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Ms. Barbara Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1500

RE: NASD Notice to Members 04-45: Proposed Rule Governing the Purchase, Sale, or Exchange of Deferred Variable Annuities

Dear Ms. Sweeney:

The American Council of Life Insurers (“Council”) is a national trade association with 399 members representing 72 percent of all United States life insurance companies. Many of our member companies offer and distribute variable annuities through affiliated and independent broker-dealers. The initiative would have a significant, unique impact on our industry and the products they manufacture.

We greatly appreciate the opportunity to share our views on this regulatory proposal. We have actively participated in numerous NASD rulemaking initiatives. Careful evaluation of SRO rule proposals ensures balanced regulation in the public interest, and helps preserve competitive fairness in the marketplace.

Overview of the Proposal

The proposed rule would codify and make mandatory the guidelines issued in NASD Notice to Members 99-35. According to the NASD, these requirements represent the industry's best practices in variable annuity sales. When recommending a deferred variable annuity transaction, the proposed new conduct rule would require broker-dealers to determine that the:

- customer has been informed of the unique features of the deferred variable annuity,
- customer has a long-term investment objective, and
- deferred variable annuity as a whole and the underlying sub-accounts are suitable for the particular customer.

According to the proposal, these determinations would have to be documented and signed by the associated person who makes the recommendation and performs the required analysis.

Risk Disclosure Statement. The proposed rule would require broker-dealers to provide the customer a current prospectus and a separate, brief, and easy-to-read risk disclosure document that highlights the main features of the particular variable annuity transaction, including, but not limited to:

- liquidity issues, such as potential surrender charges and the IRS penalty;
- sales charges;
- fees, such as mortality and expense charges, administrative fees, charges for riders or special features and investment advisory fees;
- federal tax treatment of variable annuities;
- any applicable state and local government premium taxes; and
- market risk.

The risk disclosure document also would have to inform the customer whether a “free look” period applies to the variable annuity contract, during which the customer can terminate the contract without paying any surrender charges and receive a refund of his or her purchase payments.

In addition, the risk disclosure document would require that broker-dealers inform customers that all applications to purchase or exchange a deferred variable annuity contract are accepted subject to review and approval by a designated registered principal. The broker-dealer would be required to provide the prospectus and risk disclosure document regardless of whether the transaction had been recommended.

Supervisory Review. Under the proposed NASD initiative, a registered principal of the broker-dealer would be required to review and approve the transaction no later than one business day following the date of execution of a deferred variable annuity application, regardless of whether the transaction had been recommended. In reviewing the transaction, the registered principal would need to take into account whether:

- the customer's age or liquidity needs make a long-term investment inappropriate, such as a customer over a specific age or with a short-term investment objective;
- the amount of money invested exceeds a stated percentage of the customer's net worth or is more than a stated dollar amount;
- the transaction involves an exchange or replacement of a deferred variable annuity contract;
- the customer's account has a particularly high rate of deferred variable annuity exchanges or replacements;
- the associated person effecting the transaction has a particularly high rate of effecting deferred variable annuity exchanges or replacements; and
- the purchase of the deferred variable annuity is for a tax-qualified retirement account (*e.g.*, a 401(k) plan, IRA).

Special Replacement Disclosure. The proposed NASD rule would also require broker-dealers to provide special information when a sale replaces another variable annuity prior to effecting any exchange or replacement, including

- A summary of all significant differences, if any, between the existing and proposed deferred variable annuities' contractual provisions, guarantees, death benefits, withdrawal provisions and/or tax treatment;
- Surrender charges, including both those that may be assessed on the surrender of the existing contract and those applicable to the proposed contract;
- Costs that are associated with purchasing a new contract, including new sales loads and other start-up expenses; and
- The possibility, if any, of modifying or adjusting the existing contract to meet the customer's objectives rather than exchanging or replacing the contract.

In fulfillment of these requirements, a broker-dealer may use an existing exchange or replacement form authorized by a state insurance commission or other regulatory agency to satisfy the disclosure requirements of this paragraph to the extent that the regulatory agency's form requires disclosure of the information required by the proposed rule. If the regulatory agency does not require disclosure of all of the information required by the rule, a member or person associated with a member may create and use an addendum to the regulatory agency's form.

Training. Under the proposal, broker-dealers would need to develop and document specific training policies or programs designed to ensure that associated persons who effect and registered principals who review transactions in deferred variable annuities comply with the requirements of the proposed rule and that they understand the unique features of deferred variable annuities, including liquidity issues, sales charges, fees, tax treatment, and market risks.

Supervisory Procedures. Under the proposal, broker-dealers would be required to establish and maintain specific written supervisory procedures reasonably designed to achieve and evidence compliance with the standards set forth in the proposed rule.

Background

The life insurance industry has a long history of developing and supporting initiatives protecting insurance and annuity consumers, including:

- Creation of the Insurance Marketplace Standards Association¹ (IMSA), a voluntary insurance industry membership organization promoting high ethical standards in the sale of individual life insurance and annuity products;

¹ After a two-year period of development, ACLI established the Insurance Marketplace Standards Association, a voluntary membership organization leading the insurance industry in promoting high ethical standards in the sale of individual life insurance and annuity products. Through its Principles and Code of Ethical Market Conduct, IMSA encourages life insurers to develop and implement policies and procedures to promote sound market practices. IMSA members must complete rigorous self and independent assessments to meet its principles and code. Added background on IMSA is provided in the appendix to this letter.

- ACLI's substantive rulemaking petition leading to new variable life insurance Form N-6, an integrated registration emphasizing streamlined, simplified, plain-English disclosure;²
- ACLI's significant involvement in the design of variable annuity registration Forms N-3 and N-4, which streamline and simplify variable annuity disclosure;
- Contributions to National Association of Insurance Commissioners (NAIC) laws and regulations, such as
 - The Senior Protection in Annuity Transactions Model Regulation
 - The Model Replacement Regulation; and
 - Amendments to the Unfair Trade Practices Act.
- Continuous commitments to constructive market conduct through avenues such as ACLI's Compliance Education Seminars, Regulatory Update Services, website compliance services, and Regulatory Alerts.
- Careful examination of the constructive recommendations in the June 2004 SEC-NASD Report to further enhance comprehensive compliance procedures protecting variable annuity consumers. The observations are taken very seriously. Life insurers and their customers alike are served poorly by unsuitable sales.

Summary of Position

- There is no place for unsuitable variable annuity sales. Life insurers strongly oppose any unscrupulous practices in variable annuity distribution. Abusive market conduct should be curtailed through strong enforcement of existing suitability and supervision standards.
- Comprehensive compliance procedures, meaningful prospectus disclosure, investor education, and informed decision-making are essential ingredients to variable annuity sales. The life insurance industry has a long history of developing and supporting substantive regulatory initiatives protecting insurance consumers.
- Existing NASD regulatory standards ensure that broker-dealers sell variable contracts suitably. Consistent, strong regulatory enforcement is the most effective prophylactic against marketplace abuses.
- The prospectus provides essential disclosure prepared according to uniform standards. It facilitates informed purchase decisions and critical comparison shopping

² See ACLI's rulemaking petition filed with the SEC January 13, 1993. ACLI retained an independent research organization to conduct focus group research on prospectus disclosure, and made an unprecedented supplemental video filing in the rulemaking proceeding highlighting the results of the focus group research. See ALI-ABA Conference on Life Insurance Company Products, *The Administrative History of Variable Life Insurance Registration Form N-6: the Proposal's Purpose, Design and Intent* (Nov 2002) at 149 for additional background on the amendments to Form N-6, which provided a regulatory template for conforming amendments to variable annuity registration Form N-4.

- The need for the NASD's suitability initiative has not been adequately substantiated through rigorous analysis. Objective data on NASD disciplinary actions and SEC complaint history do not support the initiative's putative purpose.
- The proposal provides little added regulatory value or consumer protection. It essentially repackages current training, supervision, and suitability standards under different rule sections.
- The risk disclosure statement, however, is a new aberration and fully duplicates the SEC's recently upgraded fee table and risk disclosure in variable contract prospectuses. It contradicts the purpose of the SEC's worthwhile prospectus simplification projects by increasing disclosure.
- Delivery of this added statement reduces the likelihood consumers will read streamlined, plain-English disclosure promoted by the SEC. In its risk disclosure statement, the NASD has inappropriately usurped the SEC's judgment and expertise on effective, meaningful disclosure.
- The initiative would impose unwarranted and unreasonable burdens on broker-dealers affiliated with life insurers. It dilutes the value of meaningful disclosure and overloads consumers with redundant information.
- Substantive rulemaking demands careful scrutiny and compelling justification. New rules must carefully balance benefits to be achieved against burdens created. On these scores, the proposal fails.
- The NASD's suitability rule has operated successfully for decades over a wide array of securities. Moving to multiple, disparate suitability rules will thwart consistent, uniform compliance procedures across broker-dealer operations.
- Current NASD suitability Rule 2310 governs variable product sales as effectively as it governs sales of exchange traded securities, mutual funds, direct private placements, real estate limited partnerships, oil and gas offerings, or any other security. A single-product suitability standard is no more appropriate for variable annuities than for any other security sold by broker-dealers.
- The NASD demonstrates a limited understanding of comprehensive state insurance laws and regulations governing variable contracts and protecting consumers. The adoption of disparate suitability standards and practices unnecessarily expands the scope of comprehensive SEC, NASD, and state insurance laws and regulations.
- Numerous aspects of the NASD proposal are functionally unworkable.
- The federal securities laws require full, fair, and meaningful prospectus disclosure permitting informed, independent decision-making. The SEC's registration statements successfully fulfill this role. SEC standards and NASD rules govern appropriate sales practices. Neither regulator has the authority to favor one security over another.

- In its statements, the NASD has inappropriately disparaged variable products and grossly overstepped its role of governing broker-dealer sales practices. Its authority does not include picking and choosing what it views as either worthwhile or unfavorable securities.
- The NASD has displayed an unwarranted and anticompetitive bias against variable annuities. In several cases, the NASD's statements are incorrect regarding the status of insurance regulation.
- A variable annuity is a long-term financial product that can provide a lifetime stream of income, something offered by no other financial product. Some variable annuities also protect beneficiaries' interests with life insurance in case the annuity owner dies before annuity payments commence.
- The proposal should be summarily jettisoned. Requiring broker-dealers and registered representatives to strongly encourage consumers to carefully read the prospectus, ask questions, and make comparative evaluations represents a far more effective approach, when coupled with current suitability standards.

Objective Measures of the Issues Under Scrutiny

Substantive rulemaking demands careful scrutiny and compelling justification. The proposal voices concern over increased patterns of unsuitable variable annuities sales without specific, material quantification. The central premise for the proposed rule is unsubstantiated. No statistical or empirical data quantifies the conduct at issue or supports the proposal's statement of purpose.³

The NASD lacks any database enumerating or categorizing its disciplinary actions. The initiative asserts that "some investors continue to be confused by certain features" of variable annuities, although no consumer survey is referenced in support of this proposition. The joint SEC-NASD report on variable contracts sales provides useful lists of both commendable and deficient conduct, but lacks any quantification of the deficient practices listed.

The proposal states that the SEC and the NASD have received "numerous" complaints about customers' grasp of variable annuities. Unfortunately, the initiative provides no substantiation or scope about the alleged volume of complaints. Good rulemaking demands credible verification on the volume and nature of targeted conduct. The proposal is supported by unquantified assertions that are not framed in any measurable or relative perspective.

³ A single numerical reference to 80 variable contract disciplinary actions over this two-year period is misleading in the proposal's context because it aggregates an omnibus collection of undifferentiated incidents. Many of the actions are unrelated to suitability or supervision issues. Moreover, in contrast with the numerical total in the proposal NASD Vice Chairman Mary Shapiro stated in March 2004 that the NASD has brought "some 75 annuity related disciplinary actions over the last *three years*." See NASD - Schapiro - SIA Remarks - March 22, 2004 http://www.nasd.com/media/speeches/schapiro_2004_02.asp at 6. There appears to be a significant discrepancy regarding the correct figure. Accurate measures of targeted conduct is necessary for responsible rulemaking.

Unlike the NASD, ACLI has created a complete database of all reported NASD disciplinary actions over the past five years. The database categorizes and quantifies all the disciplinary actions according to type of wrongdoing, security involved, fines, penalties, and parties. We have also studied the nature and relative incidence of SEC complaint data. These objective data sources do not support the initiative's putative purpose.

Here are the facts: over 50% of the NASD's 675,000 registered representatives work for broker-dealers affiliated with life insurers. Unsuitable variable annuity sales account for only 0.32% of the NASD's total disciplinary actions on average over the past five years. As a matter of perspective, there were 19,562,666 individual variable annuity contracts in 2000⁴. These are not ratios that compel regulatory overhauls.

Similarly, the SEC's Office of Consumer Affairs fields a relatively small number of complaints about broker-dealers marketing variable annuities. For example, the SEC logged 14 times as many broker-dealer complaints about equity security as variable annuities, and 4.5 as many mutual fund complaints as variable annuities for the 12 months ending May 31, 2004.⁵

With these statistics at hand, we have serious doubts about the need asserted for new regulation. To make sure there is no uncertainty about our position on the issue, we reiterate that life insurers condemn unsuitable variable annuity sales. The life insurance industry fully supports enforcement actions against inappropriate variable annuity sales. We strongly disagree, however, with the proposal's dearth of rigorous, substantive analysis and lack of relative statistical data.

The proposal has also failed to demonstrate that the regulatory revisions will have any impact on the cited regulatory concerns. By creating unique, single-product supervision, suitability, and disclosure standards, the initiative may actually thwart effective system-wide uniformity and compliance. If the proposed single-product rule advances, it will be incumbent on the NASD promptly to adopt multiple single-product suitability and supervision rules for securities incurring a greater incidence of disciplinary actions and complaints.⁶

No demonstration has been made that consistent enforcement of the existing supervision and suitability standards cannot remedy the targeted conduct. Strong enforcement against broker-dealer abuses provides the best deterrent to sales practice deficiencies.

Regrettably, the proposal may injure consumers by layering them with duplicate, redundant materials that directly contradict the SEC's disclosure simplification program and

⁴ Life Insurance Fact Book, American Council of Life Insurers (2001) at 129.

⁵ The SEC's data reflects aggregate complaints without regard to the merits of the complaint, and do not tabulate the correlation of administrative or enforcement actions associated with the complaints.

⁶ As a point of reference, the NASD has published suitability and supervision concerns about various other securities, such as collateralized mortgage obligations, funds of hedge funds, non-conventional investments, mutual funds, and direct participation programs, without creating free standing suitability or supervision rules. *See* Notice to Members 93-73 [Members Obligations When Selling Collateralized Mortgage Obligations]; NASD Investor Alert-*Funds of Hedge Funds: Higher Costs and Risks for Higher Potential Return* (Aug. 23, 2003); Notice to Members 03-07[Non-Conventional Investments]; Notice to Members 94-16 [NASD Reminds Members of Mutual Fund Sales Practice Obligations (on break points and switching)]; Notice to members 95-80 [NASD Further Explains Members Obligations and Responsibilities Regarding Mutual fund Sales Practices]; Notice to Members 91-69[Secondary Market in Direct Participation Programs]. To address break point abuses in mutual fund sales, the NASD issued IM-2830-1, not new suitability and supervision rules.

other current and proposed SEC rules. The proposal introduces individualized supervisory requirements that will make compliance unnecessarily burdensome as a matter of compliance program uniformity.

In sum, the proposal has overstated the relative incidence of inappropriate variable annuity sales. The need for new regulatory procedures is unconvincing. The NASD could more constructively protect consumers by requiring broker-dealers to strongly encourage consumers to carefully and critically review the prospectus. Prospectus disclosure and vigilant enforcement are more effective than redundant red tape.

The Proposal's Poor Interface with Other Regulatory Structures

Several aspects of the proposal duplicate other existing regulatory standards, and may undermine overall consumer protection. Repetitive regulatory practices are unconstructive and counter productive to effective compliance. A few examples demonstrate this structural deficiency.

