SUPPLEMENTARY RESOURCES

BUSINESS/PORTFOLIO TRANSFERS

Transfers of business from one insurer to another, whether on the instructions of an insurer or the brokerage, 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 brokerage should be 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 Insurance Practices Review Committee's Priority of the Client's Interest principle 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 Commission 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 brokerage may transfer business from one insurer to another include:

- Cancellation of a brokerage contract, by either the broker or the insurer, forcing transfer.
- Bulk purchase of another brokerage's book of business and integration into the purchasing brokerage's markets.
- The brokerage is owned, purchased or controlled by an insurer (or otherwise 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 brokerage as an incentive to transfer business to it, or as assistance to help with the administrative costs 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 brokerage has an obligation to provide written notification of the decision to the consumer within 45 days, outlining the options available to them.
- The brokerage must candidly and honestly explain why a client's policy is being moved from one insurer to another.
- The brokerage 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 brokerage'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. Brokerages are not required to direct customers specifically to another area brokerage 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 brokerage that represents the existing insurer.
- Explain, where applicable, the ownership and financial relationships, or any other conflict or potential conflict of interest.
- 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 brokerage 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 every day 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 brokerage's intention to re-market.
2. Indicate that the existing information (including banking information) may be provided to the new insurance company.
3. Give instructions to contact the brokerage office immediately if they have any objections to the above.

Producer Transfer of Book of Business to Another Brokerage Firm

When a producer moves from one brokerage to another and takes or transfer the book of business, the existing brokerage 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 brokerage 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 brokerage, or offering basic advice as to the course of action usually taken to make a claim or seek recovery from another party. Claims assistance has not encompassed a brokerage acting on behalf of an insurer in negotiating settlement of losses 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 brokerage 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 enhancement for 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 brokerage 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 Manager 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 Complaints Hearing, evidence 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 Complaints Hearing, 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 – ONTARIO 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 brokerage firm being subject to review by the Qualification 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 has been 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 October 1st and September 30th will begin the first October following registration. Individuals are exempted for the remainder of the licence 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 brokerage.

Technical

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

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

Subjects related to skills required to function efficiently in an insurance brokerage office, as a customer service representative or as a producer. Subjects would 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 5 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 brokerage 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. 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 the renewal 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 Qualification & Registration Manager. 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 – ONTARIO REGULATION 991

14. (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.

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 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 OF ANY KIND IN A BROKERAGE BY AN INSURER, OR IN AN INSURER BY A BROKERAGE.

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 brokerage, 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 BROKERAGE 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 brokerages 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 placement of 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 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 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.

<u>Clarity of Disclosure</u>

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 brokerage is owned by name of insurer, the underwriter of this policy of insurance.
- The name of insurer has an ownership interest in name of brokerage.
- Name of brokerage 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 brokerage currently has a loan guaranteed by name of insurer that was used to expand our business.
- Name of brokerage has a financial relationship with name of insurer.

Key Regulatory Provision – ONTARIO 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 <u>any fees</u> 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. Brokerage 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.

   - Aviva* - X% to Y%
   - Dominion of Canada* - X% to Y%
   - Economical Mutual* - X% to Y%
   - Gore Mutual – X% to Y%
   - Intact* - X% to Y%
   - Royal SunAlliance* - 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 Provisions – ONTARIO 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 required with 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 file a Form 1 Position Report semi-annually and at year end, outlining the trust, general and equity position of the brokerage firm. The following “Guidelines to assist in completing the Form 1” have been established for Principal Brokers who require clarification along with a listing of common errors made by Principal Brokers when completing the Form 1.

RIBO GUIDELINES TO ASSIST IN COMPLETING FORM 1

All member firms whether sole proprietors, partnerships, or corporations are required to complete and file a FORM 1 (Position Report)

The following guidelines are to assist members in completing FORM 1.

REPORTING DATE ~ FORM 1 is to be completed in all respects for information and balances as of close of business at the end of the fiscal year and six months after the fiscal year end date. Each of these dates are referred to as the REPORTING DATE.

FILING DATE ~ FORM 1 must be filed at the offices of RIBO no later than 90 days after the reporting date.

