

State of Delaware



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Department of Insurance

AGENTS BULLETIN NO. 11

SALE OF UNREGISTERED SECURITIES

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TO: ALL INSURERS AND LICENSEES

FROM: DONNA LEE H. WILLIAMS, COMMISSIONER

Many licensees of the Delaware Insurance Department are also licensed by the Delaware Securities Commissioner. Both the Delaware Insurance Commissioner and the Delaware Securities Commissioner desire to raise the level of awareness by insurance licensees of potential violations of Delaware's securities laws related to products that they may offer to sell. This bulletin is to inform insurance licensees that most non-insurance investment offerings are considered securities under both state and federal law. The Division of Securities has seen an increase in fraudulent unregistered securities offerings and wishes to warn agents about the sale of these investment opportunities which may result in violations of the Delaware Securities Act.

As a licensed insurance professional, you may have received solicitations that have asked you to participate in the offer and sale of various investments and/or business opportunities to your clients. The promoters of these investment interests often represent that the investment products are not securities and are not otherwise regulated by state or federal law. Please be advised that these disclaimers do not offer protection to those who violate the Delaware Securities Act. These securities products often have attractive terms, are often described as "safe" or "guaranteed" investment products, purport to offer unreasonably high rates of return and often have lucrative sales incentives or commissions. Prime bank notes, brokered or callable certificates of deposit, offshore preferred stock, offshore certificates of deposit and short-term promissory notes are some of the recent examples of the type of broad-based solicitations to insurance professionals to induce them to engage in the offer and sale of these non-insurance investment products.

With the exception of insurance products sold as variable annuities, the Commissioner of Securities regulates the offer and sale of investments by and to Delaware residents. Generally, persons who offer or sell securities in Delaware must be registered with the Commissioner of Securities. Additionally, any securities sold in Delaware must be registered with the Delaware Securities Commissioner unless they are deemed exempt for the purposes of the Delaware Securities Act. Under Delaware law, sales of unregistered securities or sales of securities by

unregistered persons, as well as other violations of the anti-fraud provisions of the Delaware Securities Act, carry possible civil and criminal penalties. The civil penalties may be as high as \$10,000 per violation, and a "willful" violation of the Act may subject a violator to a felony conviction with a maximum fine of \$50,000 and/or five years incarceration.

Other essentially "passive" investment products have also been promoted on an ongoing basis over the past few years, including pay telephone investment opportunities, ATM investment opportunities and equipment leasing income opportunities. You should be aware that such passive investment products, where your client does not participate actively to realize investment benefits, are most often deemed securities and are subject to a high degree of securities regulation. Any sale or sales of these products are also subject to the registration provisions of the Delaware Securities Act.

In addition, it is generally true that persons who engage in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities for a fee, are required to be registered with the Commissioner of Securities as an investment adviser. Again, providing illegal or fraudulent investment advice, or providing investment advice for a fee without proper state registration, may result in civil penalties, fines, or criminal penalties, as well as the imposition of restitution for any losses suffered by investors.

If you are approached to market one of the above-mentioned types of investments, or to give investment advice for a fee and you are not registered as an investment advisor, you are encouraged to contact the Delaware Division of Securities at 302-577-8924 to determine: (1) whether the investment is required to be registered as a security; (2) whether you are required to be registered to offer or sell these investments; and (3) whether you are required to register before giving investment advice.

Inquiries by insurance professionals are encouraged and may help the Division of Securities in stopping potential securities fraud. You can contact the Division of Securities at (302) 577-8924 in Wilmington.

Donna Lee H. Williams, Commissioner