NEW YORK STATE
INSURANCE DEPARTMENT

SECOND AMENDMENT TO REGULATION NO. 45
(11 NYCRR 8)

INSIDER TRADING OF INSURANCE SECURITIES

I, Gregory V. Serio, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 1207, 1221, and 1411 of the Insurance Law, do hereby promulgate the following Second Amendment to Part 8 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 45), to take effect upon publication in the State Register, to read as follows:

(Matter in brackets is deleted; new matter is underlined)

The statutory authority references for Part 8 are repealed and a new statutory authority is added to read as follows:

Insurance Law Sections 201, 301, 1207, 1221, and 1411

Sections 8.0 and 8.1 are amended to read as follows:

§ 8.0 Introductory.

The following Part 8 is hereby promulgated to establish procedures to effectuate the purposes of [subdivision 5 of] section [78] <u>1221</u> of the Insurance Law with respect to insider trading by officers, directors, and principals of domestic stock insurers whose stocks are sold on the "over-the-counter" market.

§ 8.1 Market-making exemption.

Upon approval of an application for exemption as hereinafter provided, the provisions of [paragraph (b) of subdivision 5] <u>subsection (a)</u> of section [78] <u>1221</u> of the Insurance Law shall not apply to any purchase and sale, or sale and purchase, and the provisions of [paragraph (c) of subdivision 5] <u>subsection (b)</u> of section [78] <u>1221</u> of such law shall not apply to any sale, of any stock not then or theretofore held by him in his investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market; and no such purchase or sale shall be matched against any sale or purchase of such dealer for his investment account for the purpose of determining profits under said [subdivision 5 of section 78] <u>subsection (b)</u>. A market-making exemption will be granted upon written application therefor and a certification by the applicant that the stock for which exemption is requested is stock which has been or will be purchased by applicant for his inventory held or to be held for sale as a dealer in the ordinary course of his business and incident to the establishment or maintenance of a primary or secondary market and will not be stock which has been or will be held by such dealer for investment.

The opening paragraph of Section 8.2 is amended to read as follows:

Any transaction of purchase and sale, or sale and purchase, of any stock which is effected in connection with the distribution of a substantial block of stock shall be exempt from the provisions of [paragraph] subsection (b) of [subdivision 5 of] section [78] 1221 of the Insurance Law, to the extent specified herein, as not comprehended within the purpose of the said [subdivision] provisions, upon the following conditions:

Subdivision (c) and the concluding paragraph of Section 8.2 are amended to read as follows:

(c) other persons not within the purview of [paragraph (b) of subdivision 5 of] section [78] 1221 of the Insurance Law are participating in the distribution of such block of stock on terms at least as favorable as those on which such person is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of [subdivision 5(b)] subsection (b) or subsection (c) of section [78] 1221 by this section. However, the performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing such functions shall not preclude an exemption which would otherwise be available under this section.

The exemption of a transaction pursuant to this section with respect to the participation therein of one party thereto shall not render such transaction exempt with respect to participation of any other party therein unless such other party also meets the conditions of this section.

Subdivision (a) of Section 8.3 is amended to read as follows:

(a) For the purpose of [paragraph] subsection (b) of [subdivision 5 of] section [78] 1221, and subject to the provisions of subdivision (b) of this section, (1) the disposition of stock acquired through the exercise of a stock option, by means of an exchange offer made to all stockholders generally, shall not be the sale of such stock, and (2) the acquisition of stock pursuant to the exercise of a stock option shall not be a purchase which may be matched with any stock theretofore or thereafter disposed of by the acceptance of such exchange offer.

Paragraph (1) of Section 8.3(b) is amended to read as follows:

(1) the plan under which the option is granted and exercised was approved by the superintendent pursuant to section [53-a] 1207;