Form N-4 Synopsis, Fee Table and Risk Disclosure. The proposed risk disclosure statement is fully redundant of the streamlined, simplified disclosure required in variable annuity prospectuses by Form N-4.⁷ The form requires the prospectus to “clearly and concisely describe the key features” of the variable annuity and the issuing life insurer in an upfront synopsis. The form also requires a very detailed “fee table” that the SEC substantially upgraded in November 2002.⁸ The SEC staff identifies the fee table as the “current lynchpin of cost disclosure.”⁹ The fee table is a core feature of the SEC’s prospectus simplification project that sought to replace “unintelligible, tedious, and legalistic” disclosure with meaningful information on which to make an informed purchase decision.¹⁰

The 2002 amendments to the variable annuity fee table require information about all recurring fees and charges. The enhancements also require a narrative that explains the purpose of the fee table and relevant cross-references to the prospectus. The revisions require specific explanatory narratives preceding each section of the fee table “to help investors better

⁷ Adopted in Release No. IC-14575 [CCH Fed. Sec. L. Rep. ¶83,783], effective July 25, 1985, 50 FR 26145; amended in Release No. IC-16245 [CCH Fed. Sec. L. Rep. ¶84,217], effective May 1, 1988, 53 FR 3868; Release No. IC-16766 [CCH Fed. Sec. L. Rep. ¶ 84,349], effective May 1, 1989, 54 FR 4772; Release No. IC-18005 [CCH Fed. Sec. L. Rep. ¶84,710], effective May 1, 1991 for Item 1, generally effective June 1, 1991, 56 F.R. 8113; and Release No. FR-40A [CCH Fed. Sec. L. Rep. ¶72,440], effective November 2, 1992, 57 FR 45287; Release No. IC-19284 [CCH Fed. Sec. L. Rep. ¶85,112], effective November 1, 1993, 58 FR 14848; Release No. IC-20486 [CCH Fed. Sec. L. Rep. ¶85,423], effective October 11, 1994, 59 FR 43460; corrected in Release No. IC-20486A, September 23, 1994, 59 FR 48798; Release No. IC-21221 [CCH Fed. Sec. L. Rep. ¶72,446], effective September 1, 1995, 60 FR 38918; and Release No. IC-21946 [CCH Fed. Sec. L. Rep. ¶ 85,805], effective June 14, 1996, 61 F.R. 24652; Release No. IC-22224 [CCH Fed. Sec. L. Rep. ¶ 85,845], effective October 7, 1996, 61 F.R. 49957; Release No. IC-22815 [CCH Fed. Sec. L. Rep. ¶ 85,906], effective October 11, 1997, 62 F.R. 47934; Release No. IC-22921 [CCH Fed. Sec. L. Rep. ¶ 85,973], effective February 10, 1998, 62 F.R. 64968; Release No. 33-7684 [CCH Fed. Sec. L. Rep. ¶ 86,138], effective June 28, 1999, 64 F.R. 27888; Release No. 33-8147 [CCH Fed. Sec. L. Rep. ¶ 86,801], effective December 23, 2002, compliance and phase-in dates range from January 1, 2003, to January 1, 2004, see text of release for compliance details, 67 F.R. 69974; Release No. 33-8294 (¶86,968), effective for fund advertisements submitted for publication after March 31, 2004, 68 F.R. 57760; Release No. 33-8408 [CCH Fed. Sec. L. Rep. ¶ 87,173], effective May 28, 2004, 69 F.R. 22300.

⁸ See Release No. IC-25802 (Nov 13, 2002) [CCH Fed. Sec. L. Rep. ¶86801].

⁹ See Report-Letter, CCH Fed. Sec. L. Rep. #2018, June 25, 2003.

¹⁰ See Arthur Levitt, *Plain English in Prospectuses*, New York State Bar Journal (Nov. 1997) at 36.

understand the information about fees and charges in that section.” By way of example, Form N-4 requires the fee table to include a series of captions in front of different detailed tabular information stating that:

The following tables describe the fees and expenses that you will pay when buying, owning, and surrendering the contract. The first table describes the fees and expenses that you will pay at the time that you buy the contract, surrender the contract, or transfer cash value between the investment options. State premium taxes may also be deducted.

The next table describes the fees and expenses that you will pay periodically during the time that you own the contract, not including [portfolio company] fees and expenses.

The next item shows the minimum and maximum total operating expenses charged by the portfolio companies that you may pay periodically during the time that you own the contract. More detail concerning each [portfolio company's] fees and expenses is contained in the prospectus for each [portfolio company].

Form N-4 requires a fee table “example” highlighting comparative variable annuity costs at one, three, five, and ten-year intervals. A required caption in front of the example must state:

This Example is intended to help you compare the cost of investing in the contract with the cost of investing in other variable annuity contracts. These costs include contract owner transaction expenses, contract fees, separate account annual expenses, and [portfolios company] fees and expenses.

The Example assumes that you invest \$10,000 in the contract for the time periods indicated. The Example also assumes that your investment has a 5% return each year and assumes the maximum fees and expenses of any of the [portfolio companies]. Although your actual costs may be higher or lower, based on these assumptions, your costs would be:

- (1) If you surrender your contract at the end of the applicable time period: ...*
- (2) If you annuitize at the end of the applicable time period: ...*
- (3) If you do not surrender your contract:*

All of the variable annuity fee table requirements are modeled after the mutual fund fee table in form N-1A, and facilitate full disclosure of cost information in a uniform format that lends to comparison shopping.

We are hard pressed to believe that the NASD can improve on the SEC’s comprehensive prospectus simplification projects, particularly with regard to fees, charges and risks.¹¹ The NASD is out of its element in this task.

Delivery of the NASD’s proposed risk disclosure statement reduces the likelihood consumers will read streamlined, plain-English disclosure promoted by the SEC. In its risk

¹¹ The SEC has published Guide 13 to accompany Form N-4 that provides specific guidance in addition to the instructions in the form. The presentation of the fee table is thoroughly covered in Form N-4 and its amendments.

disclosure statement, the NASD has inappropriately usurped the SEC's judgment and expertise on effective, meaningful disclosure.

One of the central goals of the SEC's project was to thwart corrosive "disclosure creep."¹² The added layering of documents on customers will unwittingly dilute the value of meaningful disclosure and overload consumers with redundant information.

Even worse, the proposal could have multiple broker-dealer firms producing different risk disclosure documents for the same variable annuity.¹³ This aspect of the proposal creates infinitely redundant risk disclosure statements that will inevitably confuse consumers and waste broker-dealers' legal and compliance resources. Moreover, it pulls broker-dealers into drafting disclosure about another entity's security, something completely outside of the broker-dealers' expertise.

In all likelihood, this practice will cause more harm than good. The proposed risk disclosure statement opens numerous unresolved status and compliance issues. To name a few: Where does it fall in the overall disclosure scheme? Is it sales literature? Would it have to be filed with and approved by the NASD, after payment of advertising review fees? What is the scope of the broker-dealer's liability for material misstatements or material omissions? How often would it need to be redrafted to keep up with changes in the product or its design?

This is only a short list of many nettlesome, unnecessary problems. The prospectus, with post-effective amendments and intermediate sticker updates, provides far superior, continuously updated disclosure, instead of multiple disparate, and potentially misleading statements under the proposal.

The proposal's statement that the risk disclosure document highlights "the main features of the particular variable annuity transaction" is inaccurate. It principally focuses on fees, charges and surrenders. These are not the "main features" of the variable annuity purchase, but only those which the NASD has selectively chosen to emphasize. This isolated uncontextual disclosure may lead consumers to focus principally on fees and charges, instead of whether the variable annuity is suitable for their needs and circumstances.

A clear, but unstated, premise in the proposal is that consumers do not read their prospectuses. While we do not agree, it is not the NASD's role to develop an insular disclosure solution based on its own unsubstantiated premises. The effectiveness of prospectus delivery and comprehension is exclusively the SEC's responsibility, not the NASD's.

The proposed risk disclosure statement requires broker-dealers to inform customers "whether a 'free look' period applies to the variable annuity contract during which the customer can terminate the contract without paying any surrender charges and receive a refund

¹² *Id.* at 38. Former SEC Chairman Levitt observed that the prospectus simplification project began "with the clear understanding that our eventual goal is to purge the entire document of words that, in the famous phrase of George Orwell, 'fall upon the facts like soft snow, blurring the outlines and covering up all the details.'" The NASD proposal would create the very kind of blurring disclosure Chairman Levitt condemned.

¹³ Some companies have questioned the significantly increased NASD revenue from unlimited risk disclosure documents that may need NASD sales literature filing fees for approval. The proposal contains no economic analysis on this point.

of his or her purchase payments.” This requirement is redundant of prospectus disclosure and state insurance law requirements, and would mandate incorrect information.

Guide 7 to Form N-4 provides guidance on the synopsis and states that it should contain a “full description” of any free look provision or a cross reference to equal information in the prospectus. The proposal’s free look requirement evidences another premise that the prospectus disclosure is insufficient. The NASD has no authority to dictate delivery of selective disclosure from the prospectus.

Burying customers with multiple pages of duplicate information thwarts meaningful disclosure and contradicts prospectus simplification. Under the proposal, variable annuity consumers would be faced with three detailed items: a prospectus, a variable annuity contract, and the risk disclosure document.

If a replacement is involved, the state insurance law replacement materials and the NASD’s proposed replacement document will be delivered for a total of five document packages at the sales point. If the SEC’s proposed confirmation and point-of-sale document is adopted, consumers will face up to six disclosure documents at the outset. This achieves dysfunctional disclosure. It is regulatory overkill.

State insurance laws establish meaningful free look provisions. Duplicate reference to these provisions is unwarranted. Moreover, the proposal would mandate an incorrect statement about most free look provisions under state laws. Most jurisdictions do not require variable annuities to provide “a refund of purchase payments” as the proposal states. Instead, states require that life insurers refund the account values at the time of the free look. A small number of states require full refund of the initial purchase payments less administrative charges. We have included a chart on free look provisions in the Appendix C to this letter.

Proposed SEC Point-of-Sale Disclosure. The proposed risk disclosure statement is exceptionally unconstructive when coupled with the SEC’s proposed point-of-sale disclosure in confirmation rule amendments.¹⁴ The information in the NASD’s proposed risk disclosure

¹⁴ *Rule 15c2-2(b) would require broker-dealers to give customers written confirmation of:*

- The date of the transaction;
- The issuer and class of the covered security;
- The net asset value of the shares or units and, if different, the public offering price of the shares or units;
- The number of shares or units of the security purchased or sold by the customer, the total dollar amount paid or received in the transaction and the net amount of the investment bought or sold in the transaction;
- Any commission, markup or other remuneration received or to be received by the broker, dealer or municipal securities dealer from the customer in connection with the transaction;
- any deferred sales load that the customer has incurred or will incur in connection with the transaction; and,
- when applicable, the fact that the broker-dealer involved is not a member of SIPC.

The proposed amendments to Rule 15c2-2(c) would require added disclosure about:

- The amount of any sales load that the customer has incurred or will incur at the time of purchase, expressed in dollars and as a percentage of the net amount invested, together with:
 - If the customer will incur a sales load at the time of sale, information about the availability of breakpoints;
 - If the customer will not incur a sales load at the time of sale, information about the

statement unnecessarily duplicates and overlaps the information in the SEC's point-of-sale proposal.

When added to the SEC's Point-of-Sale disclosure, the NASD information will further reduce the likelihood that consumers will read the critical sales document--the prospectus. In truth, the risk disclosure statement will contradict the worthwhile advances the SEC achieved in its prospectus simplification initiatives. The NASD should confine its focus to sales practice issues, not disclosure.

The NASD recently completed a comprehensive overhaul of rules governing cash and non-cash compensation in the distribution of mutual funds and variable annuities. These significant rule amendments prevent sales incentives from inappropriately influencing broker-dealers' recommendations to customers. The constraints on cash and non-cash compensation further ensure that recommendations to customers will be suitable.

State Insurance Regulation. Several aspects of the proposal unnecessarily duplicate existing requirements of state insurance laws and regulations. A good example is the proposal's requirement that the registered principal "review and approve *a separate exchange or replacement document* (which could cover issues specific to exchanges or replacements) no later than one business day following the date of execution of the deferred variable annuity application."

State replacement regulations require very detailed procedures protecting consumers against abusive replacements. Specific standards, undertakings, plain-English consumer disclosure, and acknowledgement forms already exist. For background, an overview of state replacement standards is set forth in Appendix A to this comment letter. The NASD's reinvention of this regulatory wheel is wholly unnecessary and redundant. Its inclusion in the proposal reflects an unsubstantiated premise that state replacement regulations do not work.

The proposal states that broker-dealers could use an existing state insurance exchange or replacement form "to the extent that the regulatory agency's form requires disclosure of the information required by NASD's proposed rule." This would require broker-dealers to constantly monitor minor changes in state regulations to ascertain if they cover the identical information as the NASD proposal. Moreover, this standard would result in consumers receiving two replacement or exchange forms in cases where a state deviated from the NASD's formulation. This makes little sense, and further risks that consumers will not read the fundamental disclosure document--the prospectus--because of multiple paperwork layers.

availability of breakpoints with regard to a different class of the covered security.

- An explanation of the potential amount of any deferred sales load that the customer may incur in connection with any subsequent sale of the shares or units purchased in the transaction;
- An explanation of any asset-based sales charges and asset-based service fees incurred, or to be incurred, by the issuer of the covered security in connection with the customer's purchase of the shares or units;
- The amount of any dealer concession that the broker, dealer or municipal securities dealer will earn in connection with the transaction, expressed in dollars and as a percentage of the net amount invested;
- Disclosure of payments to broker-dealers attributable to revenue sharing and portfolio securities transactions; and
- Disclosure about differential compensation practices related to the covered security purchased.

We have also included in Appendix B to this comment letter a broad overview of comprehensive state and federal regulatory requirements to highlight the wide range of existing laws, and how the proposal would add to an already vast scope of regulation. Variable annuities are one of the most heavily regulated financial products in today's market place. Variable annuities are subject to the jurisdiction and regulations of the SEC, NASD and 53 state insurance jurisdictions. No other product is subject to three levels of substantive regulation. Any new regulations must be solidly founded on a well-substantiated regulatory need.

Redundant Suitability and Supervision Standards

The proposal contains several suitability and supervisory requirements for broker-dealers distributing variable annuities. Virtually all of the proposal's requirements are already subsumed in current NASD standards. The repackaging of existing standards in separate rules thwarts coordinated system-wide compliance procedures.

The proposed rule restates requirements that already apply under NASD's current Rules, including Rule 2310¹⁵ (Suitability), IM-2310-2 (Fair Dealing with Customers), Rule 3010(d)(1)(Review of Transactions) and Rule 3110 and IM 3110-1 (Customer Account Information). This redundant approach does not improve compliance or market conduct. In fact, it impedes consistent enterprise-wide compliance.

Subsection (a) of the proposed rule ("Appropriateness/Suitability") reiterates existing requirements. Rule 2310(a) already requires members to have reasonable grounds for believing that all recommendations to purchase, sell or exchange any security are suitable. Further, Rule 2310(b) requires a member to make reasonable efforts to obtain information about the customer's investment objectives and other information needed to make suitable recommendations.

¹⁵ NASD Rule 2310, Recommendations to Customers (Suitability), provides:

(a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

(b) Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers where investments are limited to money market mutual funds, a member shall make reasonable efforts to obtain information concerning:

- (1) the customer's financial status;
- (2) the customer's tax status;
- (3) the customer's investment objectives; and
- (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

This obligation is further embellished by the NASD's position on "customer-specific" suitability practices: although a recommendation might be suitable for some investors, it must also be suitable for the *particular* investor.¹⁶ These existing suitability standards apply to variable annuity distribution and assure that customers' needs are paramount. The proposal does not move this ball forward.

Subsection (a) of the proposal requires that broker-dealers and their associated persons have a reasonable basis to believe that the customer has been informed of the material features of the deferred variable annuity. This requirement is already covered in Rules 2110, 2120, IM-2210-2 and 3010.