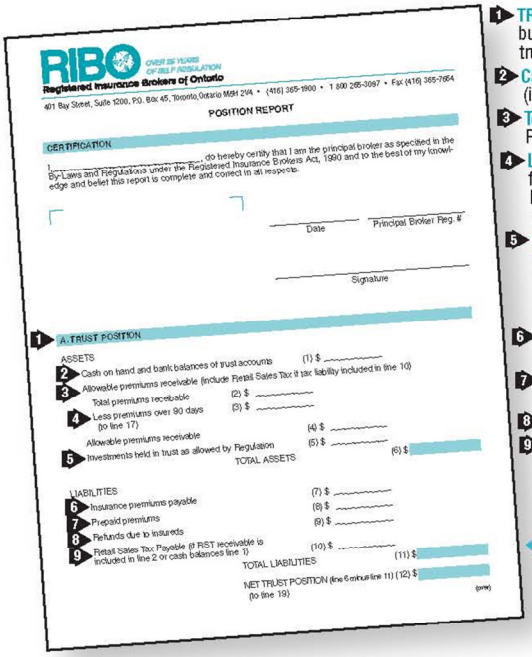
Members who have audited financial statements, or review engagement statements prepared by a licenced public accountant may apply for an exemption from the semi-annual filing of FORM 1. An information kit outlining the procedure and disclosure requirements is available from Complaints & Investigations department upon request.

All sections of FORM 1 must be completed. If a section is not applicable, indicate accordingly with an explanation. If space on the form is insufficient, attach a schedule with the remaining information in a similar format.

Each month (approximately mid-month) RIBO will mail a blank FORM 1 to all members who have a reporting date within that month. Accompanying FORM 1 will be a current information summary which contains information currently on file for the member. This summary should be reviewed, updated where necessary, and attached to FORM 1 to complete the filing requirements.

The information required to complete the form is generally straightforward. Certain sections or lines, however, do warrant further clarification as provided below. In all cases, reporting of financial information should be consistent with generally accepted accounting principles.

If there is uncertainty or specific questions when completing the report, the staff at RIBO office will be able to provide additional assistance. (416-365-1900, 1-800-265-3097, Fax 416-365-7664, Website: www.ribo.com)



RIBO OVER 55 YEARS OF SELF REGULATION
Registered Insurance Brokers of Ontario
401 Bay Street, Suite 1200, P.O. Box 45, Toronto, Ontario M5H 2Y4 • (416) 365-1900 • 1 800 265-3097 • Fax (416) 365-7664

POSITION REPORT

CERTIFICATION

I, _____ do hereby certify that I am the principal broker as specified in the By-Laws and Regulations under the Registered Insurance Brokers Act, 1990 and to the best of my knowledge and belief this report is complete and correct in all respects.

Date _____ Principal Broker Reg. # _____

Signature _____

1 A. TRUST POSITION

ASSETS

2 Cash on hand and bank balances of trust accounts (1) $
3 Allowable premiums receivable (include Retail Sales Tax if tax liability included in line 10)
Total premiums receivable (2) $
4 Less premiums over 90 days (to line 17) (3) $
Allowable premiums receivable (4) $
5 Investments held in trust as allowed by Regulation (5) $
TOTAL ASSETS (6) $

LIABILITIES

6 Insurance premiums payable (7) $
7 Prepaid premiums (8) $
8 Refunds due to insureds (9) $
9 Retail Sales Tax Payable (if RST receivable is included in line 2 or cash balances line 1) (10) $
TOTAL LIABILITIES (11) $
NET TRUST POSITION (line 6 minus line 11) (to line 19) (12) $

(over)

1 TRUST POSITION This section is required for all broker billed business. If you are solely on direct bill or business is billed through an associated registered firm, please so indicate with the name of the firm where trust funds are held.

2 Cash on hand and bank balances of trust accounts (1) Bank balances are as per the firm's records (i.e., bank statement adjusted for uncashed cheques).

3 Total premiums receivable (2) Report total premiums receivable (or premiums plus RST if reporting RST as a trust vs. general asset) for policies with effective date as of reporting date or prior (i.e., no prebills).

