No. 2924
Date: November 1, 1982 3:00 P.M.
Approved: Carlos S. Quirós
Secretary of State
By: [illegible]
Assistant Secretary of State

Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
P. O. Box 3508 - Old San Juan Station
San Juan, Puerto Rico 00904

AMENDMENT OF THE REGULATION OF THE INSURANCE CODE OF PUERTO RICO

Section I. - In accordance with the provisions of Section 2.040 of Act Number 77 of June 19, 1957, as amended, I hereby give notice to insurance industry, the insurance consumers and the general public the approval of an amendment to Rule XXXIX of the Regulation of the Insurance Code of Puerto Rico which will read as follows:

RULE XXXIX

MASS MERCHANDISING PLANS AND FICTITIOUS GROUPINGS

Legal Authority: Sections 12.040 and 27.080

Section 1. - Purpose. - The purpose of this regulation is to permit the sale of individual property and casualty insurance policies under mass merchandising plans, subject to the conditions provided herein and to prescribe rules which will avoid abuses in connection with this type of sale but which, at the same time, will maintain for policyholders the benefits of individual policies and the potential benefits of mass merchandising.

Section 2. - Eligibility. - Only natural persons members of an eligible group, shall be eligible as insureds and the insurance shall only cover risks relative to the natural person or to property wherein the natural person has an insurable interest, except that physical damage with respect to personal or real property, time element or casualty insurance over commercial risks, as defined by the customs of the business, not including liability insurance, professional as well as other than professional and vehicles, shall not be eligible.

Section 3. - Definitions.

(a) "Mass Merchandising", for the purpose of this regulation, is a form of merchandising property and casualty insurance which results in savings of costs associated with the processing and transaction of insurance (excluding savings for good loss experience under the insured perils) which may be transferred to the members of the eligible group.

(b) Mass Merchandising plan, for the purpose of this regulation, means the set of rules and procedures filed with the Commissioner by an authorized insurer, and approved by the Commissioner, which permits said insurer the use of mass merchandising in the selling of property and casualty insurance to members of an eligible group.

(c) Eligible Group, for the purpose of this regulation, means any one of the following groups:

(1) Active employees of one employer or of a corporation or subsidiary corporations, and the retired employees of said employer or corporations participating of a retirement fund, the employees of affiliated corporations and the partners of one or more partnerships, if the business of the said affiliated corporations or partnerships is under common control by means of the holding of shares of stock or by contracts.

(2) Retired employees participating in a pension plan or pension fund established by the Government of the Commonwealth of Puerto Rico, its departments, entities, corporations, authorities and municipalities.

(3) Members of a labor union.

(4) Members of a cooperative association, or of an association of individuals licensed by the Commonwealth of Puerto Rico to practice a recognized profession, or members of an association of federal, commonwealth, or municipal employees, or trade association or college.

(5) Members of incorporated non-profit clubs.

(6) Employees or ex-employees who are indebted to a retirement fund established by the employer.

(7) Insureds under property policies cancelled due to the declaration of insolvency of an insurer by the Commissioner and/or subject to an order of liquidation by a competent court of justice.

(d) Property and Casualty Insurance means those types of insurance to which Sections 4.040, 4.060, 4.070, 4.080 and 4.090 of the Insurance Code of Puerto Rico apply.

Section 4. - General Provisions. - All mass merchandising plans shall comply with the following provisions and requirements:

(a) All contact efforts with the members of an eligible group by the insurer in connection with procurement, placement and administration shall only be effected through an authorized representative of the eligible group and the producer of the plan duly registered in the Office of the Commissioner of Insurance.

(b) The filing of a mass merchandising plan with the Commissioner, shall include or contain, as the case may be:

(1) The name and address and the place of business of the producer of the plan from which all transactions relative to the placing of insurance shall be performed.

(2) The percentage of commission to be paid to the producer.

(3) The premium discount to be granted under the plan.

(4) If the plan includes more than one class or subdivision of a class of insurance, it shall specify the information required in items (2) and (3) separately for each class or subdivision. The filing with the Commissioner shall be made in a transmittal letter in duplicate and shall include data justifying the requested premium discounts.

(5) The number of eligible members at the time the filing is made certified by an authorized representative of the eligible group.