Subsection (a) of the proposal requires broker-dealers and their associated persons to have a reasonable basis to believe that the deferred variable annuity and the underlying subaccounts are suitable for the particular customer. Rule 2310 already requires this level of suitability analysis. There is no added value in reduplicating this standard in a separate rule.

Finally, subsection (a) of the proposal requires suitability determinations to be documented and signed by the associated person recommending the transactions, in addition to being approved by a registered principal, as required by paragraph (c) of the proposed rule. Rules 2310, 3010(d)(1) and 3110(c)(1)(C) already require these practices. Duplicate overlapping requirements are inimical to sound rulemaking.

In sum, the initiative fails to justify replication of existing supervision and suitability standards in a separate rule. Unwittingly, the proposal undermines coordinated enterprise-wide compliance practices.

Dysfunctional Standards

Several aspects of the proposed rule are infeasible and dysfunctional. Subsection (c) requires a registered principal to review and approve a variable annuity application no later than one business day following the date of the variable annuity application, regardless of whether the transaction has been recommended. The proposal's one-day turn around deviates from approval standards governing all other securities. This aberration is arbitrary and profoundly ironic.

¹⁶ Factors in determining whether a recommendation is compatible with the "*customer specific*" suitability yardstick, the NASD staff emphasizes that:

- Customers' overall investment objectives should comport with recommendations.
- Consistency and proper weight should be given to customers' stated investment objective.
- If customers have more than one financial objective, broker-dealers should consider each objective when analyzing suitability of recommendations.
- Previous investment experience needs elicitation and evaluation.
- Prior investment experience is often viewed in combination with a customer's sophistication.

According to the NASD, a broker-dealer recommending a security should not only be satisfied that the security is suitable for the customer, but also that the customer understands the "risks involved and is not only able, but willing to take those risks." The NASD also recommends the broker-dealer to also consider the percentage of the customer's overall investment portfolio that the recommended transaction represents, and notes that over-concentration in either a specific security or, in certain situations, even an industry sector can be problematic.

Variable contracts are the only financial products in today's marketplace with free-look protections. Free-look provisions offer a greater opportunity to redress unsuitable sales after the fact than for securities, like mutual funds, that do not offer a right of return and for which a one-day approval does not apply.¹⁷ The one-day approval measure exclusively for variable annuities is unwarranted and anticompetitive.

In parallel regulatory contexts, the SEC allows insurance companies two business days after an application's receipt to process a variable annuity application¹⁸ and exempts insurance companies from the standard T+3 settlement time frame.¹⁹ In these administrative actions, the SEC recognized the unique status of variable contracts and created appropriate timing standards. Similar rationale should be applied to variable annuity supervisory review.

Broker-dealers affiliated with life insurers are different from full service broker-dealers in their structure, operation, products, and services. The securities activities of these broker-dealers are a component of a larger insurance business. As a by-product of this relationship, supervision and compliance is often conducted through the vehicle of an insurance distribution system.²⁰ Unlike full service firms, therefore, broker-dealers affiliated with life insurers tend to have many small, geographically dispersed offices.

Principal review and approval one day after the date of a variable annuity application is infeasible for broker-dealers with numerous, geographically dispersed offices. In comparison, even full-service broker-dealers with a small number of large offices do not face a single-day approval deadline in general securities transactions. The NASD has not substantiated the need for this harsh deadline for variable product distribution. Moreover, the proposal has not established that the one-day approval mechanism will have any impact on the targeted conduct.

The significant protections of free-look provisions do not appear to have entered into the NASD's analysis regarding the one-day approval deadline. Because the NASD has not quantified the need for the proposed change, it is further unnecessary to advance the proposal due to the unworkable aspects of the draft rule.

Proposal Devoid of Economic Analysis

NASD NTM 04-45 contains no economic impact statement, and makes no effort to quantify the burdens on broker-dealers or variable product manufacturers under the proposed changes. The initiative would impose unnecessary expenses on these groups. The economic burden of the proposal greatly overshadows its nebulous benefits.

The proposal's lack of economic analysis is unacceptable. It fails to demonstrate a quantifiable, empirical need for the new rule. The initiative will have anticompetitive consequences.

¹⁷ Appendix C provides a chart of free-look provisions under state insurance laws.

¹⁸ Rule 22c-1(c) under the Investment Company Act allows two business days for processing an initial variable annuity application that is in good order. The rule allows up to five business days to complete a variable annuity application that is not in good order, or longer if the customer consents.

¹⁹ Securities Transaction Settlement, Securities Act Release No. 7177 (June 6, 1995) (1995 WL 357899); Industry Comment Letter (publicly available November 3, 1995) (available on Westlaw 1995 WL 815284).

²⁰ Broker-dealers affiliated with life insurers typically market a significantly narrower range of securities than full service firms, and usually concentrate on variable life, variable annuity, and mutual fund sales.

Request for Comment on Alternatives Limiting Variable Annuities to Selected Investor Categories.

The proposal invites comment on whether the NASD should “limit the sale of variable annuities to certain categories of investors.” The proposal further states that “[m]oreover, [broker-dealer] members could be required to provide a comparison that would indicate the results that comparable products might provide the investor.”

In these theoretical alternatives, the NASD lacks fundamental regulatory authority. Once again, the NASD confuses the scope of its role over broker-dealer sales practices. That the NASD would even conceptually consider picking and choosing the consumers for whom variable annuities are available is mind-boggling.

The federal securities laws are designed to mandate full and fair disclosure about securities offered, and to ensure scrupulous sales practices. Congress gave no self-regulator authority to screen classes of investors for whom a security should be available. To even float the concept raises real concerns about anticompetitive conduct that Congress explicitly outlawed in the Securities Exchange Act of 1934.

The second request for comment about required comparisons indicating results of comparable products is no less troubling for a self-regulator like the NASD. While we are not clear what “comparable” products the NASD staff had in mind with this question, it reflects a disturbing notion that variable annuities are fungible with some other security, like mutual funds. This notion is fundamentally wrong, and dovetails with the NASD’s perception about fees and charges associated with variable annuities.

While it is true that variable annuity fees and charges are different from other products like mutual funds, it is also true that variable annuities are a completely different product with long-term mortality guarantees. Fees and charges for these insurance and long-term guarantees are set forth in the fee table and fully discussed in the prospectus.

A variable annuity is a long-term financial product that can provide a life-time stream of income, something offered by no other financial product. The NASD appears to have lost this critical distinction. Values accumulate in the variable annuity based on the performance of underlying investment portfolios. By tracking the performance of the economy, annuity values protect against a decline in purchasing power caused by inflation. Some variable annuities also protect beneficiaries’ interests with life insurance in case the annuity owner dies before annuity payments commence.

As a consequence of these unique features, variable annuities are not “comparable” with other financial products. Form N-4 requires a fee table “example” highlighting comparative variable annuity costs at one, three, five, and ten-year intervals. These costs include contract owner transaction expenses, contract fees, separate account annual expenses, and [portfolios company] fees and expenses.

The example shows the impact of these collective fees and charges, including various surrender scenarios, on a \$10,000 variable annuity account value assuming a 5% rate of return. This approach facilitates comparison shopping, fee translation, and performance visualizations.

The NASD's invitation for required "comparable" results substitutes its judgment for the SEC's in the recently upgraded fee table, is infeasible, and will inundate consumers with information of marginal value.

Conclusion

The life insurance industry condemns any unsuitable variable annuity sales. There is no place for unscrupulous practices. Abusive sales conduct harms consumers and life insurers alike. We support firm application of the securities laws against wrongdoing.

The most effective solution to inappropriate variable annuity sales is strong enforcement of existing suitability and supervision standards. Requiring broker-dealers to strongly encourage consumers to carefully read the prospectus is a far more constructive alternative to the proposal that does not undermine the SEC's commendable prospectus simplification proposal.

Like a duck moving smoothly on the water's surface while paddling madly underneath, the proposal is quite different beneath the surface. Its supporting premises are unsubstantiated and nebulous. Undisciplined adoption of more regulation is not better regulation.

We strongly recommend the NASD jettison its proposal. It is retrograde and dysfunctional regulation. The existing suitability and supervision rules are significant, effective standards assuring appropriate conduct. The NASD has comprehensive enforcement and examination tools at its disposal.

The proposal fails to demonstrate adequately a need for new regulations based on objective empirical data. There is no demonstration that the proposed rule changes will materially change the targeted conduct. The initiative lacks any quantification of economic impact.

Detailed federal securities and state insurance laws comprehensively govern the manufacture and sale of variable annuities. In several respects, the proposal unnecessarily duplicates provisions of state insurance laws, such as "free look" provisions and replacement regulations.

The proposed risk disclosure statement fully duplicates the fee table and risk disclosure in the variable annuity prospectus. Redundant layering of disclosure undermines the SEC's commendable prospectus simplification endeavors, and reduces the likelihood that consumers will read the primary information document—the prospectus.

Objective data on NASD disciplinary actions and SEC complaint history do not support the initiative's putative purpose. The proposed rule provides no added value or consumer protection. It essentially repackages current training, supervision, and suitability standards under different rule sections.

In sum, the burdens of the proposal greatly outweigh its putative benefits. Responsible rulemaking requires rigorous analysis and articulate justification. On these measures, the proposal fails. It should be dropped.

We greatly appreciate your attention to our views, and would be happy to address any questions that may develop.

Sincerely,

A handwritten signature in black ink that reads "Carl B. Wilkerson". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Carl B. Wilkerson

Appendix A to ACLI letter of Comment on NASD NTM 04-45²¹

NAIC Insurance and Annuities Replacement Model Regulation

- a. In June 2000, the NAIC adopted substantial amendments to the 1998 Insurance and Annuities Replacement Model Regulation that were supported by the ACLI and the life insurance industry. The modifications parallel the Iowa Replacement Regulation, which served as a template for many of the changes endorsed by the life insurance industry.
 - The amendments were developed with the Iowa Insurance Department to assure that none of the operative goals of the 1998 Model were weakened. The 2000 amendments should promote uniformity among state regulations.
 - Citation: Insurance and Annuities Replacement Model Regulation, NAIC Model Regulation Service-July 2000 at III-621-1, *See*, http://www.naic.org/papers/models/Table_of_Contents2000.htm.
- b. Approach of the amended regulation
 - The amended regulation establishes duties for insurance producers, replacing insurers, and existing insurers designed to protect consumers.
 1. For example, insurers using insurance producers must, among other things:
 - a. Maintain a system of supervision and control;
 - b. Have the capacity to monitor each producer's life and annuity replacements for that insurer;
 - c. Ascertain that required sales material and illustrations are complete and accurate; and
 - d. Maintain records of required notification forms and illustrations that can be produced.
 2. A required notice of replacement must be presented, read to consumers, and signed by the producer and consumer.
 - The regulation lists illustrative violations, and establishes penalties that may include the revocation or suspension of a producer's or company's license, monetary fines, and forfeiture of commissions or compensation. Commissioners may require insurers to make restitution, and restore policy values with interest when violation are material to the sale. [See, Section 8 of the regulation].
- c. Overview of Issue
 - A replacement occurs when an individual uses existing life insurance policy or annuity contract values to purchase a new policy or contract.
 - A replacement may involve the use of the entire value of an existing policy or contract, as in the case of a surrender, or it may involve the use of only a portion of the existing values.
 - Under the NAIC Model as amended in 2000, the use of *any* portion of the values of an existing policy or contract to purchase a new policy or contract constitutes

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replacement, including borrowing, assigning dividends, lapsing, or forfeiting.

1. External replacement occurs when a company replaces the life or annuity product of another company.
2. Internal replacement occurs when a company replaces a life or annuity contract that it has already issued.

d. *Purpose* of the Amended NAIC Replacement Regulation

- To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.
- To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions, and to:
 1. Assure that purchasers receive information with which a decision can be made in his or her own best interest;
 2. Reduce the opportunity for misrepresentation and incomplete disclosure; and
 3. Establish penalties for failure to comply with the regulation.

e. Regulation Applies to Variable Life Insurance and Variable Annuity Replacements

- The term replacement is defined in the regulation to mean a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:
 1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
 2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
 3. Amended so as to effect either a reduction in force of for which benefits would be paid;
 4. Reissued with any reduction in cash value; or
 5. Used in a financed purchase.
- The regulation excuses variable life and variable annuity contracts from requirements in Sections 5(A)(2) and 6(B) to provide illustrations or policy summaries.
 6. In place of the policy summaries and illustrations requirement, the regulation mandates “premium or contract distribution amounts and identification of the appropriate prospectus or offering circular” instead.
 7. In all other respects, the regulation fully applies to individual variable contract replacements.

f. *Exceptions* from regulation for group contracts

- The regulation does not apply to transactions involving:
 1. Policies or contracts used to fund:
 - a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - b. A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
 - c. A governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or
 - d. A non-qualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
 2. Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer.
 3. Credit life insurance.
- g. Duties of Producers and Insurers in Replacement Transactions
 - Duties of insurers that use producers [Section 4.]
 1. Under the regulation, each insurer must:
 - a. *Maintain a system of supervision and control* to insure compliance with the requirements of this regulation that shall *include at least* the following:
 - i. *Inform its producers of the requirements of the regulation* and incorporate the requirements of the regulation into all relevant *producer training manuals* prepared by the insurer;
 - ii. *Provide to each producer a written statement of the company's position with respect to the acceptability of replacements* providing guidance to its producer as to the appropriateness of these transactions;
 - iii. *A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with the regulation's standards;*
 - iv. *Procedures to confirm that the requirements of this regulation have been met;* and
 - v. *Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been identified as such by the applicant or producer.*
 - b. *Have the capacity to produce, upon request, and make available to the Insurance Department, records of each producer's:*
 - i. *Replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance and annuity contracts not exempted from this regulation;*

- ii. *Number of lapses* of policies and contracts by the producer as a percentage of the producer's total annual sales for life insurance and annuity contracts not exempted from this regulation;
 - iii. Number of transactions that are unidentified replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Section (4)(A)(5) of the regulation; and
 - iv. *Replacements, indexed by replacing producer and existing insurer.*
 - c. Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;
 - d. Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A to the regulation;
 - e. When the applicant has existing policies or contracts, retain completed and signed copies of the notice regarding replacements in its home or regional office for at least five years after the termination or expiration of the proposed policy or contract;
 - f. When the applicant has existing policies or contracts, obtain and retain copies of any sales material as required by Section 3(E) of the regulation, the basic illustration and any supplemental illustrations used in the sale and the producer's and applicant's signed statements with respect to financing and replacement in its home or regional office for at least five years after the termination or expiration of the proposed policy or contract
 - g. Records required to be retained by the regulation may be maintained in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process which accurately reproduces the actual document.
- Duties of Replacing Insurers that Use Producers [Section 6].
 - 2. Where a replacement is involved in the transaction, the replacing insurer shall:
 - a. Verify that the required forms are received and are in compliance with the regulation;
 - b. Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available *illustration or policy summary* for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer; [*note: this illustration and policy summary requirement does not apply to variable contracts.*]
 - c. Be able to produce copies of the notification regarding replacement required in Section 4(B), *indexed by producer, in its home or regional office* for at least five years or until the next regular examination by the insurance

department of a company's state of domicile, whichever is later; and

- d. Provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a *variable or market value adjustment policy or contract*, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract.
3. In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control [*internal replacements*] allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to *financed purchases* the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.
4. If an insurer *prohibits the use of sales material other than that approved by the company*, as an alternative to the requirements of Section 3(E) the insurer may:
 - a. Require with each application a statement signed by the producer that:
 - i. Represents that the producer *used only company-approved sales material*;
 - ii. *Lists*, by identifying number or other descriptive language, the *sales material that was used*; and
 - iii. States that copies of all sales material were left with the applicant in accordance with Section 3(D); and
 - b. Within ten days of the issuance of the policy or contract:
 - i. Notify the applicant by sending a letter or by verbal communication with the applicant *by a person whose duties are separate from the marketing area of the insurer*, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Section 3(D);
 - ii. Provide the applicant with a *toll free number* to contact *company personnel involved in the compliance function* if such is not the case; and
 - iii. Stress the importance of retaining copies of the sales material for future reference; and
 - c. *Keep a copy of the letter or other verification in the policy file at the home or regional office for at least five years* after the termination or expiration of the policy or contract.
- Duties of the Existing Insurer [Section 6].
5. Where a replacement is involved in the transaction, the existing insurer shall:
 - a. Upon notice that its existing policy or contract may be replaced or a policy may be part of a financed purchase, *retain copies* of the notification in its

home or regional office, *indexed by replacing insurer*, notifying it of the replacement for at least five years or until the conclusion of the next regular examination conducted by the Insurance Department of its state of domicile, whichever is later.