4 Less premiums over 90 days (3) The premium portion of receivables in excess of 90 days is deducted from trust receivables. Any RST portion of receivables in excess of 90 days need *not* be shown on this line. In no case can outstanding credits in excess of 90 days be used to reduce the total premiums receivable in excess of 90 days.

5 Investments held in trust as allowed by Regulation (5) Investments held in trust include only those which are readily convertible to cash. The investment must be free from the possibility of loss of cash value on redemption due to changes in interest or market rates or penalties for early redemption. The trust certificates must be in the member's name and designated in trust – see Reg. S. 1, and may not be assigned, pledged, or hypothecated – see Act S. 32 (2).

6 Insurance premiums payable (7) Report the gross billed to the client less the member's commission for all outstanding insurance premiums owing to insurers. This includes binder billings.

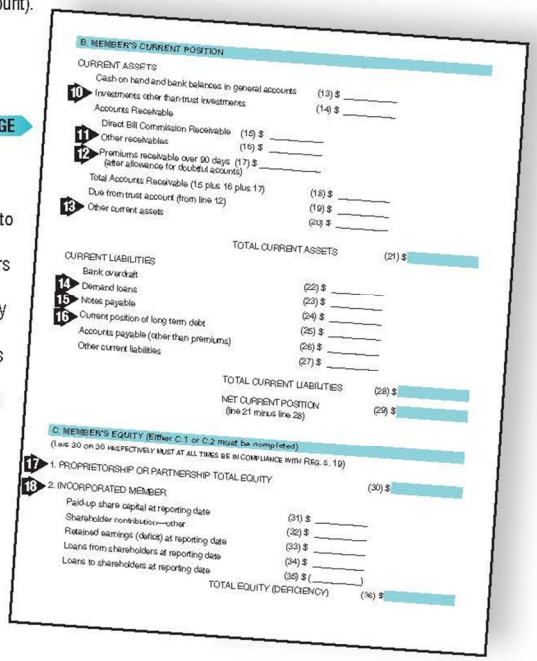
7 Prepaid premiums (8) Prepaid premiums includes all monies received for renewal or new policies where the transaction has not been booked by the brokerage.

8 Refunds due to insureds (9) Refunds due to insureds should be shown separately.

9 Retail Sales Tax Payable (10) Report the liability for collected plus billed and not collected Retail Sales Tax *unless* no RST has been included in amounts reported as trust assets (i.e., RST is treated as a general vs. trust account).

FRONT PAGE

BACK PAGE



B. MEMBER'S CURRENT POSITION

CURRENT ASSETS

Cash on hand and bank balances in general accounts (13) $
10 Investments other than trust investments (14) $
Accounts Receivable
Direct Bill Commission Receivable (15) $
11 Other receivables (16) $
12 Premiums receivable over 90 days (17) $
(after allowance for doubtful accounts)
Total Accounts Receivable (15 plus 16 plus 17) (18) $
Due from trust account (from line 12) (19) $
13 Other current assets (20) $
TOTAL CURRENT ASSETS (21) $

CURRENT LIABILITIES

Bank overdraft (22) $
14 Demand loans (23) $
15 Notes payable (24) $
16 Current position of long term debt (25) $
Accounts payable (other than premiums) (26) $
Other current liabilities (27) $
TOTAL CURRENT LIABILITIES (28) $
NET CURRENT POSITION (line 21 minus line 28) (29) $

C. MEMBER'S EQUITY (Either C.1 or C.2 must be completed)

(Line 30 on 30 RESPECTIVELY MUST AT ALL TIMES BE IN COMPLIANCE WITH REG. s. 19)

17 1. PROPRIETORSHIP OR PARTNERSHIP TOTAL EQUITY (30) $
18 2. INCORPORATED MEMBER
Paid-up share capital at reporting date (31) $
Shareholder contribution—other (32) $
Retained earnings (deficit) at reporting date (33) $
Loans from shareholders at reporting date (34) $
Loans to shareholders at reporting date (35) $ (_____)
TOTAL EQUITY (DEFICIENCY) (36) $

10 Investments other than trust investments (14) Current investments must be readily converted to cash and mature within 12 months.

11 Other receivables (16) Report life insurance receivables, loans to other than shareholders (see line 35 for loans to shareholders).

