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Approved: Hon. Fernando J. Bonilla  
Secretary of State  
By: Francisco Jose Martín-Caso  
Assistant Secretary for Services

Commonwealth of Puerto Rico  
**OFFICE OF THE COMMISSIONER OF INSURANCE OF PUERTO RICO**

**AMENDMENT TO RULE NO. 84**

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**Commonwealth of Puerto Rico**  
**OFFICE OF THE COMMISSIONER OF INSURANCE**  
**Guaynabo, Puerto Rico**

**AMENDMENT TO RULE NO. 84**  
**OF THE REGULATIONS FOR THE PUERTO RICO INSURANCE CODE**

**ARTICLE I - GENERAL PROVISIONS**

**SECTION 1 - LEGAL BASIS**

The Office of the Commissioner of Insurance of Puerto Rico hereby adopts this amendment to Rule No. 84 of the Regulations for the Puerto Rico Insurance Code, Regulation Number 7374 of the Department of State, pursuant to the provisions of Sections 2.040, 9.022, and 9.062 of Chapter 9 of Public Law No. 77, enacted on June 19, 1957, known as the Puerto Rico Insurance Code, as amended by Public Law No. 10, enacted on January 19, 2006; and the provisions of Public Law No. 170, enacted on August 12, 1988, as amended, the "Uniform Administrative Procedures of the Commonwealth of Puerto Rico Act."

**SECTION 2 - PURPOSE AND SCOPE**

This amendment to Rule No. 84 of the Regulations for the Puerto Rico Insurance Code is adopted for the purpose of revising the provisions of Paragraphs A and B of Section III, to align the provisions with the reality of the insurance business. Thus, it is provided that property and casualty insurers may pay their authorized representatives commissions that are contingent on performance, and the additional compensation that could be paid to said authorized representatives is hereby eliminated. Likewise, the title of said Section III is modified as is the basis for calculating such contingent commissions that property and casualty insurers may pay to general agents and authorized representatives.

Furthermore, the purpose of this amendment is to amend the definition in paragraph (e) of Section II; eliminate the definitions of "Individual" and "Health

services organization” from Section II; and modify Section VII to extend the period of time during which contracts in which the payment of contingent commissions have been agreed on and the duration of which extends beyond the effective date of this Rule shall be modified according to the provisions of this Rule.

Finally, the scope of the Rule is amended so that the provisions are only applicable to insurers that are authorized to underwrite property and casualty insurance. Pursuant to the above, Section IV of the Rule is also amended to eliminate the term “health services organization.”

**SECTION 3. AMENDMENT TO SECTION I, SUBSECTION 2 - PURPOSE AND SCOPE**

Subsection 2 of Section I of Rule No. 84 of the Regulations for the Puerto Rico Insurance Code, is hereby amended to read as follows:

"This Rule is approved for the purpose of establishing guidelines for payment of additional compensation by insurers to general agents or authorized representatives as earned by said general agents or authorized representatives pursuant to the provisions of the Code. The provisions of this Rule shall apply only to insurers that are authorized to underwrite property and casualty insurance."

**SECTION 4. AMENDMENT TO SECTION II - DEFINITIONS**

Section II of Rule No. 84 of the Regulations of the Puerto Rico Insurance Code is amended to read as follows:

- a) ...
- b) ...
- c) ...
- d) ...
- e) “Contingent commission”- means any additional compensation that insurers pay to general agents or authorized representatives, in cash or in kind, which general agents or authorized representatives may earn

pursuant to the provisions of the Code, based on the levels of profitability, productivity, and efficiency of the agent's or representative's portfolio, as established by the insurer contractually.

- f) "Producer" - has the same meaning as stated in Article 9.020 of the Puerto Rico Insurance Code.
- g) "Authorized representative" - has the same meaning as stated in Article 9.021 of the Puerto Rico Insurance Code."