- b. Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner.
- c. Upon receipt of a request to borrow, surrender or withdraw any policy or contract values, send to the applicant a notice, advising the policy or contract owner of the effect release of policy or contract values will have on the non-guaranteed elements, face amount or surrender value of the policy or contract from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy or contract owner. In the case of *consecutive automatic premium loans or systematic withdrawals* from a contract, the insurer is only required to send the notice at the time of the first loan or withdrawal.

▪ Duties of Producers [Section 4].

- 6. A producer who initiates an application must submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.
- 7. If the applicant answered "yes" to the question regarding existing coverage referred to in Subsection (A), the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A to the regulation or other substantially similar form approved by the commissioner. *The notice shall be signed by both the applicant and the producer* attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and left with the applicant.
- 8. The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.
- 9. In connection with a replacement transaction *the producer shall leave with the applicant* at the time an application for a new policy or contract is completed *the original or a copy of all sales material*. With respect to electronically presented sales material, it shall be provided to the policyholder in printed form no later than at the time of policy or contract delivery.

10. Except as provided in Section 5(C) of the regulation, in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, *a statement identifying any preprinted or electronically presented company approved sales materials used*, and *copies of any individualized sales materials*, including *any illustrations* used in the transaction

h. Selected Definitions

- Section 2(D) defines the term financed purchase as “the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy.”
 1. If a withdrawal, surrender, or borrowing involving the policy values of an existing policy are used to pay premiums on a new policy owned by the same policyholder within thirteen months before or after the effective date of the new policy and is known by the replacing insurer, or if the withdrawal, surrender, or borrowing is shown on any illustration of the existing and new policies made available to the prospective policyowner by the insurer or its producers, it will be deemed prima facie evidence of a financed purchase.
- Section 2(I) defines the term *registered contract* as “a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.”

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APPENDIX A-1

IMPORTANT NOTICE:

REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.

YOU ARE CONTEMPLATING THE PURCHASE OF A LIFE INSURANCE POLICY OR ANNUITY CONTRACT. IN SOME CASES THIS PURCHASE MAY INVOLVE DISCONTINUING OR CHANGING AN EXISTING POLICY OR CONTRACT. IF SO, A REPLACEMENT IS OCCURRING. FINANCED PURCHASES ARE ALSO CONSIDERED REPLACEMENTS.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy or contract and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ☐ YES ☐ NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ☐ YES ☐ NO

If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

**INSURER NAME /CONTRACT OR POLICY# / INSURED OR ANNUITANT
/REPLACED (R) OR FINANCING (F)**

- 1.
- 2.

3.

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. [If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because

I certify that the responses herein are, to the best of my knowledge, accurate:

Applicant's Signature and Printed Name

Date

Producer's Signature and Printed Name

Date

I do not want this notice read aloud to me. _____ (*Applicants must initial only if they do not want the notice read aloud.*)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:

Are they affordable?

Could they change?

You're older--are premiums higher for the proposed new policy?

How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES:

New policies usually take longer to build cash values and to pay dividends.

Acquisition costs for the old policy may have been paid, you will incur costs for the new one.

What surrender charges do the policies have?

What expense and sales charges will you pay on the new policy?

Does the new policy provide more insurance coverage?

INSURABILITY:

If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.

You may need a medical exam for a new policy.

Claims on most new policies for up to the first two years can be denied based on inaccurate statements.

Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?

How will the premiums on your existing policy be affected?

Will a loan be deducted from death benefits?

What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?

What are the interest rate guarantees for the new contract?

Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?

Is this a tax free exchange? (See your tax advisor.)

Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?

Will the existing insurer be willing to modify the old policy?

How does the quality and financial stability of the new company compare with your existing company?

APPENDIX A-2

NOTICE REGARDING REPLACEMENT

REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one--or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

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Appendix A-3

Citations to State Laws and Regulations Concerning Replacement of Life Insurance and Annuities²²

State	Key Elements/Citations
Alabama	<p>Definitions: Ala. Admin. Code r. 70, Sec. 3 (replacement); Sec. 4 (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Ala. Admin. Code r. 70, Sec. 6 • Replacing insurers: Ala. Admin. Code r. 70, Sec. 7 • Existing insurers: Ala. Admin. Code r. 70, Sec. 9 • Direct response: Ala. Admin. Code r. 70, Sec. 8 <p>Forms: Ala. Admin. Code r. 70, Exhibit A (different companies); Exhibit B (same company); Exhibit C (direct response)</p> <p><i>Effective 1/1/05: Definitions: Ala. Admin. Code r. 482-1-133-.03</i></p> <p><i>Duties:</i></p> <ul style="list-style-type: none"> • <i>Producers: Ala. Admin. Code r. 482-1-133-.04</i> • <i>All insurers using producers: Ala. Admin. Code r. 482-1-133-.05</i> • <i>Replacing insurers that use producers: Ala. Admin. Code r. 482-1-133-.06</i> • <i>Existing insurers: Ala. Admin. Code r. 482-1-133-.07</i> • <i>Direct response: Ala. Admin. Code r. 482-1-133-.08</i> <p><i>Forms: Ala. Admin. Code 482-1-133 Appendix A, Appendix B, Appendix C</i></p>
Alaska	No applicable provisions
Arizona	<p>Definitions: Ariz. Rev. Stat. Ann. §20-1241</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Ariz. Rev. Stat. Ann. §20-1241.03 • All insurers using producers: Ariz. Rev. Stat. Ann. §20-1241.04 • Replacing insurers: Ariz. Rev. Stat. Ann. §20-1241.05 • Existing insurers: Ariz. Rev. Stat. Ann. §20-1241.06 • Direct response: Ariz. Rev. Stat. Ann. §20-1241.07 <p>Forms: Ariz. Admin. Code R20-6-215, NAIC Replacement Model Appendix A, Appendix B, Appendix C adopted by reference</p>
Arkansas	<p>Duties:</p> <ul style="list-style-type: none"> • Producers: Ark. Code Ann. §23-66-307 and Bulletin 6-89. <p>Replacements that do not conform with Ark. Code Ann. §23-66-307 are defined as “churning.” Ark. Code Ann. §23-66-206(13)</p>

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State	Key Elements/Citations
California	<p>Definitions: Cal. Ins. Code §10509.2</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Cal. Ins. Code §10509.4 • Insurers: Cal. Ins. Code §10509.5 • All insurers using producers: Cal. Ins. Code §10509.6 • Direct response: Cal. Ins. Code §10509.7 <p>Forms: Cal. Ins. Code §10509.4(d) (from producer)</p>
Colorado	<p>Definitions: Col. Code Regs. 3 Colo. Code Regs §4-1-4, Section 4</p> <p>Exemptions: Col. Code Regs. 3 Colo. Code Regs §4-1-4, Section 3</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Col. Code Regs. 3 Colo. Code Regs §4-1-4, Section 5 • All insurers using producers: Col. Code Regs. 3 Colo. Code Regs §4-1-4, Section 6 • Replacing insurers: Col. Code Regs. 3 Colo. Code Regs §4-1-4, Section 7 • Existing insurers: Col. Code Regs. 3 Colo. Code Regs §4-1-4, Section 8 • Direct response: Col. Code Regs. 3 Colo. Code Regs §4-1-4, Section 9 <p>Forms: Col. Code Regs. 3 Colo. Code Regs §4-1-4, Appendices A and C – replacement forms for life insurance or annuities; Appendix B – notice to applicant to compare existing benefits against proposed contract.</p>
Connecticut	<p>Conn. Gen. Stat. §38a-435 authorizes insurance commissioner to make regulations governing replacement of life insurance and annuities.</p>
Delaware	<p>Definitions: Del. Admin. Code tit. 18, Regulation 1204, Section 2.0 (replacement); Section 3.0 (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Agents or brokers: Del. Admin. Code tit. 18, Regulation 1204, Section 5.0 • All insurers: Del. Admin. Code tit. 18, Regulation 1204, Section 6.0 • All insurers using agents or brokers: Del. Admin. Code tit. 18, Regulation 1204, Section 7.0 • Direct response: Del. Admin. Code tit. 18, Regulation 1204, Section 8.0 <p>Forms: Del. Admin. Code tit. 18, Regulation 1204, Exhibit A</p>
District of Columbia	<p>No applicable provisions.</p>

State	Key Elements/Citations
Florida	<p>Definitions: Fla. Admin. Code Ann. 69B-151.002 and 69O-151.002 (formerly 4-151.002) (replacement); 69B-151.003 and 69O-151.003 (formerly 4-151.003) (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Fla. Admin. Code Ann. 69B-151.002 (formerly 4-151.005) (agent); 69B-151.002 (formerly 4-151.006) (replacing agent) • Replacing insurers: Fla. Admin. Code Ann. 69O-4-151.007 (formerly 4-151.007) • Existing insurers: Fla. Admin. Code Ann. 69O-4-151.008 (formerly 4-151.008) <p>Forms: OIR-B2-312 "Notice to Applicant Regarding Replacement of Life Insurance" and OIR-B2-313 "Comparative Information Form."</p> <p>Also, for information on churning, see: Fla. Stat. Ann. §§ 626.9541(1)(aa); 627.573; Fla. Admin. Code Ann. 69B-151.201 - 203 (formerly 4-151-201 to 4-151-203); and Form DI4-1180 "Policy Disclosure Form and Instructions."</p>
Georgia	<p>Definitions: Ga. Comp. R. & Regs. 120-2-24-.03</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Ga. Comp. R. & Regs. 120-2-24-.05 • All insurers: Ga. Comp. R. & Regs. 120-2-24-.06 • All insurers using producers: Ga. Comp. R. & Regs. 120-2-24-.07 • Direct response: Ga. Comp. R. & Regs. 120-2-24-.08 <p>Forms: Ga. Comp. R. & Regs. Chapter 120-2-24, Exhibit A (replacement notice)</p>
Hawaii	<p>Definitions: Hawaii Rev. Stat. §431:10D-502; Hawaii Administrative Code §16-3-2</p> <p>Exemptions: Hawaii Rev. Stat. §431:10D-501; Hawaii Administrative Code §16-3-3</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Hawaii Rev. Stat. §431:10D-503; Hawaii Administrative Code §16-3-5 • All insurers: Hawaii Administrative Code §16-3-6 • All insurers using producers: Hawaii Rev. Stat. §431:10D-504 • Replacing insurers: Hawaii Rev. Stat. §431:10D-505 • Existing insurers: Hawaii Rev. Stat. §431:10D-506 • Direct response: Hawaii Rev. Stat. §431:10D-507 <p>Forms: Hawaii Rev. Stat. §431:10D-502 (direct response); Hawaii Administrative Code §16-3-7, Exhibit A (disclosure statement); Exhibit B (notice)</p>

State	Key Elements/Citations
Idaho	<p>Definitions: Idaho Administrative Code 18.01.41 Section 004 (replacement), Section 005 (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Idaho Administrative Code 18.01.41 Section 012 • All insurers: Idaho Administrative Code 18.01.41 Section 013 • All insurers using producers: Idaho Administrative Code 18.01.41 Section 014 • Direct response: Idaho Administrative Code 18.01.41 Section 015 <p>Forms: Idaho Administrative Code 18.01.41 Section 016, Exhibit A</p>
Illinois	<p>Definitions: Ill. Adm. Code tit. 50, Section 917.30 (replacement); Section 917.40 (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Ill. Adm. Code tit. 50, Section 917.60 • Replacing insurers: Ill. Adm. Code tit. 50, Section 917.70 • Direct response: Ill. Adm. Code tit. 50, Section 917.80 <p>Forms: Ill. Adm. Code tit. 50, Section 917, Exhibit A (notice re: replacement); Exhibit B (notice re: proposed replacement)</p>
Indiana	<p>Definitions: Ind. Admin. Code tit. 760 r. 1-16.1-2 (replacement); r. 1-16.1-3 (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Ind. Admin. Code tit. 760 r. 1-16.1-5 • Replacing insurers: Ind. Admin. Code tit. 760 r. 1-16.1-6 • Existing insurers: Ind. Admin. Code tit. 760 r. 1-16.1-8 • Direct response: Ind. Admin. Code tit. 760 r. 1-16.1-7 <p>Forms: Ind. Admin. Code tit. 760 r. 1-16.112.5, Exhibit A (agent); r. 1-16.113.5, Exhibit B (direct response)</p>
Iowa	<p>Definitions: Iowa Admin. Code r. 191—16.22(507B)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Iowa Admin. Code r. 191—16.24(507B) • All insurers using producers: Iowa Admin. Code r. 191—16.25(407B) • Replacing insurers: Iowa Admin. Code r. 191—16.26(507B) • Existing insurers: Iowa Admin. Code r. 191—16.27(507B) • Direct response: Iowa Admin. Code r. 191—16.28(507B) <p>Forms (NAIC models): Iowa Admin. Code r. Chapter 16, Appendix A; Appendix B; Appendix C</p>
Kansas	<p>Definitions: Kan. Admin. Regs. §40-2-12(a)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Kan. Admin. Regs. §40-2-12(c), (d), (h), (i), (j); • All insurers: Kan. Admin. Regs. §40-2-12(e) • Replacing insurers: Kan. Admin. Regs. §40-2-12(f) <p>Forms: Kan. Admin. Regs. §40-2-12(g), Exhibit A (different companies); Exhibit B (same company); Exhibit C</p>

State	Key Elements/Citations
Kentucky	<p>Definitions: Ky. Rev. Stat. Ann. §304.12-030(1); 806 Ky. Admin. Regs. 12:080, Section 2</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Ky. Rev. Stat. Ann. §304.12-030(2); 806 Ky. Admin. Regs. 12:080, Sections 4 and 7 • Replacing insurers: Ky. Rev. Stat. Ann. §304.12-030(3) and (5); 806 Ky. Admin. Regs. 12:080, Section 5 • Existing insurers: 806 Ky. Admin. Regs. 12:080, Section 7 • Direct response: 806 Ky. Admin. Regs. 12:080, Section 6 <p>Forms: 806 Ky. Admin. Regs. 12:080, Section 8, Departmental Form A (referenced); Bulletin 83-DM-004</p>
Louisiana	<p>Definitions: La. Admin. Code tit. 37, §8903 (Reg. 70)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: La. Admin. Code tit. 37, §8907 (Reg. 70) • All insurers using producers: La. Admin. Code tit. 37, §8909 (Reg. 70) • Replacing insurers: La. Admin. Code tit. 37, §8911 (Reg. 70) • Existing insurers: La. Admin. Code tit. 37, §8913 (Reg. 70) • Direct response: La. Admin. Code tit. 37, §8915 (Reg. 70) <p>Forms: La. Admin. Code tit. 37, §8921 (Reg. 70), Appendix; §8923 (Reg. 70), Appendix B; and §8925 (Reg. 70), Appendix C</p>
Maine	No applicable provisions for life and annuity products.
Maryland	<p>Definitions: Md. Regs. Code 31.09.05.03</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Md. Regs. Code 31.09.05.04 • All insurers using producers: Md. Regs. Code 31.09.05.05 • Replacing insurers: Md. Regs. Code 31.09.05.06 • Existing insurers: Md. Regs. Code 31.09.05.07 • Direct response: Md. Regs. Code 31.09.05.08 <p>Forms: Md. Regs. Code 31.09.05.10, Replacement Form A; Md. Regs. Code 31.09.05.11, Replacement Form B; Md. Regs. Code 31.09.05.12, Replacement Form C</p>
Massachusetts	<p>Definitions: Mass. Regs. Code tit. 211, §34.02</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Mass. Regs. Code tit. 211, §34.04 • All insurers: Mass. Regs. Code tit. 211, §34.05 • All insurers using producers: Mass. Regs. Code tit. 211, §34.06 • Direct response: Mass. Regs. Code tit. 211, §34.07 <p>Forms: Mass. Regs. Code tit. 211, §34.04;</p>

