# RIBO

## PRINCIPAL BROKER HANDBOOK

REGISTERED INSURANCE BROKERS OF ONTARIO

December 16, 2021

Dear RIBO Members,

RIBO would like to extend our gratitude for the submissions we received following the *RIBO Principal Broker Responsibilities Review & Consultation*. The goal of the consultation was to identify ways in which RIBO could better support Principal Brokers (PBs) in their roles and by extension, better protect and serve the public. One of the important ways RIBO supports PBs is through the Principal Broker Handbook. The Principal Broker Handbook provides information on how to adhere to the *Registered Insurance Brokers Act* (*RIB Act)*, Regulations, and By-Laws, and sets out industry best practices and RIBO expectations for our members. RIBO staff undertook a review of the Principal Broker Handbook to identity areas of improvement and ensure it aligns with current regulatory best practices, as well as reflects the ongoing evolution of insurance industry.

RIBO invites you to review the proposed changes to the Principal Broker Handbook and provide comments on how it might be improved.

Please provide any written comments and feedback via email by March 15, 2022 to Communications@RIBO.com

## *Executive Summary of Proposed Changes*

### Principal Broker

- Sets out RIBO's expectations for the tools and procedures (e.g., staff manuals, signing off on training, and performance management documentation).
- Outlines best practices PBs should do when something goes wrong with an employee.
- Clarifies the steps to correct a trust/equity deficit or inaccurately filed Form 1 Position Report.
- Added a new section to address Principal Brokers of multiple firms.

### Deputy Principal Broker

- RIBO recommends that Deputy PBs be appointed in certain situations (e.g., more than 5 locations or more than 30 employees).
- Updated references to the RIBO By-Laws.

### Branch Locations

- Removed outdated references and cleaned up language.
- Added information about remote-work.

## Supplementary Resources

- Cyber Security – This section recommends that brokerages should adopt a cyber security program and outlines what the program should generally include.
- Social Media – This section outlines RIBO's expectations regarding a broker's social media use to conduct business and suggests policies for PBs to adopt.
- Working with Managing General Agents (MGAs) – RIBO has seen an increase of brokers placing risks with MGAs. This section outlines some best practices for brokers working with MGAs to protect their clients.
- Annual Renewals Procedures – This section outlines the annual renewals to give PBs and brokers a clearer understanding process and how to navigate it.
- Ombudservices - This section advises Principal Brokers to highlight the Ombudservices available to insureds when they have a conflict with an insurer
- Take-All-Comers Rule – Updated guidance regarding FSRA's Take-All-Comers rule
- Updates to the Secondary Occupation requirements to reflect the new process is forthcoming.

## Forms

- The forms were removed the handbook and will soon be available online.

Thank you and regards,

Patrick Ballantyne
CEO

# PREFACE

## "Serve the Public and Regulate the Profession"

RIBO mandates through Regulation that every Brokerage appoints a Principal Broker* who will agree to be responsible for the direction and supervision of the firm and its employees.

The role of a Principal Broker comes with great accountability and responsibility. In this role, you are undertaking to use your best efforts to ensure that all RIBO requirements are being met. To fulfill your responsibilities, you must have full authority to act in the name of, and on behalf of the Brokerage.**

It is important to understand in accepting and assuming the responsibilities in the role of Principal Broker you may be held personally responsible for improper acts of the Firm and/or an Individual Broker under your supervision.

These Guidelines are intended to help focus all Principal Brokers on their RIBO-related duties and responsibilities. It also provides some suggestions on how to manage those responsibilities so as to better achieve compliance with each member's regulatory requirements.

The RIBO Newsletter bulletins and RIBO website (www ribo com) are primary resources to help you, the Principal Broker, stay current with regulatory requirements and best practices. It is also expected that all individuals within the Brokerage periodically check the RIBO website for any revisions to RIBO documents and forms and for news and/or updates.

*** "Principal Broker"** shall be interchangeable with and shall have the same meaning as **"Designated Individual"**

****For the purposes of this document, the term "**Brokerage**" should be taken to include RIBO licensees that operate as wholesalers and/ or Managing General Agents

# PRINCIPAL BROKER DIRECTION AND SUPERVISION REQUIREMENTS

To fulfill your obligations as a Principal Broker, you must be familiar with the *Registered Insurance Brokers Act* (*RIB Act*), Regulations and By-laws as well as the Code of Conduct Handbook. This obligation also extends to any Deputy Principal Broker that has been appointed. As such, all references to the Principal Broker in this document can also be read as references to the Deputy Principal Broker.

The appointment of a Deputy Principal Broker does not materially affect the Principal Broker's accountability for establishing an adequate management and supervision framework to ensure compliance.

## Principles and Considerations – By-law No. 1 Section 15.1 (f)

**(i) TO ENSURE THAT ALL REGISTERED INSURANCE BROKERS WHO ARE EMPLOYEES (INCLUDING PRODUCERS) OR PARTNERS COMPLY WITH THE *RIB ACT*,REGULATIONS AND BY-LAWS**

## Guiding Principles

- The obligation of the Principal Broker is to support and supervise compliance efforts by **all RIBO registered individuals associated with each brokerage**, including owners, partners and shareholders.

- This obligation also extends to all locations where registered persons conduct insurance business, including but not limited to full branches, sales offices, service offices and home offices.

- The Principal Broker is responsible for making certain that current office policies and procedures, including a plan of supervision, are in place, and that all registered staff are regularly trained on these policies and procedures and plan of supervision. These policies and procedures should be consistent with the requirements set out in the *RIB Act*, Regulations and By-laws (included under Supplementary Resources).

- In the event an individual RIBO registrant is **suspended,** procedures should be in place to ensure that the suspended individual complies with the suspension Individuals who are suspended are no different than individuals who are unlicensed. Please refer to "Unlicensed Individuals" in the Supplementary Resources section.

- The Principal Broker should take all reasonable steps to ensure compliance with brokerage policies and procedures, including implementing a plan of supervision.

- Principal Brokers are required to report any potential or real misconduct to RIBO that they are made aware of.

## Multi-Firm Principal Brokers

Principal Brokers may be appointed to serve as the Principal Broker for several related firms or may perform professional compliance and brokerage management services as a Principal Broker for multiple firms. The duties and responsibilities of a multi-firm Principal Broker are in no way different than those of a Principal Broker responsible for a single brokerage.

These multi-firm PBs are required to manage their oversight duties utilizing effective risk management and documented regulatory compliance policies and procedures. These policies and procedures must reflect the unique qualities and business models in place in each brokerage for who they are responsible.

The role of a multi-firm Principal Broker can be supported and enhanced through the appointment of one or more Deputy Principal Brokers as well as through the use of Supervising Brokers within the firm. The Supervising Broker can only perform the actions of a Principal Broker if prescribed in writing.

This not only serves to enhance general management oversight and accountability for the brokerage's activities and employees, it also supports succession planning within the firm.

The Principal Broker is responsible for updating changes to appointments for Deputy Principal Broker and Supervising Brokers with RIBO.

Please note that the Principal Broker retains ultimate responsibility for the actions of the brokerage despite the appointment of a Deputy Principal Broker or Supervising Broker.

## Considerations

- Do current office policies and procedures include a plan of supervision of all individuals associated with the brokerage at all locations?
- Would the appointment of a Deputy Principal Broker(s) or Supervising Broker(s) better assist your compliance efforts? (Remember: The Supervising Broker can only perform the actions of a Principal Broker if prescribed in writing. The Principal Broker retains ultimate responsibility for the actions of the brokerage despite the appointment of a Deputy Principal Broker or Supervising Broker.)
- Is there a dedicated staff member that is responsible for relaying updated firm information to RIBO in a timely manner?
- Does the firm have a centralized payment process or dedicated staff to accept payment for premiums?
- Is there an office manager at every branch that does not have a Deputy Principal Broker and/or Supervising Broker (if applicable) in place?
- Are new hires informed of the RIBO licensing process including needing to complete a recent criminal record check and declaring whether they have a secondary occupation?
- Do all brokerage staff know who has been appointed Principal Broker, and Deputy Principal Broker, and/or Supervising Broker (if applicable)?
- Are all individuals at all locations familiar with the brokerage's management and organizational structure?
- Are periodic reviews being done to ensure the policies and procedures remain relevant?
- Are there binder controls (this includes temporary liability or pink slips) in place and are the controls being monitored and audited?
- Do staff (licensed and unlicensed) understand the proper handling of trust monies including receipt procedures and controls?
- Does the firm have abeyance and diary controls in place? Are they being monitored?
- Is the work of individual brokers reviewed annually to ensure office policies and procedures are being followed?
- Has the firm addressed file ownership and acceptable file maintenance (including where hard copies of client files may be kept, security, confidentiality and privacy issues)?
- Are training sessions on brokerage software and systems provided to registered staff?

- Has the firm detailed a position on acceptable secondary occupations for staff? Is there an approval process in place, including RIBO notification?

- Are any employees working remotely (from home)? Does the firm have policies and procedures in place for use of company-owned equipment, and client date file management and security when working remotely?

- Are any employees working from a third-party owned "shared-space" office? If so, has RIBO approval been obtained for use of the shared space?

  Does the brokerage have a meaningful cyber risk program in place? Is there an incident response plan if there is a breach of consumer information, which includes reporting such breaches to RIBO and any other provincial insurance regulators that you and/or the firm are licensed by?

- if brokers or employees need direction or clarification on any regulatory obligations, are lines of communication and reporting clear and well defined?

**(ii) TO ENSURE THAT ALL REGISTERED INSURANCE BROKERS WHO ARE EMPLOYEES OR PARTNERS ARE PROVIDED WITH AND USE ALL INFORMATION RESPECTING INSURANCE NECESSARY FOR THEM TO ACT IN ACCORDANCE WITH THE CODE OF CONDUCT AND WITHOUT MISCONDUCT OR INCOMPETENCE AS DEFINED OR DESCRIBED IN THE *RIB ACT* AND/OR REGULATIONS**

## Guiding Principles

- The Principal Broker must remain current on:
  - regulatory requirements
  - industry trends
  - insurer requirements
  - market requirements
- The Principal Broker should share this information, as appropriate, to all registered persons and if necessary, unlicensed persons, within their brokerages.
- The Principal Broker (or designate) should be available to staff at all times should they require direction or guidance.
- The Principal Broker should pay particular attention to information that could impact the business of each brokerage for whom they serve and ensure this information is highlighted toall concerned.

## Considerations

**Principal Broker should make the following information available to all staff:**

- Current documentation and forms
- Relevant RIBO Newsletter bulletins & correspondence and other industry publications
- Availability of a resource library including, for example, an office intranet and/or internet (see On-line Information Resources in these Guidelines)

**Training**

- Principal Brokers must ensure that all employees complete their annual continuing education (CE) requirements.
- It is good practice to sign off on all training completed by brokers, including maintaining records onsite with the brokerage and requesting all employees keep their own records of completed CE.
- Consider addressing the training needs of representatives through accredited continuing education courses/seminars, including:
  - In-house training
  - Regular internal training
  - Insurer/market training

- External Training:
  - Identify and provide information about accredited continuing education courses/seminar
  - Is time given/allowed to attend/participate in continuing education courses?
  - Are staff allowed to utilize brokerage computers for accredited on- line learning?
  - Consider creating education opportunities by combining resources with other brokerages to bring in a facilitator/speaker
  - Are staff skills and performance regularly audited to identify

**Misconduct**

- Carefully review any situations involving potential misconduct without judgement.
- Speak to the employee about the situation, restrict any system and email access, and perform an internal investigation.
- If it does not fall under the Code of Conduct, provide the employee additional training.
- If it does fall under the Code of Conduct, inform RIBO and provide all supporting documents.
- Consider performing an audit or review of the employee's previous work to see if it was an on-going issue.
- Document the incident, the steps taken to address the incident, and what the conclusions were.

### (iii) TO ENSURE THAT ALL REGISTERED INSURANCE BROKERS WHO ARE EMPLOYEES OR PARTNERS KNOW AND ACT IN ACCORDANCE WITH THE CODE OF CONDUCT SET FORTH IN THE REGULATIONS

## Guiding Principles

- The Code of Conduct is a key component of the public protection regime set out in the *RIB Act*, Regulations and By-laws.
- It is also designed to enhance the professionalism of property and casualty industry participants.
- The Code of Conduct Handbook should be available to all registered persons. They should be encouraged to review the document and keep themselves current.
- The Code of Conduct Handbook provides useful information and examples on how to best avoid a situation that may lead to an act of misconduct.
- The Principal Broker must report to RIBO serious breaches of the Code of Conduct, and any other relevant regulatory requirements as soon as is reasonable under the circumstances.
- Procedures should be in place to ensure that complaint queries from RIBO are responded to within a reasonable time frame. The Principal Broker is accountable for ensuring a reply and should follow up with the individual broker to ensure all queries have been responded to.
- Is there a log of complaints from the public and how they were resolved or handled?

## Considerations

- Does the firm monitor revisions to the Code of Conduct and Code of Conduct Handbook through RIBO correspondence and the RIBO website?
- Is the Code of Conduct Handbook included in internal training initiatives?
- Consider a regular confirmation from registered persons that they have reviewed the Code of Conduct and have acted in accordance with it.
- Are there procedures in place to ensure compliance with the Code of Conduct, especially, but not limited to, protecting client's confidential information, disclosure protocols and the management of actual or potential conflicts of interest?
- Do the firm's procedures include guidelines for staff on reporting compliance issues to the Principal Broker?

## (iv) TO ENSURE THAT ALL TRUST ACCOUNTS AND BOOKS, RECORDS AND ACCOUNTS ARE MAINTAINED IN ACCORDANCE WITH THE REGULATIONS

### Guiding Principles

- The Principal Broker must have access to all banking and financial information in order to determine the trust, operating, and equity position of the firm and to make relevant decisions.
- Good financial processes and controls will enable a Principal Broker to have an accurate and current snapshot of the firm's trust position.
- Every firm must be able to meet all of the trust obligations at all times in accordance with Regulation 991, Section 16(6).
- The Trust Account must be maintained in accordance with the *RIB Act*, Section 32 and Regulation 991, Sections 16, 17, 18 and 21.
- Books and records must be maintained on a current basis.
- Equity requirements must be maintained in accordance with Regulation 991, Section 19.
- All queries from RIBO relating to trust accounts and books and records must be responded to within the time frames established by RIBO.

### Considerations

- Principal Brokers should ensure that individuals responsible for maintaining trust accounts and books have working knowledge of accounting fundamentals and in particular, how it relates to property and casualty brokerage operations.
- Principal Brokers considering external support for maintaining books and records should engage professionals familiar with performing such functions for property and casualty brokerages.
- When using a brokerage management system, brokers are encouraged to learn and utilize the full potential of the software for its management reporting abilities and to be able to establish the firm's trust position at any given moment.
- Complete an internal Form 1 on a monthly basis
  **1.** bank reconciliation bank balance = G/L account balance
  **2.** premium receivable list = G/L account balance
  **3.** insurer payable sub-listing = G/L account balance
  **4** over 90 days receivables
- Use the Three Step Approach prior to transferring commissions.
- Books and records are maintained in accordance with the ASPE or IFRS accounting standards.

- Trust account requirements:
    - Are all trust monies received by the firm deposited into the trust account within the required three (3) banking days after being received?
    - Account names for financial institution trust accounts and trust investment vehicles must be clearly denoted"IN TRUST" at all times.
    - Trust investments must be "redeemable/cashable" on demand and not "saleable".
    - Regulation 991, Section 16(5) outlines acceptable trust investments and where such investments can be made including:

        - guaranteed investment certificates up to 5 years
        - treasury bills
        - mutual funds that invest only in short-term money market
        - instruments
        - banker's acceptances
        - short-term debt securities, with a rating of the highest credit or superior credit quality from the Dominion Bond Rating Service, issued by non-financial corporations

    - Maintain backups of books and records including customer records for 6 years plus current fiscal year (Regulation 991, Section 17 (9)).
    - Consider commercial line records for at least 10 years to manage liability exposure.
    - Ensure qualified staff are assigned to carry out these responsibilities.
    - Maintain adequate corporate equity comprised of paid-up share capital, direct shareholder loans and/or contributions and retained earnings.
    - **The firm should have a business recovery and disaster plan in place which includes a backup of all books, records and accounts.**

**Correcting Errors for Trust, Equity, or Previously Filed Form 1**

- Inform RIBO of any deficits or errors and correct them immediately.
- Launch an internal audit to determine the cause of the deficit and inform RIBO of the cause of the deficit.
- Put in safeguards to prevent it from occurring again.
- An example, is implementing a procedure by determining the net trust position and the available broker commission funds amount prior to making any funds transfer to the general bank account.
- Re-file Form 1 if there are any material differences as a result of an error.

## (v) TO ENSURE THAT ALL ERRORS AND OMISSIONS INSURANCE, AND/OR OTHER FORMS OF FINANCIAL GUARANTEE, AND ALL FIDELITY INSURANCE ARE MAINTAINED IN ACCORDANCE WITH THE REGULATIONS

### Guiding Principles

- The firm's Errors and Omissions (E&O) insurance and Fidelity Bond must be maintained in accordance with Regulation 991, Section 20 and approved by RIBO.
    - Minimum policy limits:
        - E & O - $3,000,000 per claim / $6,000,000 aggregate
        - Fidelity - $100,000 & RIBO endorsement.
    - Both the bond and insurance policies must be subject to special RIBO endorsements.

### Considerations

- File with RIBO within 30 days (in accordance with RIBO By-law No 20, Section 3(a)) any changes, including upon renewal, to E&O and/ or fidelity coverage, including but not limited to, changes in carriers, deductibles and names.
- Include with filing, all supporting documents that evidence the changes or updates, e.g.,, certificates of insurance, endorsements, etc.
- Minimum equity requirement for the firm's trust account must be maintained in accordance with Regulation 991, Section 20.
    - Corporate equity is comprised of paid-up share capital, direct shareholder loans and/or contributions and retained earnings.
    - Sole proprietorship and partnership equity can be calculated as equity as of last fiscal year-end plus earnings/losses for current year less proprietor's/partner's drawings.

## (vi) TO ENSURE THAT ALL REQUIRED FILINGS ARE MADE AND PRESCRIBED FEES AND ASSESSMENTS ARE PAID IN ACCORDANCE WITH THE REGULATIONS

### Guiding Principles

- The Principal Broker must ensure that RIBO is notified of any changes within 30 days in accordance with By-law No. 20.
    - These may include but are not limited to:
        - change of address
        - change of individual and personal email addresses
        - change in employment
        - change in name of individual, operating, or trade name of firm
        - change in ownership,
        - change in officers or directors
        - change in fiscal year end
- Mandatory filings include position report and annual firm license renewal filings.
- All filings are to be made with the approval of the Principal Broker who will be responsible for the accuracy therein.
- Failure to comply with required filings, due dates, and any required fees, including payment of annual licensing fees, may reflect other more serious concerns/issues within the firm which may impact operations from both a business and regulatory perspective.
- All queries from RIBO must be responded to within the time frames established by RIBO in each query.
- Note: A Certificate of Registration together with your Registration Information may be used as proof of business name registration. As of October 2021, A Master Business License will no longer be issued by Service Ontario. If you have a Master Business License, it remains valid until it expires or is cancelled.

| Item | Deadline/Due Date |
|---|---|
| Form 1 Position Report | **90 days** after most recent fiscal year end and 90 days and 6 months after fiscal year |
| Renewal application form and fee | **August 31st** |
| Continuing education hours | **September 30th** |
| Any changes in information (i e employment, address, name, E&O and Fidelity Bond) | Within **30 days** of change |

## (vii) TO ENSURE THAT NO DIRECTOR, PARTNER OR EMPLOYEE WHO IS NOT A REGISTERED INSURANCE BROKER ACTS AS AN INSURANCE BROKER

### Guiding Principles

- All employees that have direct contact with the public acting in the capacity of an "insurance broker" must be registered with RIBO and maintain that registration in accordance with the *RIB Act*, Regulations and By-laws.

### Considerations

- "Insurance broker" as defined in the *RIB Act* is: any person who for any compensation, commission or other thing of value, with respect to persons or property in Ontario, deals directly with the public and,

  **(a)** acts or aids in any manner in soliciting, negotiating or procuring the making of any contract of insurance or reinsurance whether or not the person has agreements with insurers allowing the person to bind coverage and countersign insurance documents on behalf of insurers,

  **(b)** provides risk management services including claims assistance where required,

  **(c)** provides consulting or advisory services with respect to insurance or reinsurance, or

  **(d)** holds himself, herself or itself out as an insurance consultant or examines, appraises, reviews or evaluates any insurance policy, plan or program or makes recommendations or gives advice with regard to any of the above.

- Any unlicensed person acting as a broker may be committing an offence under *RIB Act*, section 33(2) and may be prosecuted under the *Provincial Offences Act* or subject to other court proceedings.

- Such person may be exposing brokerage clients, insurers, the E&O policy and the brokerage itself to increased risks for which the Principal Broker may be held accountable.

- For additional guidance, refer to "Unlicensed Individuals" under Supplementary Resources on the types of activities an unlicensed employee can perform within the brokerage.

- Does your firm have a process to confirm that all employees' RIBO licenses are in good standing? On or after October 1, of each year, employees should be encouraged to view/and or print their license via the member portal as a means to verify that their license is valid and in good standing. They can also search for their name on the public member broker search webpage. If there is an issue, individuals should contact RIBO, as soon as possible, as they may not have completed their license renewal properly.

**(viii) TO ENSURE THAT PROCEDURES ARE ESTABLISHED AND FOLLOWED SUCH THAT THE REQUIREMENTS OF SUB-PARAGRAPHS (I) THROUGH (VII) ARE MET**

## Guiding Principles

- The Principal Broker must establish and maintain a supervisory environment that fosters the business objectives and professionalism of the firms and promote the self-regulatory process.
- Accordingly, the firm through the Principal Broker should place a highpriority on and take all reasonable steps to ensure compliance.
- Where deficiencies in procedures are noted by RIBO staff during any review or investigation, a plan to address these deficiencies must be prepared, filed with RIBO and implemented as identified in the plan submitted to RIBO in the established time frame.
- These plans should be reflected in the firm's policy and procedures.
- A firm which has had significant deficiencies identified may be subject to increased reporting requirements, more frequent spot checks or other sanctions.

## Considerations

- Is there a current office policies and procedures manual for the firm, and if so, does it include a plan of supervision of staff (licensed and unlicensed) working in all locations, including remotely?
- Is all relevant information/material available and known to all registered staff (e.g., central library, intranet)?
- Are the responsibilities of the Deputy Principal Broker, Supervising Broker, and for all other compliance staff prescribed in writing?
- How does the firm monitor for compliance with firm policies and procedures?
- Does the PB report suspected instance of non-compliance to RIBO?
- Are staff required to report suspected instances of non-compliance to the Principal Broker?
- Are there procedures in place to ensure that complaint queries are responded to within a reasonable time frame? Is an escalation process in place for consumers who have concerns with a broker? Are complaint queries shared with the Principal Broker? Does the Principal Broker follow up with the individual broker to ensure queries have been responded to?
- A firm which has had significant deficiencies identified may be subject to increased reporting requirements, more frequent spot checks or other sanctions.

# DEPUTY PRINCIPAL BROKERS DIRECTION AND SUPERVISION REQUIREMENTS

As the Principal Broker, you can also appoint registered individuals, who are also an officer or director of the firm, with an "Unrestricted" class of registration as a Deputy Principal Broker of the firm to assist you in the management of your duties and responsibilities. It is important to remember that as the Principal Broker, you will still be held accountable and responsible for the firm.

Deputy Principal Brokers must also understand their obligations and responsibilities and, in tandem with the Principal Broker, provide the firm with an effective level of oversight and supervision. These Guidelines are also designed to assist Deputy Principal Brokers with their day-to-day supervisory activities.

Although the regulation references are to Principal Brokers, the responsibilities and requirements outlined may also be applicable to Deputy Principal Brokers.

## Guiding Principles

- The Principal Broker duties may be performed by a Deputy Principal Broker or Supervising Broker, however the delegation of these duties does not absolve the Principal Broker of their responsibilities.

- The appointment of a Deputy or Deputies may be a key component to the firm's business continuity plan. A Deputy Principal Broker can assist the Principal Broker in instances involving multiple branches/offices, producers in remote geographical locations and/or large number of producers. A Deputy Principal Broker can also assist should the Principal Broker be on extended vacation including under other unplanned circumstances involving sudden departure, sudden illness or death.

- The appointment of a Deputy Principal Broker may also support succession planning within the firm, ensuring that a qualified individual is available to act in the capacity of Principal Broker in the event the designated Principal Broker retires or is unable to fulfill these duties.

- The powers and responsibilities of the Deputy Principal Broker must be assigned by the Principal Broker in writing.

- RIBO must be notified of the appointment and the Deputy Principal Broker is required to sign and file an undertaking with RIBO with respect to their roles and responsibilities.

## Considerations

- Is the firm spread out throughout the province, in more than 5 locations, or does the firm employ more than 30 employees?

- When supervising multiple firms (if applicable), are the firms spread out throughout the province?

- Has the Principal Broker assigned duties to the Deputy Principal Broker?

- Are duties and powers of Deputy Principal Broker prescribed in writing?
- Have the Deputy Principal Broker's duties and powers been incorporated into the office policies and procedures?
- Has RIBO been notified of the Deputy Principal Broker appointments?
- Has the Deputy Principal Broker confirmed acceptance of duties and responsibilities to RIBO, by signing an undertaking with RIBO?

# BRANCH LOCATIONS AND REMOTE WORK

Any brokerage (sole proprietorship, partnership or corporation) that conducts business from a location other than the head office on a regular basis must treat these locations as branch offices. All such locations MUST be included in the firm's supervisory responsibilities.

Care must be taken with respect to home offices to ensure that a meaningful level of support, management and supervision is provided by the Principal Broker and any Deputy Principal Broker. If a producer or individual meets consumers in their home office, their office must be registered as a branch office.

RIBO does not regulate the remote work practices of its registered firms but does require, all registrants to follow the Code of Conduct, and comply with the *Act* and Regulations.

Remote work for employees on a temporary or permanent basis
Principal Brokers may wish to consider how they will manage the RIBO requirements of supervision given the potential distance involved (including for employees residing outside of the province where the firm's head office is located).

Principal Brokers need to provide support to employees during the transition to remote work. Employees are required to submit any changes to their registration information to RIBO within 30 days of the change. Employees are responsible for updating their personal information, including address information, in the membership portal. It is the individual's responsibility to be sure that their Principal Broker supports the request for remote work before the changes are made and that updated information is submitted within 30 days of any changes. Individuals working remotely or from home should review the Cyber Security guidance section of the Principal Broker handbook.

## Guiding Principles

- The Principal Broker is obligated to ensure that each branch location is compliant with the *RIB Act*, Regulations and By-laws.
- The Principal Broker may appoint an individual with an "Unrestricted" registration as Deputy Principal Broker or Supervising Broker at each branch location to assist in the supervisory
  Requirements.
- The Principal Broker must ensure that a plan of supervision is in effect.

## Considerations

The Principal Broker and Deputy Principal Broker must be familiar with regulatory provisions and guiding principles that describe the Principal Broker responsibilities as well as all of the considerations outlined under the **"Principal Broker Direction and Supervision Requirements"**

The following should also be considered and included in the plan of supervision:

- Trust account management and control
- Binder/liability certificate control
- Staff training
- Does each branch location have a copy of the firm's most current office policy and procedures manual?
- Are on-going regular visits (scheduled and unscheduled) being made to each branch location?
- Are branch audits being conducted periodically to monitor compliance with stated office policies and procedures?