**SECTION 5. AMENDMENT TO ARTICLE III - PAYMENT OF ADDITIONAL COMPENSATION, INCLUDING PAYMENT OF A CONTINGENT COMMISSION**

The title and Paragraphs A and B of Section III of Rule No. 84 of the Regulations for the Puerto Rico Insurance Code are amended, and Paragraph C is added, to read as follows:

**"SECTION III - PAYMENT OF CONTINGENT COMMISSIONS BY INSURERS TO GENERAL AGENTS AND AUTHORIZED REPRESENTATIVES**

- A. Insurers that are authorized by the Commissioner to underwrite property and casualty insurance may pay contingent commissions to general agents or authorized representatives, provided that the total amount of the contingent commissions paid to all general agents and authorized representatives does not exceed fifty percent (50%) of the total net profit generated from underwriting by the insurer during the preceding year, as reflected in the annual report, or fifty percent (50%) of the average net profit or loss generated from underwriting during the past three (3) years, as shown in the annual report.

All additional in-kind compensation that insurers grant general agents or authorized representatives, including, but not limited to, travel, lodging, meals, awards, gifts or any other object of value or form of valuable consideration, shall be subject to the aforementioned fifty percent (50%) limit.

- B. Contingent commissions that insurers may pay general agents or authorized representatives, pursuant to the provisions of Paragraph A of this Section,

shall only be paid if such agents or representatives have generated a return on underwriting at the profitability, productivity, and efficiency levels established by the insurers contractually. No advance payments of contingent commissions or loans to be paid against such will be allowed.

All contingent commissions paid by insurers to general agents or authorized representatives will be considered as an expense that shall be kept in a separate and duly identified account in the insurers' accounting records.

No insurer may use the payment of contingent commissions as a justification for increasing rates. Under no circumstances may the payment of contingent commissions affect the insurer's solvency. With regard to this matter, for each year in which said contingent commissions are paid, insurers shall provide detailed information regarding such payments on the forms established for this purpose by the Commissioner.

- C. Each and every insurer shall be responsible for ensuring that all contingent commission payments made to general agents or authorized representatives are made pursuant to this Rule.”

#### **SECTION 6. AMENDMENT TO SECTION IV - PAYMENT OF ADDITIONAL COMPENSATION BY THE INSURED**

Section IV of Rule No. 84 of the Regulations for the Puerto Rico Insurance Code is amended, to read as follows:

- “A. No provision of this Rule shall be interpreted as prohibiting a producer from receiving from an insured additional compensation other than that paid by an insurer or general agent, provided that the producer discloses to the insured the total amount of compensation received from the insurer or general agent.
- B. The disclosure of information required in Section A shall be made before placing the policy, and shall contain the following:
- i. The source or sources of compensation earned by the producer for placing the insurance business;

- ii. The total amount of the compensation received from the insurer or general agent.
- C. The producer shall keep reliable evidence of compliance with the disclosure of information as required herein. For the purposes of this section, "reliable evidence" means written acknowledgment by the insured confirming that the total amount of compensation that the producer will receive from the insurer or through a general agent has been disclosed. The written acknowledgment made by the insured shall specify the date on which the producer made the required disclosure.
- D. A person shall not be considered an "insured," for the purposes of this section, if said person is merely:
- i. a participant or beneficiary of an employee benefits plan;
  - or
  - ii. an insured under a group insurance policy or a group annuity contract, which has been sold, solicited or negotiated by the insurance producer or an affiliate thereof.

It is further provided that in the aforementioned cases, the producer shall make the required disclosure to the entity named in the policy as the policyholder of the group policy."

#### **SECTION 7. CONTINUED EFFECT OF OTHER SECTIONS**

The remaining sections of Rule No. 84 of the Regulations for the Puerto Rico Insurance Code shall have the same force and effect as on the date of their adoption.

#### **SECTION 8. EFFECTIVE DATE**

This amendment will enter into effect thirty (30) days after filing at the Department of State, pursuant to the provisions of Public Law No. 170, enacted on August 12, 1988, as amended. It is further provided that contracts in which an agreement has been made for the payment of contingent commissions, and for which the duration exceeds the effective date of Rule No. 84, shall be modified according to

the provisions of the Rule within a term of sixty (60) days, to be counted from the date on which this amendment enters into effect.

**SIGNED**

DORELISSE JUARBE-JIMÉNEZ  
COMMISSIONER OF INSURANCE

Approval date: March 14, 2008

Date of Filing at the Department of State: