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BULLETIN

TO: Persons Licensed/Registered in Tennessee to Sell Insurance and/or Securities

FROM: Julie Mix McPeak, Commissioner Julie Mix McPeak

RE: Licensing and/or Registration Requirements and Permitted Activities

DATE: May 22, 2013

I. Introduction

Since Tennessee adopted Tenn. Comp. R. & Reg. § 0780-1-86 regarding suitability in annuity transactions, questions have arisen as to where the line is drawn between providing insurance advice and investment/securities advice. The answers to these questions have become increasingly important because suitability laws at the state and federal level have evolved to the point where any recommendation to a consumer of either an insurance product or an investment/securities product requires an extensive financial analysis of the consumer's financial affairs and a discussion of broad financial trends. How information received from the consumer is applied will be different depending on whether it is an insurance transaction or an investment/securities transaction because of the differing requirements of insurance and securities laws.

References to insurance in this Bulletin include both life insurance and annuities.

Under Tennessee law, variable annuities remain an insurance product while under federal law they are securities. Thus, for a sale of variable annuities, dual licensing/registration is required and not covered by this Bulletin except for Section VI.

For purposes of this Bulletin, "Insurance-Only Person" means an individual who holds a Tennessee insurance producer license that authorizes the sale of annuities or life insurance products and who is not registered in Tennessee as an investment adviser, broker-dealer agent or investment adviser representative under Tennessee securities law.

For purposes of this Bulletin, "Securities-Only Person" means an individual who is registered as an investment adviser, broker-dealer agent or investment adviser representative under Tennessee securities law, and who is not Tennessee-licensed as an insurance producer under Tennessee insurance law.

II. Purpose

This Bulletin is based on current Tennessee insurance and securities laws and designed primarily to provide guidance to insurance producers, investment advisers, investment adviser representatives and broker-dealer agents about:

- **The permissible and prohibited activities of "Insurance-Only Persons"** under insurance and securities laws, rules and regulations with respect to a recommendation to purchase an annuity contract or life insurance policy (hereafter referred to as annuity or life insurance) made to a consumer who may choose to liquidate a security in connection with such purchase. The guidance in this Bulletin is being provided so that Insurance-Only Persons may have a better understanding of the types of activities and conduct that are within the scope of permissible activities and the types of activities and conduct that are beyond the scope of permissible activities.

- **The permissible and prohibited activities of "Securities-Only Persons"** under insurance and securities laws, rules and regulations with respect to a recommendation to purchase a security made to a consumer who may choose to surrender part or all of the proceeds from an insurance product in connection with such purchase. The guidance in this Bulletin is being provided so a Securities-Only Person may have a better understanding of the types of activities and conduct that are within the scope of permissible activities and the types of activities and conduct that are beyond the scope of permissible activities.

III. Permitted Activities for an Insurance-Only Person.

The following is not intended to be a complete listing but rather a description of generally-recognized permissible activities of Insurance-Only Persons.

1. The Insurance-Only Person may discuss with the consumer the consumer's risk tolerance, financial situation, and needs. This may include a discussion of the consumer's:

    - financial experience;

    - financial objectives, including whether the consumer needs to earn a guaranteed rate of interest, needs guaranteed minimum increases in guaranteed values, or wishes to have available a minimum lifetime income stream;

    - risk tolerance, including need for principal protection or protection from market risk;

- need to balance and diversify risk, including need for product or issuer diversification that may support an insurance position within a consumer's financial plan;

- tax status, including whether the assets used to purchase the annuity or life insurance are or need to be tax deferred;

- existing assets, including annuity, investment, and life insurance holdings;

- financial resources generally available for the funding of the annuity or life insurance;

- liquidity needs and liquid net worth, including whether there are funds other than those being used to purchase the annuity or life insurance that will be available during the surrender period of the annuity or life insurance for emergency or urgent needs, and where those funds are located;

- financial time horizon; and

- intended use of the annuity or life policy.

2. An Insurance-Only Person may discuss with the consumer the stock market in general terms including market risks and recent or historic economic activities that are generally known to the public and regularly discussed in public media.

3. An Insurance-Only Person's general discussion outlined in (1) and (2) should only be to the extent that the discussion is a necessary component of the Insurance-Only Person's insurance services and to the extent that the information is used to give the Insurance-Only Person reasonable grounds for believing that the recommendation to purchase, borrow against, exchange, or replace an annuity or life insurance is suitable for the consumer.

