subsection (b) of section 9102 of this chapter less the amount of gross premiums allocated to this state and returned to the insured.

(2) The amount of such payments which represents a sum equal to three percent of fire insurance premiums shall be distributed by the superintendent as prescribed in section 9105 of this chapter, and the balance thereof shall be paid over by the superintendent to the state treasurer.

(3) Such licensee shall be required to make such payments to the superintendent on the fifteenth day of March of each year for the taxes on all policies procured by such licensee, pursuant to such license, during the next preceding calendar year, and on such date such licensee shall also file with the superintendent a return in the form prescribed by the superintendent, showing such information as may be necessary for the proper distribution of such payments.

(e)(1) Except as provided in paragraph two of this subsection, no licensee shall be required to obtain a declination from an association established pursuant to article fifty-four or fifty-five of this chapter, or to apply for insurance through a plan established pursuant to article fifty-three of this chapter, as a condition of procuring insurance pursuant to this section.

(2)(A) Unless the licensee obtains a declination from the appropriate association, or from an insurer pursuant to an application for coverage through a plan,

no diligent effort shall be considered to have been made if the insurance is available from the plan or association in connection with the placement of:

(i) a policy of non-commercial motor vehicle liability insurance;

(ii) medical malpractice insurance for a general hospital, as defined in subdivision ten of section 2801 of the public health law, a physician or dentist; or

(iii) insurance which by law must be provided by an authorized insurer.

(B) In connection with the placement of any other kind of insurance, a declination from the appropriate association, or from an insurer pursuant to an application for coverage through a plan, shall be required unless prior to the placement the insured has been advised of the availability of insurance from the plan or association.

(C) The affirming broker shall provide written notice to the insured that the placement was made with an unauthorized insurer. A copy of this notice shall be attached to the affirming broker's affidavit. The affidavits required by this section to be completed by the affirming broker shall include a statement that the affirming broker advised the insured in writing:

(i) that the unauthorized insurer with which the coverage is being placed is not authorized to do an insurance business in this state and is not subject to supervision by this state;

(ii) that in the event of the insolvency of the unauthorized insurer, losses will not be covered by any New York state insolvency fund;

(iii) that the policy may not be subject to all of the regulations of the superintendent pertaining to policy forms; and

(iv) such other information as the superintendent may, by regulation, require.

(f)(1) An excess line broker licensed pursuant to section 2105 of this article may execute an authority to bind coverage and may exercise binding authority on behalf of an insurer not licensed or authorized to do business in this state pursuant to the provisions of this subsection.

(2) As used in this subsection:

(A) an “authority to bind coverage” means the written agreement between an excess line broker and an insurer not licensed or authorized to do business in this state and shall set forth the terms, conditions, and limitations governing the exercise of binding authority by the excess line broker;

(B) a “binder” means written evidence of a temporary insurance contract; and

(C) “binding authority” means the authority to issue and deliver binders, and to issue and deliver insurance policies on behalf of an insurer not licensed or authorized to do business in this state.

(3) (A) Every excess line broker who exercises binding authority shall have filed an authority to bind coverage, the contents of which shall not be public, with the excess line association established pursuant to section 2130 of this article.

(B) Such authority shall be valid until (i) terminated by the appointing insurer after termination in accordance with the contract between the broker and the insurer; (ii) the excess line license is suspended or revoked by the superintendent; or (iii) the excess line license expires and is not renewed.

(4) Notwithstanding any other provision of law to the contrary, the execution or filing of an authority to bind coverage and the exercise of binding authority by an authorized excess line broker shall not constitute the doing of insurance business by an insurer not licensed or authorized to do business in this state.

(5) Any coverage so written must be in compliance with this section.

(6) Every binder shall contain a description and location of the subject of insurance, coverage, conditions and term of insurance, the premium, the name and address of the excess line broker, the name and address of the producing broker, the name of the insurer and the name and address of the insured.

(7) Any binding authority agreement made and filed pursuant to this section may authorize an excess line broker to bind coverage for risks located within or outside of the state of New York, notwithstanding any other provision of this chapter.

(8) Any binding authority agreement made and filed pursuant to this section may authorize an excess line broker to issue notice of cancellation of any insurance policy bound pursuant to such agreement (A) for non-payment of premium, (B) for a material increase in the hazard insured, or (C) upon discovery of a material misrepresentation in the application for insurance. The excess line broker shall not be deemed an agent of the insurer solely for issuing such notice of cancellation.