State	Key Elements/Citations
Michigan	<p>Definitions: Mich. Admin. Code r. 500.601</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Mich. Admin. Code r. 500.602 • All insurers: Mich. Admin. Code r. 500.603 • Replacing insurers: Mich. Admin. Code r. 500.604 <p>Forms: Insurance Bureau Bulletin 84-6</p>
Minnesota	<p>Definitions: Minn. Stats. Ann. §61A.53</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Minn. Stats. Ann. §61A.55 • All insurers: Minn. Stats. Ann. §61A.56 • All insurers using producers: Minn. Stats. Ann. §61A.57 • Direct response: Minn. Stats. Ann. §61A.58 <p>Forms: Minn. Stats. Ann. §61A.60, Subdivisions 1, 2, and 3</p>
Mississippi	<p>Definitions: Miss. Ins. Reg. 99-2.2</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Miss. Ins. Reg. 99-2.3 • All insurers using producers: Miss. Ins. Reg. 99-2.4 • Replacing insurers: Miss. Ins. Reg. 99-2.5 • Existing insurers: Miss. Ins. Reg. 99-2.6 • Direct response: Miss. Ins. Reg. 99-2.7 <p>Forms: Miss. Ins. Reg. 99-2, Appendix A, Appendix B, and Appendix C</p>
Missouri	<p>Definitions: Mo. Code Regs. Ann. tit. 20, §400-5.400(2) and (3)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Mo. Code Regs. Ann. tit. 20, §400-5.400(5) • All insurers: Mo. Code Regs. Ann. tit. 20, §400-5.400(6) • All insurers using producers: Mo. Code Regs. Ann. tit. 20, §400-5.400(7) • Direct response: Mo. Code Regs. Ann. tit. 20, §400-5.400(8) <p>Forms: Mo. Code Regs. Ann. tit. 20, §400-5.400, Exhibit A and Exhibit B</p>
Montana	<p>Definitions: Mont. Admin. Reg. 6.6.303</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Mont. Admin. Reg. 6.6.305 • All insurers using producers: Mont. Admin. Reg. 6.6.311 • Replacing insurers: Mont. Admin. Reg. 6.6.306 • Existing insurers: Mont. Admin. Reg. 6.6.308 • Direct response: Mont. Admin. Reg. 6.6.307 <p>Forms: NAIC model forms—Appendices A, B, and C—incorporated by reference</p>

State	Key Elements/Citations
Nebraska	<p>Definitions: 210 Neb. Admin. Code Ch. 19, section 003 (replacement); 210 Neb. Admin. Code Ch. 19, section 004 (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: 210 Neb. Admin. Code Ch. 19, section 006 • All insurers: 210 Neb. Admin. Code Ch. 19, section 007 • All insurers using producers: 210 Neb. Admin. Code Ch. 19, section 008 • Direct response: 210 Neb. Admin. Code Ch. 19, section 009 <p>Forms: 210 Neb. Admin. Code Ch. 19, Exhibit A</p>
Nevada	<p>Definitions: Nev. Admin Code §§686A-510 - 686A.530</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Nev. Admin Code §686A.550; §686A.567 • Replacing insurers: Nev. Admin Code §686A.555 • Direct response: Nev. Admin Code §686A.560 <p>Forms: Nev. Admin Code §686A.563</p>
New Hampshire	<p>Definitions: N.H. Code Admin. R. Ann. Ins. 302.03</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: N.H. Code Admin. R. Ann. Ins. 302.04 • All insurers using producers: N.H. Code Admin. R. Ann. Ins. 302.05 • Replacing insurers: N.H. Code Admin. R. Ann. Ins. 302.06 • Existing insurers: N.H. Code Admin. R. Ann. Ins. 302.07 • Direct response: N.H. Code Admin. R. Ann. Ins. 302.08 <p>Forms: N.H. Code Admin. R. Ann. Ins. 302, Appendix A, Appendix B, and Appendix C</p>
New Jersey	<p>Definitions: N.J. Admin. Code §11:4-2.2</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: N.J. Admin. Code §11:4-2.4 • Replacing insurers: N.J. Admin. Code §11:4-2.5 • Existing insurers: N.J. Admin. Code §11:4-2.7 • Direct response: N.J. Admin. Code §11:4-2.6 <p>Forms: N.J. Admin. Code §11:4-2, Appendix A (different companies); Exhibit B (same company); Exhibit C (important notice); Exhibit D (comparative information form)</p> <p>[Note: Also see Bulletin No. 04-11, dated July 22, 2004, for information of impending adoption of current NAIC Replacement Model.]</p>

State	Key Elements/Citations
New Mexico	<p>Definitions: N.M. Admin Code tit. 13, §9.6.7</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: N.M. Admin Code tit. 13, §9.6.8 • All insurers using producers: N.M. Admin Code tit. 13, §9.6.9 • Replacing insurers using producers: N.M. Admin Code tit. 13, §9.6.10 • Existing insurers: N.M. Admin Code tit. 13, §9.6.11 • Direct response: N.M. Admin Code tit. 13, §9.6.12 <p>Forms: N.M. Admin Code tit. 13, §9.6.14, Appendix A (notice to be signed by applicant and producer, if one); §9.6.15, Appendix B (notice); §9.6.16, Appendix C (notice to be signed by applicant)</p>
New York	<p>Definitions: N.Y. Comp. Codes R. & Regs. tit. 11, §51.2</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: N.Y. Comp. Codes R. & Regs. tit. 11, §51.5 • All insurers: N.Y. Comp. Codes R. & Regs. tit. 11, §51.6 • Replacing insurers: N.Y. Comp. Codes R. & Regs. tit. 11, §51.6 • Existing insurers: N.Y. Comp. Codes R. & Regs. tit. 11, §51.6 <p>Forms: N.Y. Comp. Codes R. & Regs. tit. 11, §51.8, Appendix 10A (disclosure statement), Appendix 10B (annuity to annuity), Appendix 10C (notice), Appendix 11 (definition of replacement)</p>
North Carolina	<p>Definitions: N.C. Admin Code tit. 11, r. 12.0602 and 12.0603</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: N.C. Admin Code tit. 11, r. 12.0605 • Existing insurer: N.C. Admin Code tit. 11, r. 12.0606 • Insurers using producers: N.C. Admin Code tit. 11, r. 12.0607 • Replacing insurers using producers: N.C. Admin Code tit. 11, r. 12.0611 • Direct response: N.C. Admin Code tit. 11, r. 12.0608 <p>Forms: N.C. Admin Code tit. 11, r. 12.0611 (notice)</p>
North Dakota	No applicable provisions.
Ohio	<p>Definitions: Ohio Admin. Code §3901-6-05(D)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Ohio Admin. Code §3901-6-05(E) • All insurers: Ohio Admin. Code §3901-6-05(F) • All insurers using producers: Ohio Admin. Code §3901-6-05(G) • Direct response: Ohio Admin. Code §3901-6-05(H) <p>Forms: Ohio Admin. Code §3901-6-05 Appendix</p>
Oklahoma	<p>Definitions: Okla. Stat. Ann. tit. 36, §4033 and §4037</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Okla. Stat. Ann. tit. 36, §4034 • All insurers: Okla. Stat. Ann. tit. 36, §4034 • Existing insurers: Okla. Stat. Ann. tit. 36, §4034 <p>Forms: Okla. Stat. Ann. tit. 36, §4035 (notice); §4036 (applicant's statement); §4037 (definitions)</p>

State	Key Elements/Citations
Oregon	<p>Definitions: Or. Admin. R. 836-080-0005</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Or. Admin. R. 836-080-0014 • All insurers using producers: Or. Admin. R. 836-080-0022 • Replacing insurers: Or. Admin. R. 836-080-0029 • Existing insurers: Or. Admin. R. 836-080-0034 • Direct response: Or. Admin. R. 836-080-0039 <p>Forms: Or. Admin. R. 836-080, Appendix A, Appendix B, and Appendix C</p>
Pennsylvania	<p>Definitions: 40 Pa. Code §81.2</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: 40 Pa. Code §81.4 • All insurers: Pa. Stat. Ann. tit. 40, §625-9; 40 Pa. Code §81.5 • All insurers using producers: 40 Pa. Code §81.6 • Direct response: 40 Pa. Code §81.7 <p>Forms: 40 Pa. Code Chapter 81, Appendix A and Appendix B</p>
Rhode Island	<p>Definitions: R. I. Ins. Reg. 29, sec. 3 (replacement); R. I. Ins. Reg. 29, sec. 4 (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: R. I. Ins. Reg. 29, sec. 6 • Replacing insurers: R. I. Ins. Reg. 29, sec. 7 • Existing insurers: R. I. Ins. Reg. 29, sec. 9 • Direct response: R. I. Ins. Reg. 29, sec. 8 <p>Forms: R. I. Ins. Reg. 29, Exhibit A (different companies); Exhibit B (same company); Exhibit C (direct response); Exhibit D (comparative form)</p>
South Carolina	<p>Definitions: S. C. Code Regs. 69-12.1, sec. 2 (replacement); 60-12.1, sec. 3 (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: S. C. Code Regs. 69-12.1, sec. 5 • All insurers: S. C. Code Regs. 69-12.1, sec. 6 • All insurers using producers: S. C. Code Regs. 69-12.1, sec. 7 • Direct response: S. C. Code Regs. 69-12.1, sec. 8 <p>Forms: S. C. Code Regs. 69-12.1, Exhibit A</p>
South Dakota	<p>Definitions: S. D. Admin. R. 20:06:08:38</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: S. D. Admin. R. 20:06:08:39 • Replacing insurers: S. D. Admin. R. 20:06:08:39 <p>Forms: S. D. Admin. R. 20:06:08:41 (describes contents of notice)</p>

State	Key Elements/Citations
Tennessee	<p>Definitions: Tenn. Comp. R. & Regs. 0780-1-24-.02 (replacement); 0780-1-24-.03 (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Tenn. Comp. R. & Regs. 0780-1-24-.05 • All insurers: Tenn. Comp. R. & Regs. 0780-1-24-.06 • All insurers using producers: Tenn. Comp. R. & Regs. 0780-1-24-.07 • Direct response: Tenn. Comp. R. & Regs. 0780-1-24-.08 <p>Forms: Tenn. Comp. R. & Regs. 0780-1-24, Exhibit A</p>
Texas	No applicable provisions.
Utah	<p>Definitions: Utah Admin. Code R590-93-3 (replacement); R590-93-4 (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Utah Admin. Code R590-93-6 • All insurers using producers: Utah Admin. Code R590-93-7 • Existing insurers: Utah Admin. Code R590-93-9 • Direct response: Utah Admin. Code R590-93-8 <p>Forms: Utah Admin. Code R590-93, Addendum (notice)</p>
Vermont	<p>Definitions: Reg. I-2001-03, Sec. 2</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Reg. I-2001-03, Sec. 3 • All insurers using producers: Reg. I-2001-03, Sec. 4 • Replacing insurers: Reg. I-2001-03, Sec. 5 • Existing insurers: Reg. I-2001-03, Sec. 6 • Direct response: Reg. I-2001-03, Sec. 7 <p>Forms: Reg. I-2001-03, Sec. Appendices A, B, and C</p>
Virginia	<p>Definitions: 14 Va. Admin. Code §5-30-20</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: 14 Va. Admin. Code §5-30-40 • All insurers: 14 Va. Admin. Code §5-30-50 • All insurers using producers: 14 Va. Admin. Code §5-30-60 • Direct response: 14 Va. Admin. Code §5-30-70 <p>Forms: 14 Va. Admin. Code §5-30, Exhibit A</p>
Washington	<p>Definitions: Wash. Admin. Code §284-23-410 (replacement); §284-23-420 (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Wash. Admin. Code §284-23-440 • All insurers: Wash. Admin. Code §284-23-450 • All insurers using producers: Wash. Admin. Code §284-23-455 • Direct response: Wash. Admin. Code §284-23-460 <p>Forms: Wash. Admin. Code §284-23-485</p>

State	Key Elements/Citations
West Virginia	<p>Definitions: W. Va. Code §33-11-5a(a); W. Va. Code St. R. §114-8-2</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: W. Va. Code St. R. §114-8-4 • Replacing insurers: W. Va. Code §33-11-5a(b); W. Va. Code St. R. §114-8-5 • Existing insurers: W. Va. Code St. R. §114-8-7 • Direct response: W. Va. Code St. R. §114-8-6 <p>Forms: W. Va. Code St. R. §114-8, Appendix A (different companies); Appendix B (same company); Appendix C (direct response); Appendix D (comparative form)</p>
Wisconsin	<p>Definitions: Wisc. Admin. Code Ins 2.07(3)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Wisc. Admin. Code Ins 2.07(4) • All insurers: Wisc. Admin. Code Ins 2.07(5) • All insurers using producers: Wisc. Admin. Code Ins 2.07(5)(a) • Direct response: Wisc. Admin. Code Ins 2.07(5)(b) <p>Forms: Wisc. Admin. Code Ins 2.07, Appendix I (notice if agent); Appendix II (notice if no agent); Appendix III (definitions)</p>
Wyoming	<p>Definitions: Wy. Ins. Regs. ch. 12, sec. 3</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Wy. Ins. Regs. ch. 12, sec. 5 • All insurers: Wy. Ins. Regs. ch. 12, sec. 6 • All insurers using producers: Wy. Ins. Regs. ch. 12, sec. 7 • Direct response: Wy. Ins. Regs. ch. 12, sec. 8 <p>Forms: Wy. Ins. Regs. ch. 12, Exhibit A</p>

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Appendix B to ACLI Letter of Comment

VARIABLE CONTRACTS FULFILL A COMPREHENSIVE STATE AND FEDERAL SYSTEM OF REGULATION²³

A. STATE INSURANCE REGULATION

Through a network of statutes and regulations, state insurance departments heavily regulate the operations, products, and sales of life insurance companies. Life insurers and their salespersons must satisfy this regulatory structure in their state of domicile and every jurisdiction in which they distribute life insurance and annuities. Uniformity of regulation is accomplished throughout the states by means of model statutes and regulations promulgated by the National Association of Insurance Commissioners (the “NAIC”). Many of the insurance statutes and regulations promulgated and enforced by state insurance departments fulfill regulatory goals quite similar to those of the state securities administrators. The summary below highlights the broad scope and comprehensiveness of certain state insurance statutes and regulations.

UNFAIR TRADE PRACTICES

Virtually every state has enacted a version of the NAIC Model Unfair Trade Fair Practices Act which was developed to regulate trade practices in the insurance business by defining and prohibiting practices that constitute unfair methods of competition or unfair deceptive acts or practices.²⁴

A variety of the activities defined to be unfair trade practices directly parallel the purpose and scope of state securities codes. Section 4(A) involves misrepresentations and false advertising of insurance policies, and identifies unfair trade practices to include any estimate, illustration, circular or statement, sales misrepresentation, omission or comparison that misrepresents the benefits, advantages, conditions or terms of any policy, among other things.

Section 4(B) involves false information and advertising generally. This provision defines an unfair trade practice to include making, publishing or disseminating in a newspaper, magazine or other publication, on any radio/television station any assertion,

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²⁴ This model statute governs items previously subject to Section 5 of The Federal Trade Commission Act. Congress observed that continued regulation of insurance by the states was in the public interest. *See*, legislative history of NAIC Unfair Trade Practices Act, NAIC Model Regulation Service at 880-20(1993).

representation or statement about an insurer or its business, which is untrue, deceptive or misleading.

Knowingly making any false statement of any material fact to insurance regulators, or in documents that will be publicly disseminated, is defined to be an unfair trade practice in Section 4(B) of the Model Unfair Trade Practices Act. This proscription is consistent with the truthfulness and accuracy of reports, records and representations required of Broker/Dealers by the NASD and the SEC under the federal securities laws.