**Best Practices:**

Principal Brokers wishing to exercise "Best Practices" in their supervisory responsibilities should consider implementing the following:

- Appointing a Deputy Principal Broker for each branch location
- Putting in place an office manager or Supervising Broker if it's not feasible to appoint a Deputy Principal Broker.
- Visiting each branch location on a quarterly basis at a minimum
- Visiting the branch location when setting up (establishing) the branch
- Ensuring that the branch location is separate and distinct and has proper signage
- Ensure that individuals working from mini-office locations (shared office space locations, e.g.,, WeWork or other) have received approval from the Qualification and Registration Committee for the location
- Establish policies on the proper steps brokers should take to protect consumer information and confidentiality
- Ensure that individuals working remotely or from home have access to a secure internet connection and are using computer equipment and portable devices that include Multi-Factor Authentication (MFA) and/or comply with the firm's cyber security, password, and encryption standards
- Individuals working remotely or from home should review the Cyber Security guidance section of the Principal Broker handbook

To update RIBO records, the Principal Broker must provide the following information for each branch location:

- Address, telephone and fax numbers, email addresses
- Who is responsible for this location? Is the Principal Broker responsible or has a Deputy Principal Broker been appointed for this location and if appointed, who has been

appointed?

- A listing of individuals working from this location
- Whether or not the branch location is to receive separate mailings from RIBO or is all mail to be directed to the Principal Broker at head office
- Confirmation that the branch location is separate and distinct
- Branch locations do not need to be recorded for individuals working remotely or from home, however all individuals are required to submit any changes to their registration information to RIBO within 30 days of the change.

# PRINCIPAL BROKER KEY REGULATORY PROVISIONS

## REGULATION 991 Sections

**6. (1)** A corporation is qualified to be issued and hold a certificate of registration as an insurance broker where,

**(b)** the corporation acts as an insurance broker under the direction and supervision of a principal broker as described in section 7.2

**7. (1)** A partnership is qualified to be issued and hold a certificate of registration as an insurance broker where,

**(b)** the partnership acts as an insurance broker under the direction and supervision of a principal broker as described in section 7.2

**7.1. (1)** A sole proprietorship is qualified to be issued and hold a certificate of registration as an insurance broker if,

**(b)** the sole proprietorship acts as an insurance broker under the direction and supervision of a principal broker as described in section 7.2

**7.2. (1)** A sole proprietorship, partnership or corporation which holds or wishes to hold a certificate of registration as an insurance broker shall designate an individual who is an insurance broker to be the principal broker of the business

**(2)** A member qualifies to be designated as a principal broker if the member,

**(a)** is not in default of paying any fee due under the *Act* or the By-laws of the Corporation;

**(b)** is not, at the time the notification referred to in subsection (3) is made, the subject of a complaint referred to the Discipline Committee or the subject of disciplinary proceedings before the Discipline Committee;

**(c)** is not the subject of an outstanding order of the Discipline Committee;

**(d)** is not in a class of membership which restricts him or her to acting under supervision;

**(e)** is the sole proprietor or an employee of a sole proprietorship, is a partner or is an officer or director of the corporation, as appropriate; and

**(f)** directs and supervises the sole proprietorship, partnership or corporation in acting as an insurance broker and has the authority to act in its name and on its behalf regarding applications or reports required under this *Act* or the By-laws of the Corporation.

**(3)** directs and supervises the sole proprietorship, partnership or corporation in acting as an insurance broker and has the authority to act in its name and on its behalf regarding applications or reports required under this *Act* or the By-laws of the Corporation.

**(4)** In order to maintain his or her status as a principal broker, the member shall satisfy such educational requirements as are established by the Council within the time periods established by the Council.

**(5)** The principal broker may appoint one or more deputies to perform such duties as may be delegated to him or her in writing by the principal broker.

**(6)** This section, except subsection (5), applies to a deputy principal broker in the same way it applies to a principal broker.

**15. (1)** For the purposes of the *Act*, "misconduct" means any of the following:

**(16)** Failure as a principal broker to properly supervise brokers whose registration is restricted to acting under his or her direction and supervision.

## RIBO BY-LAW NO. 1, PART XV

**15.1. (f)** In this By-law "principal broker" shall be interchangeable with and shall have the same meaning as "designated individual".

A member who is an individual may be a principal broker, subject to compliance with the *Act*, the Regulations and the By-laws. The principal broker of a sole proprietorship, partnership or corporation which is a member shall provide direction and supervision of such member as an insurance broker and of all registered insurance brokers who are employees or partners of such member.

The provision of direction and supervision by the principal broker shall include but not be limited to the following responsibilities:

**(i)** to ensure that all registered insurance brokers who are employeesor partners comply with the *Act*, Regulations and By-laws;

**(ii)** to ensure that all registered insurance brokers who are employeesor partners are provided with and use all information respecting insurance necessary for them to act in accordance with the Code of Conduct and without misconduct or incompetence as defined or described in the *Act* and/or Regulations;

**(iii)** to ensure that all registered insurance brokers who are employees or partners know and act in accordance with the Code of Conduct set forth in the Regulations;

**(iv)** to ensure that all trust accounts and books, records and accounts are maintained in accordance with the Regulations;

**(v)** to ensure that all Errors and Omissions insurance, and/or other forms of financial guarantee, and all fidelity insurance are maintained in accordance with the Regulations;

**(vi)** to ensure that all required filings are made and prescribed fees and assessments are paid in accordance with the Regulations;

**(vii)** to ensure that no director, partner or employee who is not a registered insurance broker acts as an insurance broker; and

**(viii)** to ensure that procedures are established and followed such that the requirements of sub-paragraphs (i) through (vii) are met.

In discharging these responsibilities, the principal broker shall be required to exercise reasonable diligence only.

# DEPUTY PRINCIPAL BROKER KEY REGULATORY PROVISIONS

## REGULATION 991 Sections

**7.2 (2)** A corporation is qualified to be issued and hold a certificate of registration as an insurance broker where,

**(a)** is not in default of paying any fee due under the *Act* or the By-laws of the Corporation;

**(b)** is not, at the time the notification referred to in subsection (3) is made, the subject of a complaint referred to the Discipline Committee or the subject of disciplinary proceedings before the Discipline Committee;

**(c)** is not the subject of an outstanding order of the Discipline Committee;

**(d)** is not in a class of membership which restricts him or her to acting under supervision;

**(e)** is the sole proprietor or an employee of a sole proprietorship, is a partner or is an officer or director of the corporation, as appropriate; and;

**(f)** directs and supervises the sole proprietorship, partnership or corporation in acting as an insurance broker and has the authority to act in its name and on its behalf regarding applications or reports required under this *Act* or the By-laws of the Corporation.

**(3)** A member shall not be designated as a principal broker until the member has notified the Corporation in writing that he or she meets the criteria described in subsection (2) and the Corporation has acknowledged the notice in writing.

**(7)** In order to maintain his or her status as a principal broker, the member shall satisfy such educational requirements as are established by the Council within the time periods established by the Council.

**(8)** The principal broker may appoint one or more deputies to perform such duties as may be delegated to him or her in writing by the principal broker.

**(9)** This section, except subsection (5), applies to a deputy principal broker in the same way it applies to a principal broker.

## RIBO BY-LAW NO. 1, PART XV

**15.12 (f)** The duties and powers of a principal broker set forth in the Regulations and the By-laws may be performed or exercised by a deputy principal broker appointed by the principal broker, or if there are more than one appointed, by the deputy principal brokers in order of seniority (as determined by the principal broker). A deputy principal broker shall perform such duties and exercise such powers as may from time to time be prescribed to him in writing by the principal broker Notice of the Appointment of a Deputy shall be made to the Manager by the principal broker.

**(g)** The *Act*, the Regulations and the By-laws continue to apply to theprincipal broker regardless of any appointment of a deputy.

**(h)** The *Act*, the Regulations and the other provisions of the By-laws apply to the deputy principal broker as if he were a principal broker to the extent of the duties and powers prescribed to him in writing by the principal broker.

**(a)** Subsections (a) through (d) of this section 15 12 apply to a deputy principal broker as if he were a principal broker.

# REGISTERED INSURANCE BROKERS OF ONTARIO CODE OF CONDUCT HANDBOOK

This Code of Conduct Handbook is distributed to insurance brokers in the Province of Ontario with the approval of the Council of the Registered Insurance Brokers of Ontario. The RIBO Council recommends that both the Handbook and *Registered Insurance Brokers Act* and Regulations be made available to all insurance brokers.

We encourage all brokers to consult this Handbook, which outlines professional conduct requirements, on a regular basis.

# PREFACE

The formation of RIBO in 1981 marked the culmination of years of planning and work to enhance recognition of the practice of insurance brokers in a self-regulatory environment Ontario.

It is important for all brokers to be aware that self-regulation is a privilege. Professionals are recognized not only for their skill or experience in a particular field or activity. Their status also stems from their character and their standards All these factors combined protect the interests of the insurance consumer.

The Code of Conduct contained in Section 14 of Regulation 991 under the *Registered Insurance Brokers Act* (RIB Act) provides rules that are intended to set a standard of professional conduct for registered insurance brokers in the Province of Ontario. The provisions of the Code of Conduct must be followed both in letter and in spirit. Section 15 of Regulation 991 provides a definition of "misconduct" which warrants disciplinary action by the Discipline Committee of RIBO As of 2018, Section 15.1 provided for the enforceability by RIBO of Discipline Orders from other jurisdictions.

The Code of Conduct Handbook that follows is intended to give RIBO members an interpretation of the Code of Conduct. Each provision of the Code of Conduct is set out separately, followed by a set of guidelines in the form of commentary, which will hopefully assist you in interpreting the particular provision of the Code of Conduct. Any specific questions about interpretation of the Code of Conduct or the guidelines provided in this Handbook should be referred in writing to the Professional Conduct Committee of RIBO.

While the provisions of the Code of Conduct are legal rules which must be followed, the guidelines contained in the Handbook are not necessarily intended to be self-contained rules and may make reference to a broker's legal obligations under the *Insurance Act*, its regulations, including Financial Services Regulatory Authority of Ontario (FSRA) rules and guidance, or other relevant legislation. Many of the guidelines provided in this Handbook may overlap, and they may apply differently according to the circumstances of each particular case. Both the Code of Conduct and the guidelines contained in the Handbook are intended to be flexible in order to respond and adapt to ongoing changes in the insurance environment. The examples given arenot intended to be a complete or exhaustive list It is important to understand that breaches of the Code of Conduct may give rise to disciplinary proceedings even where no harm is caused to clients It is the broker's conduct itself that is important.

# REGULATION 991

**under the *Registered Insurance Brokers Act***

**Section 14. All members shall act as insurance brokers in accordance with the following Code of Conduct:**

**1.** A member shall discharge the member's duties to clients, members of the public, fellow members and insurers with integrity**.**

**2.** A member owes a duty to the member's client to be competent to perform the services which the member undertakes on the client's behalf.

**3.** A member shall serve the member's client in a conscientious, diligent and efficient manner and shall provide a quality of service at least equal to that which members would generally expect of a member in a like situation.

**4.** A member shall be both candid and honest when advising the member's client.

**5.** A member shall hold in strict confidence all information acquired in the courseof the professional relationship concerning the business and affairs of the member's client, and the member shall not divulge any such information unless authorized by the client to do so, required by law to do so or required to do so in conducting negotiations with underwriters or insurers on behalf of the client.

**6.** A member shall observe all relevant rules and laws regarding the preservation and safekeeping of property of the client entrusted to the member and, when there are no such rules or laws or the member is in doubt, the member must take the same care of such property as a careful and prudent person would take of the person's own property of like description.

**7.** A member who engages in another business or occupation concurrently with the practice of the member's vocation shall not allow such outside interest tojeopardize the member's integrity, independence or competence.

**7.1** A member shall disclose in writing to a client or prospective client any conflict of interest or potential conflict of interest of the member that is associated with a transaction or recommendation.

**8.** A member shall not stipulate, charge or accept any fee that is not fully disclosed, or the basis for which is not fully disclosed prior to the service being rendered, or which is so disproportionate to the service provided as to be unconscionable.

**9.** A member shall encourage public respect for and try to improve the practice of the member's vocation.

**10.** A member shall make the member's services available to the public in an efficient and convenient manner which will command respect and confidence and which is compatible with the integrity, independence and effectiveness of the member's vocation.

**11.** A member shall assist in maintaining the integrity of the member's vocation and should participate in its activities.

**12.** A member shall assist in preventing the unauthorized practice of the member's vocation.

**13.** A member's conduct towards other members, members of the public, insurers and the Corporation shall be characterized by courtesy and good faith.

**14.** A member shall cooperate in an investigation conducted by the Corporation.

**15.** A member shall notify the Corporation if the governing authority of the profession in a jurisdiction other than Ontario has made a finding of incompetence or misconduct or a similar finding against the member.

**Section 15(1) For the purposes of the *Act*, "misconduct" means any of the following:**

**1.** The use of methods of solicitation and advertising that are not compatible with the honour and dignity of the vocation including, without limiting the generality of the foregoing, the use of any illustration circular or memorandum that misrepresents, or by omission is so incomplete that it misrepresents the terms, benefits or advantages of any policy or contract of insurance issued or to be issued, and the making of any false or misleading statement as to the terms, benefits or advantages of any contract or policy of insurance issued or to be issued.

**2.** The use of any incomplete comparison of any policy or contract of insurancewith that of any other insurer for the purpose of inducing, or intending to induce, an insured to lapse, forfeit or surrender a policy or contract.

**3.** The use of any payment, allowance or gift or any offer to pay, allow or give, directly or indirectly, any money or thing of value as an inducement to any prospective insured to insure.

**4.** Directly or indirectly making or attempting to make an agreement as to the premium to be paid for a policy other than as set forth in the policy, or paying, allowing or giving, or offering or agreeing to pay, allow or give, a rebate of the whole or part of the premium stipulated by the policy or any other consideration or thing of value intended to be in the nature of a rebate of premium to any person insured or applying for insurance in respect of person or property in Ontario, but nothing in this paragraph shall be construed to affect any payment in the nature of a dividend, bonus, profit or savings that is provided for in the policy.

**5.** Coercing or proposing, directly or indirectly, to coerce a prospective buyer of insurance through the influence of a professional or business relationship or otherwise to give a preference that would not otherwise be given on the effecting of an insurance contract or coercing, inducing or exercising undue influence in order to control, direct or secure insurance business.

**6.** Holding oneself out or advertising by means of advertisements, cards, circulars, letterheads, signs, or other methods, or carrying on business in any other manner than the name in which the individual or the corporation or partnership of which the individual is the designated representative is registered.

**7.** The use of any practice or conduct that results in unreasonable delay or resistance to the fair adjustment of claims.

**8.** Failure to carry on business in a manner consistent with the Code of Conduct.

**9.** Failure to comply with the provisions of the *Act*, this Regulation and the By-laws of the Corporation.

**10.** Acting as an insurance agent or holding himself, herself or itself out, advertisingor conducting himself, herself or itself in such a manner as to lead a reasonable person to believe that the member is an insurance agent.

**11.** Being convicted, after the 1st day of October, 1981, of a criminal offence or an offence under the *Insurance Act*, whether or not the offence was committed before the 1st day of October, 1981.

**12.** The use or payment of any referral fees or finder's fees to any person who is not a registered insurance broker or who is not registered or licensed under the laws of any jurisdiction to act as an intermediary for insurance, other than life insurance.

**13.** A registered insurance broker who is a director, officer or principal broker of a corporation that is a member or who is a partner or principal broker of a partnership that is a member or who is the principal broker of a sole proprietorship that is a member has knowingly concurred in the misconduct of the sole proprietorship, partnership or corporation.

**14.** Providing false or misleading information to the Corporation.

**15.** Acting as a principal broker as described in section 7.2 when the member has failed to comply with the educational requirements established by the Council under that section.

**16.** If a principal broker believes on reasonable and probable grounds that a member under the principal broker's direction, regardless of the member's registration class has committed an act of misconduct, failure of the principal broker to report the potential misconduct.

**Section 15.1** **A finding of incompetence, misconduct or a similar finding against a member by the governing authority of insurance brokers or insurance agents in a jurisdiction other than Ontario that is based on facts that would, in the opinion of the Discipline Committee, constitute incompetence as described in subsection 18(4) of the *Act* or misconduct defined in Section 15 of this Regulation, constitutes incompetence or misconduct, as the case may be, for the purposes of the *Act* and this Regulation.**

# PARAGRAPH 1 – INTEGRITY

**14 (1) A MEMBER SHALL DISCHARGE THE MEMBER'S DUTIES TO CLIENTS, MEMBERS OF THE PUBLIC, FELLOW MEMBERS AND INSURERS WITH INTEGRITY.**

**Basic Principles**

Integrity is a fundamental quality demanded of every insurance broker. If personal integrity is missing, there is little that can be done to compensate for its absence or to repair the damage to one's reputation. A broker exercising poor ethics or lack thereof, is a reflection not only on the individual broker but also the entire insurance industry Deliberate wrongdoing and gross neglect are equally reprehensible.

**Examples**

Examples of conduct which have been found not to meet this requirement include:

**(a)** Committing any act in the performance of your duties which reflects negatively upon your integrity and that of the industry.

**e.g.,** *any act of fraud or dishonesty, such as issuing anunauthorized automobile liability certificate.*

**(b)** Making untrue representations or concealing material facts from a client.

**e.g.,** *failing to advise a client that you are unable to provide totally for the client's required insurance needs, and failingto take steps to assist the client in finding suitable coverage even if it is through another broker*

**(c)** Taking advantage of a client's inexperience, lack of education, youth, lack of sophistication, unbusinesslike habits or ill health.

**(d)** Misappropriating or dealing dishonestly with client's money or other monies held in your trust account.

**e.g.,** *a broker taking the cash received from a insured/client and issuesa personal cheque for deposit into the firm trust account.*

**(e)** Failing to be absolutely frank and candid in all dealings with insurers, fellow brokers, RIBO and other parties of interest, subject to the legal rights and confidences of your client.

**e.g.,** *withholding material underwriting information from an insurer; dishonestly arranging insurance for clients of youremployer for your own personal gain*

*which brings into question your professional integrity or competence to act as a broker.*

**(f)** Discouraging clients from making legitimate insurance claims, or delaying them from being presented, in a manner which may prejudice the client's best interests or for reasons which may serve the interests of the broker.

**e.g.,** *delaying a claim into the new year to preserve the broker's contingent earnings from the insurer.*

**(g)** Conviction of a criminal or quasi-criminal offence that brings into question your professional integrity or competence to act as a broker, even if not related with your work as a broker.

**e.g.,** *being convicted of driving without valid insurance.*

**(h)** Placing oneself in a conflict-of-interest situation with the client.

**e.g.,** *please refer to 7.1 for more information*

**(I)** While the information contained in RIBO Newsletter bulletins is public, inappropriate use of this information to criticize or slander fellow brokers may be considered to be an act of misconduct.

# PARAGRAPH 2 – COMPETENCE

**14 (2) A MEMBER OWES A DUTY TO THE MEMBER'S CLIENT TO BE COMPETENT TO PERFORM THE SERVICES WHICH THE MEMBER UNDERTAKES ON THE CLIENT'S BEHALF.**

## Scope of Duty

A broker's duty to the client is to provide competent guidance based on sufficient knowledge of the client's needs, specific risks entailed and adequate consideration of the relevant insurance principles in an experienced and expert manner.

## Knowledge and Skill

The public regards a RIBO registration as an indication of competence.

Competence is not limited to the legal qualification as an insurance broker. It is also the broker's ability to competently provide the services needed by the client. It calls for a clear understanding of insurance principles, and it requires sound knowledge of the practice and procedures to apply them effectively in the best interest of the client.

A registered insurance broker is regarded as being knowledgeable, skilled and capable of performing as an insurance intermediary. The client is entitled to assume that the broker has the ability and capacity to deal adequately with general insurance matters on the client's behalf.

A broker should not undertake to arrange insurance without honestly believing oneself to be competent to handle it without causing the client unnecessary delay, risk or expense. This becomes an ethical question relating to just and fair dealings with the client and is important since an incompetent broker can impair the credibility and perception of the industry.

## Consequences of Incompetence

The intention is not to establish a standard of perfection for the purpose of determining whether or not disciplinary action should be taken. An honest mistake may not necessarily constitute failure to adhere to the Code, even though it may result in a successful negligence claim by the client. Evidence of gross neglect or a pattern of neglect or mistakes over time, however, may be evidence of failing to meet the standards expected regardless of whether or not the broker is liable for negligence. Where both negligence and incompetence are established, damages may be awarded through civil remedy to the client for negligence and disciplinary action may be taken by RIBO for incompetence.

A broker must be sensitive to any weakness in personal competence and realize the disservice that would be done to a client by attempting to act beyond one's personal level of competence. In such circumstances, you should either decline to act, or advise the client to seek another broker with competence in the required area.

**e.g.,** *A broker with little or no commercial lines insurance experience should not attempt to provide coverage for a large manufacturing risk.*

## Consulting Experts

Brokers should recognize that competence in a particular situation may require clients to seek advice from experts in a non-insurance field, such as accounting or law and clients should not be discouraged from consulting the appropriate experts.

## Product Suitability: A Best Practices Approach

Product suitability always has been one of the primary principles of doing business as a broker in Ontario. The RIBO Code of Conduct has always required that brokers maintain the competence to provide guidance based on sufficient knowledge of the specific risks involved and adequate consideration of the relevant insurance principles so that product recommendations are suitable for addressing the needs of the client.

The recommended product or service must be appropriate for the needs of the client, as determined by a needs-based assessment done by the broker and/or as directly articulated by the client. While the information provided may vary in each transaction, it should be brief and relevant to the purchase decision.

Where a client is seeking advice on product recommendations, product suitability requires the collection of sufficient information from the client to enable the broker to properly assess their needs and make appropriate recommendations. If a broker can demonstrate that the recommended product is suitable for his or her client, then any conflict of interest from compensation, ownership of financial links is likely to have been adequately managed.

Suitability depends on the needs, facts and expectations of the client The following best practices will enhance your compliance with this principle:

1. Know your client — the facts and assumptions that support your recommendations require you to first gather appropriate information from the client.

2. Undertake a thorough client needs assessment before making your recommendations Such an assessment should reflect factors such as the underlying risk, the client's objectives and the complexity of the product being sold. By way of example, a large commercial risk would typically require a more in-depth assessment than simple automobile coverage. A higher risk automobile client, however, may make a more fulsome assessment advisable.

3. Confirm the goals of your client. This will help you avoid any miscommunication that could lead to unsuitable recommendations If so, document that you are working with information provided by the client, or that the client has requested a specific product or service.

4. Discuss with your client any product comparisons that were carried out and why a particular product is recommended.

5. Ensure the client file reflects the collection of information from your client, your analysis of their needs, available products and the reason for your recommendations. A broker should be able to explain how the recommended product or service addresses the client's needs.

6. Document your reasons for recommending a product. There should be enough information in the file to show why a particular recommendation was made.

7. Particularly for commercial accounts, consider the value of a survey or a checklist of important coverages that a client might reasonably expect in a like situation.

8. In situations where the product is offered without advice, brokers should inform the client that no advice is being offered.

9. Competence is paramount. A broker owes a duty to his or her clients to be competent to perform the services undertaken on their behalf. Where you do not have the expertise to adequately service your client's particular risk, refer the client, or consider engaging the services of a broker who possesses the necessary expertise.

Principal Brokers should ensure that procedures are in place within the firm tofollow these practices.

During spot-check visits, RIBO reviews a random selection of client files and will be looking for evidence of product suitability assessments.

# PARAGRAPH 3 – QUALITY OF SERVICE

**14 (3) A MEMBER SHALL SERVE THE MEMBER'S CLIENT IN A CONSCIENTIOUS, DILIGENT AND EFFICIENT MANNER AND SHALL PROVIDE A QUALITY OF SERVICE AT LEAST EQUAL TO THAT WHICH MEMBERS WOULD GENERALLY EXPECT OF A MEMBER IN A LIKE SITUATION.**

**Promptness**

Conscientious, diligent and efficient service means that every effort is made to provide a service The client should be informed on an ongoing basis of any delays or other impediments in providing such service.

**Standard of Service**

The standard of service to clients must be at least equal to the standard of service that an ordinarily prudent and competent broker would provide in the same situation.

**Examples**

Examples of conduct which have been found not to meet this requirement include:

(a) The use of **negative option marketing or billing** as a marketing practice, whereby consumers are charged for a new product or service before they have consented, is not allowed by RIBO Brokers may not, under any circumstance, amend coverage or add a new product or service without the express permission of the consumer.

If coverage is read in by the insurance company, at no additional cost, there is no need to obtain consent from the consumer. However, reading the coverage in and charging at the next renewal without the client's consent would still be considered negative optioning.

A firm has at all times, an obligation to provide written notificationto the consumer of any policy amendments or modifications. Failure to comply with the above may result in a consumer complaint and may constitute an act of misconduct under the Code of Conduct.

(b) Brokers are required to know their clients' insurance needs and are encouraged to clearly explain benefits and costs to consumers Consumers have a right to make informed decisions.

(c) Failing to provide evidence of insurance when needed and failing to inform a client of the status of an overdue policy renewal.

(d) Failing to provide sufficient notice of non-renewal or renewal on varied terms of any policy. The *Insurance Act* and industry-approved procedures have been laid down and serve as a standard by which this conduct is measured.

(e) Failing to inform a client of alterations to the coverage, such as changes in policy conditions or premium amounts, or any matter or fact that may materially affect the policy or prejudice the client's interests, including the impending insolvency of the insurer.

(f) Failing to inform a client prior to renewal of a change of insurer and the reason for such change.

(g) Failing to return telephone calls, letters and other communications promptly and in sufficient detail and failure to respond to enquiries without undue delay.

(h) Failing to provide proper service to new house purchasers who may assume an insurance policy from the builder, including failing to provide an explanation and review of the coverages being provided and advisingthat the policy can be rejected by the purchaser in favour of coverage from another broker.

(i) Failing to identify a client's insurance needs, thereby leaving unreasonable gaps in the client's coverage.

(j) Failing to meet deadlines to the prejudice of a client, including missing deadlines for insurance such as remitting premiums and other similar important transactions to be completed.

(k) Failing to provide point of sale commission disclosure (see Point of Sale Commission Protocol).

# PARAGRAPH 4 – ADVISING CLIENTS

**14 (4) A MEMBER SHALL BE BOTH CANDID AND HONEST WHEN ADVISING THE MEMBER'S CLIENT.**

**Scope of Advice**

Recommendations to clients should be complete, open and clear.

You should indicate in detail, the facts and assumptions upon which your recommendations are based. You should study the risk in sufficient detail to provide the client with sufficient information with which to make an informed decision.

**Disclosure of Markets**

If you can offer only one company's quote to a prospective client, there is a duty upon you to make this limitation known before accepting and placing any business on his/her behalf.

Similarly, an obligation exists to be open and honest with your client where you are able to place insurance with only a single insurer or with a limited number of insurers that may not be representative of the entire market. Since these facts may influence the judgment of a prospective client, disclosure is required.

Section 230 of the *Insurance Act*, as amended, provides that a broker must provide to an applicant for insurance, the names of all the insurers with whom the broker has a broker contract relating to automobile insurance and all the information obtained by the broker relating to quotations on automobile insurance for the applicant. Compliance with this section is monitored by RIBO in conjunction with the "spot check" or broker review conducted by RIBO financial investigation staff.