§ 2119. Insurance agents, brokers, consultants; written contract for compensation; excess charges prohibited

(a)(1) No person licensed as an insurance agent, broker or consultant may receive any fee, commission or thing of value for examining, appraising, reviewing or evaluating any insurance policy, bond, annuity or pension or profit-sharing contract, plan or program or for making recommendations or giving advice with regard to any of the above, unless such compensation is based upon a written memorandum signed by the party to be charged and specifying or clearly defining the amount or extent of such compensation.

(2) A copy of every such memorandum or contract shall be retained by the licensee for not less than three years after such services have been fully performed.

(b)(1) No person licensed as an insurance agent, broker or a consultant may receive any compensation, direct or indirect, as a result of the sale of insurance or annuities to, or the use of securities or trusts in connection with pensions for, any person to whom any such licensee has performed any related consulting service for which he has received a fee or contracted to receive a fee within the preceding twelve months unless such compensation is provided for in the memorandum or contract required pursuant to subsection (a) hereof.

(2) This chapter shall not prohibit the offset, in whole or in part, of compensation payable under subsection (a) hereof by compensation otherwise payable to such consultant as agent or broker as a result of such sale of insurance or annuities or the use of securities or trusts in connection with pensions, if any such offset is

provided for in the written memorandum or contract required under subsection (a) hereof.

(c)(1) No insurance broker may receive any compensation, other than commissions deductible from premiums on insurance policies or contracts, from any insured or prospective insured for or on account of the sale, solicitation or negotiation of, or other services in connection with, any contract of insurance made or negotiated in this state or for any other services on account of such insurance policies or contracts, including adjustment of claims arising therefrom, unless such compensation is based upon a written memorandum, signed by the party to be charged, and specifying or clearly defining the amount or extent of such compensation.

(2) A copy of every such memorandum shall be retained by the broker for not less than three years after such services have been fully performed.

(3) This subsection shall not affect the right of any such broker to recover from the insured the amount of any premium or premiums for insurance effectuated by or through such broker.

(4) This subsection shall not affect the requirements of subsection (a) or (b) hereof, subsection (g) of section 2101 or section 2108 of this article.

(d) No insurance broker shall, in connection with the sale, solicitation or negotiation, issuance, delivery or transfer in this state of any contract of insurance made or negotiated in this state, directly or indirectly charge, or receive from, the insured or prospective insured therein any greater sum than the rate of premium fixed therefor by the insurer obligated as such therein, unless such broker has a right to compensation for services created in the manner specified in subsection (c) of this section.

§ 2120. Fiduciary capacity of insurance agents, insurance brokers and reinsurance intermediaries

(a) Every insurance agent and every insurance broker acting as such in this state shall be responsible in a fiduciary capacity for all funds received or collected as insurance agent or insurance broker, and shall not, without the express consent of his or

its principal, mingle any such funds with his or its own funds or with funds held by him or it in any other capacity.

(b) Every reinsurance intermediary acting as such in this state shall be responsible, in a fiduciary capacity for all funds received or collected in such capacity, and shall not, without the express consent of his or its principal or principals, mingle any such funds with his or its own funds or with funds held by him or it in any other capacity.

(c) This section shall not require any such agent, broker or reinsurance intermediary to maintain a separate bank deposit for the funds of each such principal, if and as long as the funds so held for each such principal are reasonably ascertainable from the books of account and records of such agent, broker or reinsurance intermediary, as the case may be.

(d) A retail insurance producer who violates paragraph (a) of subdivision two of section 577 a of the banking law shall be liable for actual damages for the failure to notify, in writing, the premium finance agency of the information required pursuant to such paragraph (a).

§ 2121. Broker authorized to receive premium, when

(a) Any insurer which delivers in this state to any insurance broker or any insured represented by such broker a contract of insurance pursuant to the application or request of such broker, acting for an insured other than himself, shall be deemed to have authorized such broker to receive on its behalf payment of any premium which is due on such contract at the time of its issuance or delivery or payment of any installment of such premium or any additional premium which becomes due or payable thereafter on such contract, provided such payment is received by such broker within ninety days after the due date of such premium or installment thereof or after the date of delivery of a statement by the insurer of such additional premium.

(b) An agent who represents an insured for the purpose of obtaining insurance pursuant to any plan authorized by articles fifty-three, fifty-four and fifty-five of this chapter shall be deemed to be a broker for the purposes of this section.

§ 2122. Advertising by insurance agents and brokers

(a)(1) No insurance agent or insurance broker shall make or issue in this state any advertisement, sign, pamphlet, circular, card or other public announcement purporting to make known the financial condition of any insurer, unless the same shall conform to the requirements of section 1313 of this chapter.

