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In the Matter of

FIDELITY NATIONAL TITLE GROUP, INC., CHICAGO TITLE AND TRUST COMPANY, CHICAGO TITLE INSURANCE COMPANY, FIDELITY NATIONAL TITLE INSURANCE COMPANY, TICOR TITLE INSURANCE COMPANY, NATIONS TITLE INSURANCE OF NEW YORK INC., TICOR TITLE INSURANCE COMPANYOF FLORIDA and NATIONAL TITLE INSURANCE OF NEW YORK, INC.

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ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of Executive Law § 63 (12), General Business Law § 349 and the common law of the State of New York, the office of Eliot Spitzer, Attorney General of the State of New York ("OAG") caused an investigation to be made of Fidelity National Title Group, Inc., and its insurance subsidiaries (collectively, "FNTG") including Chicago Title and Trust Company, Chicago Title Insurance Company, Fidelity National Title Insurance Company, Ticor Title Insurance Company, Nations Title Insurance of New York Inc., Ticor Title Insurance Company of Florida and National Title Insurance of New York, Inc. (collectively, "FNTG's New York Subsidiaries") relating to the payment of rebates and certain referral fees in or from the State of New York, Howard Mills, the Superintendent of Insurance of the State of New York ("Superintendent") and the New York State Insurance Department ("NYSID"), pursuant to the provisions of New York Insurance Law §§ 305, 309, 310, 2301 *et seq.* and §§ 6401 *et seq.*, conducted an investigation of FNTG and its insurance subsidiaries on the same subject matter

(together, both investigations are referred to as the "Investigation") and conducted an examination of Fidelity National Title Insurance Company, Inc. and Chicago Title Insurance Company, Inc. on the subject matter of the Investigation and the manner in which Fidelity National Title Insurance Company, Inc. and Chicago Title Insurance Company, Inc. conducts their business practices and fulfills their contractual obligations to policyholders and claimants. Based upon the Investigation the following findings have been made:

BACKGROUND

FNTG is the title insurance market leader in New York and nationally. FNTG's market share for 2005 was more than 33% of title insurance business written in New York.

As part of a statutory scheme designed to protect consumers, New York law prohibits title insurers from paying rebates to their customers or referral fees to their customers' representatives. FNTG, however, has paid rebates to large commercial customers and referral fees to certain commercial customers' representatives. FNTG has also failed to implement policies, procedures, training or controls designed to ensure that it complies with New York law.

A. New York's Title Insurance Laws

New York State employs a fixed rate schedule that must be filed with and approved by the NYSID. The filed rates are meant to ensure that (a) title insurance rates are set at a reasonable level and reflect the true costs of providing that insurance, (b) title insurers remain solvent and earn a reasonable profit, and (c) consumers are treated equally by title insurance companies. Thus, it is illegal in New York for title insurance companies to charge rates deviating from their filed rate schedules. Insurance Law § 2314.

In furtherance of its consumer protection objective, New York law prohibits the payment of any (a) rebates from the premiums collected based on filed title insurance rates and (b) referral fees to any representative of the insured. These rebate and referral fee prohibitions were passed by the New York Legislature in 1975 in order to reduce the cost of title insurance. Insurance Law § 6409(d) provides that:

> No title insurance corporation or any other person acting for or on behalf of it, shall make any rebate of any portion of the fee, premium or charge made, or pay or give to any applicant for insurance, or to any person, firm, or corporation acting as agent, representative, attorney, or employee of the owner, lessee, mortgagee or the prospective owner, lessee, or mortgagee of the real property or any interest therein, either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement for, or as compensation for, any title insurance business.

In recommending these prohibitions, the then Superintendent of Insurance explained:

> Lawyers and real estate brokers now receive commissions of up to 15% or more of the title insurance premiums, despite their being otherwise compensated for their services in the real estate transaction. An elimination of these commissions will reduce title insurance costs to consumers. . . .

