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## MEMORANDUM

To: Valerie Barton

From: Chrys D. Lemon  
Eli K. Peterson

Re: **New York State Producer Compensation Transparency Regulation –  
Template Disclosures**

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In 2009, the New York State Insurance Department proposed a regulation to increase transparency for consumers concerning insurance producer compensation. We discussed this issue in depth at the 2009 ABIA Annual Conference and in a subsequent compliance note. The rule has been finalized<sup>1</sup> and is being implemented by the Department, **to be effective on January 1, 2011**. The regulation does not provide any suggested disclosure language, so we have been asked to draft suggested sample disclosures for ABIA members to use when transacting business in New York.

This memorandum provides *suggested* template disclosures for the three scenarios covered by the rule:

- (1) information producers must disclose orally or in writing to the purchaser<sup>2</sup> at or prior to the time of application for an insurance contract or an annuity;
- (2) information that must be disclosed if a purchaser requests more information about a producer's compensation prior to the sale of the policy; and
- (3) information that must be disclosed to a consumer who requests information about producer compensation within the 30 day period after contract issuance.

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<sup>1</sup> The final rule is published at 11 NYCRR Part 30.

<sup>2</sup> The regulation defines a "purchaser" as: "the person or entity to be charged under an insurance contract or a group policyholder and may include the named insured, policyholder, owner of a life insurance policy or annuity contract, principal under a bond, or other person to be charged, including an applicant for insurance, bond or annuity; but does not include a certificate holder or member under a group or blanket insurance contract unless the insurance producer has direct sales or solicitation contact with the certificate holder or member, and the certificate holder or member pays *all* of the premium." (emphasis added) 11 NYCRR § 30.2(b).

The template disclosures are based upon the regulation and on a conversation we had with the drafter of the regulation, who told us that the New York Insurance Department will issue a circular letter in the coming months that will provide guidance on some of the more nuanced disclosure requirements. Note that this memorandum focuses primarily on disclosures and, for the most part, not on any other specific provisions of the regulation.

### **Initial Disclosures**

The initial disclosures below must be provided orally or in writing at or prior to the time of application for an insurance contract. If the disclosures are provided orally, they must be subsequently provided in writing no later than at the issuance of the insurance contract.

#### *Model Insurance Producer Compensation Disclosures*

*This document contains important information concerning your insurance purchase and the assistance you have received with that purchase from [Name of Insurance Producer]. New York law requires insurance consumers to receive certain disclosures concerning insurance producer compensation.*

- 1.) *[Insert Producer's Name] represents [insert name of person or persons represented] in this transaction. [The disclosure should address the following issues: Does the producer only represent the customer? The insurer? Is there a dual-agency relationship?]. The services that [Insert Producer's Name] will provide include: [Describe the services provided by the producer, i.e. to help customer obtain insurance, to discuss customer's insurance coverage needs, etc. This can be a general description.]*
- 2.) *[Either: Alternative A: [Name of Insurer or Third Party that is paying the compensation] will pay [Insert Producer's Name] if you purchase insurance. Alternative B: [Insert name of Producer] will not receive compensation from [Insert name of Insurer] for an insurance sale to you.*
- 3.) *(if applicable) The compensation [Insert Producer's Name] receives in connection with your insurance purchase may vary depending on a number of factors, including (if applicable) the insurance contract and the insurer that you have selected, as well as the volume or profitability of the insurance contracts that [Insert Producer's Name] provides to the insurer.*
- 4.) *(if applicable) You may obtain information about any expected compensation related to your insurance purchase and the compensation that [Insert Producer's Name] would have expected to receive concerning any alternative quotes presented by [Insert Producer's Name].*

## **Disclosures if the Consumer Requests More Information**

After receiving the initial disclosures, but before buying insurance, some consumers may want more information about producer compensation. The New York regulation entitles a consumer to more information, which must be provided at or before the issuance of the contract; however, if time is of the essence to issue the contract, the disclosures need only be provided within five business days. The following template may be used:

### *Expanded Insurance Producer Compensation Disclosures*

1.) *[Insert Producer's name] will receive [money, credits, prizes, or any other thing of value] from [Insert name of source of compensation] if you purchase insurance. The amount of that compensation will be [insert amount or percentage commission]. In addition to [Insert Producer's name], [insert name of any applicable parent, subsidiary or affiliate of the producer] will receive [insert amount] based in whole or in part on the sale.*

2.) *In addition to the insurance coverage you have elected to purchase, you have also been provided with the following alternative quotes, which would have resulted in the following compensation being paid to [Insert Producer's name]. [Insert description of any alternative quotes presented by the producer, including the coverage, premium and compensation that the insurance producer or any parent, subsidiary or affiliate would have received based in whole or in part on the sale of any such alternative coverage.]*

3.) *Neither [Insert Producer's name] nor any parent, subsidiary or affiliate [if applicable] has any material ownership interest in the insurer issuing this contract or in any parent, subsidiary or affiliate of the insurer. [In the alternative, describe any material ownership interest the insurance producer or any parent, subsidiary or affiliate has in the insurer issuing the insurance contract or any parent, subsidiary or affiliate.]*

4.) *Neither the insurer issuing this contract nor any parent, subsidiary, or affiliate has any material ownership interest in [producer's name] or any parent, subsidiary, or affiliate. [In the alternative, describe any material ownership interest the insurer issuing the insurance contract or any parent, subsidiary or affiliate has in the insurance producer or in any parent, subsidiary or affiliate.]*

5.) *[Insert statement whether the insurance producer is prohibited by law from altering the amount of compensation received from the insurer based in whole or in part on the sale.]*

Some consumers may not seek more information until *after* a policy has been issued. If such a request is made within 30 days of the date of issue, the producer must provide the information contained in the preceding template for expanded insurance disclosures within five business days of the request.

If the nature, amount or value of any compensation to be disclosed by an insurance producer is not known at the time the disclosures are provided, the producer must provide: (1) a description of the circumstances that may determine the receipt and amount or value of such compensation, and (2) a reasonable estimate of the amount or value, which may be stated as a range of amounts or values. To comply with this requirement, New York producers may utilize language similar to the following:

*The exact amount of compensation that [Producer's Name] will receive is not known at this time. The compensation will be calculated by [provide description of calculation method]. Though the exact amount of compensation is not known, a reasonable estimate is [fill-in amount or range of amounts].*

### **Renewals**

The regulation does not apply to renewals, unless the purchaser requests more information about the producer's compensation less than 30 days prior to a renewal or less than 30 days after a renewal, in which case the producer must provide the expanded insurance disclosures in writing within five business days.

### **Records Retention**

A producer must retain a copy of the disclosures for three years after the disclosures are provided, unless the producer has a written agreement with the insurer that requires the insurer to retain a copy.