(2) No insurance agent, insurance broker or other person, shall, by any advertisement or public announcement in this state, call attention to any unauthorized insurer or insurers.

(b) Every agent of any insurer and every insurance broker shall, in all advertisements, public announcements, signs, pamphlets, circulars and cards, which refer to an insurer, set forth therein the name in full of the insurer referred to and the name of the city, town or village in which it has its principal office in the United States.

§ 2123. Misrepresentations, misleading statements and incomplete comparisons

(a)(1) No agent or representative of any insurer or health maintenance organization authorized to transact life, accident or health insurance or health maintenance organization business in this state and no insurance broker, and no other person, firm, association or corporation, shall issue or circulate or cause or permit to be issued or circulated, any illustration, circular, statement or memorandum misrepresenting the terms, benefits or advantages of any policy or contract of life, accident or health insurance, any annuity contract or any health maintenance organization contract, delivered or issued for delivery or to be delivered or issued for delivery, in this state, or shall make any misleading estimate as to the dividends or share of surplus or additional amounts to be received in the future on such policy or contract, or shall make any false or misleading statement as to the dividends or share of surplus or additional amounts previously paid by any such insurer or health maintenance organization on similar policies or contracts, or shall make any misleading representation, or any misrepresentation, as to the financial condition of any such

insurer or health maintenance organization, or as to the legal reserve system upon which such insurer or health maintenance organization operates.

(2) No such person, firm, association or corporation shall make to any person or persons any incomplete comparison of any such policies or contracts of any insurer, insurers, or health maintenance organization, for the purpose of inducing, or tending to induce, such person or persons to lapse, forfeit or surrender any insurance policy or health maintenance organization contract.

(3) Any replacement of individual life insurance policies or individual annuity contracts of an insurer by an agent, representative of the same or different insurer or broker shall conform to standards promulgated by regulation by the superintendent. Such regulation shall:

(A) specify what constitutes the replacement of a life insurance policy or annuity contract and the proper disclosure and notification procedures to replace a policy or contract;

(B) require notification of the proposed replacement to the insurer whose policies or contracts are intended to be replaced;

(C) require the timely exchange of illustrative and cost information required by section 3209 of this chapter and necessary for completion of a comparison of the proposed and replaced coverage; and

(D) provide for a sixty-day period following issuance of the replacement policies or contracts during which the policy or contract owner may return the policies or contracts and reinstate the replaced policies or contracts.

(b) Any comparison of the policies or contracts of any such insurer, insurers or health maintenance organization shall be deemed to be an incomplete comparison if it does not conform to all the requirements for comparisons established by regulation.

(c) In the determination, judicial or otherwise, of the incompleteness or misleading character of any such comparison, it shall not be presumed that the insured knew or knows of any of the provisions, terms or benefits contained in any insurance policy or health maintenance organization contract.

(d) Any agent or representative of an insurer or health maintenance organization, any insurance broker and any other person, firm, association or corporation who, or which, shall violate any of the provisions of this section and shall knowingly receive any compensation or commission for the sale of any insurance policy, health maintenance organization or annuity contract induced by a violation of this section shall also be liable for a civil penalty in the amount received by such violator as compensation or commission, which penalty may be sued for and recovered for his own use and benefit by any person induced to purchase an insurance policy, health maintenance organization or annuity contract by such violation. In addition, such agent, representative, broker, person, firm, association or corporation violating this section shall be liable for a civil penalty in the amount of any compensation or commission lost by any agent, representative or broker as a result of a violation of this section or the making of such false or misleading statement, which penalty may be sued for and recovered for his own use and benefit by such agent, representative or broker.

(e) [Expires and deemed repealed Sept. 10, 2011, pursuant to L.1997, c. 3, § 7.] Except with respect to a credit unemployment insurance policy, group credit life insurance policy, a group credit health, group credit accident or group credit health and accident policy, or similar group credit insurance covering the person of the insured, state chartered banking institutions, federally chartered banking institutions and any person soliciting the purchase of or selling insurance on the premises thereof, must disclose or cause to be disclosed in writing, where practicable, in clear and concise language, to their customers and prospective customers who are solicited therefor, that any insurance offered or sold:

(1) is not a deposit;

(2) is not insured by the federal deposit insurance corporation or the national credit union share insurance fund, as applicable; and

(3) is not guaranteed by the state chartered banking institution or the federally chartered banking institution.