Memorandum from John P. Gemma, Acting Superintendent of Insurance, to the Governor of the State of New York (June 6, 1975) ("Memorandum to the Governor"). *See also* Memorandum from the State of New York Insurance Department, to the Counsel of the Governor of the State of New York, "Ins. Dept. #4-75" (discussing Legislative Proposal No. 4, 1975).

Section 349 of the New York General Business Law ("GBL") empowers the OAG to seek injunctive relief when any person or entity has engaged in deceptive acts or practices in the conduct of any business. Section 350-d of the GBL empowers the OAG to seek, *inter alia*, civil penalties in the amount of $500 for each violation of section 349, the Deceptive Practices

Statute. Finally, Executive Law §§ 63(12) and 63(15) empower the OAG to seek injunctive and equitable relief when any person or business entity has engaged in or otherwise demonstrated repeated fraudulent or illegal acts in the transaction of business.

B. FNTG's Violations of New York Law

FNTG has violated New York law by paying illegal rebates and referral fees.

1. Illegal Rebates: FNTG's Rate Blends

FNTG gives illegal rebates to sophisticated real estate developers by using the New York rates as a basis for subsidizing discounts on business transacted in states that do not require a fixed rate schedule. The result is what are called "rate blends."

a. Rate Blends

In the most common type of rate blend transaction, the developer pays the full regulated New York rate to a title insurer, and receives discounted or free title insurance in unregulated states in return. Thus, the rates of regulated states like New York are "blended" with the rates of unregulated states, resulting in a lower charge (or in some cases, even no charge at all) for title insurance outside of New York.

In these transactions the blended rate is based on the full premium required by New York and the other regulated states involved in the transaction plus a heavily discounted amount for the properties in unregulated states. In some cases, the rates in the unregulated state are reduced to zero.

These rebated transactions are not identified as rebates in FNTG's New York books or in its filings with the NYSID.

FNTG creates an entry reflecting the full amount of the filed New York premium and an offsetting entry of a portion of the premium under an inappropriate expense code, thus "netting" the amount down to the actual premium payment received.

FNTG has engaged in numerous blended rate transactions involving New York properties. The following are examples of recent rate blends transacted by FNTG:

- In a transaction involving a real estate developer occurring in or about December 2004, involving twelve sites in seven states, the New York filed rate premiums for the three New York properties totaled $1,755,967.80, which were reduced by $366,850 as a result of the rate blend. This sum was rebated to the developer in the form of credit against the premiums for the California, Illinois, and Wisconsin policies in the transaction. FNTG's share of this rebate was $183,425.

- In a transaction occurring in or about March 2005, involving five senior assisted-living properties in five states (New York, North Carolina, Missouri, Illinois, and Ohio), the New York filed rate premium was $256,721.81. The sum of $128,360.91 was taken out of the full New York premium and was rebated to the customer in the form of lower premiums in Illinois, Missouri, and Ohio.

- In a transaction occurring in or about June 2004, involving one site in New York, the New York filed rate premium was $176,288. The sum of $20,298 was taken out of the full New York premium and was rebated to the customer in the form of lower premiums in other states.

- In a transaction occurring in or about July 2003, involving an 18-site deal for hotel properties, with one in New York, the sum of $17,811.57 was taken out of the full New York premium of $33,843.00 and was rebated to the customer in the form of lower premiums in other states.

- In a transaction occurring in or about January 2004, involving 49 properties in 22 states, the three New York premiums totaled $17,972.61, which were reduced by $10,424.12 as a result of the rate blend. This sum was rebated to the customer in the form of credit against the premiums for the California, Georgia, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Ohio, and South Carolina policies in the transaction. In the end, the customer ended up paying premiums on only 27 out of the 49 properties (in 13 out of the 22 states) involved in the transaction.

