

# FINANCIAL DISCLOSURE SYNOPSES 1995-2016

## Reporting Legal and Equitable Ownership

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### Life Insurance Policies—Commission Op. 99-14:

#### I. Is a life insurance policy a specifically listed instrument of ownership?

The Commission was asked if life insurance policies with a face value of more than \$5,000 are to be reported as "instruments of ownership" on the financial disclosure report. The policy referred to was one in which an individual pays premiums and payment of the face value amount will be made to beneficiaries upon the demise of the individual. No income was being received from the policy.

Based on the following law and facts, such policies are not to be reported as instruments of ownership.

The statute defines "instrument of ownership" as: "includes, but is not limited to, common or preferred stock, rights, warrants, articles of partnership, proprietary interest, deeds and debt instruments, if convertible to equity instruments." 29 Del. C. § 5812(c). Did the General Assembly intend to include life insurance policies in: (A) the specifically listed items; or (B) its admonition that the definition was "not limited to" those specific instruments?

Statutory interpretation must be consistent with the General Assembly's manifest intent. 1 Del. C. § 301. To determine legislative intent, Courts look first to the actual language and if there is any ambiguity, reference may be made to the usual secondary sources of statutory construction. *Chrysler Corp. v. State*, 457 A.2d 345, 351 (Del. 1983).

The only specifically listed instruments which might include insurance policies are "warrants" or "rights." In decisions on statutory construction other statutes have relevance as precedent if both statutes are such closely related subjects that consideration of one naturally brings to mind the other. *Sutherland Stat. Constr. § 45-15*, Vol 2A (5th ed. 1992). Here, the statutes that come to mind are Delaware statutes on: (1) life insurance policies and (2) investments.

#### A. Is a Life Insurance Policy a "Warrant"?

First, in Delaware, life insurance policies are contracts. 18 Del. C. Chapter 29. Life insurance contract "warrants" were recognized at common law in Delaware. *Baltimore Life Ins. Co. v. Floyd*, 91 A. 653 (Del. Super. 1914), *aff'd* 94 A. 515 (Del. 1915). However, when the General Assembly codified the common law, it clearly stated that the information on which life insurance policies were based was not to be a warrant. 18 Del. C. § 2711.

Second, in investment and security statutes, the General Assembly recognized life insurance policies as an investment separate and distinct from warrants. See, 12 Del. C. § 3302(b) (fiduciaries may acquire "every kind of investment ...including but not by way of

limitation...stocks, preferred or common, shares or interests in .... options, futures, warrants. limited partnership interest and life insurance"); See, 6 Del. C. § 7303(a)(13) (in defining "securities" the General Assembly refers to security warrants and rights, and specifically exempts insurance policies of the type discussed here).

Third, under the rules of statutory construction, words are construed to include objects similar to those specifically enumerated. *Triple C Railcar Service, Inc. v. City of Wilmington*, Del. Super., C.A. No. 90C-FE-101, Gebelein, J. (September 17, 1992). The enumerated terms in the financial disclosure definition deal with various types of securities that carry conversion privileges. A securities "warrant" is the right to subscribe to a security and carries conversion rights. *Securities Regulation: Cases and Material*, (6th ed., 1987). A security "warrant" is not the same as a contract "warrant" which means to engage or promise that a certain fact or state of facts, in relation to the subject-matter is, or shall be, as it is represented to be. *Black's Law Dictionary*, p.1421. Moreover, Delaware security laws specifically provide that "security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period. 6 Del. C. §7303(a)(13).

Thus, life insurance policies are not warrants under Delaware law and even if they were, they would be contract warrants, not securities warrants. As the definition embraces securities with conversion rights, not contract warrants, life insurance policies would not be reported as a warrant under the financial disclosure statute.

#### **B. Is a life insurance policy a "right"?**

Delaware has recognized ownership rights in life insurance policies and permits transfer of such rights by contract in other situations. See, e.g., 13 Del. C. § 323 (permits assignment of "ownership rights" of life insurance policies in pre-nuptial agreements). However, again, under the rules of statutory construction, words are construed to embrace objects similar in nature to those enumerated by the specific words. *Triple C. supra*. As noted, the enumerated terms in the financial disclosure definition deal with types of securities with conversion privileges, not contracts.

Securities "rights" are direct offerings made to existing shareholders allocated in proportion to the size of existing holdings of the issuer's securities. Like security warrants, security rights carry conversion privileges. *Securities Regulations, supra* at 29 and 396. Thus, the term embraced by the statute would be a security "right," not a contract "right." Therefore, life insurance policies would not be reported as a "right" under the financial disclosure law.

