



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

George E. Pataki
Governor

Howard Mills
Acting Superintendent

Circular Letter No. 6 (2005)
April 19, 2005

TO: All Authorized Property/Casualty Insurers and Life Insurers, Rate Service Organizations, Excess Line Association of NY, and Insurance Producer Organizations

RE: Group insurance policies for life insurance agents and broker/dealer representatives

STATUTORY REFERENCE: Section 308 and Articles 34 and 59 of the Insurance Law, Federal Liability Risk Retention Act, Insurance Department Regulations Nos. 134 and 135

It has come to the Insurance Department's attention that certain group insurance programs designed to provide liability insurance coverage for life insurance agents and broker/dealer representatives of their affiliates do not comply with New York law.

Some life insurers have required their New York agents and securities broker/dealer representatives of their affiliates to purchase liability insurance coverage under a master policy issued to the life insurer from a specific insurance company. The agents and representatives are required to become additional insureds under the master policy issued to the life insurer. These policies typically contain an overall aggregate limit so that a particular agent's or representative's coverage could be exhausted by claims against other agents or representatives.

The programs fall within the definition of group insurance contained in Section 153.1(g) of Regulation No. 135 (11 NYCRR 153). However, they are issued in violation of New York law since the policies are not issued on a purchasing group basis; the policies contain an overall group policy aggregate and the life insurers holding the master policies require the agents and representatives to purchase the coverage. Specifically::

1. A policy that insures an insurance company, and its insurance agents and/or the representatives of the insurer's affiliate, a securities broker/dealer, may not be issued as a group personal excess insurance policy under N.Y. Ins. Law § 3445 (McKinney 2000). However, a group commercial liability policy may be issued if it complies with the requirements of N.Y. Ins. Law Article 59 (McKinney 2000); the Federal Liability Risk Retention Act 15 U.S.C. §§ 3901, *et seq.* ("LRRRA"); N. Y. Comp. Codes R. & Regs., tit. 11, § 153.0 *et seq.* (1995) (Regulation No. 135); and N. Y. Comp. Codes R. & Regs., tit. 11, § 301.0 *et seq.* (1995) (Regulation No. 134).
2. An insurance company or securities broker/dealer may not require that

its New York agents or representatives purchase insurance under a group insurance policy insuring the insurer, and its insurance agents and/or the broker/dealer's representatives. In addition, an insurer or broker/dealer may not require its New York agents or representatives to purchase insurance from a specific insurer.

3. A policy that insures an insurance company, and its insurance agents and/or the representatives of the insurer's affiliate, a securities broker/dealer, may not provide coverage to its New York members subject to a group aggregate liability limit.

These points are explained in detail in an opinion issued by the Insurance Department's Office of General Counsel. See OGC Opinion 04-01-20 on the Insurance Department's Web site, at <http://www.ins.state.ny.us/rg040120.htm>.

A certificate or other evidence of insurance issued or delivered in New York on the individual agents or representatives is considered to be a policy for purposes of New York law and must comply with all applicable requirements under the Insurance Law and Regulation No. 135 regardless of whether the master policy is delivered to the insurance company or broker/dealer outside of New York, even if the master policy is placed on an excess line basis. In addition, for authorized insurers, New York Insurance Law Article 23 applies with respect to any risk or operation in this state.

Every life insurer shall review its requirements for liability coverage for its agents and for securities broker/dealer representatives of its affiliates to determine if any such requirements violate New York law or regulations. If any violations exist, the insurer shall advise the Insurance Department of such violations, in writing, within 30 days of this Letter, and provide the Insurance Department with a plan for taking corrective action.

Every property/casualty insurer writing commercial professional liability insurance must review its liability insurance books of business, including programs written as special risk insurance in the Free Trade Zone pursuant to New York Insurance Law Article 63, to determine if they have issued any group policies in violation of federal or NY law or regulations. If any policy is found to have been issued in violation, the insurer must restructure the program and make appropriate filings to be in compliance with the laws and regulations. Any illegal policy must be nonrenewed as of its next renewal date. Insurers are reminded that pursuant to Insurance Law Section 3435(d) and Regulation No. 135 (11 NYCRR 153.6(c)) group insurance policies may not be written in the Free Trade Zone. Excess line brokers are reminded that no such group policy may be placed except as described in this Circular Letter.

Any insurer or excess line broker that has written or placed such a policy shall notify the Insurance Department in writing of such fact within 30 days of this Letter, and provide the Insurance Department with a plan for taking corrective action.

Responses to this Circular Letter should be directed to:

Liability Insurance

Joy Wertel, Principal Examiner
New York State Insurance Department
25 Beaver Street
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by e-mail: Joy.Wertel

Life insurance

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Very truly yours,

Jeffrey Angelo
Assistant Deputy Superintendent & Chief
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Mark Presser
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Property Bureau