

## **Section 11(d) of the Securities Exchange Act of 1934 and Loan-Based Split Dollar**

Section 11(d) reads as follows:

### **d. Prohibition on Extension of Credit by Broker-Dealer**

It shall be unlawful for a member of a national securities exchange who is both a dealer and a broker, or for any person who both as a broker and a dealer transacts a business in securities through the medium of a member or otherwise, to effect through the use of any facility of a national securities exchange or of the mails or of any means or instrumentality of interstate commerce, or otherwise in the case of a member, (1) any transaction in connection with which, directly or indirectly, he extends or maintains or arranges for the extension or maintenance of credit to or for a customer on any security (other than an exempted security) which was a part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction: Provided, That credit shall not be deemed extended by reason of a bona fide delayed delivery of (i) any such security against full payment of the entire purchase price thereof upon such delivery within thirty-five days after such purchase or (ii) any mortgage related security or any small business related security against full payment of the entire purchase price thereof upon such delivery within one hundred and eighty days after such purchase, or within such shorter period as the Commission may prescribe by rule or regulation, or (2) any transaction with respect to any security (other than an exempted security) unless, if the transaction is with a customer, he discloses to such customer in writing at or before the completion of the transaction whether he is acting as a dealer for his own account, as a broker for such customer, or as a broker for some other person.

### **Comments**

***Important Note:*** *The comments below are for educational purposes only. In all cases, the approval of a client's legal and tax advisers must be secured regarding the implementation or modification of any split dollar arrangement as well as the applicability and consequences of new cases, rulings, or legislation upon existing or impending plans.*

If variable universal life insurance (VUL) is used as the funding instrument in a loan-based split dollar plan or other premium financing arrangement, the effect of Section 11(d) of the Securities Exchange Act of 1934 on the transaction is unknown. However, it appears that as long as the broker (agent) is not involved in arranging the financing of the VUL policy, Section 11(d) should not apply.

Section 11(d) appears to support the position that the problem is not in the borrowing to purchase a VUL contract. The problem is when the agent is involved in arranging the financing. It is open to interpretation by the client's own attorney as to whether the showing of a premium financing or split dollar illustration and making the sale play a role in "arranging the financing." Split dollar is presumably acceptable -- as well as other forms of premium financing -- so long as it is not arranged by the agent. In all cases, agents and clients should always be cautioned to seek legal advice on this issue.

Section 11(d) should have no impact plans funded by loans involving non-variable life insurance policies since such policies are not currently regulated by the SEC.

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