#### **C. As the statute is not limited to the specific terms, did the General Assembly intend to include insurance policies by the phrase "not limited to"?**

Aside from the fact that the terms listed in the definition embrace securities, not contracts, further evidence that the General Assembly did not intend to include insurance policies in the enumerated instruments or by using the phrase "not limited to" is found in the legislative history of the financial disclosure statute. Initially, the proposed legislation required public officials to file a statement of financial interests, and included the requirement to report "the name of each business, insurance policy, or trust in which he or a member of his household has a financial interest...." *H.B. 532*, June 27, 1973. However, when the General Assembly adopted the legislation, it did not include the requirement to report insurance policies. *S.B. 124* (creating the subchapter on financial disclosure, which became law on 7/23/74). Thus, the

General Assembly specifically considered, but subsequently rejected the requirement to report any type of insurance policy, which would include life insurance policies.

## **II. Conclusion**

Life insurance policies are not reported as an instrument of ownership because: (1) they are not "warrants" under Delaware life insurance laws; (2) in investment and securities laws, the General Assembly clearly and precisely deals with life insurance policies as they relate to investment and securities instruments and could have done so in the financial disclosure statute; (3) the enumerated words embrace objects related to securities, not contracts; and (4) legislative history shows that the General Assembly specifically considered, but chose to reject, the requirement to disclose insurance policies.

### **Certificates of Deposit (portions of this opinion have been deleted to remove information that is no longer in accordance with the law—Commission Op. 00-31:**

Based on the following law and facts, the Commission held that public officers do not have to disclose on their financial disclosure report Certificates of Deposit (CDs).

The financial disclosure law does not specifically mention if CDs are to be reported. Thus, the issue is whether CDs are encompassed by: (1) "Instruments of ownership," which are reported; or (2) "time or demand deposits," which are not reported.

"Time or demand deposits" include "money market funds." 29 Del. C. § 5804(g). "Money market instruments" are "various sorts of debt securities rather than equities," and "include, *inter alia*, negotiable certificates of deposit, Eurodollar certificates of deposit, commercial paper, banker's acceptances, Treasury bills, and discount notes of certain federal agencies." *Couldock & Bohan Inc., v. Societe General Securities Corp.*, 93 F. Supp. 2d 220, 223, fn 3 (2000) (*citing Dictionary of Finance and Investment Terms*, p. 339-41 (Downes & Goodman, eds., 4th ed. 1995)); *See also, Securities Training Corporation Study Manual*, pp. 10-12 thru 10-14 (1994).

As CDs are within the category of "money market funds," under the "time and demand deposit" definition, they need not be reported.

### **Reporting Day Trading Activity—Commission Op. 00-35:**

A candidate for State office asked how to properly report her spouse's internet account with Schwab when he was a day-trader; the stocks in the account changed daily; and the candidate was not involved in the trading.

Public officers are to report the name, instrument and nature of ownership of "instruments of ownership" which have a "fair market value" in excess of \$5,000, including those which are "constructively controlled." 29 Del. C. § 5813(a)(2). "Constructively controlled" includes "any financial interest of the spouse." 29 Del. C. § 5812(b)(3). "Instrument of ownership" includes "common or preferred stocks." 29 Del. C. § 5812(c). "Fair Market Value" means "if a security, the quoted price as of January 1 of the year in which the report is filed." 29 Del. C. § 5812(e).

A literal reading of the statute would appear to require a disclosure of each separate security in the account if the value of that particular security was more than \$5,000 as of January 1, 2000. However, the statute was enacted in 1984. Therefore, the General Assembly, when it directed that common or preferred stocks be disclosed, could not have contemplated how a public officer was to report rapid and constant changes in portfolios managed by day-traders on the internet.

Delaware Courts have held that where the literal reading of the statute would lead to an absurd or undesirable result, then the words of the statute should be modified to agree with the legislative intent. *Commission Op. No. 96-08 and 96-14 (citing Law v. Developmental Child Care, Inc., 523 A.2d 557, 560 (Del. Super. 1987))*; *Helfand v. Gambee, 136 A.2d 558, 561 (Del. Ch. 1957)*; and *2A Sutherland Stat. Constr. § 46.07 (5th ed. 1992)*.

The legislative intent, reflected in the General Assembly's findings, is that the purpose of the Code is to insure that officials refrain from acting in their official capacity on any matter wherein they have a direct or indirect personal interest that might reasonably be expected to impair objectivity or independent judgment. 29 Del. C. § 5811(2).

Following the literal meaning could lead to the undesirable result that no investment would be disclosed. For example, if each security in the account were less than \$5,000, none would be reported, even though the entire portfolio is worth more than \$5,000. Moreover, as the candidate's spouse was constantly trading his securities, she would not know on any given day what the individual securities were worth. A less literal reading of the statute would recognize that the "matter" in which she will always know that she has an indirect financial interest is the "Schwab" account. It would be valued at more than \$5,000 on any given day and would, therefore, be reported. Thus, it should be disclosed in Section 1 under the heading "Constructively Controlled," by the "name, instrument, and nature of ownership," e.g., spouse's holdings; Schwab Internet Account, Various Securities, Traded Daily.