**Product Disclosure**

You have an obligation to inform your clients, at all times, about all aspects of the insurance products they have purchased including any changes affecting a policy which occur during the policy term. In addition, all relevant laws relating to public protection and disclosure of information to clients must be observed. You must comply strictly with those provisions of the RIBO regulations which require disclosure to clients of information and risks relating to the use of unlicensed insurers (See Ontario Regulation 991, Section 10).

**Tied Selling**

Under the *Insurance Act*, it is an unfair or deceptive act or practice for a broker to assist in or engage in the practice of "tied selling", with respect to automobile Insurance; I.e., making the issuance or variation of a policy of automobile insurance conditional upon the purchase by the insured of another insurance policy.

**Examples**

Examples of conduct which have been found not to meet this requirement include:

(a) Giving bold or sweeping general assurances to clients that everything is covered when this is not the case.

(b) After having a broker contract with an insurer cancelled, misleading clients about the true reason for re-marketing their coverages on expiry, particularly when it results in a material difference in the premium to the client.

(c) Adding a warranty, amending or reducing policy coverages, limits of insurance or changing deductibles without first informing the client of the changes.

**e.g.,** *a fire extinguisher warranty, alarm warranty.*

(d) Having a prospective client sign an Exclusive Brokers Letter of Authorization without explaining the full implications and, in particular, the consequences to the client's present broker. If a letter of authorization is needed from a prospective client in order to provide quotations for insurance, the letter should be worded clearly and specifically regarding this purpose and should not be used unfairly against the present broker for any other purpose.

# PARAGRAPH 5 – CONFIDENTIALITY

**14 (5) A MEMBER SHALL HOLD IN STRICT CONFIDENCE ALL INFORMATION ACQUIRED IN THE COURSE OF THE PROFESSIONAL RELATIONSHIP CONCERNING THE BUSINESS AND AFFAIRS OF THE MEMBER'S CLIENT, AND THE MEMBER SHALL NOT DIVULGE ANY SUCH INFORMATION UNLESS AUTHORIZED BY THE CLIENT TO DO SO, REQUIRED BY LAW TO DO SO OR REQUIRED TO DO SO IN CONDUCTING NEGOTIATIONS WITH UNDERWRITERS OR INSURERS ON BEHALF OF THE CLIENT.**

## Guiding Principles

It is impossible for a broker to advise a client properly without full knowledge of the client's circumstances and affairs, insofar as they affect the exposures being considered. Clients therefore must feel absolutely certain that the information they disclose will be treated with the utmost confidentiality. Unless you develop and maintain this trust, your ability to provide the service expected by your clients will be severely impaired.

You cannot render meaningful service to clients unless you enjoy full and unreserved communication with them. At the same time, clients must feel completely secure that,without any express stipulation or request, matters disclosed to you will be held completely confidential by you and your staff, and that any such information will only be revealed to others without the client's consent if it is legally necessary, or in the course of negotiating with underwriters on behalf of the client.

Brokers must be aware that there is increasing risk to a client's confidential information as a result of potential cyber-attacks on firm records. Brokers must have appropriate safeguards in place to mitigate this risk from both a technology and liability insurance perspective.

## Authorized and Justified Disclosure

Confidential information may be divulged with the express permission of the client concerned, and in some situations, the authority of the client to divulge such information may be implied by the client's instructions.

**e.g.,** *disclosure of matters material to the risk is necessary to arrangesuitable insurance for the client.*

Unless the client otherwise directs, for the purpose of providing services to the client, you may disclose the client's affairs to partners, associates and those staff who handlethe client's files. This implied authority to disclose information places you under a parallel obligation to impress upon those concerned. The importance of confidentiality and non-disclosure (both during their employment and afterwards) requires you to take reasonable care (including proper staff training and supervision) to prevent others from disclosing or using any information which must be kept confidential.

When disclosure is required by law or by order of a court (i e subpoena, search warrant, government order to produce documents to Revenue Canada), you should be careful not to divulge more information than is required. Verification of the existence or validity of an automobile liability certificate produced by a client would be deemed permissible to disclose, however, requests for further or additional information will require client authorization or a subpoena. It is important that all such requests be properly documented in the client files.

Disclosure may also be justified in order to defend yourself or your staff against any allegation of incompetence or misconduct, or in legal proceedings to collect earned premiums or fees, but only to the extent necessary for such purposes.

**Scope of Duty**

You owe the duty of confidentiality to every client without exception. The duty survives the professional relationship and continues indefinitely after you have ceased to act for the client, whether or not differences may have arisen between you and the client.

You should take care to avoid disclosure to one client of confidential information concerning or received from another client.

This may not apply to facts that are public knowledge, but nonetheless, you should guard against participating in or commenting upon speculation concerning the client's affairs or business.

You should avoid indiscreet conversations, even with your family, about a client's affairs and should shun any gossip about such things. Likewise, you should not repeat any gossip or information about the client's business or affairs that is overheard or recounted to you. Apart from ethical considerations or questions of good taste, indiscreet shop-talk between brokers, if overheard by others able to identify the matter being discussed, could be prejudicial to the client's interest. Moreover, the respect of the listener for brokers and all insurance intermediaries will likely be lessened in such situations.

Any questions which arise surrounding the issue of confidentiality if there is uncertainty regarding confidentiality and your duty should be referred to RIBO.

**Example**

An example of conduct which has been found not to meet this requirement include:

- **(a)** Old client files not properly disposed of, resulting in confidential client information becoming public.
- **(b)** Proper data security protocols for the protection of client information.
- **(c)** Proper and effective data and security protocols when brokers or employees are leaving the firm.

# PARAGRAPH 6 - SAFEKEEPING AND PRESERVING CLIENT'S PROPERTY

**14 (6)** **A MEMBER SHALL OBSERVE ALL RELEVANT RULES AND LAWS REGARDING THE PRESERVATION AND SAFEKEEPING OF PROPERTY OF THE CLIENT ENTRUSTED TO THE MEMBER AND, WHEN THERE ARE NO SUCH RULES OR LAWS OR THE MEMBER IS IN DOUBT, THE MEMBER MUST TAKE THE SAME CARE OF SUCH PROPERTY AS A CAREFUL AND PRUDENT PERSON WOULD TAKE OF THE PERSON'S OWN PROPERTY OF LIKE DESCRIPTION.**

## General Obligations

This deals with a broker's general obligations regarding the holding of client's property and safekeeping of records.

While the law of bailment may impose a legal duty of care for the property of your clients entrusted to you, there is also a duty of professional responsibility. Arrangements and procedures for the storage and eventual destruction of client's files and records should reflect this responsibility and particularly the continuing obligation to confidentiality. Further, the operation of limitations laws (statutory time periods) which pertain to each client may preclude the destruction of particular papers.

Brokers need to be aware of the growing incidents of cyber- attacks and the risks that these attacks pose to network security and privacy protection of client property and records. Brokers should implement policies and procedures that enhance their obligations for the safekeeping and preservation of client property and documents to minimize cyber-risk.

Financial statements are the property of the client and should be treated in a confidential manner. Access to these statements in the broker's office should be restricted Credit reports of a client and other documents which also contain confidential information or opinions should be treated similarly.

Today, many insurers destroy their copy of policies one or two years after expiry. Especially in the case of liability insurance policies written on an "Accident or Occurrence" basis, you may be rendering your clients an invaluable service by retaining copies of expired policies.

## Compliance With Regulations

Money received from insurers for clients as return premiums or claim payments should be delivered promptly and without the necessity for clients to ask for them. Monies due to clients must be held in trust by the firm in accordance with the regulations regarding the handling of trust funds.

# PARAGRAPH 7 – DUTY TO CLIENT WHERE BROKER HAS ANOTHER BUSINESS OR OCCUPATION

**14 (7)** **A MEMBER WHO ENGAGES IN ANOTHER BUSINESS OR OCCUPATION CONCURRENTLY WITH THE PRACTICE OF THEMEMBER'S VOCATION SHALL NOT ALLOW SUCH OUTSIDE INTEREST TO JEOPARDIZE THE MEMBER'S INTEGRITY, INDEPENDENCE OR COMPETENCE.**

## Application of Duty

This applies to those registrants who have obtained an exemption under RIBO Regulations to permit them to carry on a secondary business or employment concurrently with acting as insurance brokers, and to brokers engaging in secondary business or employment who have been grandfathered into RIBO.

## Scope and Concerns

This applies in any case where it would appear that participation in an additional occupation would detract from a broker's ability to comply with the Code of Conduct.

Failure to live up to the obligations imposed may be caused by a limited amount of time being made available by you to keep informed in matters concerning the operation of the insurance firm. Similarly, the distraction of trying to operate two businesses may impair your ability to focus on the insurance firm with the attention and direction required of a competent and diligent broker.

## Conflict of Interest and Undue Influence

The obligations imposed also require that one avoid situations which would result in a conflict-of-interest situation or in which undue influence can be exercised upon a client.

**e.g.,** *potential conflicts of interest may arise where a broker sits on the board ofan insurance company (or holds shares of an insurance company), holds public office or becomes involved in disputes between the insurer and insured.*

# PARAGRAPH 7.1 – DISCLOSURE OF FACTS INDICATING POTENTIAL CONFLICTS OF INTEREST

**14 (7.1) A MEMBER SHALL DISCLOSE IN WRITING TO A CLIENT OR PROSPECTIVE CLIENT ANY CONFLICT OF INTEREST OR POTIENTIAL CONFLICT OF INTEREST OF THE MEMBER THAT IS ASSOCIATED WITH A TRANSACTION OR RECOMMENDATION.**

## Background

The disclosure requirements in this paragraph replace both the majority share ownership restrictions and the related party disclosure requirements (>10%), both of which provisions were revoked at the same time this paragraph was enacted.

## Application of Duty

The fundamental premise is that a client is entitled to any information about a broker's business relationships that pertain to a transaction or recommendation.

A business relationship means any direct or indirect interest or benefit that is relevant to the transaction or arises from placing, or the recommendation to place, a contract of insurance with a particular insurer (over another).

The interest must be sufficient to raise the perception of "influence" over the broker's "independent" decision making process, in the mind of a reasonable person, in possession of all the facts. In other words, the influence must be "material" enough that a reasonable person would believe that a consumer could not make an "informed" decision without that knowledge.

In all cases, we include "individual" conflicts of interest, as well as those of the registered "firm", as the case may be. In all cases as well, the guidelines are intended to deal with situations where non-disclosure would be detrimental to consumers.

## Guidelines

This provision as drafted is very broad in scope. Accordingly, to provide guidance to brokers in understanding what this provision means in order to comply, the following Guidelines set out RIBO's interpretation of what this disclosure requirement means for brokers, and sets out a number of factors that may give rise to "influence" sufficient to require disclosure.

### 1. Any Direct or Indirect Ownership Interest or any kind in a Firmby an Insurer, or in an Insurer by a Firm

This disclosure required under section 11 of O. Reg. 991 was revoked when the ownership provisions were revoked to make way for the new disclosure requirement. There is no longer a 10% share ownership threshold before disclosure is required. This threshold has disappeared so that any "ownership" interest would now require disclosure, including those situations whereby shareholder's agreements provide for direction and control over the firm, regardless of voting rights or number of shares held.

> *This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because of an "ownership" relationship between that broker and that insurer, that relationship must be disclosed to the client.*

**2. Common Ownership of a Firm and an Insurer by a Financial Conglomerate or Other Holding Company or Group of Companies.**

This relationship was also required to be disclosed by section 11 of the Regulations Now, however, the requirement to disclose related party situations is much clearer.

> *This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because both entities are owned or controlled by another common company or group of companies, that relationship must be disclosed to the client.*

**3. A Loan, Credit Facility or Other Financial Relationship, Direct or Indirect**

Influence can be exerted on a broker by other means than having a direct, indirect or common "ownership" relationship with an insurer. There are numerous historical examples of insurers either lending capital to firms for acquisitions or other reasons, or extending credit facilities for various reasons. These financial relationships, however provided, exert influence or control over the decision-making process in the same way as an "ownership" relationship and ought therefore, to be disclosed.

> *This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because both entities are owned or controlled by another common company or group of companies, that relationship must be disclosed to the client.*

**4. A Financial or Non-financial Network Affiliation**

Influence may affect a broker by means other than an ownership or an actual financial relationship with an insurer. The existence of, or membership in a "network" of companies making products or services available to consumers by reason of being a member of the network, may exert influence on a broker in deciding to place insurance with an insurer that is also a member of the network. The same influence may be exerted whether the "network" access applies to financial or non-financial products.

An example might be a broker making an arrangement with a retail organization for a kiosk or place of business in their premises, when that retailer also has a relationship, direct or indirect with an insurer.

This factor deals with the "independence" of a broker from an insurer, when both are members of a group or are affiliated with the same group, in other than at "ownership" or "financial" relationship.

> *This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurerbecause of a network affiliation, that relationship must be disclosed to the client.*

**5. Exclusive Contract or One Market Exceptions**

The public generally considers brokers to have access to the insurance market and that a broker will shop around to obtain "the best product with the best insurer and the best service to the customer at the best price".

Some brokers, for their own business reasons, have entered into contracts with one insurer to provide all or a substantial portion of a line or lines of business to that insurer exclusively. Other brokers have innovated a particular targeted market program that is written exclusively with one insurer, for example, an "over 50" auto insurance program.

In each of these examples, while still "acting as an insurance broker" for RIBO purposes, the client is not provided a choice of insurer. The client is placed with the one insurer with which the broker has entered into an "exclusive" contract, or through whom the broker has placed the target market program. To the public, such brokers may appear as "virtual agents" of that insurer. In these cases, just as agents are required to disclose that they represent one insurer, these brokers ought to disclose this fact as well.

Some brokers might also find themselves in a limited market capacity position by reason of market conditions from time to time, such as market cancellation or withdrawal, or in some cases notwithstanding the number of contracts held. The absence of "choice" in the placement of insurance contracts is a factor that the public has a right to know prior to the placement of coverage.

> *This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is not offering a choice of insurers in the placementof an insurance product, that fact must be disclosed to the client. This applies regardless of whether the broker is in this position by contract, by specific program or by reason of finding himself or herself in a limited market situation in the ordinarycourse of business.*

**6. Volume or Mix of Business Requirements**

At times, when an insurer is reviewing a broker's contract, that insurer may impose a stringent volume or mix of business requirement on that broker, such as a requirement to submit one property application for every auto application submitted.

This factor does not apply to a broker's normal or ordinary course of business, for example, when a broker obtains a new contracted market and places risks in support of that market. This factor is intended to apply to the rare occasion when an extraordinary restriction may be placed upon him by an insurer for contractual or rehabilitation reasons. In those instances, such requirements may lead to an absence of "choice" problem that may be to the detriment of the client If so in those cases, that absence of "choice" ought to be disclosed.

*This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is not offering a choice of insurers in the placement of an insurance product as a result of restrictive requirements placed on him or her by an insurer, to the detriment of a client, that fact mustbe disclosed to the client.*

### 7. Receipt of Contingent Commission

There is a perception that brokers may steer insurance business to one company over another based on contractual arrangements that provide a broker with an opportunity to receive contingent commission. While payment of contingent commission from an insurance company may depend on profitability (loss ratio) of that broker's total book of business with that insurer (and not on individual policies), or volume or growth targets in other cases, and the receipt of this commission by the broker is not guaranteed, the possibility that the broker may receive this commission in future ought to be disclosed,in order to achieve full and overt transparency in the transaction.

*This factor means that if a broker's contractual relationship with an insurer providesfor a contingent commission structure, that fact must be disclosed to the client.*

The following is some sample wording for use in this disclosure:

"In order for us to maintain strong relationships with quality insurers we work with each to provide the type of business they desire. The insurers noted above (from list of markets) with an asterisk recognize our efforts through a Contingent Commission contract Payment of this Contingent Commission depends on a combination of growth, profitability (loss ratio), volume, retention and increased services that we provide on behalf of the Insurer. It is based on our entire portfolio of business with that insurer and not on individual policies Contingent Commission is not guaranteed."

### 8. Sales Incentives

There is a perception that brokers may steer business to one company over another based on the fact that some companies offer trips or other incentives to brokers thatmeet certain sales targets, usually expressed in volume, growth or profit criteria.

Similar to the possibility that a broker may receive contingent commission, the possibility that a broker may receive sales incentives ought to be disclosed, in order to achieve full and overt transparency in the transaction.

*This factor means that if a broker's relationship with an insurer provides forsales incentives, such as trips, that fact must be disclosed to the client.*

## 9. Premium Financing Companies

There is a perception that brokers may steer business to one premium finance company over another based on the fact that some finance companies offer referral fees to Brokers. Indeed, a number of brokers have ownership or related party interests, directly or indirectly, with premium financing companies.

While RIBO Guidelines on Marketing Practices already provide for disclosure to the client if a broker receives a referral fee, in advance of arranging the financing, the fact that a broker may receive referral fees or have an ownership or related party interest in a financing company ought to be disclosed from a conflict-of-interest perspective, in order to achieve full and overt transparency in the transaction.

> *This factor means that if a broker's relationship with a premium financing company provides for referral fees, or involves an ownership or related party interest, directly or indirectly, that fact or both those fact, as the case may be,must be disclosed to the client.*

**Clarity and Timing of Disclosure**

A client is entitled to full and overt transparency in the disclosure of information.

A client is required to received information of a conflict or potential conflict of interest at the time of quotation by the broker while information regarding commission must be disclosed at the point of sale.

Accordingly, RIBO will consider that a broker has not complied with this requirement if disclosure is provided in a manner that is unclear or obscure, for example, disclosure of relevant information that is intentionally buried in a twenty-page document that no one will read.

**Examples of Disclosure**

The following represent common examples of disclosure of ownership or financial relationships, some of which were taken from actual documents where this information was being disclosed prior to the current requirement coming into force.

- The policyholder and insured(s) are hereby notified and advised that the producing broker name of firm is owned by name of insurer, the underwriter of this policy of insurance.
- The name of insurer has an ownership interest in name of firm.
- Name of firm and the name of insurer have common ownership, or are both members of the same group of companies, as the case may be.
- Name of firm currently has a loan guaranteed by name of insurer that was used to expand our business.
- Name of firm has a financial relationship with name of insurer.

## Sample Broker Point of Sale Commission Protocol

Items that must be included:

### 1. Statement on Services Provided

e.g., "Our role is to provide you with the best insurance value that combines coverage, service and price. We Also provide personalized, quality service that includes professional insurance advice, ongoing policy maintenance and claims support. When any issue arises regarding your insurance coverage, we are your advocate, using our professional experience to best represent your individual interest ".

### 2. Personal Lines Automobile and Property

Statement on broker compensation showing insurers by class and range of commissions provided along with a statement advising that should commissions be increased, the consumer will be notified, e.g., Firm compensation is part of your insurance premium. For your benefit, we have listed below Automobile insurers that we represent and have included the range of compensation each provides as a percentage of your overall premium that appears on your invoice.

x Aviva* - X% to Y%
x Travelers* - X% to Y%
x Definity Insurance* - X% to Y%x
x Gore Mutual – X% to Y%
x Intact* - X% to Y%

This commission percentage is paid annually for both new business and Renewals. Should there be an increase in the commission schedule we receive from your insurer, or any other material change that affects compensation arrangements, we will notify you.

### 3. Commercial Lines

A Point-of-Sale document for commercial insurance will include commission schedules for those companies writing the class of business being offered similar to a personal lines document.

### 4. Contingent (Profit) Commission

Statement will include bases for contingent commission and how they are dependent primarily on entire book of business profit (loss ratio).

In order for us to maintain strong relationships with quality insurers, we work with each to provide the type of business they desire. The insurers with an asterisk (*) noted above recognize our efforts through a Contingent Commission contract Payment of this Contingent Commission depends on a combination of growth, profitability (loss ratio), volume, retention and increased services that we provide on behalf of the Insurer Contingent Commission is not guaranteed. For detailed information on Contingent Commission, please go to the individual company's website.

## 5. Information on Ownership and Other Financial Links

Brokers will declare to their customer should they have any other financial links that could be considered a conflict of interest such as:

- Any direct or indirect ownership interest by an insurer or financial conglomerate
- Any loan, credit facility or other financial relationship direct and indirect

## 6. Working with Insurance Companies

Our disclosure commitments are made in the best interest of consumers. We encourage you to also consult the commitments made by the insurance industry and individual companies by consulting their websites or other available information.

# PARAGRAPH 8 – FEE DISCLOSURE

**14 (8)** **A MEMBER SHALL NOT STIPULATE, CHARGE OR ACCEPT ANY FEE THAT IS NOT FULLY DISCLOSED, OR THE BASIS FOR WHICH IS NOT FULLY DISCLOSED PRIOR TO THE SERVICE BEING RENDERED, OR WHICH IS SO DISPROPORTIONATE TO THE SERVICE PROVIDED AS TO BE UNCONSCIONABLE.**

There may be instances in which traditional remuneration by commission from the insurer does not yield a fair return to the broker for services rendered to the client or prospective client, or which may be an inappropriate method of determining compensation.

**Section 12(1)** outlines the disclosure requirement and it is important to note that there may be situations where failure to disclose a fee could be an act of misconduct as defined in the *RIB Act* and Regulations:

> **Section 12(1)** Where a member proposes to charge a fee for service in addition to retaining a portion of the premium charge, the member, before placing the insurance or providing a service for which a fee is to be charge, shall disclose to the person whom the member proposes to charge the amount of the fee, the portion of the premium retained and the total remuneration on the transaction.

**Relevant Factors**

Factors which may influence the amount of a fair and reasonable fee may include but are not limited to the following:

- **(a)** The time and effort required to be spent.
- **(b)** The difficulty and importance of the matter.
- **(c)** Whether special skill or service will be required or provided.
- **(d)** The amount involved or the value of the subject matter.
- **(e)** Whether or not any remuneration will be received from another source in connection with the same transaction and, if so, its amount.
- **(f)** Any special circumstances such as urgency or uncertainty of reward.

You must always be able to justify a fee when requested. A fee may be unconscionable if it cannot be justified in the light of all pertinent circumstances, including those factors mentioned above.

**Please note that the Facility Association does not allow any fees to be charged or added to the Facility Association premium.**

An example of full disclosure to a client:

| | |
|---|---|
| Premium Quoted | $10,000 00 |
| Commission | $2,000 00 |
| Broker's Fee | 1,000 00 |
| Total Broker Remuneration | $3,000 00 |

# PARAGRAPH 9 – ENCOURAGE PUBLIC RESPECT

**14 (9) A MEMBER SHALL ENCOURAGE PUBLIC RESPECT FOR AND TRY TO IMPROVE THE PRACTICE OF THE MEMBER'S VOCATION.**

## Scope and Application

Active support of this Rule is expected of the broker in the day-to-day dealings. Failure to do so may not necessarily result in disciplinary action, however, you may have fallen short of the highest standards expected of you as a broker.

It may also be deemed an offence under the Code and be grounds for disciplinary action to conduct yourself in a manner which causes disrespect for the profession.

The obligation is not restricted to your professional activities but is a general responsibility resulting from your position in the community. You should take care not to weaken or destroy public confidence in the insurance industry, most especially the unique position of the registered insurance broker as an independent intermediary. Nevertheless, you should not hesitate to act constructively to remedy inequities or unfairness that come to light.

## Public Respect

Practicing as an insurance broker implies that you have made a basic commitment to the system of the distribution of insurance to the public by independent brokers. However, the system will only function effectively if it commands the respect of the public. The ever-changing economic and social environment in which society evolves demands constant efforts be made to adapt the system to respond to such changes and thereby maintain public respect for it.

## Seeking Improvement and Change

The broker, through opportunity and experience, is in a most favourable position in the insurance industry to observe its workings and discover its strengths and weaknesses and public reaction to them. You should therefore lead in seeking improvements to the system through constructive criticism and reasoned proposals.

When seeking legislative or administrative changes, you should be clear and honest about whose interest is being advanced, your own or that of the public. When you purport to act in the public interest, you should promote only those changes which you conscientiously believe to be in the public interest.

## Avoiding Criticism

Although proceedings and decisions of regulatory bodies are properly subject to scrutiny and criticism by all members of the public, including brokers, members of such bodies are often prohibited by law or custom from defending themselves. Their inability to do so imposes social responsibilities upon brokers.

You should avoid criticism, which is petty, intemperate, or unsupported by a good faith belief in its real merit. If you have been involved in the proceedings, there is risk that any criticism may be, or may appear to be, partisan rather than objective. When an insurance body is the object of unjust criticism, you are, by virtue of your position, uniquely able to support that body, and should do so, whether or not its members can defend themselves, because you are thereby contributing to greater public understanding of the insurance industry and therefore its credibility.

## Community Activity

Your active participation in public information, education or guidance programs concerning insurance assists in the accessibility of general insurance knowledge.

# PARAGRAPH 10 – MANNER OF SERVICE

**14 (10) A MEMBER SHALL MAKE THE MEMBER'S SERVICES AVAILABLE TO THE PUBLIC IN AN EFFICIENT AND CONVENIENT MANNER WHICH WILL COMMAND RESPECT AND CONFIDENCE AND WHICH IS COMPATIBLE WITH THE INTEGRITY, INDEPENDENCE AND EFFECTIVENESS OF THE MEMBER'S VOCATION.**

Basic Principles

It is essential that a person requiring insurance be able to find a broker qualified to arrange it with a minimum of difficulty or delay. In a relatively small community, where brokers are well known, the person will usually be able to make an informed choice of a qualified broker in whom to have confidence.

In larger centres, these conditions may often not exist. As insurance becomes increasingly complex and the practice of many individual brokers becomes more specialized, the reputation of brokers and their competence or qualifications in particular fields may not be sufficiently well known to enable a person to make an informed choice.

When approached by a prospective client in such circumstances, you should be prepared to assist in finding the right broker to deal with the situation. If you are unable to act, for example, due to lack of qualifications in a particular area, you should assist the client to find another broker who is more qualified and able to act. Such assistance should be given willingly and without charge.

The means by which insurance is made available to the public must not detract from the integrity, independence or effectiveness of the insurance broker. This obligation must be kept in mind when the broker is determining particular methods of operation, marketing or advertising.

# PARAGRAPH 11 – MATAIN INTEGRITY OF THE VOCATION

**14 (11) A MEMBER SHALL ASSIST IN MAINTAINING THE INTEGRITY OF THE MEMBER'S VOCATION AND SHOULD PARTICIPATE IN ITS ACTIVITIES.**

**Principles of Self-Regulation**

A self-regulatory system inherently depends on brokers regulating brokers. Where there is a reasonable likelihood that someone will suffer serious damage as a result of an apparent breach of the regulations, for example, where a shortage of trust funds is involved, you have an obligation to report the matter to RIBO.

**Duty To Report Misconduct and Incompetence**

Where a broker who tends toward professional misconduct is not checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may disclose a more serious situation upon investigation or may indicate the beginning of a course of conduct that could lead to serious breaches in the future. **It is therefore proper (unless it be unlawful) for you to report to RIBO any instance involving a breach of the regulations by you or another broker. You shall also attempt to persuade and assist any member of the public to report any facts to RIBO that may constitute an act of misconduct.** In all cases, such a report must be made in good faith, without malice or ulterior motive. You have a duty to reply promptly to any communication from RIBO.

**Professional Communication**

You should not, in the course of business, write letters, whether to a client, another broker or any other person, which are abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a broker.

**Non-Discrimination**

You should not discriminate on any grounds in your dealings with members of the public or with other brokers, except where discrimination is warranted by the existence of material differences between risks.