(6) A written authorization signed by an authorized representative of the eligible group permitting the filing of the plan and designating the producer included in the filing as the producer selected by the members of the group. Provided that authorization may be granted to more than one insurer to make a filing on the same class of insurance for the same eligible group if and only if the number of members is greater than the number of insurers multiplied by 25.

(7) In a detailed form, the kind of insurance activities to be performed by the group or by a group representative.

(8) Any other information the Commissioner may determine.

(c) An eligible group shall consist of at least twenty five (25) members at the time of the filing of the mass merchandising plan. Such mass merchandising plan shall have, at least twenty five (25) members participating in it for each class or subdivision of a class of insurance included within the plan after six months of its effective date. Provided that after six months of the date of approval and within thirty (30) days after such period, the insurer shall notify in writing to the Commissioner the number of participants by class or subdivision included in the plan. If at any time after the first six months there is no compliance with the number of participants herein required, the insurer shall terminate and withdraw the plan or the class of insurance or request from the Commissioner an extension of the period necessary to attain the minimum number of participants.

(d) No insurer shall sell any type of insurance under a mass merchandising plan if it is a requirement of employment or membership in an association or organization that any

employee or member must purchase insurance under such plan, or if an employee or member may be subject to any penalty or discrimination due to the fact that he does not participate in the plan.

(e) No insurer shall sell any type of insurance under a mass merchandising plan if the purchase of the insurance available under such plan is contingent on the purchase of any other type of insurance or of any product or service, or if the purchase of any other type of insurance or any product or service is contingent on the purchase of the insurance available under the mass merchandising plan.

(f) The insurer shall accept all the members of an eligible group as defined in Section 3 who are eligible and who desire to participate in the plan. No insurer shall use underwriting standards for the selection of an individual risk within a mass merchandising plan which are, in general, more restrictive than the stantards used by such insurer for the selection of an individual risk in connection with the sale in Puerto Rico of the same type of insurance under plans other than mass merchandising plans. At the discretion of the insurer, the spouses, children or dependents of members of eligible groups residing in the same household may be accepted.

(g) No mass merchandising plan shall be established, nor will it be permitted that any such plan be established, which may tend to limit the participation of the members who otherwise would be eligible for the insurance in accordance with Section 3 of this Rule by means of providing specific limits of insurance or limits other than the limits required by law or regulation of a public body, or insurance coverages with specific deductibles or other restrictions in the applicable rules and/or forms which the insurer normally does not utilize in the underwriting of individual risks.

(h) No insurer which has issued an insurance policy in connection with a mass merchandising plan shall cancel such policy after being in effect more than sixty (60) days, unless it is for one of the following reasons:

(1) Non-payment of premium by the insured.

(2) In the case of property and automobile insurance, when the eligible member has ceased to have an insurable interest in the insured property or when the insured property has been totally destroyed by an insured peril and the policy does not cover any other property.

(3) In the case of motor vehicles, when the driver's license of the named insured or of any other operator resident in the same household who customarily operates the insured motor vehicle has been revoked due to traffic law violations, except, in the case that the operator is specifically excluded from the policy.

(i) When an insured ceases to be a member of an eligible group its policy shall continue in force until the expiration date.

(j) No insurer which has issued a policy in accordance with a mass merchandising plan shall decline renewal of the policy, unless it gives a written notice to the insured at least twenty (20) days prior to the expiration of the contract. Otherwise, it shall proceed as provided in the regulation in connection with the procedures for the renewal of policies, except as provided in subdivision (k) following.

(k) For the purposes of the legal, regulatory, or contractual provisions limiting cancellation or renewal declination by the insurer, the failure of the employer, of the association or of the organization to remit premiums which are due for any reason (including but not limited to the interruption or termination of employment or membership) shall not be considered non-payment of premium by any policyholder under any plan which provides for remittance of the premium by the employer, association or organization, unless such policyholder has been notified in writing of such failure to remit and such policyholder has

not paid the premium within fifteen (15) days after such notification or after the final due date for the remittance of such premiums, under the mass merchandising plan, whichever period is the longest.

(l) In case of cancellation or non-renewal of a policy, the employer, association, or organization shall have the right to present to the insurer all facts evidencing its opposition to the cancellation or non-renewal of a policy.