12 Premiums receivable over 90 days (17) Premiums receivable over 90 days (see line 3) less any allowance for doubtful accounts.

13 Other current assets (20) Report only current assets such as prepaids. Loans to shareholders must be shown on line 34.

14 Demand loans (23) Report the full principal amount of all demand loans owing by the reporting member.

15 Notes payable (24) Report those notes payable due in the 12 months following the reporting date. If the note is callable by the lender report the full principal amounts.

16 Current position of long term debt (25) Include the amount to be repaid within the 12 months following the reporting date.

17 PROPRIETORSHIP OF PARTNERSHIP TOTAL EQUITY For a proprietorship or partnership equity can be calculated as follows: Equity at the end of last fiscal year **PLUS** earnings (losses) for current year **LESS** proprietor's or partner's drawings.

18 INCORPORATED MEMBER For a corporation equity should reflect after tax income plus capital. In addition loans from a shareholder will be considered a form of equity and loans to a shareholder will be considered a reduction of equity.

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 physically in 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.
- Pre-bills being included as trust receivables 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 here 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 brokerage or that are not in the registered name of the brokerage cannot be reported.
- Only trust investments that are in compliance with Ontario 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.

Retail Sales Tax Payable (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 brokerage or as a monitoring tool for the broker to determine that his/her method 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 brokerage 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 brokerage may be transferring commissions on policies written from the trust to the general accounts before the brokerage has actually collected the premium on those policies. In this 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 for the purpose for which they were received. The Three-Step calculation could be used as proof 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
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:

Brokerages 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 brokerage, depending on the existence or 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 in any way charge the funds referred to in subsection (1) whether or 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.

ONTARIO 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.

(7) When so requested in writing by the Manager, Council, or a committee thereof or their representative, every member shall, within thirty days after the request, account for all trust funds received by the member.

(8) No member who is not a sole proprietor, partnership or corporation shall control trust funds or maintain a trust account in the member's own name.

(9) All cheques drawn on a trust account shall have the words "trust account" and the name of the member in whose name the trust account is kept imprinted thereon.

17. (1) Every member who is required to maintain a trust account shall maintain books, records and accounts in connection with the member's business to record,

(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 to any 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 Ontario 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 brokerage under the Bank Act that is required. It is highly recommended that a receipted copy of Ontario 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 brokerage that is considering on accepting/implementing electronic payments, that the brokerage 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 the brokerage'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 brokerage 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 brokerage 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 brokerage may also be reporting the trust bank account amount including the availability of the line of credit without the funds actually being injected into the bank on the Form 1.

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 brokerage 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 brokerage's corporate credit card not be used to remit or process the client's premium payments as this is in non-compliance with Ontario 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 brokerage or broker to the insurer on behalf of a client would not comply nor qualify as "trust funds" as it is not the brokerage 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 brokerage 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.

Brokerages 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 brokerage's own financial resources and not from the funds held in trust for members of the public or other insurers.

Best Practices:

Brokerages wishing to employ "Best Practices" in management of authorized claims 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 en route 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 brokerage need only disclose an "alphanumeric code or other identifier, in respect of each beneficiary" and the beneficiaries of a brokerage's trust accounts are the markets with whom business is conducted. This code/identifier should correspond with the trust records kept by the brokerage "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 brokerage as it is the commission due to the brokerage 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 brokerage 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 brokerage 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.

Brokerages that have both "agency bill" and "direct bill" accounts with the same insurer should 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 brokerage 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 brokerage 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 brokerage in a “technical” trust deficit when the brokerage may be actually in an “earned position”. When the brokerage is in an “earned position”, the brokerage 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 brokerage is in a “technical” trust deficit situation, and if the brokerage is able to satisfy RIBO that an adequate system for the accounting and collection of trust receivables is in place and operating, the brokerage 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 brokerage has an unearned premium balance of at least 60 days against earned premium may be applied if the policy is cancelled.

However, if the brokerage offers a system of in-house premium financing to the brokerage’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 brokerage 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 brokerage.

Late charges included in the trust premium receivable portion of the Form 1 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 brokerage'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 brokerage is the difference between the assets and the liabilities.