(f) [Expires and deemed repealed Sept. 10, 2009, pursuant to L.1997, c. 3, § 7.] For the purposes of this section, the terms “state chartered banking institutions” and “federally chartered banking institutions” shall have the same meanings as set forth in subdivision one of section 12 of the banking law.

§ 2127. Penalties for violations

(a) The superintendent, in lieu of revoking or suspending the license of a licensee in accordance with the provisions of this article, may in any one proceeding by order, require the licensee to pay to the people of this state a penalty in a sum not exceeding five hundred dollars for each offense, and a penalty in a sum not exceeding twenty-five hundred dollars in the aggregate for all offenses.

(b) Upon the failure of such a licensee to pay such penalty ordered pursuant to subsection (a) hereof within twenty days after the mailing of such order, postage prepaid, registered, and addressed to the last known place of business of such licensee, unless such order is stayed by an order of a court of competent jurisdiction, the superintendent may revoke the license of such licensee or may suspend the same for such period as he determines.

§ 2128. Commission and fee sharing prohibited

(a) Notwithstanding the provisions of sections 2324 and 4224 of this chapter, no insurance agent, insurance broker, insurance consultant, excess line broker, reinsurance intermediary or insurance adjuster shall receive any commissions or fees or shares thereof in connection with insurance coverages placed for or insurance services rendered to the state, its agencies and departments, public benefit corporations, municipalities and other governmental subdivisions in this state, unless such insurance agent, insurance broker, insurance consultant, excess line broker, reinsurance intermediary or insurance adjuster actually placed insurance coverages on behalf of or rendered insurance services to the state, its agencies and departments, public benefit corporations, municipalities and other governmental subdivisions in this state.

(b) The superintendent shall, by regulation, require insurance agents, insurance brokers, insurance consultants, excess line brokers, reinsurance intermediaries and insurance adjusters to file disclosure statements with the insurance department and the most senior official of the governmental unit involved, with respect to any insurance coverages placed for or insurance services rendered to the state, its agencies and departments, public benefit corporations, municipalities and other governmental subdivisions in this state.

§ 2129. Duty to have an agent or broker at each place of business

(a) Each place of business established by the holder of an agent and/or broker license shall be under the supervision of one or more persons licensed to do the kinds of business transacted in that office. The headquarters location must be supervised by one or more persons licensed to do all the kinds of business for which the licensee is authorized. Any satellite office established by a licensee must be supervised by one or more persons licensed to do the kinds of business to be transacted in that office.

(b) Written notice shall be given to the superintendent containing the location of each satellite office and the licensed person or persons responsible for each satellite office.

§ 2130. Excess line association

(a) There is hereby created a non-profit association to be known as the excess line association of New York. All excess line licensees shall be deemed to be members of the association. The association must perform its functions under the plan of operation established and approved under subsection (c) of this section and must exercise its powers through a board of directors established under subsection (b) of this section. The association shall be supervised by the superintendent. The association shall be authorized and have the duty to:

(1) receive and record all excess line insurance documents which excess line brokers are required to file with the association under section 2118 of this article;

(2) notify the superintendent or his designee prior to stamping submitted insurance documents as provided in paragraph three of this subsection if the association believes that the unauthorized insurer does not meet the standards of eligibility imposed by section 2118 of this article, together with any rules and regulations promulgated pursuant to said section;

(3) stamp all excess line insurance documents which excess line brokers are required to file with the association under section 2118 of this article, provided that an unauthorized insurer meets the standards of eligibility imposed by section 2118 of this article, together with any rules and regulations promulgated pursuant to said section;

(4) prepare reports to be provided to the superintendent on the fifteenth day of every month, which reports shall include premium data from excess line licensee affidavits relating to excess line insurance filed by each licensee and stamped by the association during the preceding calendar month. Such reports shall also include corresponding licensee affidavits in such form as the superintendent may prescribe. The association shall provide each licensee with a copy of the report as it pertains to said licensee's business for the calendar month;

(5) prepare and deliver to each licensee and to the superintendent annually the reports of excess line business, which reports shall include a delineation of the classes and kinds of business procured during the preceding calendar year in such form as the superintendent may prescribe;

(6) deliver to each licensee standard forms for affidavits required under section 2118 of this article;

(7) employ and retain such persons as are necessary to carry out the duties of the association;

(8) borrow money as necessary to effect the purposes of the association;

(9) enter contracts as necessary to effect the purposes of the association;

(10) perform such other acts as will facilitate and encourage compliance by its members with the excess line law of this state and rules promulgated thereunder; and

(11) provide such other services to its members as are incidental or related to the purposes of the association.