# PARAGRAPH 12 – UNAUTHORIZED PRACTICE OF THE VOCATION

**14 (12) A MEMBER SHALL ASSIST IN PREVENTING THE UNAUTHORIZED PRACTICE OF THE MEMBER'S VOCATION.**

**Reasons For Prohibition**

Statutory provisions prohibiting the practice of independent general insurance intermediary by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are not subjected to the necessary control, regulation and discipline by RIBO or by the Financial Services Regulatory Authority of Ontario (FSRA). A client of a registrant has the benefit and protection of safeguards such as professional liability insurance, fidelity bonds and rules respecting the handling of trust monies and requirements respecting a firm's trust and equity positions.

**Supervision of Employees/Assistants**

You must assume complete professional responsibility for all business entrusted to you Principal Brokers must maintain direct supervision over staff and assistants to whom they delegate particular tasks and functions.

**Use of Unregistered Individuals**

Any activities falling within the definition of "insurance broker" contained in section 1 of the *Registered Insurance Brokers Act* must be performed by a person who is a registered insurance broker. You should note that this definition includes "dealing with the public" You should ensure that all matters which by regulation must be performed by a registered broker are, indeed, so performed.

Also, it is the responsibility of the principal broker to ensure that any broker whose registration has been suspended, but who is still in that firm's employ, does not holdhimself or herself out as a broker, or deal with the public in insurance matters, until that period of suspension has expired, and the broker is reinstated.

# PARAGRAPH 13 - CONDUCT TOWARDS OTHERS

**14 (13) A MEMBER'S CONDUCT TOWARDS OTHER MEMBERS, MEMBERS OF THE PUBLIC, INSURERS AND THE CORPORATION SHALL BE CHARACTERIZED BY COURTESY AND GOOD FAITH.**

## Principles

Public interest, industry practice and legal requirements demand that matters entrusted to you be dealt with effectively and expeditiously. Fair and courteous dealings on the part of each registrant will contribute materially to this end. By behaving otherwise, you do a disservice to your client and to the industry as a whole.

## Withdrawal of Services

You should only refuse to continue to provide services to a client where you have a good faith reason in support of terminating your relationship with the client and you are able to comply with all applicable laws and professional obligations, including your obligation to give the client adequate notice so as not to prejudice the client's interests. You are obligated to use your best efforts to ensure that the client's firm needs are adequately looked after notwithstanding your withdrawal of services. This obligation can be fulfilled in some circumstances by finding another broker to look after the client or at least referring the client to other brokers who can appropriately service the client.

## Promptness

You should answer with reasonable promptness all professional letters and communications from other brokers which require an answer, and should be punctual in fulfilling all your commitments. The same courtesy and good faith should characterize your conduct towards members of the public.

You should give no undertaking that cannot be fulfilled and you should fulfill every undertaking given by you. Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms.

## Other Brokers

You should avoid ill-considered, uninformed or unnecessary criticism of the competence, conduct, advice or charges of other brokers, but should be prepared, when requested, to properly advise a client in a complaint involving another broker and to cooperate with RIBO and other regulatory authorities in the investigation of complaints and enforcement of the law.

Note again that the use of published material in the RIBO Newsletter bulletins to criticize or slander a fellow member may be considered to be an act of misconduct.

# PARAGRAPH 14 - DUTY TO COOPERATE

**14 (14) A MEMBER SHALL COOPERATE IN AN INVESTIGATION CONDUCTED BY THE CORPORATION.**

**Basic Principle**

Consumer protection can also be enhanced when one fully cooperates and provides accurate information during an investigation.

**Examples:**

Examples of the duty to cooperate include:

- **(a)** A member under investigation must reply to an investigator with timely information in a complete manner.
- **(b)** Failing to respond to the inquiry of an investigation or an investigator may be considered an act of misconduct.
- **(c)** During an investigation, brokers should be cooperative by making themselves available for meetings and providing all documents, electronic or otherwise as required during an investigation.

# PARAGRAPH 15 – FINDINGS FROM ANOTHER JURISDICTION

**14 (15) A MEMBER SHALL NOTIFY THE CORPORATION OF THE GOVERNING AUTHORITY OF THE PROFESSION IN A JURISDICTION OTHER THAN ONTARIO HAS MADE A FINDING OF INCOMPETENCE OR MISCONDUCT OR A SIMILAR FINDING AGAINST A MEMBER.**

**Guiding Principle**

Consumers are entitled to have complete information regarding brokers who may have been the subject of discipline proceedings in other jurisdictions. This provision was enacted to ensure that brokers are obligated to disclose these proceedings and failure to do so may be considered an act of misconduct.

# BUSINESS/PORTFOLIO TRANSFERS

Transfers of business from one insurer to another, whether on the instructions of an insurer or the firm, require brokers to be candid and honest with their client(s) as to why the transfer decision was made (i.e. reasons), and what the ramifications are for the client (e g all fees associated, any conflicts of interest). The focus of the firm shouldbe on the sufficiency of notice periods, disclosure and the quality of the professional service provided to the client, as compared to that provided by a reasonably prudent broker in like circumstances.

The Canadian Insurance Services Regulatory Organization's "*Principles of Conduct for Intermediaries*" states that brokers must place the interests of policyholders and prospective purchasers of insurance ahead of their own interests. The *Insurance Act*, RIBO's Code of Conduct Handbook and guidelines for disclosure of conflicts of interest also outlines the requirements and standards expected of a reasonably prudent broker in circumstances of non-renewal and portfolio transfers. Brokers should also be aware, in transfer situations, that the Financial Services Regulatory Authority of Ontario's "Auto Insurance Consumer's Bill of Rights" provides that consumers " have the right to remain with (their) insurance company even if that company no longer sells insurance through your broker(age)".

Some of the reasons why a firm may transfer business from one insurer toanother include:

- Cancellation of a firm contract, by either the broker or the insurer,forcing transfer.
- Bulk purchase of another firm's book of business and integration into the purchasing firm's markets.
- The firm is owned, purchased or controlled by an insurer (orotherwise has a contract with an insurer) that requires all or a substantial portion of a line or lines of business to be placed with that insurer (or through any other influence factors exerted by that insurer).
- Payment of "overrides" by an insurer to a firm as an incentive to transfer business to it, or as assistance to help with the administrativecosts of completing the transfer Insurer insolvency.

In all such instances, a broker's paramount duty is to act in the best interests of their client. This means brokers must ensure that they place the interests of their client ahead of their own interests, while being transparent in disclosing the reason why the business is being transferred.

To assist brokers in the implementation of the Priority of the Client's Interest principle, the following summarizes key RIBO expectations by setting out the standards that RIBO expects of a reasonably prudent broker in these circumstances:

- Notice to the consumer should be 60 days, if possible, but under no circumstances should the notice be less than 30 days If an automobile policy is to be lapsed on renewal the firm has an obligation to provide written notification of the decision to the consumer within 45 days, outliningthe options available to them.
- The firm must candidly and honestly explain why a client's policy isbeing moved from one insurer to another.

The firm must explain any material variations in coverage between the existing policy and the new policy It is not acceptable to suggest there may be policy variations and therefore the client should compare and call if there are questions. For example, the existence of accident forgiveness clauses, applicable discounts, or a variation of more than 10% in the premium for renewal of the old policy vs the premium for the new policy.

Explain the manner in which any client that may not want to change policies from their existing insurer to another for whatever reason may go about doing so. If the firm's contract with the insurance company has terminated, point out the additional option of remaining with the existing company if they are disadvantaged by being placed elsewhere. Firms are not required to direct customers specifically to another area firm that deals with the "old" insurer (although that would certainly be good service) but must at least provide information on how to contact the "old" insurance company who will provide that information to them (including a phone number to call). This is a consumer "RIGHT" with auto policies, but it is also a RIBO requirement in any case where the interests of the client may not be as well served with a new insurer as they were under their existing policy with the old insurer, either for price, coverage, claims handling or whatever reason. Brokers are required to assist their clients if they wish to remain with their existing insurer, usually by providing an insurance company contact phone number, through which those clients can secure a local firm that represents the existing insurer.

A broker must disclose the facts giving rise to a change in insurer, particularly if there is a conflict between the client's interests and the broker's interests, for example, if a firm is receiving an "override" incentive to transfer a book of business. The priority of the client's interest is paramount. Beyond the requirement to disclose all of the expenses and fees paid by the insurer to transfer the book, the priority of the client's interest principle must not be overlooked in favour of operational efficiencies, or other interests of the broker.

"Overrides" are treated by RIBO in the same way as a fee for service accepted by a broker, for services involved in transferring a book of business. The RIBO Code of Conduct provides that a broker shall not accept any fee that is not fully disclosed, or the basis for which is not fully disclosed prior to the service being rendered, or which is so disproportionate to the service provided as to be unconscionable. This means that, in all cases, override fees should be "reasonable" depending on the facts and circumstances of each case, that is, accountable and explainable to assist in the cost of the transfer. The "test" that will be applied by RIBO in reviewing any transfer situation can be stated as follows: "Whether it would appear to a reasonable, informed person looking at all the facts that the broker acted in the best interests of his or her client?".

**Development and Distribution of Internal Procedures**

Principal Brokers may reduce the risk of such complaints by documenting internal office procedures, training staff on these procedures and making them available for reference. Please note that in developing these guidelines, care must be taken to make certain they do not breach the *Compulsory Auto Insurance Act*, particularly with respect to providing an application for insurance to any person that requests it.

**Understand the Needs of Each Client**

Brokers should be focusing on the sufficiency of notice periods, candid and honest disclosure and quality of service provided. It is very difficult to design a "one size fits all" disclosure solution to the variable types of transactions in a transfer situation or even normal everyday situations. We suggest that brokers try and tailor their conduct to the particular facts of each client as the sufficiency of disclosure will vary in each case.

Common consumer complaints received with regards to portfolio rollovers include:

**(a)** Their file has been re-marketed without their permission or preview.
**(b)** In the case of direct bill policies, the confidential banking information was provided to a new company without their authorization.

It is important to keep your clients informed regarding the status of their insurance policies Written notification to your clients of the upcoming change or insurance company should be issued at least 45 days prior to the expiry date and should:

**1.** Outline the firm's intention to re-market. Indicate that the existing information (including banking information) may be provided to the new insurance company.
**2.** Give instructions to contact the firm office immediately if they have any objections to the above.

## Producer Transfer of Book of Business to Another Firm

When a producer moves from one firm to another and takes or transfer the book of business, the existing firm continues to be the Broker of Record until a consumer signs a Letter of Authorization that has been accepted by the Insurer or expiry date of each policy, whichever occurs first.

The existing firm, as the Broker of Record, is responsible for the servicing of the business and is subject to the RIBO Code of Conduct and all misconduct regulations.

In the event of a transfer of a book of business the following steps are suggested:

1. Letter of acknowledgement from the new Principal Broker accepting responsibility for the book of business and confirmation that the producer has been added to the Errors & Omissions and Fidelity Bond policies effective the date of the transfer;

2. Letter of acknowledgement from the existing Principal Broker agreeing with the transfer to the new Broker of Record;

3. Confirmation letters from all contracted insurers indicating acceptance of new firm as Broker of Record with the effective date and a listing of all business of each respective insurer;

4. Copy of the letter advising clients of changes to the Broker of Record and who to contact.

If the producer has registered a Non-Active Member firm for the receipt of commissions, a new Undertaking must be completed by both the producer and the Principal Broker of the new firm along with evidence of Errors & Omissions coverage by the new firm

# CLAIMS ASSISTANCE

The definition of an insurance broker in the *RIB Act* includes, among other things and subject to certain other requirements, any person who provides risk management services including claims assistance where required.

Traditionally, claims assistance has been viewed to include such things as helping a client assemble information for a proof of loss and assisting the client to pursue a claim against a policy arranged through the firm, or offering basic advice as to the course of actionusually taken to make a claim or seek recovery from another party. Claims assistance has not encompassed a firm acting on behalf of an insurer in negotiating settlement oflosses with his own client or acting on behalf of his own client and/or his insurer in adjusting, negotiating or settling claims involving Third Parties.

However, some firm contracts with licensed insurers include specific and limited authority to act on the company's behalf and pay claims to provide prompt payment for claims within guidelines set out by the company. The claim payments made on behalf of the insurer are then offset against the accounts payable to the insurer.

A broker having such payment authorization must maintain accurate records at all times so claims payments will not impair trust funds being held for the benefit of other insurers AND that any need for claims payments in excess of the funds held in trust, for the insurer involved, will be met from the Broker's own resources.

Brokers who set up a claims assistance function in their offices as a service enhancementfor clients should exercise care and supervision to ensure that day-to-day activities of personnel involved in providing those services do not encroach upon the role of claims adjusting as this could present conflict with the *Insurance Act* (acting as an Adjuster for compensation) as well as the issue of non-compliance with the *RIB Act* (sole occupation).

# COMPLAINT & DISCIPLINE PROCESS

There are two Committees involved in the complaints process, the Complaints Committee and the Discipline Committee. The committees are composed of brokers and public members, appointed by the government to protect the public interest. All of the latter proceedings take place at the RIBO office, however RIBO staff are not involved in the decision-making process.

The Complaints Committee consists of two brokers and a public member. They evaluate the evidence and merit of a complaint. If it is determined that there is sufficient evidence to indicate a possible misconduct, the matter is referred to the Discipline Committee.

The Discipline Committee consists of four brokers and a public member and conducts hearings very similar to that of a court of law. Evidence is introduced during the hearing and testimony is given under oath in the presence of a court reporter. The Committee determines the facts and makes findings of innocence or guilt based on the evidence presented. In the event a broker is found guilty of misconduct, this Committee has the authority to reprimand, impose additional educational or financial reporting requirements, restrict, suspend, fine or revoke a registration.

There are two types of complaints addressed by RIBO: consumer and financial Consumer inquiries may originate from various sources including brokers, consumers, lawyers and law enforcement. Of these complaints, 95% may be resolved informally by mediating the issues while the remaining 5% require the formal complaint process. Financial complaints are usually generated by RIBO and result from financial reports submitted by the firm or from a random spot-check performed by a RIBO financial investigator.

Every written complaint that alleges wrong-doing on the part of a broker is carefully investigated When a formal inquiry into a complaint is necessary, the process is as follows:

- A copy of the written letter of complaint or a summary of the complaint is sent to the broker with the request that the broker provide a written response to the allegation. The broker is also advised of who the assigned investigator will be,

- During the investigation, if matters can be clarified by correspondence and phone calls, a completed investigation report is submitted to the Director of Complaints & Investigation for direction and authorization to close the complaint investigation file and to notify the complainants of the result,

- If matters cannot be satisfactorily concluded, the complaint and investigation file may then be filed with the Manager for consideration by a Complaints Committee.

- A Notice of Complaint is then sent to the broker involved outlining the allegations, the section of the *RIB Act* that may have been violated, the date of the hearing and opportunity for the broker to submit further written explanation/information.

- At the Complaint Committee Meeting, information from all parties is presented to the panel by RIBO staff and any of the parties who are present to speak to their claims. A copy of all documentation provided by the parties is distributed to the panel members for their review and deliberation.

- Following deliberation by the panel members, the matter may be dismissed, resolved on a Consent basis or referred to a Discipline Committee.

During a Complaint Committee Meeting, a broker has an opportunity to acknowledge guilt or "Consent" to a guilty finding and agree to a penalty. Before a Consent can become official, the Discipline Committee must first agree to the Consent and penalty. Once a Consent is approved, the Consent becomes an Order of the Discipline Committee. Should the Committee not agree to the Consent, the matter is scheduled for hearing at a later before a different panel of the Discipline Committee. This Consent procedure saves both time and the expense of a Discipline Hearing at a later date.

When a matter is referred to the Discipline Committee, a Notice of Hearing is sent to the broker 30 days in advance of the hearing date to allow the broker sufficient time to prepare It includes an explanation of the powers of the Committee and a Direction from the Complaints Committee outlining the charges and particulars of the allegations. The broker is usually in attendance at the Discipline Hearing, however, the proceedings may take place even in the broker's absence if there is no response to the Notice of Hearing.

It is important to realize that in all complaint cases there is a presumption of innocence and RIBO is required to prove the alleged misconduct in accordance with the *RIB Act*, Regulations and By-laws.

# CONTINUING EDUCATION REQUIREMENTS

## Key Regulatory Provision –REGULATION 991

**5. (1)** An individual is qualified to be issued and hold a certificate of registration as an insurance broker where,

**(d)** the individual complies with the continuing education requirements established by the Council.

**Commentary**

**Principal Brokers and Deputy Principal Brokers:**

10 hours of continuing education credits every year between October 1st and September 30th. A minimum of 5 hours must be in the Management category The remaining hours may be in the Management or Technical category. There is a carryover of a maximum of 10 hours (or one term's requirements with a minimum of 5 hours in the Management category) allowed for the next term.

Personal Skills hours/credits cannot be applied towards the continuing education requirements Principal Brokers and Deputy Principal Brokers who apply Personal Skills hours may experience a shortfall which may place their registration in non-compliance of the requirements.

Non-compliance of the requirements by the Principal Broker will result in the registration of the Principal Broker being referred to the Qualification and Registration Committee to propose to review and revoke the Principal Broker Status. This may also result in the firm being subject to review by theQualification and Registration Committee for non-compliance of the Principal Broker requirement.

Deputy Principal Brokers who are in non-compliance of the continuing education requirements will result in the suspension of the license until full compliance hasbeen met.

**All Other Licensed Individuals:**

8 hours of continuing education credits every year between October 1st and September 30th in any category. There is a carryover of a maximum of 8 hours (or one term's requirements) allowed for the next term.

Non-compliance of the requirements will result in the suspension of the license until full compliance has been met.

**Newly Licensed Individuals:**

The continuing education program of 8 hours every year between October1st and September 30th will begin the first October following registration Individuals are exempted for the remainder of the license year that they were registered.

**E.g.,** Broker A was registered on November 1, 2006 and Broker B was registered on April 30, 2007 Both Broker A and Broker B will not be required to have accumulated any continuing education credits by September 30, 2007, but must begin taking the continuing education seminars/courses on October 1, 2007

**Category Definitions:**

Each continuing education course/seminar/workshop that is submitted for accreditation is reviewed in accordance with the Broker Skills Reports which outlines the skills set necessary to carry out the duties and responsibilities of a broker.

**Management**

Subjects related to the *RIB Act* and Regulations, human resources, general management, accounting, computerization, and generally topics relevant to the operation of an insurance firm.

**Technical**

Subjects directed towards imparting of general insurance product knowledge and/or technical insurance expertise including risk management and loss Prevention.

**Ethics**

Subjects relating to the rules or standards that govern decisions on a daily basis. Topics should examine ethical principles and moral or ethical problems that arise in a business environment, such as recognizing and managing situations that could result in a conflict or potential conflict with the professional and legal obligations to the consumer.

RIBO recognizes the importance of diversity, equity, and inclusion (DEI) in the workplace . As society grows more diverse, so do the demands of brokers to ensure equality and inclusion in the workplace. DEI topics may include reviewing the use of language as not to exclude or diminish the self-worth of clients or how brokers can best manage situations that of discrimination in the workplace."

**Personal Skills** (Not eligible for Principal or Deputy Principal Brokers)

Subjects related to skills required to function efficiently in an insurance firm office, as a customer service representative or as a producer Subjectswould include, but not limited to, sales and marketing skills, and communication and writing skills.

Courses taken towards any of the following designations: CAIB, CCIB, CPIB, CIP, FCIP, CRM, RPLU and CAIP are eligible for continuing education credits. The course grade letter or examination results for each course taken will be accepted as proof of
compliance with the continuing education requirements. The maximum accredited hours allowed for each course are:

*Insurance Broker Association courses:*

CAIB 1 ~ 5 hours Management & 16 hours Technical
CAIB 2 & 3 ~ 16 hours Technical each
CAIB 4 ~ 20 hours Management
CCIB ~ 16 hours Technical
CPIB ~ 20 hours for Management subjects
~ 16 hours for Technical subjects

*Insurance Institute courses:*

CIP ~ 16 hours Technical except C16 & C132 ~ 20 hours Management
FCIP ~ 16 hours for Technical subjects
~ 20 hours for Management subjects

*Canadian Risk Management courses:*

CRM ~ 16 hours Technical

*Professional Liability Underwriting Society courses:*

RPLU ~ 16 hours Technical

*Aviation Insurance Association courses:*

CAIP ~ 16 hours Technical except "AAI-83 – Agency Operations & Sales Management" ~ 20 hours Management

Many accredited course providers are willing to arrange on-site training. A contact person, telephone number and address is listed for each organization offering
accredited seminars/courses.

In-house seminars/training/workshops given by qualified instructors, leaders or
lecturers and meeting the continuing education guidelines can also be submitted for accreditation by completing the Accreditation Agreement for In-house Seminars. Staff Meetings in general do not qualify for accreditation unless there is an educational
component.

Any seminars/courses that meet the standards set for the Continuing Education
Program but are not listed in the RIBO Continuing Education Summary or on the RIBO website as being RIBO accredited, can be submitted for review on an individual basis.

Individuals who participate/volunteer on industry boards, councils or committees may also apply for accreditation towards the Continuing Education Program by completing the Accreditation Application for Participating on Industry Boards.

For spot check purposes, continuing education certificates should be kept for five years to indicate compliance with the Continuing Education Program. The continuing education certificates are not to be submitted to RIBO unless specifically requested by RIBO during a spot check. The Principal Broker will be responsible for ensuring that licensed individuals comply with RIBO requirements. However, it is also each individual's responsibility to keep track of their own continuing education hours and certificates for 5 years, even if the firm firm/employer keeps a record of it.

It is recommended that each individual maintain a continuing education folder to place the certificates received from seminar providers in event of a spot check or changing of employers. In addition, a standard document that tracks continuing education hours should be made available for employees. Individuals who cannot confirm compliance with the continuing education requirements following a spot check will result in having their licenses suspended. These individuals will not be able to conduct any business with members of the public until they are in full compliance and had their licenses reinstated by RIBO.

All individuals will also be asked at each renewal, to declare compliance with the Continuing Education Program If the continuing education requirements have not been completed at the time the renewal application form is being filed, the question must be answered accordingly with a brief explanation. By answering that the requirements have been completed when in fact they have not been, individuals have knowingly falsified therenewal application. Falsification on the annual renewal form constitutes an act of misconduct resulting in an individual's file being referred to the Complaints & Discipline or Qualification & Registration Committee for review and disciplinary action.

The information in annual RIBO Continuing Education Summary can be viewed online on the RIBO website at www ribo com/br_edu html. An alphabetical listing of accredited course providers including dates on any known upcoming courses/seminars will appear when one of the following categories: Management, Technical or Personal Skills is chosen.

If you and/or your staff are not satisfied with the quality of a program, please forward your concerns with the course provider to the attention of the Director of Qualification & Registration. RIBO will address the concerns directly with the course providers and protect the broker's anonymity.

# DISCLOSURE REQUIREMENTS

## Conflict of Interest or Potential Conflict of Interest

**Key Regulatory Provision –REGULATION 991**

**14.(7)** A member shall disclose in writing to a client or prospective client any conflict of interest or potential conflict of interest of the member that is associated with a transaction or recommendation

**Commentary**

**Background**

The disclosure requirements in this paragraph replace both the majority share ownership restrictions and the related party disclosure requirements (>10%), both of which provisions were revoked at the same time this paragraph was enacted.

**Application of Duty**

The fundamental premise is that a client is entitled to any information about a broker's business relationships that pertain to a transaction or recommendation.

A business relationship means any direct or indirect interest or benefit that is relevant to the transaction or arises from placing, or the recommendation to place, a contract of insurance with a particular insurer (over another).

The interest must be sufficient to raise the perception of "influence" over thebroker's "independent" decision making process, in the mind of a reasonable person, in possession of all the facts. In other words, the influence must be "material" enough that a reasonable person would believe that a consumer could not make an "informed" decision without that knowledge.

In all cases, we include "individual" conflicts of interest, as well as those of the registered "firm", as the case may be. In all cases as well, the guidelines are intended to deal with situations where non-disclosure would be detrimental to consumers.

**Guidelines**

This provision as drafted is very broad in scope. Accordingly, to provide guidance to brokers in understanding what this provision means in order to comply, the following Guidelines set out RIBO's interpretation of what this disclosure requirement means for brokers, and sets out a number of factors that may give rise to "influence" sufficient to require disclosure.

1. **ANY DIRECT OR INDIRECT OWNERSHIP INTEREST OF ANY KIND IN A FIRM BY AN INSURER, OR IN AN INSURER BY A FIRM.**

   This disclosure required under section 11 of O Reg 991 was revoked when the ownership provisions were revoked to make way for the new disclosure requirement. There is no longer a 10% share ownership threshold before disclosure is required. This threshold has disappeared so that any "ownership" interest would now require disclosure, including those situations whereby shareholder's agreements provide for direction and control over the firm, regardless of voting rights or number of shares held.

   This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because of an "ownership" relationship between that broker and that insurer, that relationship must be disclosed to the client.

2. **ANY DIRECT OR INDIRECT OWNERSHIP INTEREST OF ANY KIND IN A FIRM BY AN INSURER, OR IN AN INSURER BY A FIRM.**

   This relationship was also required to be disclosed by section 11 of the Regulations. Now, however, the requirement to disclose related party situations is much clearer.

   This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because both entities are owned or controlled by another common company or group of companies, that relationship must be disclosed to the client.

3. **A LOAN, CREDIT FACILITY OR OTHER FINANCIAL RELATIONSHIP, DIRECT OR INDIRECT.**

   Influence can be exerted on a broker by other means than having a direct, indirect or common "ownership" relationship with an insurer. There are numerous historical examples of insurers either lending capital to firms for acquisitions or other reasons, or extending credit facilities for various reasons. These financial relationships, however provided, exert influence or control over the decision-making process in the same way as an "ownership" relationship and ought therefore, to be disclosed.

   This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because of a financial relationship, that relationship must be disclosed to the client.

### 4. A FINANCIAL OR NON-FINANCIAL NETWORK AFFILIATION

Influence may affect a broker by means other than an ownership or an actual financial relationship with an insurer. The existence of, or membership in a "network" of companies making products or services available to consumers by reason of being a member of the network, may exert influence on a broker in deciding to place insurance with an insurer that is also a member of the network. The same influence may be exerted whether the "network" access applies to financial or non-financial products.

An example might be a broker making an arrangement with a retail organization for a kiosk or place of business in their premises, when that retailer also has a relationship, direct or indirect with an insurer.

This factor deals with the "independence" of a broker from an insurer, when both are members of a group or are affiliated with the same group, in other than at "ownership" or "financial" relationship.

This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because of a network affiliation, that relationship must be disclosed to the client.

### 5. EXCLUSIVE CONTRACT OR ONE MARKET EXCEPTIONS

The public generally considers brokers to have access to the insurance market and that a broker will shop around to obtain "the best product with the best insurer and the best service to the customer at the best price".

Some brokers, for their own business reasons, have entered into contracts with one insurer to provide all or a substantial portion of a line or lines of business to that insurer exclusively. Other brokers have innovated a particular targeted market program that is written exclusively with one insurer, for example, an "over 50" auto insurance program.

In each of these examples, while still "acting as an insurance broker" for RIBO purposes, the client is not provided a choice of insurer. The client is placed with the one insurer with which the broker has entered into an "exclusive" contract, or through whom the broker has placed the target market program. To the public, such brokers may appear as "virtual agents" of that insurer. In these cases, just as agents are required to disclose that they represent one insurer, these brokers ought to disclose this fact as well.

Some brokers might also find themselves in a limited market capacity position by reason of market conditions from time to time, such as market cancellation or withdrawal, or in some cases notwithstanding the number of contracts held. The absence of "choice" in the placement of insurance contracts is a factor that the public has a right to know prior to the placement of coverage

This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is not offering a choice of insurers in the placementof an insurance product, that fact must be disclosed to the client. This applies regardless of whether the broker is in this position by contract, by specific program or by reason of finding himself or herself in a limited market situation in the ordinary course of business.