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

Brokerage 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 brokerage'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 brokerage'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 brokerage 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 brokerage to 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 of the 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.

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 brokerage.

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

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

The taxes can be paid/remitted from either the trust or general accounts of the brokerage. 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 brokerages 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 brokerages 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 brokerage 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 brokerage are based on the policy transactions processed by the brokerage, whether it is new business, renewals, endorsements or cancellations. These are the brokerage's own records of activity within the brokerage.

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 brokerage's books and records must incorporate "effective date or invoice date", whichever is greater, when recognizing trust assets, liability and income for the brokerage.

A brokerage'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 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 brokerage, the books and records must be kept current and in order at all times. It is important that a detailed verifying trail supporting any changes be prepared and retained. Also, if the brokerage 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, brokerages fully utilizing an insurance brokerage 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 brokerage 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 Ontario 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 Ontario 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 upon the 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 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 or target 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

Ontario 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 Commission, 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 Commission of Ontario (FSCO) to be an unfair and deceptive act.

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. FSCO 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 brokerage 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.

FSCO 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.

ON-LINE INFORMATION RESOURCES

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 Commission of Ontario (FSCO) – www.fsco.gov.on.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

PREMIUM FINANCING

With more and more clients financing their premiums, brokerages 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 brokerage itself or a separately established premium financing company owned by the brokerage or its brokers.

The impact of premium financing on the brokerage depends on which one of the financing methods are being utilized. Brokerages financing the premiums internally must transfer the amount being financed from the brokerage's general/operating accounts into the trust account to pay the insurer since the use of **any other trust funds** constitutes non-compliance with Ontario Regulation 991, Section 16. Simply put, you cannot use Peter's money to pay Paul.

Brokers and/or brokerages who establish a separate business entity for the purposes of premium 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 brokerage, for deposit into the brokerage's trust account. Using any other trust funds to pay premiums being financed constitutes non-compliance with Ontario Regulation 99, Section 16. Brokerages 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 brokerages 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 brokerage must not be made contingent upon the client agreeing to use the brokerage'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.

PROVINCIAL REGULATOR LISTING

When handling multi-provincial risks, including national programs regardless of where the associations head office is located, brokers must be licensed in each and every province when dealing with any member of the public.

The following are the provincial licensing contact information:

Province/ Territory	Agent/Broker Regulator	Provincial Regulator
Alberta	**Alberta Insurance Council** Suite 901, Toronto Dominion Tower 10088-102 Avenue Edmonton, Alberta T5J 2Z1 T: (780) 421-4148 F: (780) 425-5745 Suite 350, Life Plaza 734-7th Avenue S.W. Calgary, Alberta T2P 3P8 T: (403) 233-2929 F: (403) 233-2990 www.abcouncil.ab.ca	**Superintendent of Insurance** **Alberta Finance** 402 Terrace Building 9515 - 107 Street Edmonton, Alberta T5K 2C3 T: (780) 422-1592 F: (780) 420-0752 www.finance.gov.ab.ca
British Columbia	**Insurance Council of British Columbia** 300 - 1040 West Georgia Street P.O. Box 7 Vancouver, British Columbia V6E 4H1 T: (604) 688-0321 F: (604) 662-7767 www.insurancecouncilofbc.com	**Financial Institutions Commission** Suite 1200 – 13450 102nd Avenue Surrey, British Columbia V3T 5X3 T: (604) 953-5300 F: (604) 953-5301 www.fic.gov.bc.ca Email: ficom@ficombc.ca