(b)(1) The association shall function through a board of directors elected by the association members, and officers who shall be elected by the board of directors.

(2) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The plan of operation shall provide for the election of a board of directors by the members of the association from its membership. The plan of operation shall fix the manner of voting and may weigh each member's vote to reflect the annual excess line insurance premium written by the member. Members employed by the same or affiliated employers may consolidate their premiums written and delegate an individual officer or partner to represent the member in the exercise of association affairs, including service on the association board of directors. The superintendent shall, within thirty days after the enactment date of this section, appoint an interim board of directors for the sole purpose of conducting an election of directors which election shall be conducted within sixty days after the enactment date of this section.

(3) The board of directors shall elect such officers as may be provided in the plan of operation.

(c)(1) The association shall submit to the superintendent a plan of operation and any amendments thereto to provide operating procedures for the administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the superintendent.

(2) All association members must comply with the plan of operation.

(d)(1) The superintendent shall at least once in three years, make or cause to be made an examination of the association. The reasonable cost of any such examination shall be paid by the association upon presentation to it by the superintendent of a detailed account of such cost. Any examiner authorized by the superintendent shall have the power to administer oaths and to examine under oath any director, officer, member, agent or employee of the association. During the course of such examination, the directors, officers, members, agents and employees of the association shall make available all books, records, accounts, documents and agreements pertaining thereto. The superintendent shall furnish a copy of the examination report to the association. Within thirty days after receipt of the report, the association may request a hearing on the report or any facts or recommendations therein. If the superintendent finds the association is not in compliance with this section he may issue an order requiring compliance or discontinuance of such violation and the association shall be subject to the penalty provisions of this chapter.

(2) A director may be removed from the association's board of directors by the superintendent for cause, stated in writing, after an opportunity has been given to the director to be heard thereon.

(e) In the absence of gross negligence, fraud, or bad faith, there shall be no liability on the part of and no causes of action of any nature shall arise against the association, its directors, officers, agents, or employees for any action taken or omitted by them in the performance of their powers and duties under this section and subsections (b), (c) and (f) of section 2118 of this article.

(f) The services performed by the association shall be funded by a stamping fee assessed for each declarations page, cover note or other premium bearing document submitted to the association. The stamping fee shall be established by the board of directors of the association from time to time and shall be subject to approval by the superintendent. The stamping fee shall be paid by the excess line licensee. Provided, however, the licensee shall be allowed to receive and collect from the insured

the stamping fee if the licensee obtains a written memorandum, signed by the insured, specifying the amount and the insured's agreement to pay the stamping fee.

(g) Nothing in this section shall be construed to modify the obligation of an excess line licensee to comply with the provisions of sections 2105 and 2118 of this chapter, nor to diminish the power of the superintendent to take any other disciplinary action otherwise authorized by this chapter.

(h) The superintendent may declare an unauthorized insurer ineligible and order the association not to stamp insurance documents issued by such unauthorized insurer.

(i) Compliance by the association with the duties set forth in subsection (a) of this section in connection with filing, receiving, recording and stamping of excess line insurance documents, as well as the requirement to deliver standard forms for affidavits, may be accomplished by means of electronic or other media transmission, provided that the superintendent first approves such methods of filing, receiving, recording and stamping.

Insurance Business (Banks and Bank Holding Companies) Regulations

SOR/92-330

BANK ACT

His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to section 416 of the *Bank Act* [*], is pleased hereby to make the annexed Regulations respecting the extent to which a bank may undertake the business of insurance and relations between banks and entities that undertake the business of insurance, insurance agents and insurance brokers, effective June 1, 1992.

[*] S.C. 1991, c. 46

Registration May 21, 1992

INSURANCE BUSINESS (BANKS AND BANK HOLDING COMPANIES) REGULATIONS

1. [Repealed, SOR/2002-269, s. 2]

INTERPRETATION

2. In these Regulations,"Act" means the *Bank Act*. (*Loi*)

"authorized type of insurance" means

(*a*) credit or charge card-related insurance,

(*b*) creditors' disability insurance,

(*c*) creditors' life insurance,

(*d*) creditors' loss of employment insurance,

(*e*) creditors' vehicle inventory insurance,

(*f*) export credit insurance,

(*g*) mortgage insurance, or

(*h*) travel insurance; (*assurance autorisee*)

"credit or charge card-related insurance", in respect of a bank, means a policy of an insurance company that provides insurance to the holder of a credit or charge card issued by the bank as a feature of the card, without request and without an individual assessment of risk,