## 6. VOLUME OR MIX OF BUSINESS REQUIREMENTS

At times, when an insurer is reviewing a broker's contract, that insurer may impose a stringent volume or mix of business requirement on that broker, such as a requirement to submit one property application for every auto application submitted.

This factor does not apply to a broker's normal or ordinary course of business, for example, when a broker obtains a new contracted market and places risks in support of that market. This factor is intended to apply to the rare occasion when an extraordinary restriction may be placed upon him by an insurer for contractual or rehabilitation reasons. In those instances, such requirements may lead to an absence of "choice" problem that may be to the detriment of the client If so in those cases, that absence of "choice" ought to be disclosed.

This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is not offering a choice of insurers in the placement of an insurance product as a result of restrictive requirements placed on him or her by an insurer, to the detriment of a client, that fact must be disclosed to the client.

## 7. RECEIPT OF CONTINGENT COMMISSION

There is a perception that brokers may steer insurance business to one company over another based on contractual arrangements that provide a broker with an opportunity to receive contingent commission. While payment of contingent commission from an insurance company may depend on profitability (loss ratio) of that broker's total book of business with that insurer (and not on individual policies), or volume or growth targets in other cases, and the receipt of this commission by the broker is not guaranteed, the possibility that the broker may receive this commission in future ought to be disclosed, in order to achieve full and overt transparency in the transaction.

This factor means that if a broker's contractual relationship with an insurer provides for a contingent commission structure, that fact must be disclosed to the client.

The following is some sample wording for use in this disclosure:

"In order for us to maintain strong relationships with quality insurers we work with each to provide the type of business they desire. The insurers noted above (from list of markets) with an asterisk recognize our effortsthrough a Contingent Commission contract Payment of this Contingent Commission depends on a combination of growth, profitability (loss ratio),

volume, retention and increased services that we provide on behalf of the Insurer It is based on our entire portfolio of business with that insurer and not on individual policies Contingent Commission is not guaranteed"

## 8. SALES INCENTIVES

There is a perception that brokers may steer business to one company over another based on the fact that some companies offer trips or other incentives to brokers that meet certain sales targets, usually expressed in volume, growth or profit criteria.

Similar to the possibility that a broker may receive contingent commission, the possibility that a broker may receive sales incentives ought to be disclosed, in order to achieve full and overt transparency in the transaction.

This factor means that if a broker's relationship with an insurer provides for sales incentives, such as trips, that fact must be disclosed to the client.

## 9. PREMIUM FINANCING COMPANIES

There is a perception that brokers may steer business to one premium finance company over another based on the fact that some finance companies offer referral fees to brokers. Indeed, a number of brokers have ownership or related party interests, directly or indirectly, with premium financing companies.

While RIBO Guidelines on Marketing Practices already provide for disclosure to the client if a broker receives a referral fee, in advance of arranging the financing, the fact that a broker may receive referral fees or have an ownership or related party interest in a financing company ought to be disclosed from a conflict of interest perspective, in order to achieve full and overt transparency in the transaction.

This factor means that if a broker's relationship with a premium financing company provides for referral fees, or involves an ownership or related party interest, directly or indirectly, that fact or both those fact, as the case may be, must be disclosed to the client.

### Clarity of Disclosure

A client is entitled to full and overt transparency in the disclosure of information.

Accordingly, RIBO will consider that a broker has not complied with this requirement if disclosure is provided in a manner that is unclear or obscure, for example, disclosure of relevant information that is intentionally buried in a twenty-page document that no one will read.

**Examples of Disclosure**

The following represent common examples of disclosure of ownership or financial relationships, some of which were taken from actual documents where this information was being disclosed prior to the current requirement coming into force

- The policyholder and insured(s) are hereby notified and advised that the producing broker name of firm is owned by name of insurer, the underwriter of this policy of insurance
- The name of insurer has an ownership interest in name of firm
- Name of firm and the name of insurer have common ownership, or are both members of the same group of companies,as the case may be
- Name of firm currently has a loan guaranteed by name of insurer that was used to expand our business
- Name of firm has a financial relationship with name of insurer

## Fees for Services

## Key Regulatory Provision – REGULATION 991

**14.(8)** A member shall not stipulate, charge or accept any fee that is not fully disclosed, or the basis for which is not fully disclosed prior to the service being rendered, or which is so disproportionate to the service provided as to be unconscionable

There may be instances in which traditional remuneration by commission from the insurer does not yield a fair return to the broker for services rendered to the client or prospective client, or which may be an inappropriate method of determining compensation.

Relevant Factors

Factors which may influence the amount of a fair and reasonable fee may include but are not limited to the following:

**(a)** The time and effort required to be spent

**(b)** The difficulty and importance of the matter

**(c)** Whether special skill or service will be required or provided

**(d)** The amount involved or the value of the subject matter

**(e)** Whether or not any remuneration will be received from another source in connection with the same transaction and, if so, its amount

**(f)** Any special circumstances such as urgency or uncertainty of reward

You must always be able to justify a fee when requested A fee may be unconscionable if it cannot be justified in the light of all pertinent circumstances, including those factors mentioned above

**Please note that the Facility Association does not allow any fees to be charged or added to the Facility Association premium.**

Here is an example of full disclosure to a client:

| | |
|---|---|
| Premium Quoted | $10,000 00 |
| Commission | $2,000 00 |
| Broker's Fee | $1,000 00 |
| Total Broker Remuneration | $3,000 00 |

## Sample Point of Sale Commission Protocol

Items that must be included:

**1.** Statement on Services Provided

e.g., "Our role is to provide you with the best insurance value that combines coverage, service and price. We also provide personalized, quality service that includes professional insurance advice, ongoing policy maintenance and claims support. When any issue arises regarding your insurance coverage, we are your advocate, using our professional experience to best represent your individual interest. "

**2.** Personal Lines Automobile and Property

Statement on broker compensation showing insurers by class and range of commissions provided along with a statement advising that should commissions be increased, the consumer will be notified, e.g.,, Firm compensation is part of your insurance premium. For your benefit, we have listed below Automobile insurers that we represent and have included the range of compensation each provides as a percentage of your overall premium that appears on your invoice.

x Aviva* - X% to Y%
x Dominion of Canada* - X% to Y%
x Definity Insurance * X% to Y% x
x Gore Mutual – X% to Y%
x Intact* - X% to Y%

This commission percentage is paid annually for both new business and renewals. Should there be an increase in the commission schedule we receive from your insurer, or, any other material change that affects compensation arrangements, we will notify you.

**3.** Commercial Lines

A Point-of-Sale document for commercial insurance will include commission schedules for those companies writing the class of business being offered similar to a personal lines document.

**4.** Contingent (Profit) Commission

Statement will include bases for contingent commission and how they're dependent primarily on entire book of business profit (loss ratio).

**5.** In order for us to maintain strong relationships with quality insurers, we work with each to provide the type of business they desire. The insurers with an asterisk (*) noted above recognize our efforts through a Contingent Commission contract Payment of this Contingent Commission depends on a combination of growth, profitability (loss ratio), volume, retention and increased services that we provide on behalf of the Insurer Contingent Commission is not guaranteed. For detailed information on Contingent Commission, please go to the individual company's website.

**6.** Information on Ownership and Other Financial Links

Brokers will declare to their customer should they have any other financial links that could be considered a conflict of interest such as:

- Any direct or indirect ownership interest by an insurer or financial conglomerate
- Any loan, credit facility or other financial relationship direct or indirect

**7.** Working with Insurance Companies

Our disclosure commitments are made in the best interest of consumers. We encourage you to also consult the commitments made by the insurance industry and individual companies by consulting their websites or other available information.

# FINANCIAL REPORTING REQUIREMENTS

## Key Regulatory Provision – REGULATION 991

**21.(1)** Every member who is a sole proprietor, partnership or corporation shall, within ninety days after the member's fiscal year-end, complete and file with the Manager a position report in the form approved by the Council presenting fairly the member's financial and trust positions as of the member's fiscal year-end, and providing such details as may be requiredwith respect to the member's financial guarantees and the markets with which the member places insurance, and such other information as is required on the form

**(2)** Every member to whom subsection (1) applies shall, within nine months after the member's most recent fiscal year-end, complete and file a position report in the form approved by the Council as of the day that falls six months after the member's most recent fiscal year-end

**Commentary**

The Regulations require the Principal Broker to complete a Form 1 Position Report semi-annually and at year end, outlining the trust, general and equity position of the firm. As the Principal Broker, it is your responsibility to review and complete a Position Report directly on the member portal. It is a good practice to keep detailed notes when financials were reviewed.

The following "Guidelines to assist in completing the Form 1 Position Report" have been established for Principal Brokers who require clarification along with a listing of common errors made by Principal Brokers when completing the Position Report. You can also find the Guidelines on the following webpage: https://www.ribo.com/broker-resources/printable-forms/

**Common Form 1 Errors**

Cash on hand and bank balances of trust accounts (Line 1)

- The account balance reported is often the balance shown on the bank statement and adjustments for any outstanding deposits or cheques are not made
- Not all trust bank accounts and balances are being reported
- Bank reconciliations are being done at dates other than month-end date which could result in transactions recorded in an inappropriate time period. Filter dates set for month-end can easily correct for this error (purpose of bank reconciliation is to verify that the general ledger balance is correct)
- "Outstanding transfers" from the general account to the trust account are not to be included in the trust bank balance (trust funds must be physicallyin the account at month-end dates to be included)
- Premium receivable balances being reported are not being offset/reduced by the outstanding deposits included in the trust bank balances (results in asset being double-counted and trust position overstated)
- U S exchange not being applied to and reported for all trust assets and liabilities

Total premiums receivable (Line 2)

- Reported balance may not be accurate due to incorrect invoicing dates for new business, renewals, endorsements, cancellations and binders. Total premium balances should be based on the latter of the invoiced date or the effective date
- The balance on the premium receivable list is not the same as the balance on the general ledger. The balance to report on the Form 1 should be the more conservative figure of the two
- Valid receivables, which would be included, are omitted because they are shown as pre-bills due to incorrect parameter settings on the premium receivable list
- Double-counting of post-dated cheque balances if they are included in both the regular aged receivables and the balance summary
- Direct bill commissions are not to be added to the agency billed receivables
- Late charges are not deemed to be trust receivable assets and should not be included as an agency bill receivable item
- U S exchange not being applied to and reported for all trust assets and liabilities

Premiums over 90 days (Line 3)

- The most common error is to report the net amounts generated by the system summary. Only over 90-day debits should be reported her since any amounts owed over 90 days are deemed to be "non-trust assets". Over 90-day credits should not be applied to amounts owing as these balances are trust liabilities and cannot be applied to "non- trust assets" for any reason
- Valid receivables which would normally be included, are omitted due to incorrect parameter settings on the premium receivable list (over 90-day balance may not actually be over 90 days)
- Receivables which would be normally excluded, are included as trust receivables due to incorrect parameter settings on the premium receivable list
- Items on the over 90-day premium receivable balance becomes current due to flipping (e g NSF cheques, policy rewrites, policy issuance on a binder)
- U S exchange not being applied to and reported for all trust assets and liabilities

Investments held in trust as allowed by Regulation (Line 5)

- Trust investments that are not owned by the firm or that are not inthe registered name of the firm cannot be reported
- Only trust investments that are in compliance with Regulation 991, Section 16(5) can be reported
- General ledger transactions (sales, purchases, interest payments and/or accruals) are not made. The sum total of the investments should verify that the corresponding general ledger balance is correct
- U S exchange not being applied to and reported for all trust assets and liabilities

Insurance Premiums Payable (Line 7)

- Reported amounts owed to insurers are improperly reduced by the amount of Direct Bill/monthly Payment Plan commissions expected from insurers
- Only the company billings for the two months preceding the reporting date are being reported although there are still amounts owed and outstanding to insurers (any amounts owing are still trust liabilities until they are paid)
- Broker insurer payables must be based on broker records rather than insurer/company statements Insurer statements must be adjusted to match broker records (i.e. trust asset items and trust liability items must match)

- Total insurer payables are not fully reported and only amounts paid in the reporting month and/or next month are being included
- Binder billed amounts owing are not being included in insurer payables
- Reporting of old items (credit or debit) in the insurer payable accounts that are no longer relevant. These accounts should be reviewed periodically to ensure that they accurately reflect what is owed to the insurers
- U S exchange not being applied to and reported for all trust assets and liabilities

Prepaid Premiums (Line 8)

- Reported prepaid premiums are not added to net premium receivable balances reported on Line 2 resulting in the double-counting of trust liabilities (net trust position is understated)
- Prepaid premium balances are not reported but are added to net premium receivable balances reported on Line 2 resulting in trust liabilities being understated (net trust position is overstated)
- U S exchange not being applied to and reported for all trust assets and liabilities

Refunds due to Insureds (Line 9)

- Reported refunds due to insureds are not added to net premium receivable balances reported on Line 2 resulting in the double counting of trust liabilities (net trust position is understated)
- Refunds due to insureds balances are not reported but are added to net premium receivable balances reported on Line 2 resulting in trust liabilities being understated (net trust position is overstated)
- U S exchange not being applied to and reported for all trust assets and liabilities

Refunds due to Insureds (Line 10)

- Only next month's payments/remittance for retail sales tax are reported as Retail Sales Tax Payable and the actual total amount owing is not Reported. The retail sales tax owing is the amount collected in the current month plus retail sales tax amounts not yet collected which are included in premium receivables balances at month end (trust liabilities are understated and net trust position overstated)
- Reported balance differs from invoice amount when taxes are being remitted on an invoice basis (invoice balance and not general ledger balance should be reported)

Member's Equity Position (Lines 31 to 35)

- Paid up share capital is not properly reported
- Any up-to-date earning/loss and the dividends payable balance in the retained earnings/deficit balance at reporting date must be included (adjustments must be made to most recent fiscal year-end figure when semi-annual report is filed)
- Loans to and from indirect shareholders do not qualify as equity and are not to be included in as equity
- Shareholder loans being reported as contributed surplus on Line 22 and not as Line 34

## Three (3) Step Approach

The broker's net trust position is comprised of two elements. Firstly, monies in the broker's bank account or "in trust" investments that represent funds that have been received and not yet transferred to the general account. These balances represent funds that could be transferred to the general account. Secondly, commission receivable element from premium receivable balances that are 0 to 90 days old. These balances represent amounts that are not transferable to the general account, as the funds have not yet been received.

The Three-Step Approach uses information from the broker's own systems, whether automated or not It can be used as a means to manage the trust assets and liabilities of the firm or as a monitoring tool for the broker to determine that his/her meth-od of commission transfer is in full compliance with the regulations. It determines how much money actually ought to be in the trust account, taking into consideration that some policy premiums may not have been collected yet. The difference between the net trust position calculation minus the Three-Step Approach calculation is the amount that is potentially available for transfer to the general account.

The Three-Step Approach is not a regulation and no firm will ever face a complaint proceeding alleging non-compliance with it. It is intended to be used as a management tool only. What the Three-Step calculation does, however, is highlight that a firmmay be transferring commissions on policies written from the trust to the general accounts before the firm has actually collected the premium on those policies. Inthis instance, the firm may well face complaint proceedings alleging that the firm has misused trust funds, contrary to the regulation that firms can only use trust monies forthe purpose for which they were received. The Three-Step calculation could be used asproof of mishandling trust funds in breach of that regulation.

The following example demonstrates how the three-step would work for Broker XYZ:

| | |
|---|---|
| $100,000 | trust cash |
| 200,000* | premium receivable |
| 25,000 | over 90- day balances |
| 190,000 | insurer payables |
| 5,000 | prepaid premiums |
| 2,500 | refunds owed |
| 15,000 | retail sales tax owing |

Assume the broker has an average commission of 15% and an average retail sales tax rate of 6%

* 0 to 60 - $150,000, 61 to 90 – $25,000

**Step 1. Calculation of the net trust position**

| | |
|---|---|
| Cash | $100,000 |
| Premiums Receivable | $200,000 |
| Over 90-day balances | $25,000 |
| Allowable premiums receivable | $175,000 |
| Trust investment | 0 |
| **Total Trust Assets** | **$275,000** |
| | |
| Insurer payables | $190,000 |
| Prepaid Premiums | $5,000 |
| Refunds | $2,500 |
| RST payable | 15,000 |
| **Total Trust Liabilities** | **$212,500** |
| | |
| **Net Trust Position** | **$62,500** |

**Step 2. Calculation of the minimum net trust position**

| Best Practices Method | Alternative Method |
|---|---|
| Form 1 Position Report Using the allowable premium receivable balances (0-60 day balances) remove the retail sales tax on those balances by dividing it by the average retail sales tax rate | Using the allowable premium receivable balances (0-90 day balances) remove the retail sales tax on those balances by dividing it by the average retail sales tax rate |
| 150,000 divided by 1 06 = 141,509 | 175,000 divided by 1 06 = 165,097 |
| Multiply resulting balance by the average commission factor | |
| 141,509 multiplied by 15% = 21,226 | 165,097 multiplied by 15% = 24,764 |
| Remove the retail sales tax on the 61 to 90-day balances | |
| 25,000 divided by 1 06 = 23,585 | |
| Minimum net trust position | |
| 21,226 + 23,585 = **44,811** | **24,764** |

Please note prepaid premiums and refunds owed should be reclassed as trust liabilities when making this calculation

**Step 3. Compare steps 1 & 2 and act accordingly**

| Best Practices Method | Alternative Method |
|---|---|
| Calculate amount potentially available to transfer to general account by subtracting minimum net trust position from net trust position | |
| 62,500 – 44,811 = 17,689 | 62,500 – 24,764 = 37,736 |

- Please note the above assumes that balances are paid to insurers in 60 days, but there could be instances where items receivable have been paid in 30 days (wholesalers and specialty markets)
- Conversely items may not be paid to insurers until after 60 days (Binder bill balances or disputed amounts with insurers)

**Best Practices:**

Firms wishing to employ "Best Practices" in management of their method of commission transfer can take advantage of the more detailed calculation, using the adjustment in step two of the process. This additional step provides a more accurate picture because 0-60 day balances have probably not been paid to insurers whereas 61-90 day balances have been paid to insurers.

The 3-step approach can be tailored to each firm, depending on the existenceor otherwise of premiums that may be receivable between 61 and 90 days in each firm's case .

**More importantly you should always adjust the model to your own circumstances.**

## Trust Accounts

### Key Regulatory Provisions

***RIB ACT* Section**

**32. (1)** All funds received or receivable by a member in the course of business on behalf of insurers from members of the public or on behalf of members of the public from insurers are deemed to be trust funds

**(2)** No member shall assign, pledge, hypothecate or mortgage or inany way charge the funds referred to in subsection (1) whetheror not such funds have been received or remain receivable

**(3)** Any assignment, pledge, hypothecation, mortgage or other charge of or on funds referred to in subsection (1) is null and void as against the beneficial owner of the funds

**REGULATION 991 Sections**

**16. (1)** Subject to subsections (2) and (3), every member who is a sole proprietor, partnership or corporation shall maintain, for all trust funds received, a trust account or trust accounts at any Ontario branch of,

**(a)** a bank listed in Schedule I or II to the Bank Act (Canada);

**(b)** a trust corporation;

**(c)** a loan corporation;

**(d)** a credit union authorized by law to receive money on deposit; or

**(e)** a Province of Ontario Savings Office,

and each such account shall be kept in the name of the member and designated as a trust account

**(2)** On application, the Council shall permit a member who is licensed or registered as an insurance broker or agent in four or more provinces of Canada and maintains offices in each of them to maintain the member's trust account in any such province at a branch of,

**(a)** a bank listed in Schedule I or II to the Bank Act (Canada);

**(b)** a trust corporation;

**(c)** a loan corporation; or

**(d)** a credit union authorized by law to receive money on deposit; that is not in Ontario, but the Council may, for good and due cause

**(e)** impose such terms and conditions as it considers appropriate; and

**(f)** revoke its permission at any time

**(3)** On application, the Council may permit a member who is licensed or registered as an insurance broker or agent in two or more provinces of Canada to maintain the member's trust account in any such province at a branch of,

**(a)** a bank listed in Schedule I or II to the *Bank Act* (Canada);

**(b)** a trust corporation;

**(c)** a loan corporation; or

**(d)** a credit union authorized by law to receive money on deposit; that is not in Ontario, but the Council may,

**(e)** impose such terms and conditions as it considers appropriate; and

**(f)** revoke its permission at any time

**(4)** A member shall ensure that all trust money he or she receives, whether by cash, cheque or otherwise, is dealt with in accordance with the following:

**1.** The trust money be deposited into a trust account or invested in an investment described in subsection (5) as soon as practicable after receipt

**2.** The member shall not knowingly fail to make the deposit or investment referred to in paragraph 1 within three banking days after the day the trust money is received

**3.** Money deposited into a trust account may be subsequently invested and held in trust in an investment described in subsection (5)

**4.** Subject to paragraph 5, the member shall not, except in accordance with the terms and conditions under which the money was received,

**i.** disburse any money held in trust or the proceeds from any investment in which trust money was invested, or

**ii.** withdraw any money from a trust account

**5.** The member may withdraw money belonging to him or her from a trust account and deposit it into the member's general account

**(5)** Trust money may be invested in and held in trust in the following types of investments:

**1.** Deposits, guaranteed investment certificates and other forms of indebtedness,

**i.** that are issued by a bank listed in Schedule I or II to the Bank Act (Canada), a trust corporation, a loan corporation, a credit union, the Government of Canada or a Province of Canada,

**ii.** that have a term not exceeding five years, and

**iii.** that permit the repayment on demand of the principal sum evidenced by the deposit, guaranteed investment certificate or other form of indebtedness

**2.** Treasury bills and other instruments evidencing indebtedness,

**i.** that are issued or guaranteed by the Government of Canada or a Province of Canada, and

**ii.** that are issued for a period of 30 days or less

**3.** Mutual or pooled funds that invest only in short-term money market instruments

**4.** Bankers' acceptances

**5.** Short-term debt securities issued by non-financial corporations for a term of one year or less, but only if the securities have a rating of the highest credit quality or a superior credit quality from the Dominion Bond Rating Service

**(6)** A member shall ensure that the member is at all times able to meet all of the member's trust obligations from,

**(a)** money in the member's trust account;

**(b)** investments held by the member in trust; and

**(c)** the member's trust funds receivable, excluding premiums that have been receivable for more than 90 days

**17. (1)** A member shall ensure that the member is at all times able to meet all of the member's trust obligations from,

**(a)** all money received in trust for insurers or members of the public;

**(b)** all disbursements out of money held in trust;

**(c)** all other money received and disbursed in connection with the business; and

**(d)** all specifically identified property other than money held in trust including marketable securities, stock certificates, bonds, debentures, deposit receipts, treasury bills or other negotiable instruments and any other thing of value or instrument that could be negotiated by the broker

**(2)** As a minimum requirement to comply with subsection (1), every member who is required to maintain a trust account shall maintain,

**(a)** a book or other permanent account record showing all receipts and disbursements of money, distinguishing therein between,

**i.** the receipt of money in trust for insurers and members of the public and disbursements out of money held in trust; and

**ii.** money received and money paid on his own account;

**(b)** a record in the form of a remuneration book or file or copies of billings showing all commissions or fees charged or billings to members of the public;

**(c)** bank statements or pass books, cashed cheques and detailed deposit slips for both trust and general accounts;

**(d)** a record showing the monthly totals of the trust assets and trust liabilities as they appear from the books and records of the member; and

**(e)** a listing or other record showing all specifically identified property held in trust from time to time for insurers or members of the public

**(3)** The Manager, Council or a committee thereof or their representative is entitled to inspect the books and records required to be kept under this section at any time

**(4)** Every member who is required to maintain a trust account shall provide the Manager with a current audited financial statement within thirty days after written request therefor from the Manager, Council or a committee thereof

**(5)** Every member who is required to maintain a trust account shall maintain accounting records in accordance with generally accepted accounting principles

**(6)** Where this Regulation requires a record to be kept by a member, it may be kept in a bound or looseleaf book, or by means of a mechanical, electronic or other device

**(7)** Where a record is not kept in a bound book, the member shall,

**(a)** take adequate precautions, appropriate to the means used, for guarding against the risk, of falsifying the information recorded; and

**(b)** provide means for making the information available in an accurate and intelligible form within a reasonable time toany person lawfully entitled to examine the record

**(8)** The bound or looseleaf book or, where the record is not kept in a bound or looseleaf book, the information in the form in which it is made available under clause (7)(b) is admissible in evidence as proof, in the absence of evidence of the contrary, of all facts stated therein

**(9)** Where this Regulation requires a record to be kept by a member, it shall be preserved for at least the six-year period previous to the most recent fiscal year-end of the member

**Commentary**

The requirements outlined in the *RIB Act* and Regulation 991 for the trust account and record keeping is very specific.

Trust monies are **ALL** funds received from a client in payment of Insurance Premiums for payment to an Insurer and **ALL** funds received from an Insurer for refund to a client

**Banking**

Every sole proprietor, partnership or corporation is required to maintain a Trust Account.

When arranging the banking, it is important that the bank you will be or are dealing with is aware that it is a "statutory trust account" accorded protection from general creditors of the firm under the *Bank Act*. It is highly recommended that a receipted copy of Regulation 991, Section 16 be given to the bank so that they are aware of the transactions that should be processed through this account.

Cheques must have the words "Trust Account" and the name of the member in whose name the Trust Account is kept printed on their face The bank statements must also clearly designate the account as being a "Trust" account.

Members are required to deposit all trust monies received (cash, cheque or otherwise) into the Trust Account without delay and in no case, any later than three (3) banking days after it is received. Deposits must be made in kind, i.e., if cash is received from the insured, the cash must be deposited into the trust account. A broker should never issue a personal cheque for the same amount to be deposited into the trust account while taking the cash received from the trust account.

As more and more clients are using online banking services and/or electronic funds transfers, it is important for any firm that is considering accepting/ implementing electronic payments, that the firm is able to identify the insured that is paying and the insurer to whom the payment belongs. The proper identification of client/insured deposits and disbursements are critical to the process of maintaining proper books and records. It is important to note that any fees charged by the bank for electronic funds transfer activities would not qualify as a "trust" disbursement and therefore cannot be paid as such (i.e., these fees must be financed/transferred from thefirm's general/operating accounts).

Any direct bill and/or monthly payment plan payments or installments received from clients on behalf of the insurer are also considered to be trust funds and must be deposited into the trust account. Payments to the insurer must be processed through the trust account and paid with a trust account cheque/authorized electronic funds transfer (e g online banking, wire transfers). These transactions cannot be processed through the general account. These payments should have a neutral effect on the trust position of the firm since money deposited into the trust account results in a corresponding liability which is used to offset the increase in the bank account.

Once funds are deposited into a Trust Account, they can only be properly taken out under the following circumstances/situations:

**(i)** Payments to Insurers by Trust cheque/electronic funds transfer

**(ii)** Refunds to clients by Trust cheque/electronic funds transfer

**(iii)** Transfers, by Trust cheque/electronic funds transfer, for deposit into the member's general account, in respect of commissions

**(iv)** Payments to the Ministry of Finance for purposes of retail sales tax by Trust cheque/electronic funds transfer

**(v)** Purchase of trust investments by Trust cheque/electronic funds transfer

**(vi)** Payment of claims on behalf of insurers if authorized by insurer

Disbursements made for any other reason would likely constitute an act of misconduct.

The firm must be in a trust positive position at all times, and it is extremely important that procedures are established to ensure this.