Manitoba	**Insurance Council of Manitoba** 167 Lombard Avenue Suite 466 Winnipeg, Manitoba R3B 0T6 T: (204) 988-6800 F: (204) 988-6801 www.icm.mb.ca Email: contactus@icm.mb.ca	**Superintendent of Financial Institutions Regulation Branch** 1115 - 405 Broadway, Woodsworth Building Winnipeg, Manitoba R3C 3L6 T: (204) 945-2542 F: (204) 948-2268 www.gov.mb.ca/fs/cca Email: insurance@gov.mb.ca
New Brunswick	**Superintendent of Insurance** **Department of Justice and Consumer Affairs** **Insurance Branch** King Tower, 440 King Street, Suite 635, P.O. Box 6000 Fredericton, New Brunswick E3B 5H8 T: (506) 453-2512 F: (506) 453-7435 www.gnb.ca Email: insurance.branch@gnb.ca	**Superintendent of Insurance** **Department of Justice and Consumer Affairs** **Insurance Branch** King Tower, 440 King Street, Suite 635, P.O. Box 6000 Fredericton, New Brunswick E3B 5H8 T: (506) 453-2512 F: (506) 453-7435 www.gnb.ca Email: insurance.branch@gnb.ca
Newfoundland and Labrador	**Superintendent of Insurance** **Department of Government Services** **Financial Services Regulations Division** 2nd Floor, West Block, Confederation Building Prince Philip Parkway P.O. Box 8700 St. John's, Newfoundland A1B 4J6 T: (709) 729-2595 F: (709) 729-3205 www.gs.gov.nl.ca	**Superintendent of Insurance** **Department of Government Services and Lands** 2nd Floor, West Block, Confederation Building P.O. Box 8700 St. John's, Newfoundland A1B 4J6 T: (709) 729-4909 F: (709) 729-3205 www.gs.gov.nl.ca

Northwest Territories	**Superintendent of Insurance** **Government of Northwest Territories** **Department of Finance** **Treasury Division** 3rd Floor YK Centre 4922-48th Street, P.O. Box 1320 Yellowknife, Northwest Territories X1A 2L9 T: (867) 920-8056 F: (867) 873-0325 www.fin.gov.nt.ca	**Superintendent of Insurance** **Government of Northwest Territories** **Department of Finance** **Treasury Division** 3rd Floor YK Centre 4922-48th Street, P.O. Box 1320 Yellowknife, Northwest Territories X1A 2L9 T: (867) 920-3423 F: (867) 873-0325 www.fin.gov.nt.ca
Nova Scotia	**Superintendent of Insurance** **Department of Finance** **Financial Institutions Division** 1723 Hollis Street 4th Floor P.O. Box 2271 Halifax, Nova Scotia B3J 1V9 T: (902) 424-7751 or (902) 424- 5528 F: (902) 424-1298 www.gov.ns.ca/finance Email: fininst@gov.ns.ca	**Superintendent of Insurance** **Department of Finance** **Financial Institutions** 1723 Hollis Street 4th Floor P.O. Box 2271 Halifax, Nova Scotia B3J 1V9 T: (902) 424-6331 F: (902) 424-1298 www.gov.ns.ca/finance Email: fininst@gov.ns.ca

Nunavut	**Superintendent of Insurance** **Government of Northwest Territories, Department of Finance, Treasury Division** 3rd Floor YK Centre 4922-48th Street, P.O. Box 1320 Yellowknife, Northwest Territories X1A 2L9 T: (867) 920-3423 F: (867) 873-0325 www.gov.nu.ca	**Superintendent of Insurance** **Government of Northwest Territories, Department of Finance, Treasury Division** 3rd Floor YK Centre 4922-48th Street, P.O. Box 1320 Yellowknife, Northwest Territories X1A 2L9 T: (867) 920-3423 F: (867) 873-0325 www.gov.nu.ca
Prince Edward Island	**Superintendent of Insurance** **Office of the Attorney General** **Consumer, Corporate & Insurance** **Justice and Public Safety** 95 Rochford Street, 4th Floor, P.O. Box 2000 Charlottetown, Prince Edward Island C1A 7N8 T: (902) 368-4550 F: (902) 368-5283 www.gov.pe.ca	**Superintendent of Insurance** **Office of the Attorney General** **Consumer, Corporate & Insurance** **Justice and Public Safety** 105 Rochford Street, P.O. Box 2000 Charlottetown, Prince Edward Island C1A 7N8 T: (902) 368-4564 F: (902) 368-5283 www.gov.pe.ca