Section 4(J) involves the failure to maintain marketing and performance records, and defines as an unfair trade practice the failure of an insurer to maintain its books, records, documents, and other business records in such an order that data regarding complaints, claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year in the two preceding years must be maintained under this standard. This provision directly parallels the scope and purpose of NASD Conduct Rule 3110 regarding books and records.

Section 4(K) defines the failure of any insurer to maintain a complete record of all the complaints it received since the date of its last market conduct examination to be an unfair trade practice. The records of complaints must indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint and the time it took to process each.²⁵ For purposes of this subsection, the term “complaint” means any written communication primarily expressing a grievance.

Like state securities administrators, insurance commissioners have the power to examine and investigate the affairs of every insurer operating in the insurance department’s state “in order to determine whether such insurer has been or is engaged in any unfair trade practice prohibited by [the Unfair Trade Practices Act].”²⁶ Several provisions embellish this important authority.

For example, Section 7 of the Unfair Trade Practices Act gives insurance commissioners extensive authority to initiate hearings concerning unfair trade practices, to compel witnesses, appearances, production of books, and service of process. Section 7 sets forth detailed administrative and procedural practices, in order to assure due process and quasi-judicial formality.

²⁵The NAIC has also promulgated a Model Regulation for Complete Records to be maintained pursuant to Section 4(K) of the NAIC Unfair Trade Practices Act. *See*, NAIC Model Regulation Service at 844-1(1992). This regulation sets forth a complaint record form, content requirements, maintenance requirements, and standards concerning the format of complaint records.

²⁶ *See* Section 6, Power of Commissioner, Model Unfair Trade Practices Act, NAIC Model Regulation Service at 880-9(1993).

Section 8 of the Unfair Trade Practices statute authorizes insurance commissioners finding insurers guilty of unfair trade practices to issue written findings and enforcement orders requiring the insurer to cease and desist from engaging in the act or practice. The insurance commissioner also has the discretionary authority to suspend and revoke the insurer's license if the insurer knew or reasonably should have known that its conduct violated the Unfair Trade Practices Act, and to order penalties of \$1,000 for each violation up to an aggregate penalty of \$100,000, unless the violation was committed flagrantly in conscious disregard of the act, in which case the penalty may be up to \$25,000 for each violation to an aggregate total penalty of \$250,000. A similar monetary violation may be imposed under Section 11 for violations of cease and desist orders. The act also provides for judicial review of insurance commissioner orders and authorizes immunity from prosecution for witnesses who attend, testify or produce books, records or other paper correspondence.²⁷

These significant powers that may be used by insurance commissioners to enforce violations of unfair trade practice proscriptions, together with the recordkeeping, reporting and inspection powers of the Act, provide a package of regulatory tools directly analogous to state securities codes, the NASD Rules of Conduct and SEC regulations governing market conduct practices and the prosecution of violations. In a sum, the unfair trade practice laws provide meaningful proscriptions that eliminate the need for duplicative regulation of variable contracts.

NAIC MODEL FRAUD LAWS AND FRAUD LEGISLATION

Enactment of state fraud statutes represents another significant insurance regulatory development. Recent market conduct issues have resulted in some insurance departments requiring insurer management to assume increased responsibility for supervision of sales activities. Other states have taken an approach similar to that of New York and Pennsylvania by requiring insurer review of market conduct compliance, thus placing direct responsibility at the corporate officer level. This widespread action dovetails with the objectives of the Federal Crime Control Statute and the Federal Sentencing guidelines, discussed below.

While states have taken different approaches to the issue, the majority of states addressing the fraud issue enacted legislation similar to the NAIC Model Fraud Laws.²⁸

MARKET CONDUCT EXAMINATIONS

Nearly every jurisdiction has enacted a version of the NAIC Model Law on Examinations.²⁹ This Act is designed to provide an effective and efficient system for

²⁷See Sections 8, 9, 10, 11 and 14 of the Model Unfair Trade Practices Act, NAIC Model Regulation Service at 880-10 through 13(1994).

²⁸See NAIC Insurance Fraud Prevention Model Act, NAIC Model Reporting Service at 680-1(1995).

²⁹See NAIC Model Regulation Service at 390-1(1991).

examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in each state and concerning individuals otherwise subject to the insurance commissioner's jurisdiction. The Act is intended to enable commissioners to adopt a flexible system of examinations and allocate resources deemed appropriate and necessary for the administration of the insurance laws of each state. The Model Law on Examinations sets forth standards for the conduct of examinations, commissioner authority, scope, and scheduling of examinations. It also details the scope of examination reports which shall be comprised of only facts appearing on books, records or other documents of the company, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined.³⁰

Significantly, this Model Act dovetails with the NAIC Market Conduct Examiner's Handbook, an extremely detailed manual for examiners to assure that examiners follow comprehensive, uniform practices and procedures. The Examiner's Handbook is divided into seven different sections and contains 58 different standards. Among other things, the Examiner's Handbook addresses complaint handling, marketing and sales, producer licensing, and company operations/management.³¹

³⁰See Sections 3, 4, and 5 of the Model Law on Examinations, NAIC Model Regulation Service at 390-5 (1991). Section 5 also sets forth detailed provisions for orders and administrative procedures in the conduct of hearing and adoption of a report on examination.

³¹Certain standards under the complaint handling section illuminate the depth and scope of the market conduct examination. Several standards are set forth below in this note as representative examples.

Complaint Handling

Standard 2

The company has adequate complaint handling procedures in place and communicates such procedures to policyholders.

Review Procedures and Criteria

Review manuals to verify complaint procedures exist. Procedures in place should be sufficient to require satisfactory handling of complaints received as well as internal procedures for analysis in areas developing complaints. There should be a method for distribution of and obtaining and recording response to complaints. This method should be sufficient to allow response within the time frame required by state law.

Company should provide a telephone number and address for consumer inquiries.

Complaint Handling

Standard 3

The company should take adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules and regulations and contract language.

Review Procedures and Criteria

Review complaints documentation to determine if the company response fully addresses the issues raised. If the company did not properly address/resolve the complaint, the examiner should ask company what corrective action it intends to take.

Commentary:

Reference to the examiner's general instructions on Handbook page VIII-14 (November 1995) reveals that an inquiry broader in scope than the mere resolution of a given complaint is expected. For example, the Handbook contains the following instructions:

"The examiner should review the frequency of similar complaints and be aware of any pattern of specific type of complaints....Should the types of complaints generated be cause for unusual concern, specific measures should be instituted to investigate other areas of the company's operation."

Throughout most of 1995 and 1996, the NAIC significantly revised the Market Conduct Examiner's Handbook, which has been recommended for full adoption by the NAIC. The NAIC, together with industry input, sought to expand and enhance tools fostering the detection and prevention of marketplace abuse in the life insurance industry. Market conduct examinations are extremely comprehensive and serve as a means of positive reinforcement, by discouraging deficient practices that will be detected on examination, resulting in remedial action, and insurance department intervention.

AGENTS LICENSING AND TESTING

The NAIC Agents and Brokers Licensing Model Act,³² which appears virtually in every state, governs the qualifications and procedures for licensing insurance and annuity agents and brokers. This model law sets forth examination and licensing standards in great detail, and has a specific category for variable annuities and variable life insurance contracts. Licensed salespeople must be deemed by the insurance commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation. Insurance brokers must also fulfill experience requirements. Section 8 of this regulation governs license denial, non-renewal and termination, giving the insurance commissioner broad discretion to suspend, revoke or refuse to issue or renew a license upon finding any of a variety of conditions including materially untrue statements, violation or noncompliance with insurance laws, withholding, misappropriating or converting customer moneys, conviction of a felony or misdemeanor involving moral turpitude, forgery, or cheating on licensing examinations, among other things.

CONTINUING EDUCATION

In granting insurance agents and brokers licenses, most states also impose significant continuing education standards that parallel in objective and scope the continuing education standards recently developed by the securities industry together with the NASD. As in other areas seeking uniformity, the NAIC has promulgated the Agents and Brokers Licensing Model Act.³³ Under Section 5 of this model regulation, licensed agents must annually satisfy courses or programs of instruction approved by insurance commissioners in each state according to a minimum number of classroom hours, which typically is in the range of 25 class room hours per year for life and annuity salespersons. The courses include those presented by the Life Underwriter Training

Complaint Handling Standard 4

The time frame within which the company responds is in accordance with applicable statutes, rules, and regulations.

Review Procedures and Criteria

Review complaints to ensure company is maintaining adequate documentation. Determine if the company response is timely. The examiner should refer to state laws for the required time frame.

³²See NAIC Model Regulation Service at 210-1 (1990).

³³See NAIC Model Regulation Service at 215-1 (1990).

Council Life Course Curriculum, the American College's Chartered Life Underwriter and Chartered Financial Planner curriculum, and the Insurance Institute of America's programs in general insurance, for example. Like the NASD, state insurance regulators understand that testing, licensing and demonstration of continued competence through continuing education is critically important in the distribution of insurance and annuity products.

VARIABLE CONTRACT STATUTES

Life insurance companies are authorized to issue separate accounts funding variable life insurance and annuity contracts upon fulfilling a variable contract statute in their domestic state, which typically follows the NAIC Model Variable Contract Law.³⁴ This NAIC model statute gives the insurance commissioner exclusive authority to regulate the issuance and sale of variable contracts and to issue rules and regulations appropriate to carry out the act's purpose. This model act and associated regulations that appear under state insurance law gives an additional, important measure of regulatory scrutiny and purchaser protection. Many aspects of these laws, such as the NAIC Variable Life Insurance Model Regulation, have explicit suitability standards that were modeled after the federal securities laws.

Collectively, the NAIC statutes and regulations provide a significant network of comprehensive regulation over many important aspects affecting the marketing and sale of variable contracts that closely reflect the purpose and scope of analogous concepts of securities regulation.

INSURANCE PRODUCER DATABASE

From a market conduct perspective, life insurers have committed to a single, industry-accessible national producer database to facilitate their ability to track pertinent information regarding licensed producers. Access to information having a bearing on the producer's background, qualifications and competency is a valuable tool to insurers in the employment/appointment screening process. Moreover, widespread availability of such information makes it more difficult for a producer with significant disciplinary history to continue illegal or unethical practices by "company jumping."

NIPR (National Insurance Producer Registry) is a non-profit affiliate of the National Association of Insurance Commissioners (NAIC). It was created in October 1996 to develop and operate a national repository for producer license information (PDB) and to establish a network to facilitate the electronic exchange of producer information.

The Producer Database (PDB) is an electronic database consisting of information relating to insurance agents and brokers (producers) accessible through the NIPR Gateway on a subscription basis through the Internet. Internet

³⁴See NAIC Model Regulation Service at 260-1 (1984).

PDB links participating state regulatory licensing systems into one common system establishing a repository of producer information. Internet PDB also contains or references producer information from sources such as the Regulatory Information Retrieval System (RIRS) of the NAIC. Its development is based, in part, on the belief that the widespread availability of such information will make it more difficult for a producer with significant disciplinary history to continue illegal or unethical practices.

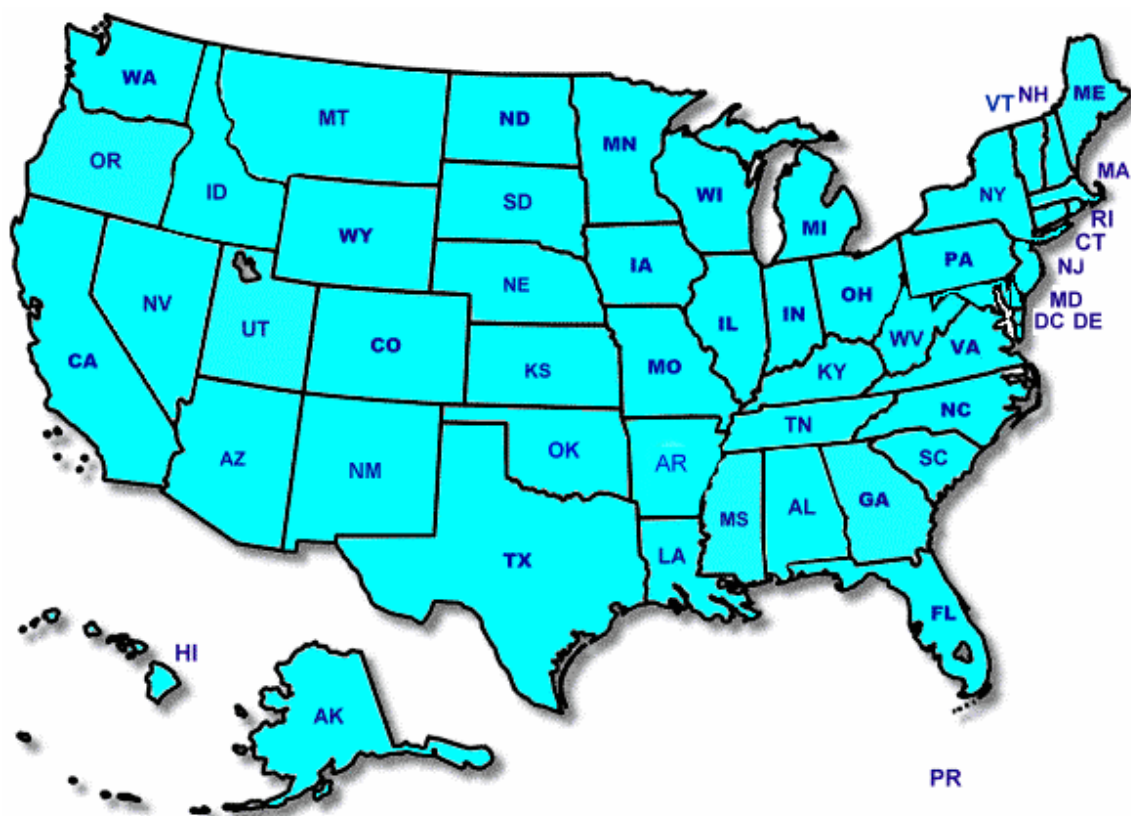
The NIPR Gateway is an electronic communication network that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of producer information; including license applications, appointments, and terminations. To date, data standards have been developed for the exchange of appointment and not-for-cause termination information. All data flowing through the NIPR Gateway will conform to these standards.

Through Internet PDB, industry is able to access all public information related to a producer provided by participating states, including licensing, demographics and final regulatory actions. The product is designed to assist insurers in exercising due diligence in the monitoring of agents and brokers to reduce the incidence of fraud. Currently, Internet PDB contains information on over 2.9 million producers. Information available includes:

- Demographics – name, date of birth, addresses
- License Summary – state of license, license number, issue date, expiration date, license type/class, residency, lines of authority, status, status reason, status/reason effective date.
- Continuing Education – CE compliance indicator, CE renewal date, CE credits needed.
- Certificates and Clearance – date issued, issuing state, receiving state, certification or clearance indicator.
- Regulatory Actions – State of action, entity role, origin of action, reason for action, enter date penalty/fine/forfeiture, effective date, file reference, time/length of dates.

Currently 37 jurisdictions participate in the PDB, including AL, AK, AR, AZ, CA, CO, CT, DC, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MA, ME, MD, MI, MN, MS, MO, MT, NC, ND, NE, NM, NV, NH, NJ, NY, OH, OK, OR, PA, RI, PR, SC, SD, TN, TX, UT, VA, VT, WA, WI, WV, WY. Jurisdictions not participating in the PDB are AS, GU, VI.

Map of states in the National Insurance Producer Registry



In many respects, this new producer data base parallels the purpose and scope of the NASD's Central Records Depository or CRD. Through the NIPR data base, problem producers can be tracked and deterred from the insurance business.