Establishing a bank line of credit against the trust bank account to ensure a trust positive position would NOT be an option as disbursements from the trust account to the line of credit would not comply with the Regulations. Also, arrangements made with the bank manager may be such that the bank manager and not the principal broker, is the one who is controlling the injection of funds into the trust account to meet the payables and the removal of the funds from the trust account to pay down the line of credit. The firm may also be reporting the trust bank account amount includingthe availability of the line of credit without the funds actually being injected into the bank on the Form 1 Position Report.

Caution should also be taken if commissions owed by regulation to the general account are being transferred from the trust account at the beginning of the month as it could result in a trust deficit.

Accounts receivables from the clients (trust funds) should never be hypothecated by the firm to financial institutions Should business assets be assigned as collateral, trust assets must be specifically declared to be excluded from the provisions of the assignment agreement, pledge or security agreement.

## Credit Card Transactions

The use of credit cards to pay for insurance premiums is now as common as writing a cheque. It is important to remember that the use of a broker's personal credit card or the firm's corporate credit card not be used to remit or process the client's premium payments as this is in non-compliance with \Regulation 991, Section 16. The Regulation requires that trust monies be deposited into the trust account in the form it was received within 3 banking days. Credit card payments by the firm or broker to the insurer on behalf of a client would not comply nor qualify as "trust funds" as it is not the firm who forwards the premium monies to the insurer but the credit card facility of the credit card issuing bank, thereby breaking the flow of "trust" monies. An acceptable form of electronic payment under the regulations is electronic funds transfer.

## Brokers Having Claims Payment Authority

Some firm contracts with licensed insurers include specific and limited authority to act on the company's behalf and pay claims to provide prompt payment for claims within guidelines set out by the company. The claim payments made on behalf of the insurer are then offset against the accounts payable to the insurer.

Firms that have claims payment authorization must maintain accurate records to ensure that any claims payments made on behalf of that insurer are paid only with funds specifically held in trust for that insurer. Should any payment for claims be made in excess of the funds held in trust for that insurer, the excess must be paid from the firm's own financial resources and not from the funds held in trust for members ofthe public or other insurers.

### Best Practices:

Firms wishing to employ "Best Practices" in management of authorizedclaims payment can establish/maintain a separate trust bank account and separate trust accounting for each insurer whose Broker Contract includes authority to pay claims for all business transacted with that insurer. The accounting records and trust bank account must meet RIBO regulation requirements and are subject to review during a spot check or upon request by RIBO.

## Trust Account Monitoring

Trust account activity should be closely monitored to minimize the fraudulent activity involving stolen and altered cheques being cashed on business bank accounts. The use of online banking, a service provided by most banks, speeds up the bank reconciling process since the broker would be able to verify deposits and disbursements as they occur. In this regard, month-end closing can be streamlined and more relevant as it can be done in a more timely manner.

The scheme usually involves cheques being intercepted and stolen in transit. The payee is changed as well as the amount in many cases and the cheques are presented for payment at another bank, sometimes in another province or even another country. In some cases, the fraudsters have incorporated companies and opened bank accounts under that corporation for the sole purpose of perpetrating the scheme.

Trust cheques representing monthly insurer payments are the most common cheque used in this scheme, intercepted enroute to the insurer. In many cases, electronic imaging equipment has been used to reproduce several cheques and "second" attempts to cash such cheques have been reported up to a year after the first incidence.

As an extra precaution, firms are urged to use a secure method of payment delivery on all cheques to insurers or other large amount payees.

**Canadian Deposit Insurance Corporation Requirements for Trust Account Disclosure**

The Canadian Deposit Insurance Corporation (CDIC) under the CDIC Joint and Trust Account Disclosure By-Law now require member financial institutions (i. e., banks and credit unions) to request on an annual basis, information on the beneficiaries of trust accounts and amounts being held in trust to determine deposit insurance coverage If requested, the firm need only disclose an "alphanumeric code or other identifier, in respect of each beneficiary" and the beneficiaries of a firm's trust accounts arethe markets with whom business is conducted. This code/identifier should correspond with the trust records kept by the firm "that contain an up-to-date list of (a) the name and address of each beneficiary and (b) particulars of the amount or percentage of each beneficial interest ".

**Direct Bill Commission**

Direct bill commission "receivable" is revenue for the firm as it is the commissiondue to the firm from an insurer It not a trust asset as the funds are not held on behalf of an insurer or an insured.

Direct bill commission receivables are not protected funds. If a firm becomes insolvent, the direct bill commission receivable from an insurer is available to satisfy general creditors. If an insurer becomes insolvent, the full agency bill payable (without offset) would still be outstanding to the Receiver.

If a firm experiences a trust deficit, without the inclusion of direct bill commission receivable as an asset to correct it, it may be an indication that trust funds are being used for general purposes and not for purposes for which the funds were received.

Firms that have both "agency bill" and "direct bill" accounts with the same insurershould only be using the agency billed items in calculating the insurance company Payables.

## Trust Receivables

### Proper Binder Billing Procedure

When invoicing clients on a binder bill basis, the firm must ensure that clients are properly invoiced otherwise the binder billed policy cannot be accrued and counted as a trust receivable.

There must also be proper reversing mechanisms in place for when the actual policy or endorsement is received to prevent the double counting of trust asset and liability balances which would result in the overstatement of the trust position by the corresponding commission element.

As with all agency billed premiums, binder billed premiums must also be consistently aged. The aging process should commence with the latter of the effective date or the invoice date (i.e., if the binder is 60 days old when the policy comes in, then it should be 60 days old after it has been issued and invoiced and balances on the aged list should not be flipped from 60 days old to current as a result of the policy being issued). The parameters for this process should be set to segregate those premiums that are current from those premiums that exceed 90 days.

### Post-Dated Cheques

When the firm permits clients to pay premiums by post-dated cheques, problems with Trust account adequacy may result where the cheques are payable more than 90 days from the effective date of the policy.

Premiums receivable over 90 days are deducted from the total premium receivable for the purposes of calculating "trust assets" on the Form 1 Position Report. Thus, the deduction of these over 90-day post-dated cheques may place a firm in a "technical" trust deficit when the firm may be actually in an "earned position" When the firm is in an "earned position", the firm could cancel any policy for non-payment if a post-dated cheque were NSF and still be in sufficient funds, already cashed, to cover the time-on-risk earned premium due to the insurer for the policy.

Generally, if a firm is in a "technical" trust deficit situation, and if the firm is able to satisfy RIBO that an adequate system for the accounting and collection of trust receivables is in place and operating, the firm may be permitted to include, in determining the trust position, the over 90-day balances represented by post-dated cheques provided that for each over 90-day receivable the firm has an unearned premium balance of at least 60 days against earned premium may be applied if the policy is cancelled.

However, if the firm offers a system of in-house premium financing to the firm's customers and the total amount financed represents more than 10% of the total trust assets, NO post-dated cheques applied to over 90-day balances will be considered as allowable trust receivables, for the purpose of determining the trust position.

**Brokers Should Review Late Charges on A Regular Basis**

Late charges are charges made by the firm on overdue accounts It is not a trust asset as it is not money held to be paid to an insurer or on behalf of an insurer to an Insured. These items are excluded when calculating the trust position of the firm.

Late charges included in the trust premium receivable portion of the Form 1 Position Report may accumulate over a lengthy period of time and potentially overstate the trust assets when not properly aged. Late charges should be reviewed on a regular basis a procedure adopted to clear the uncollectible amounts and ensure proper aging of the remaining charges Late charges should be aged exactly like premiums receivable to ensure a proper calculation of the over 90- day amounts.

**Insurer Payables**

A firm's account current statement is generated from invoice driven transactions (i e new business, renewals, endorsements or cancellations) producing a premium receivable listing of trust assets and an insurer payable listing of liabilities. The revenue for the firm is the difference between the assets and the liabilities.

A firm has the option of submitting the insurer payable amount based on eitherthe firm's own statements or the insurer statements. The firm must be consistent upon which basis the insurer payables are made.

**Firm Statements:**

Depending on the insurer's terms of payment (immediate/upon binding, 30 days or 60 days), the total amount payable can easily be calculated from the firm's accounts current statements. This calculation will also determine whether or not the insurer subledger is accurate. Insurer accounts should be rolling over 30-60 days at most These items should be closely monitored and if necessary, removed as they may no longer be deemed to be a "trust" item.

**Insurer Statements:**

If the firm's trust position is calculated solely from the insurer statements, there is the risk that the trust assets and liabilities do not balance resulting in the trust position being inaccurately reported. To ensure accurate reporting, the insurer payables must be adjusted for the timing differences between the insurer records and firm records.

Although not a requirement, insurer payables are broken into subledgers by insurer. This subledger system identifies the amount owed and by whom allowing the firmto manage these payables in the most efficient and effective manner. Also, since most broker management systems do not include broker payables with the insurer subledgers, it is important that this be included and to always have this balance equal to all ofthe outstanding binders at that respective date.

The insurer payables should be reconciled on a monthly basis to ensure that balances are accurate. When errors such as incorrect commission amounts, incorrect invoicing or incorrect opening balances or adjustments to balances are identified early, it can easily be corrected. If the errors are left unchecked, correcting it can be a large and complicated process.

## Client Credits

Client credits can take the form of either prepaid premiums or refunds owed. Prepaid premiums arise from client payments on account for an insurance policy that has not been invoiced or is effective at a future date while refunds owed arise from client reduction or cancellation of insurance coverages or an overpayment of premium by the client.

A primary duty of a broker is to collect the premium and issue and deliver the policy to the client as quickly as possible. Refunds owed are owed to the client immediately unless the client has instructed otherwise. How a broker manages his client credits is as every bit as important as the collection of premiums. The proper handling of these credits would enhance the professionalism of the broker to the clients and reduce the potential for an Errors & Omissions claim.

From a reporting perspective, a broker may choose one of the following options:

1. Report the net balance, which is reflected by the broker's accounts receivable balance on Line 2 of the Form 1 followed by nil balance on Lines 8 & 9.

2. Add the credits to the accounts receivable balance and report the offsetting liability balances on Lines 8 & 9 of the Form 1 Position Report.

Please be reminded that for option 2, the credit balance should only be added to the accounts receivable balance if the broker's system includes the credit balances on the listing.

For systems which age credits, brokers are cautioned that the over 90 days credits are still considered to be trust liabilities, and should not be netted against the non-trust Assets. The total over 90 days credits should be added back to the system generated over 90 days net accounts receivable balance to calculate the actual over 90 days amount for the firm.

## Taxes – Retail Sales Tax (RST) and Goods and Services Tax (GST)

Although firms are required to register and remit taxes as required to the appropriate government agency, the Retail Sales Tax (RST) and Goods and Services Tax (GST) are not within RIBO's jurisdiction.

A firm's net trust position would not be affected by the retail sales tax balance, however firms must be able to account for the retail sales tax to ensure that theretail sales tax assets and liabilities are properly reconciled.

The taxes can be paid/remitted from either the trust or general accounts of the Firm. It is important to note that if the decision is made to pay the taxes from the general account, the payment amount must first be transferred from the trust account to the general account.

Some firms remit the taxes on invoiced premiums rather than paid premiums. Even though the taxes may not yet have been collected from the insureds, it is the easiest method to remit and account for the taxes since the balance in the account at any month-end should reflect what will be remitted the next month. When the taxes are remitted on invoiced premiums, the taxes are considered to be prepaid in accordance with the Treasurer of Ontario guidelines.

The *Retail Sales Tax Act* prohibits firms from rebating the sales tax or discounting a premium to be paid by paying the retail sales tax themselves, on behalf of a client. It is also considered an act of misconduct to directly or indirectly make or attempt to make an agreement as to the premium to be paid for a policy other than as set forth in the policy. This includes the payment of the sales tax by the firm and/or broker as an inducement to direct, control or secure general insurance business.

RST website: www trd fin gov on ca
GST website: www ccra-adrc gc ca/tax/technical/gsthst-e html

**Record Keeping**

The books and records of a firm are based on the policy transactions processed by the firm, whether it is new business, renewals, endorsements or cancellations. These are the firm's own records of activity within the firm.

In most brokers offices between 85-90% of the invoicing occurs in the 30-45 days from the effective date of a client's policy. Whether manual or automated, the firm's books and records must incorporate "effective date or invoice date", whichever is greater, when recognizing trust assets, liability and income for the firm.

A firm's books of account must separate and record:

**(i)** Receipt of money in Trust for insurers;

**(ii)** Receipt of money in Trust for members of the public;

**(iii)** All disbursements out of money held in Trust;

**(iv)** Bank statements, deposit books and cashed cheques;

**(v)** Record showing monthly totals of Trust assets and Trust liabilities.

The original books of entry described above support and verify the monthly list of trust assets and liabilities that are prepared and retained. The books and records must be prepared on the basis of generally accepted accounting principles. It is also recommended that any applicable "best practice" RIBO guidance and Newsletter bulletins be adopted as part of the firm's record keeping practice.

All of the records referred to above must be preserved and kept by members for up to seven (7) years. Please note that there are no regulatory requirements with respect to policy/client records, however, our best advice, is to keep these records for the prescribed period mentioned above and in cases of commercial liability it may be wise to consider keeping them for ten years particularly because of the possibility of a future negligence action. Your Errors and Omissions carrier may also have additional advice for you. Scanned files are an accepted form for record keeping, however, there must be proper back-up procedures in place to protect the integrity of the data and the files must be readily accessible.

Whether it's a manual or computerized record keeping system that is utilized by the firm, the books and records must be kept current and in order at all times. It isimportant that a detailed verifying trail supporting any changes be prepared and retained. Also, if the firm engages the services of a third-party accounting firm to prepare the required filings, a copy of their working papers must be obtained and retained. However, firms fully utilizing an insurance firm management system that is integrated to a general ledger set of accounts producing financial records (balance sheets, income statements, aged premium receivable lists and insurer payable listings) more than meets the regulatory record keeping requirements.

# MARKETING GUIDELINES

RIBO's Professional Development Committee has issued the following guidelines. The Committee has attempted to balance restrictions on fair trade practices in the industry with the interests of consumers in an orderly market RIBO wants to balance professionalism in the firm industry with avoidance of unnecessary restrictions on the ability of brokers to compete in the market. Liberalization of some existing marketing practices reflects these balances.

Consumer protection is provided effectively through the existing regulatory provisions regarding advertising measures, client disclosure and consent, and the rules regarding undue influence, coercion, conflict of interest and tied selling practices.

*Please Note – These are only guidelines. It is strongly recommended that all proposed marketing plans be submitted in writing to RIBO for review, prior to launching any new program.*

## AIR MILES AND REWARDS FROM CREDIT CARDS

It is acceptable for a broker to offer AIR MILES or reward incentives from credit cards in conjunction with the purchase of an insurance product. Bonus points plans may be considered inducements and should be referred for approval.

## BARTERING

Bartering is not an acceptable practice Brokers are not permitted to provide "Barter Points" or accept "Barter Points" in exchange for insurance premiums.

## BROKERS NEGOTIATING WITH INSURANCE COMPANIES TO REDUCE THEIR COMMISSIONS TO OFFER LOWER PREMIUMS TO CUSTOMERS

It is acceptable for brokers negotiating with insurance companies to reduce their commissions in order to offer lower premiums to customers.

## CREDIT CARD AND DEBIT CARD PREMIUM PAYMENTS

It is permissible for a broker to accept debit cards or credit cards (e.g., Visa, MasterCard) from the client. If a broker, however, is passing on the fee charged by a bank to a client or assessing a fee for this service, the broker must disclose all information to the client in a manner consistent with Regulation 991, section 12.

## CSR INCENTIVES PAID BY INSURANCE COMPANIES DIRECT TO CSRs

It is acceptable for CSRs to accept incentives paid by insurers providing the Principal Broker has approved the program and subject to the appropriate disclosure of same be given to the client (please refer to the "Disclosure Requirements" outlined in the Supplementary Resources section).

**CUSTOMER LISTS**

Brokers may only sell, trade, giveaway or "rent out" customer/client lists with prior individual client consent (see sample client consent form),

**DONATIONS BY BROKERS OF PART OF THEIR COMMISSION TO A BENEVOLENT ORGANIZATION, CHURCH, OR CHARITY**

A broker may advertise that he or she supports a benevolent organization, church or Charity. It is, however, improper for a broker to advertise that a portion of commission, or a specific percentage of the premium of each policy sold, will be donated to that organization as an inducement to a prospective client to insure with that broker,

**ENVELOPE STUFFING (BROKERS INCLUDING OTHER THIRD PARTY ADVERTISING OR FLYERS IN CLIENTS' MAIL)**

Envelope stuffing is permitted, as long as the broker acts with integrity, having regard to the duty to encourage public respect for the industry,

**EX-DATING**

The use of unlicensed personnel to obtain expiry dates is permitted as long as the unlicensed person gives no insurance advice, and all insurance related questions are referred to a licensed broker,

**FEES**

Where a broker intends to charge a fee over and above commission, such fees must be disclosed to the client in a manner consistent with Regulation 991, section 12 (please refer to the "Disclosure Requirements" outlined in the Supplementary Resources section),

**GIVEAWAYS**

RIBO's position is that giveaways are acceptable as long as they are nominal in value (under $100 00) and not tied to the purchase of insurance,

Inducements for the obtaining of expiry dates and/or for the opportunity to quote on a piece of business are acceptable as long as such inducements are not contingent uponthe purchase of an insurance product.

**GROUP MARKETED PROGRAMS**

Brokers involved with "association" or "group" marketed insurance programs should refer any such proposed ventures to RIBO for its consideration. All promotional material must clearly indicate the name of the insurer, and the broker It must also state that all insurance related inquiries must be directed to the broker or the insurer, and not to the administrators of the "association" or "group".

## JOINT ADVERTISING

It is acceptable for a broker to enter into a joint advertising program, subject to the Principal Broker's approval, with insurance or non-insurance related entities. Any advertising is subject to the existing regulations concerning advertising and tied selling. "Bundling" of insurance and non-insurance products **IS NOT** an acceptable practice. Bundling includes the practice of the sale of the insurance product along with a non-insurance product being offered together with one price

## MARKET BLOCKING

This involves the practice where a broker, in advance of an upcoming commercial renewal, sends out a request for quotation to a number of markets to lock the account, the effect of which is to prevent other brokers from obtaining quotations from that market, in some circumstances, even when requested to obtain a quote from the same client. Brokers are reminded that the consumer's interest is their first priority in market conduct. Brokers must deal candidly and honestly with their clients and in a manner that will command respect and confidence and is compatible with the integrity and effectiveness of the vocation Brokers must honour the wishes of their client.

**IF REQUESTED BY ANOTHER BROKER TO RELEASE A MARKET, BY AUTHORIZATION OF THE CLIENT, BROKERS WILL BE EXPECTED TO COMPLY IN A TIMELY MANNER.**

## NETWORK AFFILIATIONS

Network Affiliations may be acceptable, however, specific affiliation plans should be submitted to RIBO for review.

## NICHE MARKETING

Niche marketing is acceptable where a broker develops an insurance program to fill ortarget a particular niche in the marketplace, and then obtains the agreement of a particular insurer to give him or her an exclusive right to market this niche product.

## RAFFLES and CONTESTS

A raffle is acceptable as long as it is not tied to insurance product purchase, and is retrospective in nature (i.e., for existing clients only). Some consideration will be given to brokers who have a booth at a trade show where "business card" raffles and contests for prizes are commonplace.

## REBATING

Rebating is strictly prohibited. Rebating is directly or indirectly making or attempting to make an agreement as to the premium to be paid for a policy other than as set forth in the policy, or paying, allowing or giving, or offering or agreeing to pay, allow or give, a rebate of the whole or part of the premium stipulated by the policy or any other consideration or thing of value intended to be in the nature of a rebate of premium to any person insured or applying for insurance in respect of person or property in Ontario.

## REFERRAL FEES TO/FROM OTHER FINANCIAL SERVICE SECTORS

Regulation 991, section 15(1)(12), permits brokers to pay or receive referral fees from other intermediaries in the following financial services: life agents/brokers, mutual funds, financial planners, investment dealers, mortgage brokers, real estate brokers, premium financing organizations and organizations that deal with products that reduce insurance risk (e g alarm systems). Subject to the following conditions:

- There must be full disclosure and receipt of written consent from a client in advance of the referral (please refer to sample client consent form in the Forms section);
- The broker does not give advice or participate in any sale of a product unless properly licensed to do so;
- Any permission necessary has been received from all appropriate regulatory organizations (e g Financial Services Regulatory Authority of Ontario, etc. ).

*Note: Referral fees to non-financial industry parties are not permitted.*

## THIRD PARTY PAYING FOR INSURANCE COVERAGE

**It is not acceptable for insurance brokers to pay for insurance coverage for others.**

Third- party paying for insurance coverage is acceptable. Any advertisement must indicate that the third- party is paying for all or a portion of the insurance costs upon the purchase of their product The advertisement cannot, for example advertise "Free Insurance". Such third-party advertisements should be referred to RIBO for approval before they are distributed.

# NEGATIVE OPTION MARKETING/BILLING

The use of negative option marketing or billing as a marketing practice by insurance companies, whereby consumers are charged for a new product or service before they have consented, is considered by the Financial Services Regulatory Authority (FSRA) to be an unfair and deceptive act, as defined by the *Insurance Act* and Regulations.

This practice is also not supported by RIBO and brokers may not, under any circumstances, amend coverage or add a new product or service without the express permission of the consumer.

Consumers benefit from the automatic renewal of their policies, however, consumers may not be aware when a change has been made to their policy and that there is an additional charge, particularly where consumers pay by automatic monthly premium installments. FSRA also recognizes that some insurance contracts contain provisions that allow the insurer to adjust the coverage and the resulting premium on renewal (i e Inflation Protection) and these types of contractual provisions are acceptable provided that consumers are made aware at the point of sale.

Most recently the Claims Protection coverage on automobile insurance and Identity Theft coverage for property insurance have been offered as new products. In most instances there is a cost for the addition of this coverage. If this is the case, the broker must obtain permission from the consumer to add the coverage to the renewal or new business.

If the coverage is read in by the insurance company, at no additional cost, there is no need to obtain consent from the consumer. However, reading the coverage in and charging at the next renewal without the client's consent would still be considered as negative optioning.

The firm has at all times, an obligation to provide written notification to the consumer of any policy amendments or modifications. Failure to comply with the above may result in a consumer complaint that RIBO would be required to address.

FSRA also continues to stress the need for improved disclosure and consumer information by the insurance industry Insurers, agents and brokers are encouraged to actively sell insurance coverage by clearly explaining the benefits and costs to consumers as consumers have a right to make an informed decision.

# NON-ACTIVE MEMBER FIRM

## Key Regulatory Provision – RIBO BY-LAW NO. 1, PART XV

**15.1 (h)** Non-Active Firm Class of Member

This class of member applies to all members and to all applicants for membership whose corporate structure falls within the following parameters:

**(i)** Clusters with a dominant corporation doing the trading and holding the insurer contracts

**(ii)** Corporate partnerships where two or more corporations join together to form a partnership

**(iii)** Individual tax corporation created to have commissions paid into it for tax purposes and to claim benefits

The following terms and conditions apply to these "non-active member firms ".

All corporations to which this By-law applies shall maintain a certificate of registration as a member, either through the ordinary registration process applicable to full corporate members or by registration as a "Non-Active Member Firm".

All firms registered in this class shall pay an annual registration fee in an amount as shall be fixed from time to time by resolution of the Council.

All "non-active member corporations" shall maintain Errors & Omissions insurance, and for the purposes of compliance with this requirements may be added to the Errors & Omissions policy of the firm under whom the individual owner is personally registered.

In lieu of the "non-active member corporation" filing a Fidelity Bond, Form 1, and maintaining the minimum equity requirement, RIBO will accept an undertaking, in the form annexed hereto, that the "non-active member corporation" will not hold itself out or advertise in any manner or be associated in any way with the general public in the trading of general insurance (undertaking not attached).

For the purpose of this By-law, RIBO will waive the designated individual requirement for individual tax corporations where the individual holds an "Acting Under Supervision" registration.

All corporations that hold themselves out in any way to the public as an insurance broker including but not limited to names on signage, letterhead, or business cards, etc., shall register as a full member, and shall comply with all the regulations applicable to a full member.

**Commentary**

A non-active member firm registration is required for any business (sole proprietorship, partnership or corporation) that has been set up for at least one of the following reasons:

**1.** to receive commission income for tax purposes
- this tax corporation does not trade or hold contracts or conduct any trust activity

**2.** is a partner in a corporate partnership

**3.** is an underlying corporation in a cluster or management agreement arrangement
- this occurs when a number of member brokers join together, with a dominant corporation doing the trading, holding the insurer contracts, and the dominant corporation is responsible for all trust activity

It is a condition of registration that the non-active member firm name must not be identified in any way to the public. Should the non-active member firm name appear on any signage, letterhead, business cards or any other form to the public, transacting general insurance, a full registration is required and the firm must comply with all the regulations of an active member and file a full member registration fee.

# PREMIUM FINANCING

With more and more clients financing their premiums, firms must take into consideration the impact this will have in the books, records and trust position. Financing can generally be accomplished through one of the following ways: a third-party premium financing company, the firm itself or a separately established premium financing company owned by the firm or its brokers.

The impact of premium financing on the firm depends on which one of the financing methods are being utilized. Firms financing the premiums internallymust transfer the amount being financed from the firm's general/operating accounts into the trust account to pay the insurer since the use of **any other trust funds** constitutes non-compliance with Regulation 991, Section 16.

Brokers and/or firms who establish a separate business entity for the purposes ofpremium financing require a **Secondary Business exemption** from the Qualification & Registration Committee. Any premiums being financed by clients under these loan agreements must be paid or transferred promptly by the separately established financing business to the firm, for deposit into the firm's trust account. Using any other trust funds to pay premiums being financed constitutes non-compliance with Regulation 99, Section 16. Firms should not have any outstanding financed premium receivables over 90 days since the entire amount being financed is supposed to be transferred promptly. However, should there be any financed balances that are over 90 days, these balances must be deducted from the overall trust balance when filing the Form 1 Position Report.

Although a separately established business, brokers and firms involved in the financing business are still subject to the requirements outlined in the *RIB Act* and Regulations, including the Code of Conduct. Clients must be advised of available alternatives, including low cost or no cost premium payment plans, which may be offered by insurers for the class of business involved. The availability of insurance through the firm must not be made contingent upon the client agreeing to usethe firm's premium financing terms The cost of borrowing and service charges must be clearly stated, as required by the *Consumer Protection Act of Ontario*.

Regardless of the financing method, it is an act of misconduct to not refund any monies, including any applicable premium sales tax, due to clients and non-compliance with the *Act* and/or Regulations can result in the matter being referred to the Complaints Committee.

# "RESIGNING" AS A BROKER FROM A SINGLE CLIENT

RIBO frequently receives enquiries regarding the regulatory ramifications involved where a broker wishes to cease doing business with a specific client.

In many cases, the situation follows the same pattern, that is, where the client has systematically and repeatedly abused each staff member who has attempted to assist them, to the point that it seems impossible to satisfy them.

In "resignation" situations, brokers must remember that they are required to conduct themselves in compliance with applicable laws and professional obligations. For example, it should be noted that for auto insurance in Ontario, brokers are required by law to provide access to insurance for consumers. For this product, if a client insists that your firm provide an application for auto insurance, brokers must comply with the requirements of the *Compulsory Automobile Insurance Act* by providing an application and submitting it to a carrier Failure to do so may result in complaint proceedings.

With that exception noted, RIBO regulations do not prohibit "resignation" where a broker-client relationship has deteriorated beyond repair. There are, however, a number of factors or considerations arising from the Code of Conduct that are important to keepin mind in these situations.

