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VERMONT DEPARTMENT OF FINANCIAL REGULATION

JOINT BULLETIN OF THE INSURANCE & SECURITIES DIVISIONS

INSURANCE BULLETIN 198

SECURITIES BULLETIN S-2018-01

Joint Guidance on Providing Advice for Securities and Insurance Products

I. Introduction

The Department of Financial Regulation (the “Department”) believes it is necessary to provide additional guidance on the line between providing insurance advice and securities advice due to:

- an increase in investigations and enforcement actions relating to unregistered investment advice; and
- the continuing evolution of state and federal suitability laws that now require an extensive financial analysis of a consumer’s financial affairs and a discussion of broad financial trends prior to the making of a recommendation on an insurance product or an investment/securities product.

In 2011, the Department first issued general guidance on this subject (Insurance Bulletin 161 & Securities Bulletin 1), but the circumstances mentioned above now necessitate the more detailed guidance found in this Bulletin.

For purposes of this Bulletin, “**Insurance-Only Person**” means an individual who holds an Vermont insurance license that authorizes the sale of annuities or life insurance products and who is not properly licensed to provide investment advice or sell securities products to Vermont residence.



For purposes of this Bulletin, “**Securities-Only Person**” means an individual who is licensed as an investment adviser, securities agent or investment adviser representative under Vermont securities law, and who is not Vermont-licensed as an insurance producer under Vermont insurance law.

II. Purpose

This Bulletin is based on current Vermont insurance and securities laws and designed primarily to provide guidance to insurance producers, investment adviser representatives and securities agents about:

- **The permissible and prohibited activities of “Insurance-Only Persons”** under insurance and securities laws 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. This guidance is 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 and regulations with respect to a recommendation to purchase a security made to a consumer who may choose to surrender part of or all the proceeds from an insurance product in connection with such purchase. This guidance is 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 description 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 anticipated 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 the need for principal protection or protection from market risk;

- need to balance and diversify risk, including the 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 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 relevant to the insurance services and to the extent the information is used to give the Insurance-Only Person reasonable grounds for believing the recommendation to purchase, borrow against, exchange, or replace an annuity or life insurance is suitable for the consumer.
 4. An Insurance-Only Person may discuss and complete suitability, replacement, and exchange or transfer forms as required by Vermont regulations.
 5. An 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 Vermont 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 to sell, recommend, or provide advice about investments or securities.

IV. Prohibited activities for an Insurance-Only Person

The following is not intended to be a complete description 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 securities holdings, investment performance or comparing the consumer's specific securities holdings or investment performance with other financial products, including annuity contracts or life insurance policies.
3. Recommending the liquidation of specific securities, or identifying specific securities that could be used to fund an annuity or life insurance product.
4. Recommending specific allocations, in dollars or percentages, between insurance and securities products.
5. Offering research, analysis or recommendations to a consumer regarding specific 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 Vermont insurance regulations.
7. Implying, explicitly or implicitly, that one is registered to sell securities or provide 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 description but rather a description of generally-recognized permissible insurance-related activities of Securities-Only Persons:

1. The Securities-Only Person may generally discuss information that is required by FINRA Rule 2330, which includes but is not limited to the following:
 - 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 historic 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 relevant component of the Securities-Only Person's securities 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 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 services and the recommendation to purchase, sell, hold, exchange, or replace a security 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 licensed as an investment adviser, securities agent or investment adviser representative under Vermont securities law, and who does not hold an insurance license.

VI. Prohibited Activities for a Securities-Only Person

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

1. Discussing the benefits or negatives of insurance, its cost versus benefits, 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.
4. Recommending specific allocation, in dollars or percentages, between 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 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 Vermont securities regulations.
7. Using the terms insurance professional, agent, producer or similar titles that tend to indicate to customers 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 the following limited circumstances, unlicensed persons are permitted to provide insurance advice:
 - When the individual does 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
 - When the individual's insurance advice is incidental to the services they provide.
2. These individuals may include, but are not limited to the following:

- An employee of a business whose job includes the explanation of insurance plans or options available during or following employment;
- A lawyer, accountant, engineer, or teacher whose insurance advice is solely incidental to the practice of the person's profession;
- 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 that 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
- A financial institution that does not hold a Vermont insurance license, including but not limited to a bank or savings institution, or its employees whose insurance advice is solely incidental to the conduct of financial business.

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

Individuals licensed/registered as both an insurance producer and an investment adviser or investment adviser representative may provide investment advice that requires adherence to a fiduciary standard and additional disclosure rules. Insurance producers that obtain investment advisers licenses to provide advice 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 III of this Bulletin, and who disclose that fact to the consumer, are not subject to the investment adviser or investment adviser representative requirements.

Questions regarding this Bulletin should be directed to:

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Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation.