

# DEPARTMENT OF INSURANCE

## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 1303(a) and 29 Delaware Code, Chapter 101  
(18 Del.C. §§311 and 1303(a) and 29 Del.C. Ch. 101)  
18 DE Admin. Code 403

### PROPOSED

### PUBLIC NOTICE

#### 403 Sale and Purchase of Options [Formerly Regulation 28]

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 403 relating to Sale and Purchase Options [Formerly Regulation 28]. The docket number for this proposed regulation is 2413.

The proposed amended regulation withdraws the provisions for Sale and Purchase Options due to the promulgation of new Regulation 404 Derivative Instruments, which sets standards for the prudent use of derivative instruments by domestic insurers. The Delaware Code authority for this proposed regulation is 18 Del.C. §§311 and 1303(a) and 29 Del.C. Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at

<http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amended regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, October 31, 2014. Any such requests should be directed to:

Regulatory Specialist Rhonda West  
Delaware Department of Insurance  
841 Silver Lake Boulevard  
Dover, DE 19904  
Phone: (302) 674-7379  
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This Regulation shall become withdrawn effective December 11, 2014.

#### ~~403 Sale and Purchase of Options~~

#### ~~1.0 Rules and Regulations~~

- ~~1.1 18 Del.C. §314, authorizes the Insurance Commissioner to "...make reasonable rules and regulations necessary for or as an aid to the administration or effectuation of any provision of this Title." 18 Del.C. §1303(a), Ch. 13 permits an insurer to purchase options subject to certain limitations. It is the purpose of this Regulation to provide rules for the sale and purchase of options by insurers.~~

#### ~~2.0 Definitions~~

~~"Call Option" means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase the number of shares of the underlying stock covered by the option contract.~~

~~"Closing Purchase Transaction" means the purchase of an exchange traded call options, the effect of which is to reduce or eliminate the obligations of a call option writer with respect to an option contract or contracts.~~

~~"Escrow Receipt" means an escrow receipt used with respect to escrowed stock held on deposit by a bank or other custodian approved by a registered national securities exchange.~~

~~"Escrowed Stock" means stock owned by an insurance company with respect to which an escrow receipt has been issued.~~

**"Exchange"** means a national securities exchange registered under the Securities Exchange Act of 1934, as amended.

**"Exchange-traded"** means traded on the floor of an exchange.

**"Exercise Price"** means the price per unit at which the holder of an option may purchase the underlying stock upon exercise.

**"Stock"** means stock owned by a domestic insurance company which was acquired subject to the provisions of 48 Del.C., §§1310, 1311.

**"Underlying Stock"** means the stock subject to being purchased upon the exercise of a call option.

### **3.0 Sale of Exchange-traded Call Options**

3.1 An insurer may sell exchange-traded call options only through an exchange and only with respect to stock which it owns. Insurers may not sell any other options. Any insurer selling an option:

3.1.1 Shall enter into an escrow agreement which provides that its escrowed stock is kept segregated by the bank or other custodian from other securities owned by the company, and from securities owned by others, which are deposited with the same bank or other custodian approved by a registered national securities exchange; and

3.1.2 Must obtain and retain in its possession a copy of an escrow receipt identifying with particularity the escrowed stock.

### **4.0 Purchase of Exchange-traded Call Options**

4.1 An insurer may purchase an exchange-traded call option only through an exchange and only for the purpose of a closing purchase transaction. An insurer may purchase a call on the same security upon which an option was written by the insurer. Insurers may not purchase any other options.

### **5.0 Accounting Procedures**

5.1 The price received for selling a call option shall not be included in income at the time of receipt, but shall be carried in a deferred account until:

5.1.1 The call option expires through the passage of time. The price for the option shall be treated as investment income.

5.1.2 The insurer sells the underlying stock pursuant to an exercise of the call option. The price received for the option shall be treated as increasing the amount realized upon the sale of the stock and shall be included in determining capital gain or loss.

5.1.3 The insurer engages in a closing purchase transaction. In this event the difference between the price received from the sale of the call option and the price paid in the closing purchase transaction shall be treated as addition to or deduction from investment income.

### **6.0 Valuation**

6.1 The stock on which an option has been sold shall be valued, so long as the obligation under the option exists, at the lesser of:

6.1.1 The exercise price of the option, or

6.1.2 The current market price of the stock.

### **7.0 Prohibition Against Speculating in Options**

7.1 The authority granted to insurers herein to engage in option transactions shall be used solely in a manner consistent with the insurer's obligation to exercise prudent judgment in the conservative management of its assets. Each option transaction shall reflect such prudent judgment and shall have a rationale related to such conservative management of assets rather than speculations. Nothing herein shall be construed to authorize an insurer to engage in option transactions to an extent or to a degree which would, under the relevant circumstances, be inordinate or speculative. The insurer shall establish and maintain records as to each transaction, demonstrating compliance with this section.

### **8.0 Severability**

8.1 If any provision of this Regulation or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the Regulation which can be given effect without the invalid provision or application and to this end the provisions of this Regulation are declared to be severable.

**9.0 Effective Date**

~~9.1 This Regulation shall become effective September 1, 1977.~~

**18 DE Reg. 283 (10/01/14) (Prop.)**