The Code of Conduct (Section 15, Paragraph 13) requires that "a member's conduct towards other members, members of the public, insurers and the Corporation (RIBO) shall be characterized by courtesy and good faith". Keeping that in mind, a broker should only refuse to continue to provide services to a client where there is a good faith reason supporting the decision to terminate the relationship. In addition, brokers are obliged to give the client adequate notice so as not to prejudice the client's interest. Brokers must also use best efforts to ensure that the client's needs are adequately looked after notwithstanding the withdrawal of services. This obligation can be fulfilled in some circumstances by finding another broker to look after the client or at least referring the client to other brokers who can appropriately service the client.

The following steps are merely suggestions and the minimum practical steps Compliance with these steps/suggestions does not automatically mean that a broker's conduct meets the standards set out in the Code of Conduct. If a consumer complains, each case will be reviewed based on the facts and circumstances of that case:

1. Makes sure your file is well documented with dates, times etc.

2. Ensure that all communication options whether, electronic, telephone or in -person as applicable have been fully utilized prior to reaching a decision to resign as a broker of record to a client.

3. This should be a management decision and should have full and unqualified support of management. All staff must be told of the decision and the fact that it is final.

4. Think in terms of a six-month notice. The biggest exposure in this process is being accused of giving a client insufficient notice of his newfound-brokerless state.

5. Send a registered letter to the customer stating the intention to resign as his/her broker effective the expiry date of the policy. Ensure that the letter makes references to the specific policy numbers and expiry dates of the policies in question.

6. Within the letter, simply state that management has concluded that to continue the professional relationship further is not in the mutual interest of either party. Use plain polite language to say that you will be resigning as their broker effective the expiry of the policies and that you will no longer be placing any insurance coverage for them after that date Also, use caution in your choice of words and be careful not to use words that may be considered inflammatory.

7. Continue to provide the best possible service to the client until the policy expires.

8. Send another registered letter 45 days in advance of the expiry date, enclosing a copy of the original letter and reminding the customer that effective the renewal date they must seek coverage elsewhere.

9. Send another registered letter one week prior to the renewal date confirming that your firm has not placed any insurance on theirbehalf.

# SECONDARY BUSINESS

## Key Regulatory Provision –REGULATION 991

**5. (1)** An individual is qualified to be issued and hold a certificate of registration as an insurance broker where,

**(b)** the individual's only business or employment is that of,

**(i)** an insurance broker, or

**(ii)** an insurance broker and life insurance agent, and

**(iii)** such other business as the Qualification and Registration Committee considers appropriate when carried on in accordance with such terms as the Committee stipulates.

**6. (1)** A corporation is qualified to be issued and hold a certificate of registration as an insurance broker where,

**(a)** the only business conducted by it is that of,

**(i)** an insurance broker, or

**(ii)** an insurance broker and life insurance agent, and

**(iii)** such other business as the Qualification and Registration Committee considers appropriate when carried on in accordance with such terms as the Committee stipulates.

**7. (1)** A partnership is qualified to be issued and hold a certificate of registration as an insurance broker where,

**(a)** the only business conducted by it is that of,

**(i)** an insurance broker, or

**(ii)** an insurance broker and life insurance agent, and

**(iii)** such other business as the Qualification and Registration Committee considers appropriate when carried on in accordance with such terms as the Committee stipulates.

**7.1 (1)** A sole proprietorship is qualified to be issued and hold a certificate of registration as an insurance broker if,

**(a)** the only business conducted by it is that of an insurance broker or both an insurance broker and life insurance agent, and such other business as the Qualification and Registration Committee considers appropriate when carried on in accordance with such terms as that Committee stipulates.

**Commentary**

Regulation 991 legislates that the only business or employment of a firm or individual be that of an insurance broker or an insurance broker/life agent, and thatany other business involvement requires a secondary business exemption from the Qualification and Registration Committee.

**Individual**

When an individual considers carrying on other activities, business or employment, in addition to general insurance, the individual must apply for a secondary business exemption by submitting a letter of request and completing a secondary business exemption form. A letter from the Principal Broker outlining the qualifications of the individual and supporting the request for the exemption must accompany the application. The individual must be granted an exemption from the Qualification & Registration Committee prior to any involvement in a secondary occupation.

The Qualification & Registration Committee will also allow exemptions for individuals to carry on business as a general insurance broker and/or life agent along with one other licensed occupation from the non-insurance financial services group. A completed Financial Products Application for Individuals must accompany the documentation.

**Firm**

When a firm considers carrying on other activities or business, in addition to general insurance, the Principal Broker must apply for a secondary business exemption for the firm by submitting a letter of request including any necessary forms, outlining the details of the other business. The firm must be granted an exemption fromthe Qualification & Registration Committee prior to any involvement in the other business. Activities that are considered other business include the sale of emergency roadside assistance, prepaid legal programs, non-insurance financial services and premium financing services.

**Premium Financing**

Firms setting up a separate business entity for the purposes of premium financingfor their clients must submit a "Premium Financing Business Questionnaire" in addition to the letter of request from the Principal Broker.

Premiums being financed by clients under loan agreements with the separate financing company must be paid promptly by the financing company to the firm for deposit to the trust account. Subsequent collections, and any collection problems, remain with the financing company However, with proper documentation, the premium financing company can request cancellation for non-payment.

The firm and its trust account must be insulated from any financial problems, employee dishonesty or other difficulty encountered by the legally separate financing company at all times. And as a condition of such an exemption, RIBO retains the right to examine the books and records of the premium financing business with respect to transactions involving the insurance premiums of the firm's clients.

The Code of Conduct requirements of candour, honesty and professional integrity is also extended to any premium financing operation in which a firm is involved. Clients must be advised of available alternatives, including low cost or no-cost premium payment plans, which may be offered by insurers for the class of business involved. The availability of insurance through the firm must not be made contingent upon the client agreeing to use the firm's premium financing terms.

The cost of borrowing and service charges must be clearly stated, as required by the *Consumer Protection Act of Ontario* (members may wish to discuss the requirements of that *Act* with their legal advisors).

# SHARING OFFICE SPACE

## Key Regulatory Provision – REGULATION 991

**8.** No person shall be issued a certificate of registration as an insurance broker where the Qualification and Registration Committee is satisfied that,

**(a)** the applicant; or

**(b)** a person occupying office space in the same business premises as the applicant, is in a position to offer inducement or use coercion or undue influence in order to control, direct or secure insurance business

**Commentary**

A firm office must be separate to ensure confidentiality of conversations and the contents of client files and to provide security for trust monies awaiting deposit. The premises of the firm office must also be clearly identified to avoid any confusion on the part of the consumer as to the independence of the firm operation from other businesses on the premises.

A firm wishing to share space is required to request an exemption to do so fromthe Qualification and Registration Committee. A written request must be made to the Qualification and Registration Committee addressing the following items:

- Reason(s) why there is a need for sharing space.
- Description of other business(es) occupying adjacent space.
- Details of procedures to be taken by the firm to ensure there will be no risk of inducement, coercion or undue influence to control, director secure insurance business.
- Description of any relationship, shared ownership or other financial connection between the firm and other businesses on the premises.
- Floor plan showing location of each business office and physical separations.
- Details of means of public access to each office, and the way in which it is proposed that the separate firm office premises will be identified.
- Steps taken to ensure confidentiality of the firm clients' affairs(telephone, fax, incoming and outgoing correspondence).
- Details of security arrangement concerning client file information.

# SPOT CHECK PROCESS

## Key Regulatory Provision – REGULATION 991

**17.(3)** The Manager, Council or a committee thereof or their representative is entitled to inspect the books and records required to be kept under this section at any time

**Commentary**

A spot check is a review of the financial status of a randomly chosen firm. The spot check is conducted by one of RIBO's Financial Investigators. Every effort is made to visit a firm within a 3-5 year cycle. Since a spot check is often the first contact thatmany brokers have with a member of RIBO staff, Principal Brokers are encouraged to use the Financial Investigator's visit as an opportunity to learn more about RIBO and itsreporting requirements.

Once a firm has been selected, the Principal Broker receives written notification that a spot check will be conducted in approximately two weeks' time. Accompanying the notification is an outline of the information normally reviewed during the spot check allowing the Principal Broker sufficient time to prepare for the spot check. The assigned Financial Investigator will then contact the Principal Broker to schedule a specific date and time.

The spot check begins with a series of questions designed to assist the Financial Investigator in understanding the firm's specific business practices including areas of market specialization and the maintenance of books and records. The Financial Investigator then reviews a minimum of two of the most recent Form 1 Position Report filings and reconciling the figures from these reports with the firm's books and records, and the most current non-filing month-end. An audit trail is then conducted on randomly selected client files in conjunction with the books and records.

While at the firm, the Investigator will briefly discuss the findings of the spot check with the Principal Broker. Any areas of non-compliance are explained along with possible solutions and corrective action that can be undertaken. The length of time it takes the Financial Investigator to conduct the spot check depends upon theaccessibility and availability of the information at the firm.

A formal Summary of Findings is prepared and issued to the Principal Broker upon the Financial Investigator's return to the RIBO office. Depending on the specific findings and its severity, actions that can result from the spot check can range from a letter of request from the Financial Investigator to a complaint being filed against the firm.

For the spot check, Principal Brokers are asked to provide 18 months of the following information to be available for the Financial Investigator to review:

- Balance Sheet

- Income and Expense Statement
- Aged Accounts Receivable Listing
- Bank Statements and Corresponding Bank Reconciliations
- Cancelled Cheques (Trust and General Accounts)
- Trust Investment Documents
- Insurer Accounts Payable Listing
- Receipts and Disbursement Journals
- Prepaid Premium Listing
- Retail Sales Tax Remittance File
- General Ledger
- Most recent externally prepared Financial Statements (including any year-end adjusting entries)
- Working papers prepared by an external accounting source to complete Position Reports
- Supporting Documentation for Shareholder Loans/Advances
- Disclosure of Facts provided to Insureds indicating Potential Conflict(s) of Interest
- Point of Sale Commission Disclosure Statement provided to Insureds
- Client Consents for any Unlicensed Insurance used
- Listing of all Markets including Sub-Brokers, Intermediaries, etc.
- Listing of all Markets including Sub-Brokers, Intermediaries, etc.
- Current Errors and Omissions insurance and Fidelity Bond policies
- Continuing Education compliance certificates for the previous two (2) terms of October to September for all licensed individuals

Under certain circumstances, a "Broker Review" may be conducted rather than a routine "Spot Check" Situations that may lead to a broker review can include:

**(i)** A complaint from a member of the public
**(ii)** A complaint by an insurer
**(iii)** As a follow-up by RIBO for issues found on a prior spot check or filed Form 1 Position Report

# UNLICENSED INDIVIDUALS

**Key Regulatory Provision**

**RIB ACT Section**

**33. (2)** No person shall willfully procure or attempt to procure himself, herself or itself or any other person to be registered under this *Act* by knowingly making any false representation or declaration or by making any fraudulent representation or declaration, either orally or in writing

**REGULATION 991 Section**

**2. (1)** No person shall act as an insurance broker unless the person is a registered insurance broker under this *Act*

**(2)** Subsection (1) does not apply to,

**(f)** an employee of a person registered under this *Act* when the employee is acting for or on behalf of his or her employer engaged solely in the performance of clerical or administrative duties in the office of his or her employer

**Commentary**

Receptionists and other unlicensed/unregistered individuals should not be employed to speak with the public to obtain and record information which is required for insurance decisions or actions, such as applications, policy changes (i.e., address changes, vehicle substitutions, etc.) or loss reports; nor should they be involved in giving advice about insurance coverages, providing insurance quotations or discussing claims matters with clients.

To avoid conflict with the requirements of the *Act*, unregistered employees should be instructed to limit their involvement with the public to taking messages which can then be dealt with by registered brokers.

The use of unlicensed personnel to follow up on overdue accounts receivables or to obtain expiry dates is permitted as long as the unlicensed person does not give insurance advice, and all insurance related questions are referred to a registered broker.

# UNLICENSED INDIVIDUALS CLIENT CONSENT REQUIREMENTS

**Key Regulatory Provision – REGULATION 991**

10. (1) A member shall not act or assist in the placing of insurance with an unlicensed insurer unless,

(a) the member has informed the member of the public for whom the member acts of the following risks of entering into a contract of insurance with an insurer not licensed under the *Insurance Act*:

1. That the insurer is not subject to regulation under the *Insurance Act*.

2. Orderly payment of claims may be more difficult than with an insurer licensed under the *Insurance Act*.

3. The Chief Executive Officer has no authority under the *Insurance Act* in respect of the insurer.

4. Provincial and federal taxes payable;

(b) the member has obtained the written consent of the member of the public for whom the member acts; and

(c) sufficient insurance cannot be obtained at reasonable rates or on the form of contract required by the member of the public from insurers licensed under the *Insurance Act*. Reg. 991, s. 10 (1); O. Reg. 143/19, s. 1.

(2) A member shall not act or assist in the placement of automobile insurance with an unlicensed insurer except automobile insurance in excess of the minimum liability coverage required by the *Insurance Act*. Reg. 991, s. 10 (2).

(3) A member who places insurance with an unlicensed insurer shall, within thirty days after the last day of March, June, September and December of each year,

(a) file with the Chief Executive Officer a return under oath or affirmation in the form and manner required by the Chief Executive Officer, containing particulars of all insurance effected under this section by the member during the period covered by the return; and

(b) at the same time, in respect of all premiums on such insurance, pay to the Minister of Finance the premium taxes that would be payable if such premiums had been received by a licensed insurer. Reg. 991, s. 10 (3); O. Reg. 143/19, s. 1.

**Commentary**

Any insurance company carrying on the business of insurance in Ontario when not licensed to do so is in contravention of Section 21(3) of the *Insurance Act*. The licensing status of insurance companies in Ontario can be determined by checking with the Financial Services Regulatory Authority of Ontario (FSRA, https://www.fsrao.ca/).

A broker cannot place insurance with any insurance company not licensed to do business in Ontario (unlicensed insurer) unless the following conditions are complied with:

**a)** The broker cannot place automobile insurance with an unlicensed insurer with the exception of automobile insurance in excess of the minimum limits

**b)** Sufficient insurance cannot be obtained at reasonable rates from insurers licensed under the *Insurance Act*

**c)** Due diligence and background checks regarding financial solvency, licensing elsewhere and prior or open investigations is completed by the broker

**d)** The Unlicensed Insurance Client Consent Form must be presented to the client in advance of the coverage being placed

**e)** The broker must review the Unlicensed Insurance Client Consent and Acknowledgement of Risk Form with the client to discuss the risks involved and obtain a signed consent from the client (A copy of this form should be given to the client and become part of the clients file)

**f)** File the appropriate return under oath with the Superintendent

**g)** Pay the appropriate premium taxes to the Minister of Finance

**h)** File the appropriate form to Canada Revenue Agency

If placing business with an unlicensed insurer, to ensure compliance with Ontario Regulation 991, Section 10, the client must read and sign the "Unlicensed Insurance Client Consent and Acknowledgement of Risk" form.

# UNLICENSED INSURANCE INTERMEDIARIES

Ontario currently does not require Insurance Intermediaries such as wholesalers, underwriting managers to be licensed. Therefore, before any business is placed with an unlicensed and unregulated intermediary, it is necessary to exercise the appropriate diligence and investigate the credentials of the wholesaler or underwriting manager.

Brokers should exercise diligence when placing business through an unlicensed intermediary as it is the broker's professional responsibility to ensure that the clients are provided with the best overall service. Exercising appropriate diligence should include, and if possible, have confirmed prior to placing the risk, the following:

- Evaluate the markets represented by the intermediary, especially if non-admitted or unlicensed markets are being used
- Inquire if they are licensed by RIBO
- If unlicensed, inquire if they carry Errors & Omissions or Fidelity Insurance and if so,are they with licensed insurers and for what amounts
- Establish the financial solvency of the intermediary
- Inquire on whether or not there are present or previous complaints of any nature
- Contact your local association
- Obtain a list of reputable references if possible

If the unlicensed intermediary is placing the business with an unlicensed insurer, it is still the responsibility of the registered broker to ensure compliance with Regulation 991, Section 10 and to have the client read and sign the "Unlicensed Insurance Client Consent and Acknowledgement of Risk" form.

# CYBER SECURITY

RIBO recommends that firms adopt a cyber security program that outlines cyber security policies and procedures to protect against cyber-attacks. Reports have noted massive increases in the number and severity of cyber-attacks experienced by businesses of all sizes. These attacks are expected to continue increasing as businesses rely on digital platforms and as more employees work from home on a regular basis. The cost of these cyber-attack can not only result in serious financial consequences for the firm but to your clients as well.

Insurance firms could face a number of different cyber-attacks:

- Phishing: This attack attempts to steal sensitive information by masquerading as a trustworthy entity. Most commonly your organization will receive an email from what appears to be a trustworthy sender to open a malicious link that will allow the attacker to have access to your system.
- Social Engineering: This is the act of deceiving someone into divulging information that they should not have access to.
- Ransomware: This attack attempts to encrypt files and then demand a ransom payment for the encryption key to unlock those files. These attacks are varied and may have multiply encryptions and they may reach out to your clients as a way to demand additional ransom payments.
- Hacking: This attack can use brute force or exploit weaknesses in your software to get access to user passwords and steal data.

A cyber security policies and procedures manual should be written down and available to all staff members to help protect against cyber-attacks. The manual should identify what data needs to be secured, what threats and risks the firm faces, what safeguards are in place, and what to do in the case of an incident. This manual needs to be review and revised periodically as technological changes occur.

A cyber security manual should address the following:

- Data
    - Inventory, management, and access authority of your firm's resources
    - Backup data
- Safeguards
    - Access/Authorization rights – who has access to what, internal vs external
    - Securing your wireless network
    - Updating your software and systems – including operating systems and anti-virus programs to the latest patches.
    - Early warning systems to detect unauthorized activity
    - Password and encryption standards for all company devices including portable devices
- Risks
    - List the types of cyber-attacks a firm may face and how to identify them
    - Equipment theft, loss, or breakage
    - Third-party services with access to your data
    - Plans for departing employees
    - Employees working from home and social media use
- Incidents
    - Systems in place to monitor for breaches
    - Reporting incidents to consumers, RIBO, and your insurer

Firms can also protect against cyber-attacks by regularly training staff as they the most likely to experience cyber-attacks. Regular security awareness and cybersecurity training programs can mitigate against cyber-attack. So that they can recognize and respond appropriately to cyber-attacks.

RIBO also recommends that firms purchase cyber security policies that cover First Party and Third-Party liability coverage and consider sufficient limits to address these exposures. An example of coverage would include Policy Aggregates of $1,000,000 with dedicated Data Breach Response of $500,000 as minimums. Additionally, insurers can also support your cybersecurity programs as certain policies may require certain safeguards to be in place which can help round out your cybersecurity policy program.

One of the best measures to protect your cybersecurity is to implement Multi-Factor Authentication (MFA) for all employees. MFA requires that employees use two different methods (e.g., phone codes) to verify their identity before they are allowed to log in or gain access to the firm's data. This prevents most phishing and password hacks keeping your data secured. This a low-cost measure that can save your firm from large claims and reputational lost, and most insurers require MFA to be in place prior to issuing a policy.

# SOCIAL MEDIA

RIBO considers social media to be a form of advertising and the same guidelines that apply to advertising also apply to social media posts

Brokers using social media for communication with their clients (e.g.,, Facebook, LinkedIn, Twitter, etc.) are reminded that must obtain permission from their Principal Broker when advertising on social media and must act in accordance with the *Registered Insurance Brokers Act* and its Regulations while holding themselves out as a broker on social media.

Firms should create a process to review a broker's social media presence before they are used to conduct business. This would help protect firms and principal brokers as they are held responsible for any acts of misconduct by their employees. Some potential policies and procedures include:

- Proving guidelines on what is permitted and prohibited content
- Guidelines on removing posts
- Developing a social media recordkeeping policy (e.g., retaining copies of any communication over social media in a client's file)
- Only allowing brokers trained on the firm's policies and procedures to engage in social media advertising
- Provide periodic training of brokers on the firm's social media policies and procedures
- Monitoring compliance with firm's policies through routine supervision

Misconduct can include but not limited to misrepresenting the terms, benefits, or advantages of a particular insurance policy by illustration. Additionally, in every advertisement by a broker, the legal name of the firm, as registered with RIBO must be identified as well. Individual brokers who are producers of the firm and hold themselves as a broker on social media as a broker must clearly identify the registered firm in which they are employed.

Brokers should be aware that any posts on your personal accounts that are not private may be accessed by third parties, including clients of the firm. It is important not to post anything that may result in harm to a client by posting any details of their business which could result in financial or reputational loss.

# WORKING WITH MANAGING GENERAL AGENTS (MGAs)

Consumers may have hard to place risks and sourcing coverage for them can be difficult given hard market conditions that have seen premium increases and shrinking coverages. Firms increasingly are sourcing and placing coverage through a Managing General Agent (MGA) to find the right insurance policy for their client.

The MGA acts as a broker for brokers as they have access to larger and more specialized markets. MGAs sign contracts with insurance carriers or Lloyd's syndicates that outline their duties such as pricing products, underwriting, and receiving & remitting premiums on behalf of insurers. Contracts may have limitations such as limited binding authority to provide sufficient notice to their markets regarding non-renewals or terminations.

Complaints from consumers regarding the availability and affordability of insurance raises concerns regarding all insurance intermediaries. Since commercial consumers rely on brokers to find coverage, MGA decisions to reject unprofitable contracts can place both brokers and consumers in a precarious position, particularly when product availability is scarce and more expensive. To assist brokers, RIBO has compiled a list of best practices for dealings between firms and MGAs.

## Best Practices

- When to Use an MGA – Firms should make a good faith attempt and find coverage prior to using an MGA. This is to avoid creating additional costs for the insured by placing their business with other underwriters and/or intermediaries.
- Know Your MGA – Brokers should establish a list of pre-approved MGAs that can be accessed and used by staff. This ensures that staff are placing business with trusted and known MGAs who have expertise in the markets they are placing the risk.
- You may want to consider the MGA's technical competence, experience with the type of risk, business reputation, and regulatory compliance history.
- Relationships with MGAs – Firms should deal honestly and fairly with MGAs. This includes informing them how laws and regulations may impact the relationship and your duties to place your client's interest first.
- Licensed – Your firm should place risks with licensed MGAs to ensure that consumers are sufficiently protected. Many have voluntarily registered with RIBO. Licensed MGAs are bound by the code of conduct, as well as, meeting regulatory requirements such as maintaining E&O insurance.
- Documentation – Any communication between the firm and MGA should be well documented. Establishing a standard documentation process allows the firm that records are kept and organized. Coverage negotiation and other special features that may limit coverage need to clearly be documented.
- Wordings -– Policy wordings should be available to the client to review

prior to binding coverage. Brokers need to ensure they understand coverage, terms, warranty, and any exclusions that impact the benefit of the policy. For specialized risks, experienced brokers who have dealt with that type of risk should review policy wordings to ensure they are represented properly.

- Signing a Policy – The policy must clearly indicate the insurer providing coverage for the client. Policies should be provided quickly to the firm, as well as, a written binder showing the markets used by the MGA.

- Renewals – Brokers should begin the renewal process for any MGA accounts earlier than normal and ask for renewal commitment. This would allow you to discover potential issues with renewing a policy. By starting earlier, you mitigate the risk that the client would be left without coverage.

- Marketing Materials – When an MGA provides your brokerage with any marketing materials you should review them for accuracy and that they meet your marketing standards before distributing them to the public. It is your duty as a broker to ensure that the materials clearly convey not only the benefits but potential limitations and exclusions that may impact your clients.

- Post-Sale – Keep in close touch with the MGAs you have accounts with so that both parties can provide your clients with the best level of support for any issues or concerns they may have regarding the product.

# OMBUDSERVICES

Insureds from time to time will have complaints about their insurer due to the insurer's noncompliance with *the Insurance Act*, regulations, or Financial Services Regulatory Authority of Ontario (FSRA) rules. In the case of a dispute between the insurer and the insured, section 5.1 of the *Insurance Act*, requires an insurer to have an ombudsman service. The insurer's Ombudsman will attempt to resolve the conflict between the insured and insurer.

If the insurer's Ombudsman is unable to resolve the issue, the insured can request Ombudservice referral letter which states the company's final position and refers them to one of two ombudservices. The services are the General Insurance OmbudServices (GIO) for P&C insurance or OmbudService for Life and Health Insurance (OLHI). The Ombudservice decisions are non-binding and either party may pursue alternative courses of action such as a lawsuit to resolve the issue.

In certain cases, insurers may refuse to provide a referral letter or if the complaint is unresolved by insurers or OmbudServices, a complaint form should be submitted to FSRA according to the directions on the FSRA website.

RIBO registrants are uniquely positioned to mediate and potentially solve any consumer concerns or complaints. It is good practice to keep a list of the contact information for the insurer's ombudservice so you can refer your clients to them to quickly resolve the issue.

# ANNUAL RENEWAL PROCEDURES

The RIBO registration is effective for one license year and it must be renewed annually to maintain an active license. The license is effective from October 1 to September 30 of every year. All renewals must be completed by August 31 of each year as per the By-laws stated in the *RIB Act*.

Renewal application filings are required for both firms (active and non-active) and individuals. Firm renewals are completed by the Principal Broker. License renewals are also required to be completed on an individual basis by each respective broker and Principal Broker.

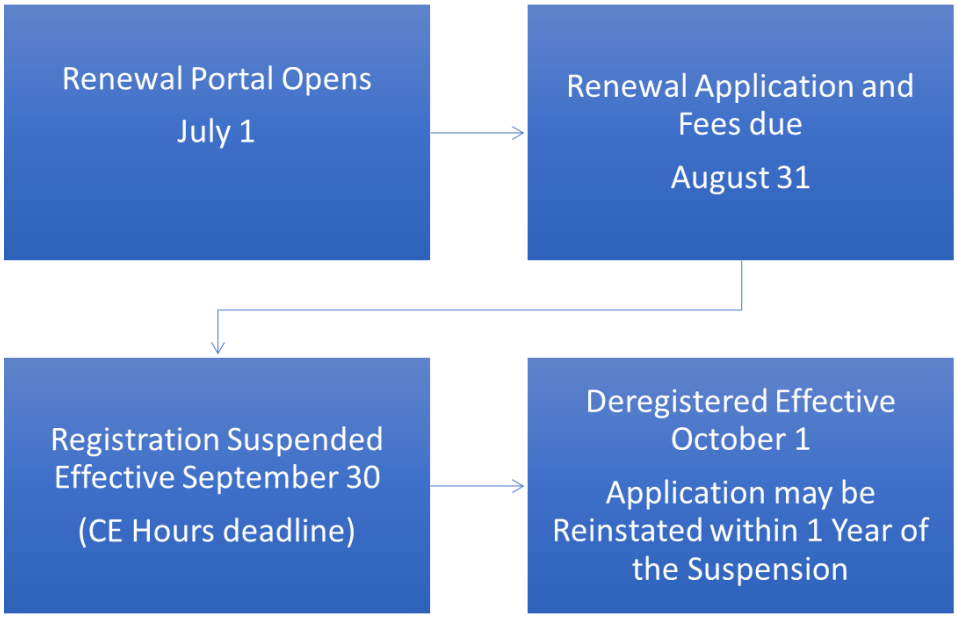
If the renewal application and license renewal fees are not submitted, the registration is suspended effective September 30th. Once suspended the member cannot act as an insurance broker but the *Act* and the Regulations continue to apply.