(*a*) against loss of, or damage to, goods purchased with the card,

(*b*) under which the insurance company undertakes to extend a warranty provided by the manufacturer of goods purchased with the card, or

(*c*) against any loss arising from a contractual liability assumed by the holder when renting a vehicle, when the rental is paid for with the card; (*assurance carte de credit ou de paiement*)

"creditors' disability insurance", in respect of a bank, means a group insurance policy that will pay all or part of the amount of a debt of a debtor to the bank, or to a loan company that is an affiliate of the bank, in the event of bodily injury to, or an illness or disability of,

(*a*) where the debtor is a natural person, the debtor or the spouse or common-law partner of the debtor,

(*b*) a natural person who is a guarantor of all or part of the debt,

(*c*) where the debtor is a body corporate, any director or officer of the body corporate, or

(*d*) where the debtor is an entity, any natural person who is essential to the ability of the debtor to meet the debtor's financial obligations to the bank or to the loan company; (*assurance-invalidite de credit*)

"creditors' life insurance", in respect of a bank, means a group insurance policy that will pay to the bank, or to a loan company that is an affiliate of the bank, all or part of the amount of a debt of a debtor or, where a debt is in respect of a small business or a farm, fishery or ranch, all or part of the amount of the credit limit of a line of credit, in the event of the death of

(*a*) where the debtor is a natural person, the debtor or the spouse or common-law partner of the debtor,

(*b*) a natural person who is a guarantor of all or part of the debt,

(*c*) where the debtor is a body corporate, a director or officer of the body corporate, or

(*d*) where the debtor is an entity, any natural person who is essential to the ability of the debtor to meet the debtor's financial obligations to the bank or to the loan company; (*assurance-vie de credit*)

"creditors' loss of employment insurance", in respect of a bank, means a policy of an insurance company that will pay, without any individual assessment of risk, all or part of the amount of a debt of a debtor to the bank, or to a loan company that is an affiliate of the bank, in the event that

(*a*) the debtor, if the debtor is a natural person, becomes involuntarily unemployed, or

(*b*) a natural person who is a guarantor of all or part of the debt becomes involuntarily unemployed; (*assurance credit en cas de perte d'emploi*)

"creditors' vehicle inventory insurance", in respect of a bank, means a policy of an insurance company that provides insurance against direct and accidental loss or damage to vehicles that are held in stock for display and sale purposes by a debtor of the bank, some or all of which have been financed by the bank; (*assurance credit pour stocks de vehicules*)

"export credit insurance" means a policy of an insurance company that provides insurance to an exporter of goods or services against a loss incurred by the exporter due to a non-payment for exported goods or services; (*assurance credit des exportateurs*)

"group insurance policy", in respect of a bank, means a contract of insurance between an insurance company and the bank, or between an insurance company and a loan company that is an affiliate of the bank, that provides insurance severally in respect of a group of identifiable persons who individually hold certificates of insurance; (*police d'assurance collective*)

"insurance company" means an entity that is approved, registered or otherwise authorized to insure risks under an Act of Parliament or of the legislature of a province; (*societe d'assurances*)

“line of credit” means a commitment on the part of a bank to lend to a debtor, without a predetermined repayment schedule, one or more amounts, where the aggregate amount outstanding does not exceed a predetermined credit limit, which limit does not exceed the reasonable credit needs of the debtor; (*marge de credit*)

“loan company” means a company incorporated under the *Trust and Loan Companies Act* or a loan or trust corporation incorporated by or under an Act of the legislature of a province; (*sociee de pr□t*)

“mortgage insurance”, in respect of a bank, means an insurance policy that provides insurance to the bank, or to a loan company that is an affiliate of the bank, against loss caused by a default on the part of a debtor who is a natural person under a loan from the bank or from the loan company that is secured by a mortgage on real property or on an interest in real property; (*assurance hypoteque*)

“personal accident insurance” means a group insurance policy that provides insurance to a natural person

(*a*) whereby the insurance company undertakes to pay one or more sums of money in the event of bodily injury to, or the death of, the person that is caused by an accident, or

(*b*) whereby the insurance company undertakes to pay a certain sum for each day that the person is hospitalized in the event of bodily injury to the person that is caused by an accident or in the event of an illness or disability of the person; (*assurance accidents corporels*)

“small business” means a business that is or, if it were incorporated, would be a small business corporation within the meaning of subsection 248(1) of the *Income Tax Act*; (*petite entreprise*)