B. ERISA

In several significant regards, the ERISA statute was patterned after the Investment Company Act of 1940 concerning prohibitions against self-dealing, fiduciary duty, and information reporting. As a general standard, employee benefit plans must be operated for the exclusive benefit and solely in the interest of plan participants and beneficiaries. Plan sponsors are subject to high standards of prudence in executing their responsibilities, and are subject to liability for breaches of fiduciary duty that are punishable by severe penalties. Retirement plans funded by variable contract separate accounts must fulfill these rigorous fiduciary and regulatory standards administered by the Department of Labor.

A plan sponsor has a fiduciary duty to select appropriate funding vehicles, such as group variable annuities, and to continually monitor their performance.³⁵ This responsibility includes a thorough evaluation of the insurance company and the investment manager's experience, and execution of due diligence in ascertaining the manager's good professional character and appropriate licensing. If the fiduciary fails to act prudently and exercise due diligence, the fiduciary is liable to plan participants for any losses attributable to the inexperience of the investment manager.

The problems of churning and inappropriate replacements are circumscribed under ERISA which requires that a fiduciary act solely in the interest and for the exclusive benefit of plan participants and beneficiaries.³⁶ In addition, ERISA specifically prohibits a fiduciary from dealing with assets of a plan in his/her own interest or for his/her own account.³⁷

ERISA prevents any person who has been convicted of certain crimes from serving: as a plan administrator, fiduciary, trustee, custodian or representative in any capacity of any employee benefit plan; as a consultant or advisor to any employee benefit plan; or, in any capacity that involves decision making authority or custody or control of plan assets.³⁸

In another example of regulatory parallels, ERISA grants the Labor Department the power, in order to determine whether any person has violated or is about to violate any provision of ERISA or any regulation thereunder, to conduct an investigation, and to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Labor Department. In addition, the Labor Department has the authority to enter business places, inspect books and records, and question persons to enable the Department to determine the facts relative to such investigation.³⁹ These inspection and examination powers correspond to the authority of securities administrators to examine registered broker/dealers, and ensure regulatory supervision of qualified plan administration.

Similarly, ERISA requires extensive recordkeeping, and mandates that certain plan administrators must furnish to participants an individual statement containing information about each participant's benefits.⁴⁰ Additionally, ERISA requires each

³⁵Unlike other suitability standards that are measured only at the time of purchase, ERISA requires plan sponsors to continually monitor the appropriateness of qualified plan funding vehicles. The broad scope of this fiduciary duty is comprehensively discussed in Knickerbocker, *Fiduciary Responsibility Under ERISA* (Michie) (1997).

³⁶*Id.* at Sections 404(a).

³⁷*Id.* at Section 406(b)(1).

³⁸*Id.* at Section 411.

³⁹*Id.* at Section 504(a).

⁴⁰*Id.* at Section 105.

administrator of a pension plan to furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information, the total benefits accrued and the nonforfeitable pension benefits which have accrued or the earliest date on which such benefits will become nonforfeitable.⁴¹

The fundamental structure of ERISA and state fiduciary laws place the responsibility for the investment of retirement plan assets on plan fiduciaries, who select and monitor institutions managing plan assets and, with respect to 401(k) plans, also assure participant access to a prudent and diverse range of investments for individual accounts. Failure to fulfill these obligations in a prudent manner and solely in the interests of plan participants and beneficiaries subjects the fiduciary to ERISA's enforcement regime.

Under ERISA, a participant, beneficiary or the Secretary of Labor can bring a civil action against the fiduciary who breached his or her duties. The fiduciary is personally liable to make good to the plan any losses resulting from the breach and to restore to the plan any profits that inured to the fiduciary. The fiduciary is also subject to other equitable or remedial relief as a court may deem appropriate.

DOL DISCLOSURE INITIATIVES AFFECTING QUALIFIED PLANS

There have been significant developments at the Department of Labor concerning the range of funding options available to plan participants and the risk attributable to each option, and noteworthy strides in educating plan participants about retirement plan funding alternatives. After careful analysis and critical scrutiny, the Department of Labor

⁴¹Section 103 of ERISA requires plan administrators to engage an independent qualified public accountant to conduct such an examination of a financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. This requirement applies to plans covering 100 or more participants, and also mandates that the accountant shall conduct such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant.

Among other things, the annual report required in Section 103 must have information in separate schedules concerning: a statements of the assets and liabilities of the plan aggregated by categories and valued at the current value; a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower or lessor, maturity date in valuation and a schedule of all loans or fixed income obligations.

Section 102(a)(1) requires that the summary plan description for participants and beneficiaries shall be written in a manner calculated to be understood by the average plan participants and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. This requirement parallels the SEC's plain English initiative. Collectively, these requirements impose high thresholds for monitoring activities involving qualified plans and plan assets, and preventing abusive practices. This parallels SEC and NASD plain English and participant education initiatives.

issued its Section 404(c) regulations in 1992 that provide plan participants with useful additional information about, and more control over, their investment choices.⁴²

In order to rely on the Section 404(c) regulations, a plan sponsor or plan administrator must offer at least three diversified investment vehicles, each of which has different risk and return characteristics. Further, the plan must permit participants to transfer among the vehicles at least once within each three-month period, and more frequently for investment vehicles subject to fluctuating performance patterns.

Significantly, the Section 404(c) rules require the plan sponsor to assure that plan participants are given, or can obtain, the information necessary to make an informed investment decision. At a minimum, sponsors must give employees information about each investment option, including its objectives, risk and return characteristics, and type of portfolio assets, as well as information about transfer procedures, the expenses and performance of each investment option, and a prospectus for vehicles registered under the Securities Act of 1933.

Since adopting the Section 404(c) regulations concerning fiduciary responsibilities for self-directed individual account plans, the Department of Labor issued Interpretative Bulletin 96-1 on June 6, 1996, which provides guidance to encourage employer-provided education for plan participants. The Department of Labor sought to provide a safe harbor for retirement plans delineating the type of investor education that could be provided to plan participants without becoming investment advice. The Department of Labor issued this interpretation in view of the important role that investment education can play in assisting participants and beneficiaries in making informed investment and retirement-related decisions.

Interpretative Bulletin 96-1 identifies four increasingly specific categories of investment information and materials that can be provided within the ambit of investment education. These are plan information, general financial and investment information, asset allocation models, and interactive investment materials. This category includes information and materials that inform a plan participant or beneficiary about (i) general financial and investment concepts, such as risk and return, diversification, dollar cost averaging, compound returns and tax-deferred investment; (ii) historic differences in rates of return between different asset classes (*e.g.*, equities, bonds or cash) based on standard market indices; (iii) the effects of inflation; (iv) how to estimate future retirement income needs; (v) how to determine investment time horizons; and (vi) how to assess risk tolerance.

In October 1998, the Department of Labor published a detailed consumer disclosure booklet on 401(k) plan fees.⁴³ This Department of Labor action evidences active regulation of qualified plan funding vehicles.

⁴²Section 404(c) under ERISA gives plan sponsors or plan administrators of self-directed plans protection from certain fiduciary liabilities if the conditions of Section 404(c) are followed.

C. OTHER FEDERAL STATUTES ENHANCING COMPLIANCE PROCEDURES AND MARKET CONDUCT

The *Federal Violent Crime Control Act of 1994* (“The Act”), and the *Federal Sentencing Guidelines for Organizations* have an important impact on the prevention of abusive sales practices. Together, these statutes provide material protections for qualified plans and their participants.

Several provisions in the *Federal Violent Crime Control Act of 1994*⁴⁴ relate to sales practices within the insurance industry. The law punishes with fines and a jail term up to five years anyone who *participates* in the business of insurance and has been convicted of a felony involving dishonesty or a breach of trust. Likewise anyone convicted of violating the Act itself cannot participate in the business of insurance and is punished with fines and jail. There are fines and jail terms for anyone who willfully allows a person to participate in the business of insurance who has been convicted of a felony involving dishonesty or a breach of trust. Consequently, anyone who willfully *allows* a person who has been convicted of a felony involving dishonesty or a breach of trust to participate in the business of insurance will be prohibited from participating in the business of insurance themselves.

The law applies to all insurance companies, regardless of the lines of business sold or the state of domicile. Persons who “*participate*” in the business of insurance include officers, directors, agents, employees, or persons authorized to act on behalf of such persons. The “*willfully permits*” language means that even if the felony was before the effective date, that person cannot be allowed to continue to participate in the business.

The Federal Crime Control Statute imposes an important prophylactic parallel to the NASD’s barrier to statutorily disqualified individuals in the broker/dealer industry. This protection applies to all life and annuity sales, including variable annuities marketed to qualified plans.

Importantly, the *Sentencing Reform Act of 1984* has made a dramatic change in the federal court sentencing system since its enactment.⁴⁵ Essentially, the law provides that evidence of effective compliance programs will be regarded favorably as mitigating factors in the imposition of sentence upon a conviction for criminal behavior. The guidelines as provided in the *United States Sentencing Commission Guidelines Manual: Sentencing of Organizations*, are:

⁴³On several occasions, the DOL has publicly stated its intent to develop a standardized fee disclosure statement to facilitate comparison among competing funding arrangements for 401(k) plans. *See* Winokur, *Labor Dept. Is Developing 1-Page Fee Disclosure Form*, *American Banker* (Nov. 6, 1998) at 6.

⁴⁴Ch. 47, Title 18, U.S.C. at subsection 1033 (1996).

⁴⁵The particular provisions noted above are from the *Organizational Sentencing Guidelines*, and took effect on November 1, 1991.

"An effective program to prevent and detect violations of law means a program that been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal conduct. Failure to prevent or detect the instant offense, by itself, does not mean that the program was not effective. The hallmark of an effective program to prevent and detect violations of law is that the organization exercised due diligence in seeking to prevent and detect criminal conduct by its employees and other agents. Due diligence requires at a minimum that the organization must have taken the following types of steps:

- (1) The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal conduct.
- (2) Specific individual(s) within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures.
- (3) The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in illegal activities.
- (4) The organization must have taken steps to communicate effectively its standards and procedures to all employees and other agents, *e.g.*, by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.
- (5) The organization must have taken reasonable steps to achieve compliance with its standards, *e.g.*, by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report criminal conduct by others within the organization without fear of retribution.
- (6) The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate,

discipline of individuals responsible for the failure to detect an offense. Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however, the form of discipline that will be appropriate will be case specific.

(7) After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses -- including any necessary modifications to its program to prevent and detect violations of law."

Significantly, organizations are now strongly motivated to establish compliance standards and procedures and to monitor those procedures through a self evaluative process. Through this process, corporations can reduce exposure to liability, both criminally and civilly. Insurance and annuity consumers benefit from these initiatives.

D. VOLUNTARY MARKET CONDUCT EFFORT - THE INSURANCE MARKETPLACE STANDARDS ASSOCIATION ("IMSA")

After a comprehensive two-year period of ACLI study and development, the life insurance industry has established the Insurance Marketplace Standards Association ("IMSA"), a voluntary, membership organization for life insurance companies. IMSA provides a practical and conceptual structure to assist its member companies to maintain high standards of market conduct in the sale of individual life and annuity products. The fundamental purpose of IMSA is to facilitate, advance, and promote ethical market conduct in the life insurance industry.

An eligible life insurance company will be admitted to IMSA membership five days after filing with IMSA current reports indicating successful completion of IMSA's Assessment Questionnaire by both the eligible company and by an independent assessor approved by IMSA. An insurance company considering participation in IMSA would first need to evaluate, understand, and adopt IMSA's Principles of Ethical Market Conduct and the IMSA Code of Life Insurance Ethical Market Conduct. The company would then utilize IMSA's Assessment Questionnaire and the Assessor's Handbook to perform a market conduct self-assessment. If the company were able to respond affirmatively to each question in the Assessment Questionnaire, it would then engage an independent assessor to review the self-assessment and to perform an independent assessment following similar procedures. If the independent assessment is successful, the company would then be able to submit reports indicating such success to IMSA and could become a member. Following an advertising moratorium expiring on April 1, 1998, IMSA members were able to advertise their membership and use the IMSA logo. Membership in IMSA is good for a three-year period after which companies must undergo the assessment process anew to retain membership. As of August 4, 2000 IMSA has 240 member companies that collectively represent 82.52% of the market share for individually sold life insurance and annuity business in the United States.

The core of the IMSA market conduct initiative is the commitment of each participating life insurance company to the following Principles of Ethical Market Conduct:

“Each life insurance company subscribing to these principles commits itself in all matters affecting the sale of individually-sold life and annuity products:

1. To conduct business according to high standards of honesty and fairness and to render that service to its customers which, in the same circumstances, it would apply to or demand for itself.
2. To provide competent and customer-focused sales and services.
3. To engage in active and fair competition.
4. To provide advertising and sales materials that are clear as to purpose and honest and fair as to content.
5. To provide for fair and expeditious handling of customer complaints and disputes.
6. To maintain a system of supervision and review that is reasonably designed to achieve compliance with these Principles of Ethical Market Conduct.”

The Code of Ethical Market Conduct elaborates in some detail on each of the six principles and includes commentary to clarify application and use of the Principles. The six Principles are supported implementing Code Provisions set forth in a 140-page Assessment Handbook detailing the criteria for interpreting and applying the Principles, Code, and Assessment Questionnaire.

The focus of the self-assessment done by the company and the independent assessment done by the independent assessor relates to whether or not the company has an infrastructure - policies and procedures - that will reasonably assure compliance with the Principles and Code. The program architects developed the IMSA Assessment Questionnaire to test the existence of such an infrastructure and to assist the company and the independent assessor in assessing the company’s compliance with the Principles and Code. The Assessment Questionnaire consists of 24 questions. An affirmative answer is required to each of the 24 questions to enable a company to qualify for IMSA membership. There are specific questions regarding each of the Principles.

The IMSA Assessment Handbook is an instruction manual providing objective, systemic, analytical guidance to the company or its independent assessor concerning the details of assessment. In order to respond affirmatively to the 24 questions that comprise the Assessment Questionnaire, the Assessment Handbook requires an affirmative response to an extensive series of questions regarding the company’s policies and

procedures, the communication and use of those policies and procedures, and the continuing monitoring by the company of the utility of the policies and procedures.

The Assessment Handbook includes a number of “indicators” to guide the assessor and to yield objective information to consider in formulating and evaluating an answer to each question in the Questionnaire. The indicators are intended to provide examples of how an insurer, regardless of size or complexity, may demonstrate compliance with the Principles and Code. In some cases an insurer may be able to identify alternative indicators not set forth in the Assessment Handbook, which will provide support for the requisite affirmative response to the questions.

The Assessment Handbook also includes various testing procedures by which the company and the independent assessor can examine the company and its personnel in the assessment process. The Assessment Handbook also discusses permissible sampling techniques for assessors, recognizing that reviewing all documents and interviewing all employees and participants may be impractical.

Thus, while there are only six Principles that provide the foundation of the IMSA market conduct effort and only 24 questions comprise the IMSA Assessment Questionnaire, the assessment process is designed to be both comprehensive and flexible. It is designed to compel the company and the independent assessor to produce specific evidence of compliance with both the letter and the spirit of the life insurance market conduct effort.⁴⁶

⁴⁶ An independent board of directors sets policy for IMSA.

