

INSURANCE DEPARTMENT OF THE STATE OF NEW YORK
THIRD AMENDMENT TO REGULATION NO. 34-A
11 NYCRR 219
RULES GOVERNING ADVERTISEMENTS OF
LIFE INSURANCE AND ANNUITY CONTRACTS

I, Howard Mills, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 308, 1313, 2122, 2123, 2402, 4224, 4226 and 4240(d) of the Insurance Law of the State of New York, do hereby promulgate the following Third Amendment to Part 219 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 34-A), to take effect upon publication in the State Register, to read as follows:

(New Matter is Underscored; Matter in Brackets is Deleted)

Section 219.3 is amended to read as follows:

Section 219.3 Definitions.

For purposes of this Part:

(a)(1) *Advertisement* [for the purpose of This Part] shall include, but not necessarily be limited to the following, when designed to be used or are actually used, to induce the public to purchase, increase, modify, reinstate or retain a policy:

[(1)](i) printed and published material, audio visual material and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, television scripts, billboards and similar displays;

[(2)](ii) descriptive literature and sales aids of all kinds, including but not limited to circulars, leaflets, booklets, depictions, illustrations and form letters, issued by an insurer, agent, broker, solicitor or organization sponsoring the insurance for presentation to members of the insurance buying public;

[(3)](iii) prepared sales talks, presentations and material for use with the public by agents, brokers and solicitors; or

[(4)] (iv) material used for the recruitment[,training and education] of an insurer's sales personnel, agents, brokers and solicitors.

(2) Notwithstanding subparagraph (1) of this subdivision, the terms "advertisement" and "public announcement", as used pursuant to any provision of the insurance law, shall not include:

(i) correspondence or forms directed to the owner, insured, assignee, or beneficiary of an existing policy, certificate or contract, when such existing policy, certificate or contract is the subject of such correspondence or form; or

(ii) any registration statement including, without limitation, the prospectus that forms a part of such registration statement, or any periodic, current or other report, filed with or furnished to the United States Securities and Exchange Commission.

(b) *Policy* [for the purpose of this Part] shall include any policy, plan, fraternal benefit certificate or other certificate of insurance coverage, contract, agreement, statement of coverage, rider or endorsement [which] that provides life insurance or annuities.

(c) *Insurer* [shall include any] means an entity providing life insurance or annuity benefits [pursuant to policy forms approved by the superintendent].

(d) *Unauthorized insurer* means an entity doing an insurance business, as defined in Section 1101 of the Insurance Law, that is not:

(i) an authorized insurer in New York; or

(ii) exempt from licensing in New York.

(e) *Joint advertisement* means an advertisement that contains the names of, or refers to insurance policies sold by, a New York authorized insurer and its parent, subsidiary or affiliate.

Section 219.4 is amended to add a new subdivision (q) and to reletter the present subdivisions (q) through (x) as (r) through (y) to read as follows:

(q) Notwithstanding the provisions of subdivision (p) of this section, a joint advertisement may include the name of an unauthorized insurer and would not be considered calling attention to the unauthorized insurer, provided that the unauthorized insurer does not do an insurance business in New York and the advertisement contains a clear and conspicuous disclaimer indicating the licensing status of the entities relative to New York. An acceptable disclaimer could either state that the unauthorized insurer is not authorized in New York and does not do an insurance business in New York or name the insurer that is authorized to sell insurance in New York. Any joint advertisement of a specific insurance policy or policies may also use general disclaimers such as "This insurance policy is not available in all states." or "Some insurance policies are not available in all states." The name of the unauthorized insurer shall not be more prominent than the name of the authorized insurer. The disclaimer shall be of prominence and placement relative to references to unauthorized insurers or insurance policies not available in New York so as not to minimize, render obscure or otherwise diminish the importance of the information contained therein.

I, Howard Mills, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Third Amendment to Part 219 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 34-A), promulgated by me on September 19, 2006, pursuant to the authority granted by Sections 201, 301, 308, 1313, 2122, 2123, 2402, 4224, 4226 and 4240(d) of the Insurance Law of the State of New York, to take effect upon publication in the State Register.

Pursuant to the provision of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on July 19, 2006. No other publication or prior notice is required by Statute.

Howard Mills
Superintendent of Insurance

September 19, 2006