4. In his or her general discussion with the consumer, the Insurance-Only Person may discuss and complete suitability, replacement, and exchange or transfer forms as required by Tennessee insurance regulations.

5. In his or her general discussion about the expectations of the funds being considered to purchase the annuity or life insurance, the Insurance-Only Person may discuss: that the funds need protection from market risk; that the tax status of the funds and that tax deferral needs to be utilized or maintained; that the funds may be needed to provide a lifetime income stream; that the funds need to earn a guaranteed interest rate; or that there are other funds available during the surrender period of the annuity or life

insurance for emergency or urgent needs and where those funds are located.

6. An Insurance-Only Person may have general discussions about balancing risk, diversification, etc., that support an insurance position within a consumer's financial plan.

7. An Insurance-Only Person may provide advice as part of a financial plan. When doing so, an Insurance-Only Person should clearly identify himself or herself as an individual who holds a Tennessee insurance producer license and explain that such license authorizes the person to discuss how annuities or life insurance products may fit into the consumer's financial plan and that he or she is authorized to sell annuity or life insurance products and not sell, recommend or provide advice about investments/securities.

IV. Prohibited Activities for an Insurance-Only Person.

The following is not intended to be a complete listing, but rather a description of generally-recognized activities that are specifically prohibited for an Insurance-Only Person:

1. Discussing risks specific to the consumer's individual securities portfolio.

2. Providing advice regarding the consumer's specific investments/securities or securities investment performance, or comparing the consumer's specific investments/securities or securities investment performance with other financial products, including annuity contracts or life insurance policies.

3. Recommending the liquidation of specific investments/securities, or identifying specific investments/securities that could be used to fund an annuity or life insurance product.

4. Recommending specific allocations, in dollars or percentages, between insurance and investment/securities products.

5. Offering research, analysis or recommendations to a consumer regarding specific investments/securities.

6. Completing securities forms, except for: 1) providing general information to the consumer related to the consumer's existing or new annuity or life insurance product; 2) assisting with forms that are required by the insurance company to complete an insurance transaction; and 3) assisting with forms that are required by Tennessee insurance regulations.

7. Using the following term or terms: investment adviser, broker-dealer agent, or investment adviser representative under Tennessee securities laws; and similar titles that tend to indicate to consumers that the individual is registered to provide investment advice, that the individual is registered to sell securities, or otherwise holding the individual out as providing investment advice to others, when the individual is not so registered .

V. Permitted Insurance-Related Activities for a Securities-Only Person.

The following is not intended to be a complete listing, but rather a description of generally-recognized permissible insurance-related activities of Securities-Only Persons:

1. The Securities-Only Person may generally discuss the consumer's:

   - risk-tolerance;
   - financial situation and needs;
   - financial experience;
   - financial objectives;
   - financial time horizon;
   - existing assets, including investment and insurance holdings;
   - liquidity needs;
   - liquid net worth; and
   - tax status.

2. The Securities-Only Person may discuss insurance with the consumer in general terms in the context of managing risks and recent or historical insurance activities that are generally known to the public and regularly discussed in public media.

3. A Securities-Only Person's general discussion outlined in (1) and (2) should only be to the extent that the discussion is a necessary component of the Securities-Only Person's securities or investment advisory services and to the extent that the information is used to give the Securities-Only Person reasonable grounds for believing that the recommendation to purchase, sell, hold or exchange a security or investment is suitable for the investor.

4. A Securities-Only Person may discuss diversifying assets and financial objectives using insurance that is solely incidental to the Securities-Only Person's securities

or investment advisory services and the recommendation to purchase, sell, hold, exchange, or replace a security or investment product when the Securities-Only Person provides advice as part of a financial plan.

5. In his or her general discussion about the expectations of the funds being considered to purchase securities or investments, a Securities-Only person may discuss: that the funds could be used for wealth accumulation strategies; the current tax status of the funds and change in tax status; general discussion of "risk versus reward;" or that there are other funds available during the time period used to meet the financial objective of the securities or investments for emergency or urgent needs and where those funds are located.

6. A Securities-Only Person may have a general discussion about balancing risk, diversification, etc., that support an insurance position within a consumer's financial plan.

7. A Securities-Only Person may provide advice as part of a financial plan. When doing so, a Securities-Only Person should clearly identify himself or herself as an individual who is registered as an investment adviser, broker-dealer agent or investment adviser representative under Tennessee securities law, and who does not hold an insurance producer license.

