

**ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF MARYLAND**

IN THE MATTER OF:

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\*

DELAWARE DISTRIBUTORS, L.P.

Dkt. No. 2009-0303

\*

Respondent.

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**CONSENT ORDER**

WHEREAS, the Division of Securities of the Office of the Maryland Attorney General (the "Division"), pursuant to the authority granted in Section 11-701 of the Maryland Securities Act, Title 11, Corporations and Associations Article, Annotated Code of Maryland (2007 Repl. Vol., Cum. Supp. 2008) (the "Act"), undertook an investigation with regard to possible violations of the Act by Delaware Distributors, L.P. ("Respondent"), in connection with the offer and sale in and from Maryland of certain of its securities related to the Optimum Fund Trust; and

WHEREAS, based on the information presented by the Division, the Maryland Securities Commissioner (the "Commissioner") has determined that Respondent has engaged in acts or practices constituting violations of §§ 11-501 and 11-503.1 of the Act and the regulations promulgated under those sections of the Act; and

WHEREAS, in settlement of any proceeding that could be brought based upon Respondent's violations of §§ 11-501 and 11-503.1, the Commissioner has determined that it is in the public interest to accept this Consent Order; and

WHEREAS, the securities subject to this Consent Order are issued by the Optimum Fund Trust, an investment company, that is registered under the Investment Company Act of 1940, and as federal covered securities are subject to exclusive federal registration pursuant to § 18(b)(2) of the Securities Act of 1933; and

WHEREAS, this Consent Order pertains to Maryland's notice filing requirements of §§ 11-501 and 11-503.1 of the Act and regulations promulgated under those sections of the Act; and

WHEREAS, Respondent has agreed to the provisions set forth below.

NOW THEREFORE, without the holding of a hearing in this matter, and upon consent of the parties hereto,

IT IS HEREBY AGREED AND ORDERED:

### **I. JURISDICTION**

1. The Commissioner has jurisdiction in this proceeding pursuant to Section 11-701.1 of the Act.
2. Respondent voluntarily waives any right to a hearing and appeal under the Act and the rules and regulations promulgated thereunder with respect to this Consent Order.
3. In the event that judicial intervention in this matter is sought by any party, Respondent consents to the jurisdiction of the Circuit Court for Baltimore City over any such proceeding and as to Respondent.

### **II. PARTIES**

4. Melanie Senter Lubin is the Securities Commissioner for the State of Maryland.
5. Delaware Distributors, L.P., a broker-dealer registered with the U.S. Securities & Exchange Commission under the federal Securities Exchange Act of 1934 and with the Division under Section 11-402 of the Act, offers securities as mutual fund investments in Maryland.

### **III. FINDINGS OF FACT**

The Commissioner finds the following facts:

6. Respondent operates a broker-dealer business from its principal office in Philadelphia, Pennsylvania.
7. Respondent sold two specific share classes each of four mutual funds in the Optimum Fund Trust (hereinafter "Optimum") in Maryland pursuant to properly filed notices with the Division, as is required by the Maryland Securities Act. The specific share classes of the four funds that were sold are listed on Exhibit A to this Consent Order, which is attached hereto and incorporated by reference herein.
8. As is also required by the Maryland Securities Act, Respondent filed sales reports for each of the Optimum funds listed on Exhibit A for each fiscal year beginning on March 31, 2004 through 2009.
9. In early 2008, Respondent outsourced its blue sky responsibilities to PNC Global Investments Servicing, Inc. (hereinafter "PNC"). After conducting an initial audit, PNC uncovered errors in some of the sales reports the Respondent had filed with the Division. The incorrect filings are listed on Exhibit B to this Consent Order, which is attached hereto and incorporated by reference herein.

10. Respondent notified the Division of these errors both by telephone and in its undated letter, which the Division received on April 24, 2009. Thereafter, Respondent submitted corrected sales reports with the Division on November 17, 2008.

11. The total owed by Respondent for Optimum for back fees and interest due to Respondent's failure to file correct sales reports is \$4,257.50, which are also itemized on Exhibit B to this Consent Order.

#### **IV. CONCLUSIONS OF LAW**

The Commissioner concludes that:

12. The shares of common stock offered and sold by Respondent constitute "securities" within the definition at Section 11-101(r) of the Act.

13. Respondent failed to comply with Sections 11-501 and 11-503.1 of the Act by filing incorrect sales reports with the Division from March 31, 2004 until November 17, 2008.

#### **V. CONSENT TO SANCTIONS**

Delaware Distributors, L.P. expressly agrees and consents, and it is ordered that:

14. Respondent shall pay to the Division a civil monetary penalty pursuant to Section 11-702 of the Act, in the amount of \$8,000 (\$1,000 assessed per fund share class at issue), payable by check to the order of the Office of the Attorney General, which penalty has been submitted to and received by the Commissioner.

15. Respondent shall pay to the Division \$4,257.50, which represents back fees and interest due and owing from Respondent for filings that should have been made between March 1, 2004 and November 18, 2008.

16. Respondent agrees to cease and desist from offering or selling securities in violation of Sections 11-501 and 11-503.1 of the Act and the regulations promulgated under those sections of the Act.

17. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commissioner, or to which the Commissioner is a party, and without admitting or denying any of the Commissioner's findings of fact or conclusions of law herein, except as to the Commissioner's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Consent Order pursuant to Section 11-701.1 of the Act, including imposition of administrative sanctions, as set forth above.

## **VI. CONSEQUENCES OF VIOLATION OF CONSENT ORDER**

18. If Respondent fails to comply with any term of this Consent Order, the Commissioner may declare this Consent Order to be null and void. The Commissioner may then proceed with full administrative and/or judicial proceedings to enforce this Consent Order against Respondent, or to sanction Respondent for violating an order of the Commissioner, and may take any other action authorized under the Act or any other applicable law. In any such proceeding in which, after an opportunity for a hearing, the Commissioner or the court finds that Respondent has violated this Consent Order, the facts and the violations of the Act set forth and incorporated in this Consent Order shall be deemed admitted and may be introduced into evidence against Respondent.

## **VII. MODIFICATION OF TERMS OF THIS CONSENT ORDER**

19. The terms of this Consent Order may only be modified by a subsequent order issued by the Commissioner.

## **IX. JURISDICTION RETAINED**

20. Jurisdiction shall be retained by the Commissioner for the purpose of enabling any party to this Consent Order to apply for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Consent Order.

The provisions of this Consent Order shall become binding when this Consent Order has been executed by each party and is issued by the Commissioner.

DATE OF THIS ORDER:

October 19, 2009

SO ORDERED:

**Commissioner's Signature is  
on File with Original Order**

Melanie Senter Lubin  
Securities Commissioner

CONSENTED TO:

DELAWARE DISTRIBUTORS, L.P.

By: \_\_\_\_\_ /S/ \_\_\_\_\_

\_\_\_\_\_ Print name \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_ On this 8th day of October, 2009, personally appeared \_\_\_\_\_  
signer of the foregoing Consent Order, who did duly acknowledge to me that she/he was  
authorized to execute the same on behalf Delaware Distributors, L.P. and acknowledged the  
same to be her/his free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_