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BULLETIN NO. 08-12

TO: ALL LICENSED PRODUCERS IN THIS STATE

FROM: STEVEN M. GOLDMAN, COMMISSIONER

**RE: FEES CHARGED BY INSURANCE PRODUCERS FOR SERVICES
IN COMMERCIAL LINES INSURANCE**

N.J.A.C. 11:17B-3 sets forth requirements with respect to fees charged by insurance producers. N.J.A.C. 11:17B-3.1(a) provides that insurance producers acting as agents for an insurance company shall not charge or receive any fee on a policy to or from a policyholder or insured for services rendered as an insurance producer except for reimbursement of actual out-of-pocket expenses incurred in obtaining documents and other materials related to the underwriting process for new automobile applications and subject to the limitations of N.J.A.C. 11:17B-3.2(a)9.

After almost 20 years' experience with this rule, the Department of Banking and Insurance ("Department") has determined that it is appropriate to amend this rule to limit its application solely to personal lines insurance. The distinction between an insurance agent, who represents an insurer, and an insurance broker, who represents the insured, has been blurred in recent years, particularly in the commercial lines context. The substance of modern agency agreements is limiting and restrains the producer in a number of ways. Significantly, an agent now frequently lacks the ability to bind coverage on behalf of the principal without submitting an application to the insurer's underwriters and obtaining advance approval. In personal lines, however, traditional insurance agency relationships continue to exist. In the commercial marketplace, many insurance producers offer an array of services to their commercial clients in addition to the sale of insurance on a commission basis. This provides the client with additional services over and above those that are required to sell, solicit or negotiate insurance, in exchange for the payment of a fee. Clients are willing to pay for additional services because they may be engaged in a high-risk business and need the extra attention, or they may simply believe it is in their commercial interest to maximize their insurance relationship. Examples of these services include: analysis of a client's risk profile and development of a comprehensive insurance program; preparation of annual coverage review analysis; enhanced customer service standards and claims services; appraisal and

inspection of client properties for insurance coverage purposes; and loss control consulting and education. The current rule would prohibit producers from providing and charging for these additional services in transactions involving commercial lines policies, notwithstanding that the insured agreed to pay for such services, where the producer is operating in the capacity of an agent. This is true even if the fees are charged and accepted pursuant to a separate written agreement between the insured and producer.

The Department has determined that, in the case of commercial lines insurance where the products and issues involved in the provision of such coverage are more complex, a producer should not be prohibited from providing additional services and charging appropriate fees for such services, provided that the insured agrees to such additional fees and such fees otherwise comply with N.J.A.C. 11:17B-3.1(b) through (g). The Department intends to propose amendments to the rule in the near future to have it so provide.

The proposed amendments will not modify the restrictions on fees charged in personal lines transactions, nor those applicable to fees charged in surplus lines transactions set forth at N.J.S.A. 17:22A-38.

Pending the adoption of such amendments, the Department will not enforce N.J.A.C. 11:17B-3.1(a) as it applies to commercial line producers, provided the requirements set forth in N.J.A.C. 11:17B-3.1(b) through (g) are satisfied. In the event that the Department does not ultimately adopt the proposed amendment, the enforcement of the current rule will be re-commenced, with adequate notice, as to future transactions.

7/28/08
Date

/s/ Steven M. Goldman
Steven M. Goldman
Commissioner

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