VI. Prohibited Activities for a Securities-Only Person.

The following is not intended to be a complete listing but rather a description of generally-recognized activities that are specifically prohibited for Securities-Only Persons:

1. Discussing the cost versus benefits of insurance, in specific terms relating to the consumer's individual or group insurance policies.

2. Providing advice regarding the consumer's specific insurance policy performance, or comparing the consumer's specific insurance policy performance with securities.

3. Recommending the liquidation of an insurance policy, the lapsing of an insurance policy, the taking of policy loans, withdrawals, or surrenders, or otherwise providing any insurance advice or recommendations related to the purchase of a security or investment.

4. Recommending specific allocation, in dollars or percentages, between investments/securities and insurance products.

5. Offering research, analysis or recommendations to a prospective consumer regarding specific insurance products or policies.

6. Completing insurance forms, except for: 1) providing general information to the consumer related to the consumer's existing or new investment/securities product;

2) assisting with forms that are required by the insurance company to complete a securities transaction; and 3) assisting with forms that are required by Tennessee securities regulations.

7. Using the terms insurance professional, agent, producer or similar titles that tend to indicate to consumers that an individual is licensed to provide insurance advice, or otherwise holding the individual out as providing insurance advice to others when the individual is not so licensed.

VII. Certain Unlicensed Persons and Entities Who are Permitted to Give Limited Insurance-Only Advice.

1. In certain instances, persons who are not insurance licensed are permitted to provide insurance-only advice. This includes individuals:

   a. Who do not receive compensation, directly or indirectly, for the insurance products purchased including the payment of commissions or other remunerations based on transactions in insurance; and

   b. Whose insurance-only advice is incidental to the services they provide.

2. These individuals may include, but are not limited to the following:

   a. An employee of a business whose job includes the explanation of insurance plans or options available during or following employment;

   b. A lawyer, accountant, engineer, or teacher whose providing of insurance advice is solely incidental to the practice of the person's profession;

   c. A publisher, employee, or columnist of a newspaper, news magazine, or business or financial publication, including a web-based publication, or an owner, operator, producer, or employee of a cable, radio, or television network, station, or production facility, if the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific insurance situation of a particular customer or audience member; and

   d. A financial institution that is not an insurance institution, including but not limited to a bank or savings institution, or its employees whose providing of insurance advice is solely incidental to the conduct of financial business.

VIII. Insurance Producers Who Are Registered as Investment Advisers or Investment Adviser Representatives.

Insurance licensed producers who are also registered as investment advisers or investment adviser representatives as defined in Tennessee Code Annotated § 48-1-102(10) and (11) respectively may be considered providing investment advice and subjecting themselves to securities rules which require them to adhere to a fiduciary standard and additional disclosure rules. Insurance producers that obtain an investment adviser registration to be able to provide advice to clients concerning the sale of a security, such as a mutual fund, to purchase an insurance product, could be subjecting themselves to the jurisdiction of state and federal securities regulators for violation of securities rules pertaining to fiduciary requirements. Persons who solely provide insurance advice as discussed in Section I of this Bulletin, and who disclose that fact to the consumer, should not be concerned with investment adviser or investment adviser representative requirements.

IX. Penalties for Engaging in Prohibited Activities.

An insurance-only person may have their insurance producer license placed on probation, suspended or revoked pursuant to Tennessee Code Annotated § 56-6-112 for engaging in any prohibited activities for an insurance-only person. Further, the insurance-only person may also be subject to civil penalties up to $ 10,000.00 per violation for violations of Tennessee Code Annotated § 48-1-109 or $ 5,000.00 per violation for violations of Tennessee Code Annotated § 48-1-121.

Insurance
T.C.A § 56-6-112: probation, suspension, revocation

Securities
T.C.A. § 48-1-109: civil penalties $10,000
T.C.A. § 48-1-121: civil penalties $5,000

A securities-only person may have their broker-dealer agent, investment adviser or investment adviser representative registrations suspended or revoked pursuant to Tennessee Code Annotated § 48-1-112 for engaging in any prohibited activities for a securities-only person. Further a securities-only person may also be subject to civil penalties up to $1,000 for each violation pursuant to Tennessee Code Annotated § 56-6-112.

Insurance
T.C.A. § 56-5-112: civil penalties $1,000

Securities
T.C.A. § 48-1-112: suspension, revocation

Any questions about the intent of this Bulletin should be directed to the Insurance Division, 7th Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee, 37243, and/or telephone number (615) 741-2176.

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