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BULLETIN

TO: All Tennessee Licensed Insurance Producers

FR: Paula A. Flowers, Commissioner Paula A. Flowers
Department of Commerce and Insurance

RE: The Sale of Securities by Persons Not Properly Registered to Do So

DT: August 14, 2006

It has come to the attention of this Department that the number of insurance producers selling unregistered securities has increased recently. This Bulletin seeks to provide guidance to insurance producers as to the possible consequences of selling unregistered securities.

Tenn. Code Ann. § 48-2-104 states that it is unlawful for any person to sell any security in this state unless it is registered, the security or transaction is exempted, or the security is a covered security, as that term is defined. Furthermore, Tenn. Code Ann. § 48-2-109(a) makes it unlawful for any person to transact business from or in this state as a broker-dealer or securities agent unless they are registered as such.

Licensed insurance producers recently have been recruited to market and sell unregistered securities such as investments in corporate promissory notes, pay phone sale and lease-back plans, so-called foreign bank investments and viatical/life settlements. These unregistered securities are sold in violation of state and federal securities laws. Worse yet, the promoters of these investments are often engaged in "Ponzi" schemes and are committing fraud that will harm the investors. (In a Ponzi scheme, new investors' money is used to repay, or pay interest or "profits" to earlier investors. The enterprise is not intended to generate legitimate profits and eventually collapses, leaving the promoters with most of the money and most investors empty-handed.) The firms that market these investments target insurance producers to do the selling by offering high commissions on sales and "rollovers", and false guarantees backed by offshore "insurers". The investments are promoted to producers through ads in insurance trade publications and by word-of-mouth. The producers usually are not licensed to sell securities and do not understand the risks involved. This Department is also concerned that many producers

are marketing these risky, frequently fraudulent investments to seniors, religious groups and ethnic communities.

Tenn. Code Ann. § 56-6-112(a)(2) authorizes the Department to discipline insurance producers that sell unregistered securities. Be advised that the Department takes such violations very seriously, and believes that strong penalties are appropriate in the majority of such cases. Producers should also be aware of the civil liability involved in the offer and sale of securities that are not registered, or are sold by a person who is not properly registered. Tenn. Code Ann. § 48-2-122 provides that a person who sells unregistered securities is personally liable for the amount of the security sold. Furthermore, willful violations of the Tennessee Securities Act are punishable criminally as a Class D felony. Please note that in addition to violating state regulatory and criminal laws, the sale of unregistered securities may also result in the violation of federal securities laws that are punishable by regulatory action, fines and/ or imprisonment.

"Guarantees", high returns, complicated investment strategies, glossy brochures and other hype are warning signs not to be ignored. Producers should be cautious and responsible. The Department encourages you to contact either the Securities Division or the Insurance Division should you have any questions about the requirements surrounding the proper sale of any investment product which you are thinking of selling.