Quebec	**Autorite des marches financiers** Place de la Cité tour Cominar 2640, boulevard Laurier bureau 400 Québec, Québec G1V 5C1 T: (418) 525-0337 F: (418) 525-9512 800, square Victoria 22e étage C.P. 246, tour de la Bourse Montréal, Québec H4Z 1G3 T: (514) 395-0337 1-877-525-0337 F: (514) 873-3090 www.lautorite.qc.ca Email: information@lautorite.qc.ca	**L'Inspecteur general des institutions financieres** 800, place d'Youville 8e etage Quebec, Quebec G1R 4Y5 T: (418) 528-9140 F: (418) 528-0835 www.lautorite.qc.ca Email: information@lautorite.qc.ca
Saskatchewan	**Insurance Councils of Saskatchewan** 310 - 2631 - 28th Avenue Regina, Saskatchewan S4S 6X3 T: (306) 347-0862 F: (306) 347-0525 www.insurancecouncils.sk.ca	**Superintendent of Insurance Financial Institutions Division Saskatchewan Financial Services Commission** 1919 Saskatchewan Drive, Suite 601 Regina, Saskatchewan S4P 4H2 T: (306) 787-6700 F: (306) 787-9006 www.sfsc.gov.sk.ca Email: fid@gov.sk.ca

Yukon	**Superintendent of Insurance** **Consumer Services, C-5** **Department of Community Services** **Government of the Yukon Territory** 2130 Second Avenue 3rd Floor, Law Centre P.O. Box 2703 (C-5) Whitehorse, Yukon Territory Y1A 2C6 T: (867) 667-5111 F: (867) 667-3609 www.gov.yk.ca Email: consumer@gov.yk.ca	**Superintendent of Insurance** **Consumer Services, C-5** **Department of Community Services** **Government of the Yukon Territory** 2130 Second Avenue 3rd Floor, Law Centre P.O. Box 2703 (C-5) Whitehorse, Yukon Territory Y1A 2C6 T: (867) 667-5111 F: (867) 667-3609 www.gov.yk.ca Email: consumer@gov.yk.ca

"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 keep in 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. 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.
3. 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.
4. 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.
5. 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.
6. Continue to provide the best possible service to the client until the policy expires.
7. 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.
8. Send another registered letter one week prior to the renewal date confirming that your brokerage has not placed any insurance on their behalf.

SECONDARY BUSINESS

Key Regulatory Provision – ONTARIO 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

Ontario 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 that any 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.

Brokerage Firm

When a brokerage 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 brokerage must be granted an exemption from the 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

Brokerages setting up a separate business entity for the purposes of premium financing for 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 brokerage 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 brokerage 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 brokerage's clients.

The Code of Conduct requirements of candour, honesty and professional integrity is also extended to any premium financing operation in which a brokerage 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 brokerage must not be made contingent upon the client agreeing to use the brokerage'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 – ONTARIO 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 brokerage 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 brokerage office must also be clearly identified to avoid any confusion on the part of the consumer as to the independence of the brokerage operation from other businesses on the premises.

A brokerage wishing to share space is required to request an exemption to do so from the 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 brokerage to ensure there will be no risk of inducement, coercion or undue influence to control, direct or secure insurance business.
- Description of any relationship, shared ownership or other financial connection between the brokerage 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 brokerage office premises will be identified.
- Steps taken to ensure confidentiality of the brokerage clients' affairs (telephone, fax, incoming and outgoing correspondence).
- Details of security arrangement concerning client file information.

SPOT CHECK PROCESS

Key Regulatory Provision – ONTARIO 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 brokerage. The spot check is conducted by one of RIBO's Financial Investigators. Every effort is made to visit a brokerage within a 3-5 year cycle. Since a spot check is often the first contact that many 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 its reporting requirements.

Once a brokerage 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 a 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 brokerage'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 brokerage'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 brokerage, 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 the accessibility and availability of the information at the brokerage.

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 brokerage.

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 sources 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.
- 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 wilfully 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.

ONTARIO 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 INSURANCE CLIENT CONSENT REQUIREMENTS

Key Regulatory Provision – ONTARIO 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 Superintendent 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.*

(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.*

(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 Superintendent a return under oath or affirmation in the form and manner required by the Superintendent, 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.

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 Commission of Ontario (www.fsco.gov.on.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 or managing general agents (MGAs) 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 MGA, 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 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 Ontario Regulation 991, Section 10 and to have the client read and sign the "Unlicensed Insurance Client Consent and Acknowledgement of Risk" form.