“travel insurance” means

(*a*) a policy of an insurance company that provides insurance to a natural person in respect of a trip by the person away from the place where the person ordinarily resides, without any individual assessment of risk, against

(i) loss that results from the cancellation or interruption of the trip,

(ii) loss of, or damage to, personal property that occurs while on the trip, or

(iii) loss that is caused by the delayed arrival of personal baggage while on the trip, or

(*b*) a group insurance policy that provides insurance to a natural person in respect of a trip by the person away from the province in which the person ordinarily resides

(i) against expenses incurred while on the trip that result from an illness or the disability of the person that occurs on the trip,

(ii) against expenses incurred while on the trip that result from bodily injury to, or the death of, the person caused by an accident while on the trip,

(iii) whereby the insurance company undertakes to pay one or more sums of money in the event of an illness or the disability of the person that occurs on the trip, or of bodily injury to, or the death of, the person that is caused by an accident while on the trip,

(iv) against expenses incurred by the person for dental care necessitated by an accident while on the trip, or

(v) in the event that the person dies while on the trip, against expenses incurred for the return of that person's remains to the place where the person was ordinarily resident before death, or for travel expenses incurred by a relative of that person who must travel to identify that person's remains. (*assurance voyage*)

SOR/2001-190, s. 1; SOR/2002-269, s. 3.

PERMITTED ACTIVITIES

3. A bank may carry on any aspect of the business of insurance, other than the underwriting of insurance, outside Canada and in respect of risks outside Canada.

4. (1) A bank may administer an authorized type of insurance and personal accident insurance.

(2) A bank may administer a group insurance policy for

(*a*) its employees or the employees of an entity that the bank holds control of, or a substantial investment in, under section 468 of the Act;

(*b*) the employees of

(i) another bank or a bank holding company, that controls the bank, or

(ii) an entity that the other bank or the bank holding company, referred to in subparagraph (i), holds control of, or a substantial investment in, under section 468 or 930 of the Act;

(*c*) the employees of an entity that an affiliate of the bank holds control of, or a substantial investment in, in accordance with section 522.07 or 522.08 or subsection 522.32(1) or (3) of the Act;

(*d*) the employees in Canada of an authorized foreign bank that is an affiliate of the bank; and

(*e*) if the bank is controlled by a foreign bank, the employees in Canada of an affiliate of the foreign bank that is an entity referred to in section 522.17 or 522.18 of the Act and that carries on a business described in one of those sections.

SOR/2002-269, s. 4.

5. (1) A bank may provide advice regarding an authorized type of insurance or a service in respect of an authorized type of insurance.

(2) A bank may provide advice in respect of an insurance policy that is not of an authorized type of insurance, or services in respect thereof, if

(*a*) the advice is general in nature;

(*b*) the advice is not in respect of

(i) a specific risk, proposal in respect of life insurance, insurance policy or service, or

(ii) a particular insurance company, agent or broker; and

(*c*) the bank does not thereby refer any person to a particular insurance company, agent or broker.

PROMOTION

6. No bank shall, in Canada, promote an insurance company, agent or broker unless

(*a*) the company, agent or broker deals only in authorized types of insurance; or

(*b*) the promotion takes place outside a branch of the bank and is directed to

(i) all of the holders of credit or charge cards issued by the bank who receive regularly mailed statements of account,

(ii) all of the bank's customers who are natural persons and who receive regularly mailed statements of account, or

(iii) the general public.

7. (1) No bank shall, in Canada, promote an insurance policy of an insurance company, agent or broker, or a service in respect thereof, unless

(*a*) the policy is of an authorized type of insurance or the service is in respect of such a policy;

(*b*) the policy is to be provided by a corporation without share capital, other than a mutual insurance company or a fraternal benefit society, that carries on business without pecuniary gain to its members and the policy provides insurance to a natural person in respect of the risks covered by travel insurance;

(*c*) the policy is a personal accident insurance policy and the promotion takes place outside a branch of the bank;

(*d*) the service is in respect of a policy referred to in paragraph (*b*) or of a policy referred to in paragraph (*c*) that is promoted as described in that paragraph; or

(*e*) the promotion takes place outside a branch of the bank and is directed to

(i) all of the holders of credit or charge cards issued by the bank who receive regularly mailed statements of account,

(ii) all of the bank's customers who are natural persons and who receive regularly mailed statements of account, or

(iii) the general public.