- In a transaction occurring in or about May 2005, involving three sites in three states (New York, California, and Virginia), the New York filed rate premium was $17,063.89. The sum of $4,832.00 was taken out of the full New York premium and was rebated to the customer in the form of credit against the California premium.

b. Delayed Blends

A second type of rate blend occurs when a developer is only purchasing a single large New York property. Since there is no immediately available out-of-state fee to discount or "zero out," the title insurer simply gives the developer a credit for future use, *i.e.*, a "delayed blend." To do this, the title insurer collects the New York filed rate premium from the developer and immediately deposits a portion thereof in an escrow account to be applied against that developer's future purchase of title insurance policies outside New York – in essence a coupon for free or reduced title insurance on the developer's next out-of-state transaction in an unregulated state.

Examples of recent delayed blend transactions are as follows:

- In three separate transactions involving a San Francisco real estate developer, which took place between February 2003 and April 2005, out of a total premium for five New York properties of $581,769, FNTG took out $146,726 and placed it in an escrow account to be used by the developer for future title insurance purchases.

- In a transaction occurring in or about July 2004, out of a total premium for the New York property of $266,329, FNTG took out $79,899 and placed it in an escrow account to be used by the developer for future title insurance purchases. In connection with this transaction, one FNTG officer advised another that the purchaser had a delayed blend arrangement with FNTG, requiring FNTG "to escrow 25-30% toward future premiums.... I'd plan on a 30% holdback [of the New York premium]."

- In a transaction occurring in or about December 2004, out of a total premium for the New York property of $253,479, FNTG took out $55,765 and placed it in an escrow account to be used by the developer for future title insurance purchases.

As with the failure of FNTG to identify rate blends as rebates in its New York books or in its filings with the NYSID, FNTG similarly failed to identify its delayed blends as rebates.

2. FNTG's Illegal Referral Fees

FNTG's second violation of New York law involves paying illegal referral fees in commercial transactions. As discussed above, New York Insurance Law § 6409(d) prohibits the payment of referral fees by title insurers to representatives of the insured. Payments to representatives of the insured are allowed only if that representative is providing "substantial services" to the title insurer and then only if the payment for such "substantial services" is reasonable.

FNTG has paid referral fees to representatives of the insured who did not provide substantial services to FNTG. These referral fees can reach up to 50% of the value of the total premium paid on a transaction.

FNTG records its referral fee payments in its books and records under the category "Other Operating Expenses: Other," identified by code number 588500, which is described obliquely as "Referral expense-other" in FNTG's "Universal Chart of Accounts."

FNTG also reports the costs of these illegal referral fees under broad, un-itemized expense categories in its statutorily required NYSID filings, by treating these payments as "other" expenses that appear to support higher title insurance rates to ensure FNTG's continued profitability. Accordingly, in its quarterly filings with the NYSID, FNTG reports illegal referral

fee payments in the schedule called, "Operations and Investment Exhibit Statement of Income," under line 5, "Operating expenses incurred," a category that also includes legitimate expenses. This practice allows FNTG to reduce its reported profit in New York.

Based on these factual allegations, the OAG and NYSID allege that FNTG has violated New York law, including Executive Law § 63 (12), General Business Law § 349, New York Insurance Law § 2301 *et seq.* and § 6401 *et seq.*, and the common law of the State of New York, by paying illegal rebates and referral fees, and by submitting inaccurate information to the NYSID relating thereto.

FNTG has been and is continuing to cooperate with the Investigation.

Under this Assurance of Discontinuance (the "Assurance") and corresponding Stipulation with the NYSID (the "Stipulation"), FNTG will implement a number of business reforms governing this conduct.

By entering into this Assurance, the OAG resolves all issues uncovered to date, including all issues related to illegal rebates and referral fees, in the Investigation concerning FNTG, including the conduct of FNTG's subsidiaries, directors, officers and employees.

The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest and is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding.

The NYSID and FNTG will, simultaneously with the signing of the Assurance, enter into a Stipulation to resolve all issues uncovered to date in the Investigation but not

including any issues in the NYSID's current examination of Fidelity National Title Insurance Company, Inc. and Chicago Title Insurance Company, Inc.

