



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

**Circular Letter No. 22 (1998)**  
**August 25, 1998**

**TO: All Licensed Brokers and Property/Casualty Insurers**

**RE: Disclosure of Brokers' Compensation**

An alleged market development has recently come to the attention of the Department that appears to warrant scrutiny. The development centers on the allegation that undisclosed compensation, in addition to commissions, is being paid to brokers by insurers as additional compensation for the placing of business without such information being furnished to insureds. Pursuant to Section 2101(c) of the New York Insurance Law ("NYIL"), a broker is the legal representative of the insured. It is the position of the Department that the undisclosed receipt of additional compensation is sufficient to create the perception that brokers are conflicted in their loyalties and that such conduct may constitute a violation of Section 2110 as a dishonest or untrustworthy practice.

Accordingly, pursuant to the sections of law noted above, as well as Article 23 of the NYIL, this Department offers the following guidance.

- All compensation arrangements between an insurer and a broker should be reduced to writing and agreed to by both parties;
- All such compensation arrangements should be disclosed to insureds prior to the purchase so as to enable insureds to understand the costs of the coverage and the motivation of their broker in placing the business;
- All fees paid to brokers should be included as factors in the establishment of an insurer's premium rates;
- All fees paid to brokers (and reasons for such fee payments) should be included in a broker file maintained by the insurer; and
- The insurer's internal auditing procedures should include verification that all fees paid to brokers are proper and within the parameters of the New York Insurance Law and Department regulations.

The Department will review these matters in future market conduct investigations of insurers and brokers.

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Bonnie Steingart  
Deputy Superintendent &  
General Counsel