Section 5. - Forms and Rates.

(a) The forms, rates, rating plans and every modification of the foregoing under any mass merchandising plan shall comply with the applicable provisions of the Insurance Code of Puerto Rico and the Regulation of Insurance. Rates within a mass merchandising plan shall not be considered unfairly discriminatory as compared with the rates outside a mass merchandising plan due to the fact that they are different for insureds with similar loss exposures but different expense factors provided that the rates reflect the difference with reasonable exactness. Rates shall not be considered unfairly discriminatory if they are broadly averaged among the persons insured under a mass merchandising plan.

(b) The use of master policies and certificates shall be permissible only in the cases in which the master policyholder named therein has an insurable interest in the object of insurance. It shall be permissible to renew an individual policy issued under a mass merchandising plan by issuance of an endorsement or certificate which, in addition, will set forth any changes in the original contractual provisions of the policy.

Section 6. - Separate Statistics.

(a) An insurer which sells insurance under mass merchandising plan shall maintain separate statistics of the premiums, loss and expense experience of such plans.

(b) The use of premium modification plans previously approved by the Commissioner of Insurance base on the expense experience of a mass merchandising plan shall be permitted. All premium, loss and expense experience of mass merchandising plans shall be reported annually to the Commissioner in the forms prescribed by him not later than March 31 of the following year, and to the statistical agent in the form prescribed by them in their statistical plans.

Section 7. - Producer. - No insurer shall engage in the writing of a mass merchandising plan unless through an authorized agent of the insurer or a broker, both resident of Puerto Rico. A general agent shall not be a producer unless it posses a corporate agent license.

Section 8. - Mandatory Facilities. - An agent or broker, who sells insurance under a mass merchandising plan must, with respect to any employee or member who applies for insurance under the plan but is rejected, offer to such person his services in the placement of insurance through the Puerto Rico Assigned Risk Plan or through the Joint Underwriting Association for Fire and Allied Lines Insurance of Puerto Rico.

Section 9. - Fictitious Groups Prohibited.

(a) No authorized or non-authorized insurer shall provide, by means of any rating plan or policy form for property, vehicle, surety or casualty insurance to any firm, corporation or association of individuals, any preferred rate or premium based on any fictitious grouping of such firm, corporation or association of individuals and no master policy or series of policies or certificates of property, vehicle, surety, or casualty insurance, which may be issued to any fictitious grouping on the

basis of any preferred rate or policy form, shall include any resident or group of residents of Puerto Rico in such coverage.

(b) Fictitious grouping is herein defined as any grouping which is not contemplated by Section 3 of this Rule. Provided, however, that such grouping may be permitted by special approval of the Commissioner of Insurance when it is demonstrated to his satisfaction that such groupings will not result in unfair discrimination nor have been formed primarily for the purpose of obtaining such insurance, nor have been formed by reason of religious or political affiliation, sex, ethnic background nationality or race.

Section 10. - Termination of the Plan. - A mass merchandising plan, once it has been placed in force by the insurer, may reject new members and/or not renew policies in force, but shall not cancel any policy in force except for the reasons expressed in Section 4(b) of this Rule. In order to proceed as aforesaid, it shall send a written notice to the group representative and to the Commissioner of Insurance, stating the reasons for the termination with at least thirty (30) days prior to the proposed date of termination of the plan. The termination of the plan in no way will affect the contracts in force at the date of such termination and these contracts shall continue in force until their normal expiration date.

Section II. - Applicability. - This regulation is in addition to, but not in lieu of, other applicable requirements set forth in the Insurance Code of Puerto Rico and the Insurance Regulations. The requirements of this regulation except as provided in Section 9 are not applicable to marketing methods other than through mass merchandising plans as defined in Section 3 of this Rule.

Section 12. - Every registered mass merchandising plan legally in use as of the effective date of this Rule or any amendment to it shall have one year thereafter, to comply with the requirement of this Rule.

Section 2. - This amendment shall be effective five days after its publication in a newspaper of general circulation once a week for two consecutive weeks, after its approval.

Approved on: July 30, 1974

Amended on: September 30, 1981

October 11, 1982

Juan Antonio García
Commissioner of Insurance