This Assurance is entered into solely for the purpose of resolving the Investigation with regard to FNTG, and is not intended to be used for any other purpose.

Without admitting or denying any of the above allegations or findings, FNTG is entering into this Assurance and the Stipulation.

NOW THEREFORE, the OAG and FNTG hereby enter into this Assurance and agree as follows:

PENALTY

1. On or before June 30, 2006, FNTG's New York Subsidiaries shall pay $2 million as a fine, by wire transfer to the State of New York. This penalty is imposed for all of the improper conduct described in this Assurance.

BUSINESS REFORMS

2. Within 60 days of the date of this Assurance (or such other date as specified below), FNTG shall undertake the following business reforms. FNTG will not undertake any transaction for the purpose of circumventing the prohibitions contained in this Assurance and the Stipulation.

PROHIBITION OF ILLEGAL REBATES AND REFERRAL FEES

3. FNTG shall immediately cease paying illegal (a) rebates and (b) referral fees as described in this Assurance.

RATE REDUCTIONS AND RATE HEARINGS

4. Concurrently with execution of this Assurance, FNTG's New York Subsidiaries shall cause to be filed with the NYSID an application for a downward deviation from current title insurance rates on file with the NYSID, together with all supporting information necessary for review by the NYSID for a rate reduction of 15% on all purchase transactions in New York involving liability levels up to $1 million. Upon approval by the Superintendent, these rate reductions shall remain in effect until hearings on industry-wide rates are conducted by the NYSID in 2006, at which point all rates may be adjusted as the Superintendent deems appropriate.

RATE CALCULATION WEB SITE

6. FNTG shall also develop a web site for its customers. The web site shall contain rate information sufficient to inform the insured of the total of the New York premium and all endorsements and fees for each title insurance policy for real property located in the State of New York. FNTG shall have this system fully operational by no later than September 1, 2006.

7. Beginning no later than September 1, 2006, for all transactions involving real property located in the State of New York, FNTG shall notify or cause its title agents to notify the insured in writing, at the time the insured or its representative orders any title insurance, of the web site referred to in paragraph 6 and the information available on the site.

PROHIBITION OF CLOSING "ADD-ONS"

8. FNTG shall require a certification from the title agents in connection with each transaction involving real property located in the State of New York that the insured has paid the title agent only the premium for the title policy in accordance with the insurer's filed rates in

New York and charges for necessary services performed in connection with the issuance of the title policy as permitted under the applicable approved rate manual in New York and *not* any additional charges of any kind, including but not limited to the payment of cash tips at the closing. If the rate manual does not specify how much may be charged for a service, the charge shall be reasonably related to the work performed and shall not be excessive. Nothing in this paragraph shall preclude a title agent from performing additional services that may be required by the lender or other party but which are not necessary services performed in connection with the issuance of the title policy; provided, however, that the title agent certifies that it has provided a clear notice to the insured that such additional services are not performed in connection with the issuance of the title policy and has advised the insured that the issuance of the title policy is not dependent upon the agent performing such additional services.

9. FNTG agrees to monitor and maintain adequate records for all transactions involving real property located in the State of New York to identify charges that are added to the customer's bill at closing by title agents, in order to prevent such added charges from being incurred by the customer.

COMPLIANCE PROCEDURES

10. FNTG shall review its internal control and system information structures, including but not limited to, operational and financial reporting controls of FNTG in the United States and develop policies, procedures and training programs, acceptable to the NYSID and OAG, to ensure compliance with New York state law, including but not limited to those relating to rebates, referral fees, proper calculations of premiums, and proper financial reporting. FNTG

shall also develop policies and an employee training program, acceptable to the NYSID and OAG, prohibiting excessive gifts and entertainment related to transactions involving real property located in the State of New York. A report of FNTG's review, an appropriate remediation plan and timetable for full implementation, shall be provided to the OAG and NYSID by September 30, 2006.

COOPERATION WITH THE NYSID

11. FNTG commits that it and its insurance subsidiaries will implement a record retention policy, within 30 days of signing this Assurance and the Stipulation, to ensure compliance with applicable record retention requirements, including but not limited to the responsibility of the insurer for the maintenance of files for policies issued by agents, and ensure that all files contain documentation necessary to properly rate the policies. FNTG further commits to maintain and provide to the NYSID, upon its request, complete files, including correspondence and e-mails, and payment records. FNTG commits that it will authorize its independent auditors and direct its internal auditors to make available to the NYSID upon request all workpapers of FNTG's auditors.

12. FNTG commits that it and its insurance subsidiaries will cooperate fully with all examinations and on all other regulatory requests and will respond to all NYSID inquiries in a prompt, timely and complete manner, subject to applicable laws, and will provide appropriate staff during examinations in order to provide timely responses. Failure to respond to the NYSID in a timely manner, as required by this paragraph, will constitute violations of this Assurance, the Stipulation and the Insurance Law.

13. FNTG commits that the Chair of the Audit Committee of Fidelity National Title Group, Inc. and each of FNTG's New York Subsidiaries, if requested, will meet with the NYSID and/or a designated official of the NYSID on an annual basis or more frequently as deemed necessary by the NYSID.

COOPERATION WITH THE OAG

14. FNTG commits that it and its insurance subsidiaries shall fully and promptly cooperate with the OAG with regard to the Investigation, and related proceedings and actions, of any other person, corporation or entity, including but not limited to FNTG's current and former employees, concerning the insurance industry. FNTG commits that it and its insurance subsidiaries shall use their best efforts to ensure that all its officers, directors, employees, and agents also fully and promptly cooperate with the OAG in the Investigation and related proceedings and actions. Cooperation shall include without limitation: (a) production voluntarily and without service of subpoena of any information and all documents or other tangible evidence reasonably requested by the OAG, and any compilations or summaries of information or data that the OAG reasonably requests be prepared; (b) without the necessity of a subpoena, having FNTG and its insurance subsidiaries officers, directors, employees and agents attend any proceedings at which the presence of any such persons is requested by the OAG and having such persons answer any and all inquiries that may be put by the OAG to any of them at any proceedings or otherwise ("proceedings" include but are not limited to any meetings, interviews, depositions, hearings, grand jury hearing, trial or other proceedings); (c) fully, fairly and truthfully disclosing all information and producing all records and other evidence in its

possession relevant to all inquiries reasonably made by the OAG concerning any fraudulent or criminal conduct whatsoever about which it has any knowledge or information; (d) in the event any document is withheld or redacted on grounds of privilege, work-product or other legal doctrine, a statement shall be submitted in writing by FNTG indicating: (i) the type of document; (ii) the date of the document; (iii) the author and recipient of the document; (iv) the general subject matter of the document; (v) the reason for withholding the document; and (vi) the Bates number or range of the withheld document. The OAG may challenge such claim in any forum of his choice and may, without limitation, rely on all documents or communications theretofore produced or the contents of which have been described by FNTG, its officers, directors, employees, or agents; and (e) FNTG shall not jeopardize the safety of any investigator or the confidentiality of any aspect of the investigation, including sharing or disclosing evidence, documents, or other information with others during the course of the investigation, without the consent of the OAG. Nothing herein shall prevent FNTG from providing such evidence to other regulators, or as otherwise required by law.

15. FNTG shall comply fully with the terms of this Assurance. If FNTG violates the terms of paragraph 14 in any material respect, as determined solely by the OAG: (a) the OAG may pursue any action, criminal or civil, against any entity for any crime it has committed, as authorized by law, without limitation; (b) as to any criminal prosecution brought by the OAG for violation of law committed within six years prior to the date of this Assurance or for any violation committed on or after the date of this Assurance, FNTG shall waive any claim that such

prosecution is time barred on grounds of speedy trial or speedy arraignment or the statute of limitations.

OTHER PROVISIONS

16. FNTG commits that it shall not seek or accept, directly or indirectly, indemnification pursuant to any insurance policy, with regard to the penalty payable pursuant to this Assurance and the Stipulation, nor shall it seek to recoup any portion thereof through future rate increases.

17. The OAG agrees that any prior approval required under the terms of this Assurance shall not be unreasonably withheld.

18. This Assurance is not intended to disqualify FNTG or any of its current employees from engaging in any business in New York or in any other jurisdiction. Nothing in this Assurance or the Stipulation shall relieve FNTG of obligations imposed by any applicable state insurance law or regulations or other applicable law.

19. This Assurance shall not confer any rights upon any persons or entities besides the OAG and FNTG.

20. FNTG shall maintain custody of, or make arrangements to have maintained, all documents and records related to this matter for a period of not less than six years.

21. Pursuant to the terms of Executive Law § 63(15), in the event this Assurance is violated, evidence of such violation shall constitute *prima facie* proof of violation of Executive Law § 63 (12), General Business Law § 349, New York Insurance Law § 2301 *et seq.* and § 6401 *et seq.*, and the common law of the State of New York, in any civil action or proceeding

thereafter commenced by the OAG; provided further, that if in such a proceeding it shall be determined that there has been a violation of this Assurance, such finding shall constitute a fraudulent and unlawful practice under Executive Law § 63 (12), General Business Law § 349, and New York Insurance Law § 2301 *et seq.* and § 6401 *et seq.*, and the OAG may seek an order permanently enjoining FNTG from further violating said statutes.

22. The OAG may make such application as appropriate to enforce or interpret the provisions of this Assurance, or in the alternative, maintain any action, either civil or criminal, for such other and further relief as the OAG may determine is proper and necessary for the enforcement of this Assurance.

23. In any application or in any such action, facsimile transmission of a copy of any papers to current counsel for FNTG shall be good and sufficient service on FNTG unless it designates, in a writing to the OAG, another person to receive service by facsimile transmission on behalf of FNTG.

24. Facsimile transmission of a copy of this Assurance to counsel for FNTG shall be good and sufficient service on FNTG.

25. This Assurance shall be governed by the laws of the State of New York.

26. This Assurance may be executed in counterparts.

Executed this 23rd day of May, 2006.

ELIOT SPITZER
Attorney General of the State of New York
by _____
120 Broadway, 25th Floor
New York, New York 10271

FIDELITY NATIONAL TITLE GROUP, INC., CHICAGO TITLE AND TRUST COMPANY, CHICAGO TITLE INSURANCE COMPANY, FIDELITY NATIONAL TITLE INSURANCE COMPANY, TICOR TITLE INSURANCE COMPANY, NATIONS TITLE INSURANCE OF NEW YORK INC., TICOR TITLE INSURANCE COMPANYOF FLORIDA and NATIONAL TITLE INSURANCE OF NEW YORK, INC.

By: _____

Name: _____

26. This Assurance may be executed in counterparts.

Executed this 23rd day of May, 2006.

ELIOT SPITZER
Attorney General of the State of New York

_____
120 Broadway, 25th Floor
New York, New York 10271

FIDELITY NATIONAL TITLE GROUP, INC., CHICAGO TITLE AND TRUST COMPANY, CHICAGO TITLE INSURANCE COMPANY, FIDELITY NATIONAL TITLE INSURANCE COMPANY, TICOR TITLE INSURANCE COMPANY, NATIONS TITLE INSURANCE OF NEW YORK INC., TICOR TITLE INSURANCE COMPANYOF FLORIDA and NATIONAL TITLE INSURANCE OF NEW YORK, INC.

By: _____, EVP

Name: Peter T. Sadowski, EVP