Brokers have one year after the date of suspension (if the only cause of suspension was due to the late filing of the renewal) to submit their late renewal applications. Penalty fees will also apply. If the renewal application and fees are not submitted within one year from the date of suspension the license will expire.

### Continuing Education

Although the deadline date for compliance with the continuing education requirements is September 30th, individuals who have not completed the continuing education requirements must still complete the online renewal questionnaire by August 31 of each renewal term.

Renewals can be completed and submitted with the continuing education question answered "No". Individuals will be prompted online (to be followed by a letter to the mailing address on file) to submit/forward copies of their continuing education certificates totaling 8 hours (or 10 hours for Principal Brokers) to RIBO once completed (by September 30th to maintain compliance).



### Submitting Renewals

All renewal forms are completed and submitted online via the RIBO membership system together with online payment if the firm is not a part of the "Bulk Payment" option. Individuals use their RIBO portal member account to login to the member only section of RIBO's website and once in the member's section they can navigate to their renewal filing application to fill it out. Individuals and Principal Brokers can access online video tutorials to learn how firms and individuals can submit their license renewal applications if they require additional assistance.

To complete the renewal process, each respective individual broker must complete and submit the online renewal application form and payment by signing into the RIBO membership system using their personal login and password. Once the renewal application has been uploaded, individuals will receive confirmation that the renewal application has been successfully submitted to RIBO. Principal Brokers of firms will have both the firm and personal renewal applications shown under their personal membership login. Principal Brokers will also be able to monitor and track the status of the renewals of individual associated with their firm (renewed vs. outstanding) by accessing the "Renewal Status Report" tab when logged in.

All renewal applications under this process must be completed online (by the individual broker) by August 31st. Failure to submit the renewal application by the deadline will result in late renewal penalties applying.

### Bulk Renewals

In an effort to streamline the renewal process for Principal Brokers, firms are automatically enrolled in the bulk payment program and must notify RIBO prior to the next renewal season if they want to opt out. Firms must notify RIBO no later than June of the renewal year for the records to be noted accordingly.

A report listing all the individuals associated with firm and the required renewal fee will be sent to the Principal Broker at the start of the renewal period. The date of the list will be based on the date that the renewal portal is opened for renewal (July 1st). The single bulk payment in the amount indicated on the report for all of the renewal applications listed (firm and individuals) must be received by RIBO no later than August 31st and all the renewals identified on the list will be processed and paid at the appropriate renewal fee amount. The firm and individuals will not receive a paper/hard copy of the renewal filing application. Individuals and firms should print a copy of their renewal filing for their own records.

### Changes to the report listing (June-September):

- Additions to the firm (individual is an existing RIBO registered member): Renewals for new hires during the months of June through September will be addressed on an individual basis and will require separate payment and renewal. These individuals should complete their license renewal filing application online and process payment for their license renewal via credit card. We regret to advise that these cannot be included in the bulk renewal payment process.
- New licensees: Individuals registering during the months of June-September will not receive a renewal application as the renewal fees are automatically included in the initial new license registration fee. Such individuals cannot be included in the bulk renewal payment process.
- Deletions to the firm: Bulk license fees that were paid for these individuals cannot be "transferred" or deducted from the bulk payment amount. Any requests for refunds for a "deletion" must be submitted with the deletion notice to RIBO on or before August 31st of

each year. All refund requests will be processed at the end of the RIBO renewal period. Firms may wish to move to a 100 per cent individual payment method for license renewals to mitigate against any over payment for the firm's license holders.

### Copies of Annual Renewal Filing

The firm and the Principal Broker will not have access to the answers provided by each individual staff member who completes the renewal application online, however each individual does have the opportunity to print a copy of what they will be submitting for their own records.

Confidentiality does not permit RIBO to disclose responses (i.e., charges or bankruptcy declarations) without the authorization of the individual.

Any individual or bulk renewals not submitted by the renewal deadline will result in the license being listed as inactive. Late fees will also apply.

### Reminder Notices

*General*

RIBO sends a notice to Principal Brokers and individuals in July when the renewal portal is opened to inform that they are now able to submit their firm or individual renewals. Starting in 2022, RIBO will send firm renewals reminder notices to the Principal Broker listed.

*Individuals*

RIBO sends two renewal reminder notices to individuals to complete and submit their renewal through the online portal. The first renewal notice is sent to individuals 1 week prior to the August 31st, deadline. This notice provides them information on how to submit their renewal and payment. Renewals completed after the August 31 deadline are subject to administration fees and penalties.

### Grace period

A grace period notification is sent on September 15th to individuals who have not yet submitted their renewals. This notice confirms that the license will be deregistered if the renewal is not submitted prior to the September 30th grace period deadline, it outlines potential penalties (e.g., loss of grandfathered privileges, as well as additional administrative fees and penalties that apply).

For all individuals, Principal Brokers and firms who fail to renew by the grace period deadline, a final notice is sent confirming they have been deregistered. Such licenses require a full reinstatement and will be subject to administration fees and penalties.

*Principal Brokers*

The Principal Broker is sent a list of their employees who have not yet submitted their renewals on September 15 of each year. They are reminded that those employees are not authorized to act as a broker on October 1, 2021, and that they must report any employment changes within 30 days.

On October 15 of each year, the Principal Broker receives a list of their licensees who are now deregistered. The Principal Broker must sign an undertaking that the affected employees are not communicating with any member of the public regarding insurance or acting as an insurance broker.

# FAIR TREATMENT OF CUSTOMERS (2019)

**Background**

In Canada, regulating the conduct of business in insurance is the exclusive authority of the provinces and territories. Each jurisdiction has its own regulatory approach for the conduct of business, based on its unique culture, traditions and legal regime.

By way of example, Council of The Registered Insurance Brokers of Ontario issued a Fair Treatment of Customers Guideline ("RIBO FTC Guideline") that summarized 'conduct of business' expectations for RIBO licensees. That Guideline, issued in 2015, provided examples of broker business activities and practices that promote the Fair Treatment of Customers It was rooted in RIBO's Code of Conduct, found at Section 14 in Regulation 991 enacted under the *Registered Insurance Brokers Act*, as well as the supplementary Code of Conduct Handbook.

While that Guidance applied only to RIBO licensees, insurance regulators within each Canadian jurisdiction share a common set of 'conduct of business' expectations to ensure the fair treatment of customers. Accordingly, members of the Canadian Council of Insurance Regulators ("CCIR") and the Canadian Insurance Services Regulatory Organizations ("CISRO") (of which RIBO is a Member) developed and published a "Fair Treatment of Customers Guidance" ("FTC Guidance") that reflects their vision and expectations.

CCIR and CISRO issued this Guidance to support Insurers as well as Intermediaries (i.e., brokers and agents) to achieve fair treatment of customers within existing laws and Regulations. As with both the RIBO Guideline and Code of Conduct, it also aims to strengthen public trust and consumer confidence, while minimizing reputational risks and unsustainable business models

This Guidance is based on Insurance Core Principles of the International Association of Insurance Supervisors ("IAIS")[1].

[1] International Association of Insurance Supervisors. Insurance Core Principles, ICP 19, updated November 2017. https://www.iaisweb.org/page/supervisory-material/icp-on-line-tool

**Scope of the FTC Guidance**

- The FTC Guidance applies to insurers and intermediaries and is a shared responsibility between them
- Insurers are responsible for fair treatment of customers throughout the life-cycle of the insurance product, as it is the insurer that is the ultimate risk carrier. Insurers should, upon first contact with customers, make a commitment to them and hold it throughout the life cycle of the product, regardless of the distribution channel used by the insurer
- The insurer's ultimate responsibility does not absolve intermediaries of their own regulatory responsibilities
- Industry participants, including RIBO licensees, must comply with their regulatory obligations. In addition, they should respect any Codes of Conduct of insurers and any other business entities through which they act
- Insurers and intermediaries must maintain an appropriate level of professional knowledge and experience, integrity and competence

**Impact on RIBO Licensees**

As has been previously noted, the RIBO Code of Conduct and its corresponding Handbook already establish conduct of business requirements and expectations for RIBO licensees. Compliance with the Code of Conduct strongly supports and is consistent with the Fair Treatment of Customers Guidance referenced above. Conversely, any violation of the RIBO requirements may be considered an act of misconduct and lead to disciplinary proceedings.

What follows are examples of activities that should be carried out with a focus on treating customers fairly. For more complete guidance, please refer to the RIBO Code of Conduct

**1. Know Your Client**

Brokers support the fair treatment of customers by regularly reviewing and addressing clients' changing needs.

While firms may rely on appropriately trained staff for renewal processing and updating client files, brokers must still understand and satisfy the on-going needs of their clients. Reasonable and regular efforts must be made to communicate with clients and ensure that their information on file remains current and their coverages remain relevant and satisfactory.

**2. Educate Your Client**

By way of example, brokers should seek to engage their clients to help them better understand:

- optional auto benefits,
- property damage from water,
- product suitability,
- flowing from 'know your client' requirement, products that may be suitable for their needs,
- the awareness, reporting and prevention of fraud.

**3. Implement Firm Policies and Procedures**

Fair treatment of customers also applies to office policies firms, like any other business, regularly identify and implement policies to make their business more efficient and profitable. However, brokers must ensure that efficiencies do not come at the expense of providing customers with the standards of service that they are entitledto expect of a broker in Ontario.

Firm policies adopted for the sake of efficiency should also require adherence to meaningful customer service standards. In the event of a conflict between office policiesand the customer, the customer should always prevail.

**4. Conflict and Commission Disclosure**

A client is entitled to full and overt transparency in the disclosure of relevant information. For example, a client is required to receive information of a conflict or potential conflict of interest at the time of quotation by the broker, while information regarding commission would be disclosed at the point of sale.

RIBO will consider that a broker has not complied with this requirement if disclosure is provided in a manner that is incomplete, misleading or unclear.

Brokers must always report any potential conflicts with a customer to their Principal Broker.

### 5. Outsourcing

When relying upon third parties to provide service(s) to the firm, all reasonable efforts should be made to ensure the vendor protects customer personal information in a manner consistent with the practices of the firm and legal requirements.

### 6. Act With Competence

A broker must also be sensitive to any weakness in personal competence and realize the disservice that would be done to a client by attempting to act beyond their personal level of competence. In such circumstances, the broker should either refer the client to an appropriate broker in their office or decline to act and advise the client to seek another broker with competence in the required area. An example would be that a broker with little or no commercial lines insurance experience should not attempt to provide or advise a client for coverage on a manufacturing risk.

### 7. Protection of Personal Information

A broker cannot render meaningful service to clients unless they engage in full and unreserved communication with the. At the same time, clients must feel completely secure that, without any express stipulation or request, matters disclosed to their broker will be held in complete confidence, and that any such information will only be revealed to others without the client's consent if it is legally necessary, or in the course of negotiating with underwriters on behalf of the client.

Brokers must be aware that there is increasing risk to a client's confidential information as a result of potential cyberattacks on brokerage records. Brokers must have appropriate safeguards in place to mitigate this risk from both a technology and liability insurance perspective. This should include mobile devices and home offices, as applicable.

# TAKE-ALL-COMERS RULE

The Financial Services Regulatory Authority of Ontario (FSRA) recently released guidance on the Take-All-Comers (TAC) Rule (see FSRA Guidance No. AU0135INT). As part of the TAC rule, RIBO Registered Brokers have responsibilities while quoting and delivering automobile insurance coverage to consumers. RIBO will be reviewing brokers' compliance with the TAC rule as well as the brokerage practices while conducting routine spot checks in Brokers' offices.

While providing an auto insurance quote to consumers, Brokers are expected to:

1. Provide a quote for every auto insurance market that the brokerage represents;

2. Inform the consumer if a market has declined to provide a quote; and

3. Report any instance where they are dissuaded or forced to abandon a request for a quote to RIBO

If there are published rates on a specific auto risk and one of your auto markets does not provide a quote, the broker should be advising the consumer of this situation and report this situation to RIBO. Examples of a failure to provide a quote can include:

- an inability to obtain a quote or bind coverage through an insurance company portal or rating engine,
- a message indicating that a paper application is required, or
- a message indicating the risk does not meet an underwriting rule when there is no such underwriting rule.

Similarly, if one of the markets verbally instructs the broker to not submit any auto insurance business in a particular city or particular area of Ontario, and that market has published rates in the same area, this should also be disclosed to the consumer. This situation should also be reported to RIBO.

FSRA takes these obligations very seriously. Accordingly, RIBO has expanded the spot check program to include a review of office procedures, files and follow-through on this issue, to ensure that brokers are fulfilling their responsibilities

# FEDERAL LEGISLATION AWARENESS/COMPLIANCE

**All brokers should be aware of the following federal legislation:**

## 1. Anti-Terrorism Provisions

The Criminal Code of Canada provides that:

> "No person in Canada and no Canadians outside Canada shall knowingly:
>
> **(a)** deal directly or indirectly in any property that is owned or controlled by or on behalf of a terrorist group;
>
> **(b)** enter into or facilitate, directly or indirectly, any transaction in respect of property referred to in paragraph (a); or
>
> **(c)** provide any financial or other related services in respect of property referred to in paragraph (a) to, for the benefit of or at the direction of, a terrorist group".

The purpose of this legislation is to present and suppress the financing, preparation, facilitation and commission of acts of terrorism.

"Terrorist group" is defined as including those persons or associations of persons on the "list" as established by the Governor in Council. This consolidated list, as update from time to time, can be found on OSFI's website at www osfi-bsif gc ca under the heading Suppression of Terrorism.

"Financial or other related services" is not specifically defined, therefore by reference to its common or ordinary meaning, this legislation appears to prohibit insurance brokers from knowingly arranging insurance policies on property owned or controlled by, or on behalf of, any person or entity on the list, or any other "terrorist group".

Insurers are similarly prohibited from knowingly entering into or renewing contracts of insurance with anyone on the list, or other "terrorist groups".

## 2. The Proceeds of Crime (Anti-Money Laundering) and Terrorist Financing Act

While not generally applicable to property and casualty insurance firms, regarding a direct reporting requirement as a "reporting entity", under the *Act*, Principal Brokers should nonetheless be aware of the general requirement by the financial services industry to report cash transactions in excess of $10,000 to the Agency responsible for collecting this information:

> The Financial Transactions and Report Analysis Centre of Canada (FINTRAC)
> www fintrac-canafe gc ca
> 1-866-346-8722

This would include a series of cash payments, all under the $10,000 threshold that, when taken together, would trigger a reporting requirement.

In the ordinary course, it would be a very rare circumstance for any client to pay his or her premium (assuming it was over the threshold of $10,000) in cash. On the whole, this is a low risk issue for most general insurance brokers.

However, brokers should be aware that there have been instances reported globally where a policy has been purchased, with cash and subsequently cancelled, resulting in a return of premium, that has been washed so to speak.

As a matter of policy, brokers should take sufficient steps to know their clients and possibly take steps to verify their identity if circumstances warrant, or appear suspicious. This may include a review of licenses or other documents evidencing identity, as the case may be.

Brokers are encouraged to consult their own legal counsel for issues regarding compliance with the Criminal Code provisions or the Anti-Money Laundering and Terrorist Financing. legislation

### 3. Canada's Anti-Spam Legislation (CASL)

This legislation took effect on July 1st, 2014.

RIBO members, like most businesses, are relying increasingly upon electronic communication to market their services. The federal government has introduced legislation (Canada's Anti-Spam Law", or "CASL") aimed at regulation electronic communications with a view of reducing the amount of unwanted communication, or "spam", received by consumers.

The new law applies to anyone who:
- makes use of commercial electronic messages ("CEM"),
- is involved with the alteration of transmission data, or
- produces or installs computer programs

A CEM is any electronic message that encourages participation in a commercial activity, regardless of whether there is an expectation of profit It is the regulation of this activity that will likely have a major impact on many member firms.

At a high level, the sender of a CEM will need to:

- obtain consent from the recipient before sending the message,
- include information that identifies the sender, and;
- enable the recipient to withdraw consent

The legislation provides for a fine of $1 million for an individual found to be in non-compliance, and $10 million for entities, such as a corporation.

For more specific information about how this law impacts your firm, you are encouraged to contact your legal counsel.

The Government of Canada's CASL website is an excellent source of information about the new law: http://fightspam gc ca/eic/site/030 nsf/eng/home

# FRAUD PREVENTION AND EDUCATION

This guideline is designed to assist brokers in identifying potential frauds in the auto insurance sector, as well as providing information that brokers can use to educate their clients on this issue.

Ontario has introduced legislation aimed at combatting insurance fraud through tighter controls over tow truck operators and health clinics, among other things, but brokers can still play an important role in fighting fraud through:

- Sensitivity to circumstances surrounding a claim that suggest something is not quite right, for example, staged accidents
- Generally having a second look where client activity seems to indicate some fraudulent purpose, for example, previous BI claims or a different insurer every year
- Reporting good faith concerns about potential fraud to insurance companies, regulators and, where appropriate, the police
- Educating clients to be aware of auto insurance fraud, for example, by making available to your clients, education materials prepared by FSRA and IBAO, as well as encouraging clients to be aware and report fraud

Indeed, consumer awareness and reporting may be the most powerful weapons in the fight against fraud.

Brokers occupy a unique position in the auto insurance system and their own Communities. They are an important and trusted touch point that can be used to engage and educate their customers. Purchasing or renewing an auto policy is an opportunity to provide a "learning moment" to customers.

Brokers can help consumers understand auto insurance and how to purchase it, and warn about potential scams.

Examples of fraud include:

- Fake insurance claims potentially involving body shops, tow truck companies, legal representatives, health clinics, assessment centre or attendant services, particularly where the same persons have ownership interests in service providers.
- Fees for tow truck referral, storage or other "administrative" fees to tow trucks, repair shops or health care providers that may "pad" their bills to recover "fees" that get passed along to consumers.

- Unlicensed people charging a fee to find insurance for consumers, who then impersonate the consumer using their information to apply for insurance coverage, usually by fraudulently indicating that they are members of an organization that may have a "group" or "association" insurance plan.

- An increasingly common scam involves the advertised sale of "cheap" insurance, usually in local or community newspapers. While they may sound genuine, they usually require the consumers to pay the premium funds by money transfer services, for example, Western Union, but the insurance doesn't exist. Some of these ads typically don't identify the Insurance Company or the Broker or may use names that are very similar to actual insurers or brokers.

- Consumers need to be reminded that if it sounds too good to be true, it usually is, and that driving without insurance, even unwittingly, is illegal.

Brokers can also help consumers about what to do where they become aware of potential fraud, or after they may be involved in a minor accident.

Consumers can be advised to:

- Write down what they noticed, including the names of persons and the dates of suspicious communications

- Contact their broker as soon as possible after an accident. Brokers can provide advice on towing and, if required, notify the police, or insurance regulators (FSRA/RIBO)

- Reports may also be referred to:

  - the Canadian Anti-Fraud Centre
    Canadian Anti-Fraud Centre (antifraudcentre-centreantifraude.ca)
  - 1-800-495-8501

  - the Competition Bureau
    www competitionbureau gc ca
    1-800-348-5358
    (where the report is regarding deceptive of misleading advertising)

- If necessary, reports may also be sent to Canada's 2 credit agencies (Trans Union, Equifax)

Additional information for consumers is available on the RIBO website.

Brokers must be vigilant in watching for and helping to report bad actors who tarnish the reputation of dedicated professionals working in the industry. RIBO, as well as other organizations that regulate professional behaviour, has an important role to play in ensuring that those they regulate are disciplined in an effective and timely way, if they engage in fraudulent activity.

RIBO maintains and enforces regulations regarding insurance broker conduct that are explicit and forceful in the pursuit of professionalism and zero tolerance for fraud.

Specifically, there are provisions for:

- Prohibition on unauthorized practice
- Prohibition on misleading or deceptive advertising
- Prohibition on referral fees to/from anyone other than regulated financial services providers
- Prohibition on charging unconscionable fees
- Prohibition on failure to disclose a conflict of interest and related guidelines for members

The fight against insurance fraud will require all stakeholders to be engaged and integrated It will require a collaborative effort involving everyone in the auto insurance sector, including consumers. Being aware that everyone could become a potential victim of fraud is an important step in preventing or reducing its occurrence.

As a supplement to this policy on fraud and fraud awareness, RIBO is adopting the following Guideline for writing new business, proposed by the IBAO as best practices for firm policies aimed at preventing fraudulent activity.

# NEW BUSINESS GUIDELINES

These are suggestions only and each firm should review and adapt these guidelines in accordance with their own business model/goals. These guidelines are provided as an attempt to safeguard the firm, insurers and consumers against possible fraudulent activity. While it is the brokers' duty to provide the best possible coverage at the best possible premium for consumers, it is prudent to address these issues. Consideration should be given to implementing use of call recording programs and scripts developed to ensure consistency in all transactions.

These guidelines could be prefaced with an outline of what the Company/Division commitment is. For example: *ABC Insurance Brokerage is committed to providing our clients with the best possible coverage with the best available market. Preapproval from the Personal Lines Manager must be obtained prior to binding risks which do not fall within the regular guidelines.*

- Qualify all new business at initial contact with the prospective client to ensure that you have a clear understanding of where the business should be placed and that you gain a clear understanding of the risk
- Confirm you are speaking/emailing with the potential insured and not someone acting on behalf of a potential client – consent must be obtained from the prospective client prior to proceeding and a clear explanation as to why you must speak with a third-party, (language barrier)
- Ask how the client was directed to your firm
- Discuss loss history – including any comp claims or others deemed "naf" (if a series of "naf", probe for further information. This may be an indication of "staged accidents" or other fraudulent activity
- Discuss all non-renewal issues –is there a history of non-payment which will lead to a discussion of other past payment issues
- Discuss any cancellation issues – who initiated the cancellations
- Discuss any and all convictions, accidents and claims

Once you are satisfied with the information you have collected above you can proceed with quoting and binding. Advise your client that the following documentation is required to be submitted with the application:

- Copy of all drivers' licenses listed on the application
- Copy of vehicle ownership
- Copy of any papers confirming primary place of residence (e g utility or property tax bill, income tax assessment)
- Have client initial section on application relating to "all other drivers in household"

These procedures should be adopted for all new business whether auto or home.

# OPTIONAL BENEFITS – AUTO INSURANCE

Conducting a client needs assessment is a key part of every broker's responsibility It is necessary in order to recommend an insurance solution that is suitable for your client.

The changes to auto insurance in Ontario introduced in 2016 fundamentally changed basic auto coverage, while introducing numerous optional accident benefits. We know that brokers reviewed these options with clients when the changes were introduced.

Remember, though, that understanding your client's needs is important not only at the beginning of your relationship, but also on an on-going basis. Errors and Omissions companies as well as RIBO are going to expect that brokers have an established policy for the renewal process in place to ensure that client selections are current and informed.

Examples of life events that may impact a client's needs include:

- marriage
- divorce
- children
- a change in employment
- changes in employment benefits
- changes in overall health

Brokers should revisit optional coverages at each renewal, or indeed sooner if they become aware of changes to a client's circumstances that could affect their needs. Where a client declines recommended coverage, make sure to document this in the client file.

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# PRODUCT SUITABILITY: A BEST PRACTICES APPROACH

Product suitability has always been one of the primary principles of doing business as a broker in Ontario. The RIBO Code of Conduct has always required that brokers maintainthe competence to provide guidance based on sufficient knowledge of the specific risks involved and adequate consideration of the relevant insurance principles so that product recommendations are suitable for addressing the needs of the client.

The recommended product or service must be appropriate for the needs of the client, as determined by a needs-based assessment done by the broker and/or as directly articulated by the client. While the information provided may vary in each transaction, it should be brief and relevant to the purchase decision.

Where a client is seeking advice on product recommendations, product suitability requires the collection of sufficient information from the client to enable the broker to properly assess their needs and make appropriate recommendations. If a broker can demonstrate that the recommended product is suitable for his or her client, then any conflict of interest from compensation, ownership of financial links is likely to have been adequately managed.

Suitability depends on the needs, facts and expectations of the client. The following best practices will enhance compliance with this principle:

1. Know your client — the facts and assumptions that support your recommendations require you to first gather appropriate information from the client.

2. Undertake a thorough client needs assessment before making your Recommendations. Such an assessment should reflect factors such as the underlying risk, the client's objectives and the complexity of the product being sold. By way of example, a large commercial risk would typically require a more in-depth assessment than simple automobile coverage. A higher risk automobile client, however, may make a more fulsome assessment advisable.

3. Confirm the goals of your client. This will help you avoid any miscommunication that could lead to unsuitable recommendations. If so, document that you are working with information provided by the client, or that the client has requested a specific product or service.

4. Discuss with your client any product comparisons that were carried out and why a particular product is recommended.

5. Ensure the client file reflects the collection of information from your client, your analysis of their needs, available products and the reason for your recommendations. A broker should be able to explain how the recommended product or service addresses the client's needs.

6. Document your reasons for recommending a product. There should be enough information in the file to show why a particular recommendation was made.

7. Particularly for commercial accounts, consider the value of a survey or a checklist of important coverages that a client might reasonably expect in a like situation.

8. In situations where the product is offered without advice, brokers should inform the client that no advice is being offered.

9. Competence is paramount A broker owes a duty to his or her clients to be competent to perform the services undertaken on their behalf. Where you do not have the expertise to adequately service your client's particular risk, refer the client, or consider engaging the services of a broker who possesses the necessary expertise.

Principal Brokers should ensure that procedures are in place within the brokerage to follow these practices.

During spot-check visits, RIBO reviews a random selection of client files and will be asking about office policies for product suitability assessments.

# WATER DAMAGE

Brokers generally employ a business model that involves building and developing a relationship with their clients. This, in turn, requires brokers to take time with their clients to explain or clarify insurance matters, through reaching out or touching base with clients multiple times each year.

Water damage is a great and current topic to help your customers understand property insurance and in particular, recent changes in water damage coverage.

Every year in recent memory has had its challenges weather-wise Ontario, in particular, has seen its share of torrential rainfall in many parts of the province, resulting in a significant amount of residential flooding and basements with water damage.

The frequency of these incidents and the corresponding increase in claims has led many insurers to dramatically amend the home coverage they offer, for example, lowering basic limits and raising deductibles. However, customers that are experiencing water damage will typically not distinguish between something that was "sudden and accidental" or something caused by spring run off or sewer back-up, or damage resulting from water coming in through foundation cracks or leaks.

The time to educate clients about what is and what is not covered in their home policies is at the time that brokers initially take the application for a policy, and then, any time thereafter that insurers change coverages or the client's risk changes. It is imperative that brokers understand their clients' needs as well as the coverages that are available to them.

Take the opportunity to educate your clients on how best to prepare themselves against water damage. As well, document your files to set out what coverage options were discussed and either accepted or rejected.

Remember that not only must brokers advise their clients on selecting proper values for their homeowner's insurance, but also keep the client current with respect to coverage changes, particularly the changes in water damage coverage, that may well vary from region to region in Ontario, depending on local or other factors.

# FORMS AND ON-LINE INFORMATION RESOURCES

Please visit the RIBO website to access all forms.

Canadian Council of Insurance Regulators (CCIR) – www ccir-ccrra org

Centre for Study of Insurance Operations (CSIO) – www csio com

e-Laws (ServiceOntario) – www e-laws gov on ca

Facility Association – www facilityassociation com

Financial Services Regulatory (FSRA) – www.fsrao.ca/

Insurance Brokers Association of Ontario (IBAO) – www ibao com

Insurance Bureau of Canada (IBC) – www ibc ca

Insurance Institute of Canada (IIC) – www insuranceinstitute ca

Office of the Superintendent of Financial Institutions (OSFI) – www osfi-bsif gc ca

Registered Insurance Brokers of Ontario (RIBO) – www ribo com