(2) Notwithstanding subsection (1) and section 6, a bank may exclude from a promotion referred to in paragraph (1)(*e*) or 6(*b*) persons

(*a*) in respect of whom the promotion would contravene an Act of Parliament or of the legislature of a province;

(*b*) who have notified the bank in writing that they do not wish to receive promotional material from the bank; or

(*c*) who are holders of a credit or charge card that was issued by the bank and in respect of which the account is not in good standing.

SOR/95-171, s. 3(E).

PROHIBITED ACTIVITIES

8. (1) No bank shall

(*a*) provide, directly or indirectly, an insurance company, agent or broker with any information respecting

(i) a customer of the bank in Canada,

(ii) an employee of a customer of the bank in Canada,

(iii) where a customer of the bank is an entity with members in Canada, any such member, or

(iv) where a customer of the bank is a partnership with partners in Canada, any such partner;

(*b*) permit any of its subsidiaries to provide, directly or indirectly, an insurance company, agent or broker with any information that it receives from the bank respecting

(i) a customer of the bank in Canada,

(ii) an employee of a customer of the bank in Canada,

(iii) where a customer of the bank is an entity with members in Canada, any such member, or

(iv) where a customer of the bank is a partnership with partners in Canada, any such partner;

(*b*.1) provide an affiliate of the bank that is not a subsidiary of the bank with information unless the bank ensures that the affiliate does not directly or indirectly provide the information to an insurance company, agent or broker if the information is in respect of

(i) a customer of the bank in Canada,

(ii) an employee of a customer of the bank in Canada,

(iii) where a customer of the bank is an entity with members in Canada, any such member,

(iv) where a customer of the bank is a partnership with partners in Canada, any such partner; or

(*c*) permit a subsidiary of the bank that is a trust or loan corporation incorporated by or under an Act of the legislature of a province to provide, directly or indirectly, an insurance company, agent or broker with any information respecting

(i) a customer of the subsidiary in Canada,

(ii) an employee of a customer of the subsidiary in Canada,

(iii) where a customer of the subsidiary is an entity with members in Canada, any such member, or

(iv) where a customer of the subsidiary is a partnership with partners in Canada, any such partner.

(2) Subsection (1) does not apply in respect of a bank or a subsidiary of a bank that is a trust or loan corporation incorporated by or under an Act of the legislature of a province where

(*a*) the bank or the subsidiary has established procedures to ensure that the information referred to in that subsection will not be used by an insurance company, agent or broker to promote in Canada the insurance company, agent or broker or to promote in Canada an insurance policy, or a service in respect thereof; and

(*b*) the insurance company, agent or broker, as the case may be, has given an undertaking to the bank or to the subsidiary, in a form acceptable to the Superintendent, that that information will not be used to promote in Canada the

insurance company, agent or broker or to promote in Canada an insurance policy, or a service in respect thereof.

SOR/2002-269, s. 5.

8.1 (1) No bank holding company shall control a trust or loan corporation incorporated by or under an Act of the legislature of a province if the trust or loan corporation directly or indirectly provides an insurance company, agent or broker with any information in respect of

(*a*) a customer of the trust or loan corporation in Canada;

(*b*) an employee in Canada of a customer of the trust or loan corporation;

(*c*) where a customer of the trust or loan corporation is an entity with members in Canada, any such member; or

(*d*) where a customer of the trust or loan corporation is a partnership with partners in Canada, any such partner.

(2) Subsection (1) does not apply in respect of a bank holding company or a trust or loan corporation if

(*a*) the bank holding company or the trust or loan corporation has established procedures to ensure that the information referred to in that subsection will not be used by an insurance company, agent or broker to promote in Canada

(i) the insurance company, agent or broker, or

(ii) an insurance policy or a service in respect of an insurance policy; and

(*b*) the insurance company, agent or broker, as the case may be, has given an undertaking to the bank holding company or to the trust or loan corporation, in a form acceptable to the Superintendent, that the information will not be used to promote in Canada

(i) the insurance company, agent or broker, or

(ii) an insurance policy or a service in respect of an insurance policy.

SOR/2002-269, s. 6.

9. No bank shall provide a telecommunications device that is primarily for the use of customers in Canada and that links a customer with an insurance company, agent or broker.

10. No bank shall carry on business in Canada in premises that are adjacent to an office of an insurance company, agent or broker unless the bank clearly indicates to its customers that the bank and its premises are separate and distinct from the office of the insurance company, agent or broker.

TRANSITIONAL

11. Where a bank administered a policy on May 6, 1992 the administration of which is not permitted under section 4, the bank may continue to administer the policy in respect of any person in respect of whom coverage was provided under the policy on that date.