Appendix C: Free Look/Right To Return Requirements⁴⁷

State	Citation	Provision Location	Days
Alabama	Ala. Stat. Ann. §27-19-105(f)	Prominently printed on 1st page or attached thereto	30 days
	Ala. Admin. Code Reg. 70 §7(C)(5)	In policy or in separate written notice delivered with policy	20 days
Alaska	Alaska Stat. §21.53.050(a)	Prominently printed on 1st page or separately attached	30 days
	§21.57.055	In writing	30 days
Arizona	Ariz. Rev. Stat. Ann. §20-1233	Prominently printed on or attached to 1st page	10 days or 30 days if the contract holder is 65 or older on the date of the application (amendment effective 12/31/03)
	§20-1691.07	Prominently printed on or attached to 1st page	30 days
	Ariz. Admin. Code R20-6-501	Printed on 1st page or attached thereto or endorsed in a notice in a prominent style	10 days (or longer, at insurer's option)
	R20-6-215(F)(3)(d)	In policy or separate written notice delivered with policy	20 days
Arkansas	Ark. Code Ann. §23-79-112(f)	Prominently printed on 1st page of policy or contract	At least 10 days unless policy or contract specifies a greater period
	§23-97-213	Prominently printed 1st page or attached thereto	30 days
	Ark. Rule and Regulation 33, art. IV, §3(a)(5)	Captioned provision on the cover page or pages corresponding to the cover page	10 days
California	Cal. Ins. Code §10127.7	Printed on or attached to policy	Not less than 10 nor more than 30 days

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State	Citation	Provision Location	Days
California (cont'd)	Cal. Ins. Code §10127.9	Printed on or attached to notice	Not less than 10 nor more than 30 days
	Cal. Ins. Code §10127.10	On cover page or policy jacket in 12-point bold print with one-inch space on all sides or on sticker affixed to cover page or policy jacket	Not less than 30 days
	Cal. Ins. Code §10232.7	Prominently printed on 1st page of policy or certificate or attached to it	30 days
	Cal. Ins. Code §10509.6(d)	In policy or separate written notice	30 days
	Cal. Code Regs. tit. 10, §2522.8(a)(3)(G)	Printed on application	10 days
Colorado	Colo. Rev. Stat. §§10-7-302(1)(g) and 10-7-307	Prominently printed on 1st page or attached thereto	15 days
	§10-19-111	Prominently printed on 1st page or attached thereto	30 days
	3 Colo. Code Regs. 4-1-4 §7 A(4), §3 B	Prominently attached to or displayed on 1st page of policy	30 days
	3 Colo. Code Regs. 4-1-4 §7 A(4)	In policy	30 days
Connecticut	Conn. Gen. Stat. §38a-436	Printed on or attached to notice	10 days
	Conn. Agencies Regs. §38a-457-5(c)(6)	Printed on or attached to policy	10 days
	§38a-501-11(g)	Prominently printed on 1st page or attached thereto	30 days
	§38a-433-4(c)(1)(E)	Captioned provision	10 days
Delaware	Del. Code Ann. tit. 18 §7105(f)	Prominently printed on 1st page or attached thereto	30 days
	Del. Reg. 1204 §7(D) (renumbered effective 1/1/03; formerly Reg. 30 §7(D))	In policy or separate written notice	20 days

State	Citation	Provision Location	Days
Delaware (cont'd)	Reg.1203 §5(A) (renumbered effective 1/1/03; formerly Reg. 29 §5(A))	In policy or policy summary	At least 10 days (if no unconditional refund provision/offer, the insurer shall provide to all prospective purchasers a Buyer's Guide and a Policy Summary upon delivery of policy or prior to delivery of policy)
District of Columbia	D.C. Mun. Regs. tit. 26, §2712 (a)(5)	Cover page or pages corresponding to cover page of policy	Either within 45 days of date of execution of the application or within 10 days of receipt of policy by policyholder, whichever is later
	D.C. Code Ann. §31- 3605(d)(2)	Prominently printed on first page or attached thereto	30 days
Florida	Fla. Stat. Ann. §626.99(4)(a)	In policy or policy summary	At least 10 days (if no unconditional refund provision/offer the insurer shall provide to all prospective purchasers a Buyer's Guide and a Policy Summary prior to accepting the applicant's initial premium or premium deposit)
	§626.99(4)(a)	In policy	At least 10 days (including an unconditional refund; also, insurer shall provide a Buyer's Guide to Annuities and a Contract Summary as provided in the NAIC Model Annuity and Deposit Fund Regulation)
	§627.9407(8); Fla. Admin. Code Ann. r. 4-157-018	Prominently printed on 1st page or attached thereto	30 days
	r. 4-157.114(2)(c)		30 days
Georgia	Ga. Code Ann. §33-25-8	Printed on or attached to contract	10 days

State	Citation	Provision Location	Days
Georgia (cont'd.)	§33-26-4	Printed on or attached to contract	10 days
	§33-28-6(a)	Printed on or attached to contract	10 days
	§33-42-6(f)	Prominently printed on 1st page or attached thereto	30 days
Hawaii	Haw. Rev. Stat. Ann. §431:10-214	Printed on or attached to policy in 10-point bold type	10 days
	§431:10H-111	Prominently printed on 1st page or attached thereto	30 days
	§§431:10D-501, 431:10D-505(a)(4)	In policy or contract owner notice	30 days
Idaho	Idaho Code §§41-1901, 41-1927 (13), 41-1935(1)	In policy or contract under appropriate caption and if not so printed on face page of policy, printed or stamped conspicuously on face page	20 days
	§41-4605(6)	Prominently printed on 1st page or attached to it	30 days
	Idaho Admin. Code §§18.01.41.014, 18.01.41.015	In policy or in separate written notice	20 days
Illinois	215 Ill. Comp. Stat. Ann. 5/224(1)(n)	Provision or notice attached to policy	10 days
	5/224(2)	In policy or separate notice delivered with policy	At least 20 days
	5/229(1)(m)	Provision or notice attached to policy	10 days
	5/351A-7	Prominently printed on 1st page or attached to it	30 days
	5/226(1)(h)	Provision or notice attached to contract	10 days
	Ill. Admin. Code tit. 50, §2018.110(e)	Prominently printed on 1st page of policy	30 days
Indiana	Ind. Code Ann. §27-1-12-43	Prominently printed on 1st page	10 days
	§27-1-12.6-5	Conspicuously placed on face page of the contract	10 days
	§27-8-12-12	Prominently printed on or attached to 1st page	30 days

State	Citation	Provision Location	Days
Indiana (cont'd.)	§27-8-12-13	Printed on or attached to 1st page	30 days
	Ind. Admin. Code tit. 760, r. 1-20-3(9)	Conspicuously placed on face page of the contract	10 days
	r. 1-16.1-4, r. 1-16.1-6(5)	In policy or separate written notice	20 days
	r.2-20-36(4)(A)	Prominently printed on 1st page or attached thereto	30 days
Iowa	Iowa Code Ann. §514G.7(6)	Prominently printed on or attached to 1st page	30 days
	Iowa Admin. Code r. 191-15.9(507B)		10 days
	r. 191-28.17(509)	Prominently printed on cover of policy, certificate or notice	15 days
	r. 191-16.7(4)(507B)	In policy or separate written notice delivered with policy	20 days
	r. 191-16.26(1)d(507B)	May be included in Appendix A or Appendix C	30 days
	r. 191-16.28	May be included in Appendix A or Appendix C	30 days
Kansas	Kan. Admin. Regs. §40-2-15	Printed on or attached to 1st page of policy in not less than 10-point bold print or in some distinguishable manner from other policy print	10 days
	§40-4-37f(b)	Notice printed on or attached to 1st page in at least 18-point bold face type or other manner distinguishing from other print	30 days
	§40-2-12	In policy or separate written notice	20 days
Kentucky	Ky. Rev. Stat. Ann. §§304.15-010, 304.15-050(2)	In policy	Not less than 10 days
	§304.12-030	Replacing insurer must agree in writing with insured	30 days
	§304.14-615(6)	Prominently printed on 1st page or attached thereto	30 days
	806 Ky. Admin. Regs. 15:030 §3(3)(a)(5)	Captioned provision	10 days

State	Citation	Provision Location	Days
Louisiana	La. Rev. Stat. Ann. §22:170 A(10)	Prominently printed on or attached to life policies	10 days
	§22:173 A(8)	Prominently printed on or attached thereto	10 days
	§22:1736 F(1)	Prominently printed on 1st page or attached thereto	30 days
	§22:1736 F(2)	Prominently printed on 1st page or attached thereto	30 days
	La Admin. Code tit. 37, pt. XIII §8305 (3)	Captioned provision	10 days
	§8911 (A5)	May be included in Appendix A or Appendix C	30 days
Maine	Me. Rev. Stat. Ann. tit. 24-A, §§2501, 2515-A, 2503	In policy or in separate rider attached thereto; provision set forth in policy under appropriate caption and, if not printed on face of policy, adequate notice stamped or printed conspicuously on face page	10 days
	tit. 24-A, §5075 (4)	Prominently printed on 1st page or attached thereto	30 days
Maryland	Md. Code Ann. Ins. §§16-101, 16-105	Attached to or prominently printed on face of policy or contract	10 days
	§18-119	In policy	30 days
	Md. Admin. Code §31.09.05.06(A)(5)	In policy or in separate written notice	30 days
	§31.14.01.04(J)	Prominently printed on 1st page of policy	30 days
	§31.09.05.06(A)(5)	Not stated	30 daysS
Massachusetts	Mass. Ann. Laws ch. 175 §187H	Printed on or attached to policy	10 days
	Mass. Regs. Code tit. 211, §34.06(1)(d)	In policy or in separate written notice	20 days
	§95.08(1)(g)	Captioned	10 days
Michigan	Mich. Comp. Laws Ann. §§500.4000, 500.4015	Contained in policy on front page, printed or stamped and made a permanent part of policy	Not less than 10 days

State	Citation	Provision Location	Days
Michigan (cont'd.)	§500.4073	Contained in policy on front page, printed or stamped and made a permanent part of policy	Not less than 10 days
	§500.3409(1)	Contained in policy on front page, printed or stamped and made a permanent part of policy	10 days
	§500.3409(2)	Printed or stamped on front page and made a permanent part of policy	30 days
	§500.3943	Prominently printed on 1st page and in summary of coverage	30 days
	Mich. Admin. Code r. 500.850(a)(iv)	Captioned provision on the cover page or pages corresponding to the cover page	Within 45 days of the execution of the application or within 10 days of receipt, whichever is later
Minnesota	Minn. Stat. Ann. §§60A.06, 72A.51(Subdivision 3), 72A.52	Stated clearly and conspicuously in minimum 10-point bold face type in contract	10 days
	§61A.57(d)	In policy or contract or in a separate written notice	20 days
	§62A.50 (Subdivision 2)	Prominently printed on 1st page	30 days
	Minn. R. 2750.1300(A)(5)	Captioned provision	10 days
Mississippi	Miss. Code Ann. §83-7-51	Printed on or attached to policy	10 days
	Miss. Ins. Reg. 84-101 §4(c)(1)(v)	Captioned provision	10 days
	Reg. 90-102 §6 D	Prominently printed on 1st page or attached thereto	30 days
	Reg. 99-2 §§1, 5A(4)	May be included in Appendix A or Appendix C	30 days

State	Citation	Provision Location	Days
Missouri	Mo. Ann. Stat. §§376.706, 376.702	In policy or policy summary	At least 10 days (if no unconditional refund provision/offer the insurer shall provide to all prospective purchasers a Buyer's Guide and a Policy Summary prior to accepting applicant's premium or premium deposit)
	§§376.1106, 376.1109 (11)	Prominently printed on 1st page or attached thereto	30 days
	Mo. Code Regs. tit. 20, §400-1.010(1)(D)	In policy	10 days
	§400-1.030(3)C)(1)(E) §400-5.400(4), (7)(D)	Captioned In policy or in separate written notice	10 days 20 days
Montana	Mont. Code Ann. §33-15-415	In policy	At least 10 days
	§33-22-1119	Prominently printed on 1st page or attached thereto	30 days
	Mont. Admin. R. 6.6.304, 306(1)(d)	May be included in Appendix A or Appendix C	30 days
	R. 6.6.805(1)(b)		15 days
Nebraska	Neb. Rev. Stat. §44-502.05	In policy or printed on face	10 days
	§44-4515	Prominently printed on 1st page or attached to it	30 days
	Neb. Admin. R. & Regs. tit. 210, ch. 19 §008.04	In policy or in separate written notice delivered with policy	20 days
Nevada	Nev. Rev. Stat. Ann. §§688A.010, 688A.165	In policy or notice attached to policy	10 days
	Nev. Admin. Code §687B.060	Prominently printed on 1st page or attached thereto	30 days
	§687B.065	Prominently printed on 1st page or attached thereto	30 days
New Hampshire	N.H. Rev. Stat. Ann. §415-D:7	Prominently printed on or attached to 1st page of policy	30 days
	N.H. Code Admin. R. Ins. §401.01(b)(1)(o)	In conspicuous place on face page of policy	10 days

State	Citation	Provision Location	Days
New Hampshire (cont'd.)	§302.06(a)(4)	May be included in Appendix A or Appendix C	30 days
New Jersey	N.J. Stat. Ann. §17B:25-2.1	In policy or notice attached to policy	10 days
	N.J. Admin. Code tit. 11, §11:4-21.3(h)	In policy	30 days
	§11:4-2.5(a)3(vi)	In policy or in separate written notice	20 days
	§11:4-34.6(d)	Prominently printed on 1st page or attached thereto	30 days
New Mexico	N.M. Stat. Ann. §59A-23A-6(E)	Prominently printed on or attached to 1st page	30 days
	N.M. Admin. Code tit. 13, §13.9.6.10D (§13.9.6.10A(4), effective 1/1/04)	In policy or in a separate written notice	20 days (30 days, effective 1/1/04)
	tit. 13, §13.9.12.8C		15 days
New York	N.Y. Ins. Law §3203(a)(11)	In policy or notice attached to policy	Not less than 10 days nor more than 30 days
	§3203(a)(11)	In policy or notice attached to policy	30 days
	§3209	Applicant is to be advised	10 days
	§3209(b)	In policy	At least 30 days (if no unconditional refund provision, the insurer must include in each initial solicitation a Buyer's Guide)
	§3219(a)(9)	In contract or certificate or attached thereto	Not less than 10 nor more than 30 days
	§3219(a)(9)	In contract or certificate or attached to it	30 days
	N.Y. Comp. Codes R. & Regs. tit. 11, §54.6(b)(1)(v)	Captioned provision on cover page of policy or pages corresponding to the cover page	10 days
	§51.6(d)	In policy	60 days
North Carolina	N.C. Gen. Stat. §58-55-30(g)	Prominently printed on 1st page or attached	30 days

State	Citation	Provision Location	Days
North Carolina (cont'd.)	§58-60-15	In policy or policy summary	At least 10 days (if no unconditional refund provision/offer, the insurer shall provide to all prospective purchasers a Buyer's Guide and a Policy Summary prior to accepting applicant's initial premium deposit)
	N.C. Admin. Code, tit. 11, r. 12.0447(a)(1)	Sticker or printed on face of policy	30 days
	r. 12.0447(a)(2)	Sticker or printed on face of policy	10 days
	r. 12.0607 Repealed by Laws 2003, HB 560, effective 6/4/03 r. 12.0436(1)(c), (3)(v)	Captioned on cover page of policy	Within 45 days from execution of application or within 10 days of receipt of policy by policyholder, whichever is later
North Dakota	N.D. Cent. Code §§26.1-33-02.1, 26.1-34-01.1	Prominently printed on or attached to 1st page of policy or certificate	20 days
	§26.1-45-09 (1)	Prominently printed on 1st page of policy or attached thereto	Within 30 days of date of delivery or 30 days of effective date, whichever occurs later
	N.D. Admin. Code §45-04-04-03(3)(a)(5)	Captioned provision on cover page of policy or pages corresponding to the cover pages	10 days
Ohio	Ohio Rev. Code Ann. §§3923.44(H)	Printed prominently on 1st page of policy or attached to it	30 days
	Ohio Admin. Code §3901-6-05	In policy or in separate written notice delivered with policy	20 days

State	Citation	Provision Location	Days
Ohio (cont'd.)	§3901-6-08(E)(3)(a)(v)	Captioned provision on cover page or pages corresponding to the cover page of each policy	10 days
Oklahoma	Okla. Stat. Ann. tit. 36, §4003.1	Printed on or attached to policy	10 days
	§4034(G)	Prominent written notice attached to or as part of 1st page of policy	20 days
	§4426(E)	Prominently printed on 1st page or attached	30 days
Oregon	Or. Rev. Stat. §743.655(5)(a)	Prominently printed on 1st page or attached thereto	30 days
	§743.655(5)(b)	Prominently printed in 10-point type on 1st page or attached thereto	30 days
	Or. Admin. R. 836-080-0001(4), 836-080-0029(1)(d)	May be included in Appendix A or Appendix C	30 days
Pennsylvania	Penn. Stat. Ann. tit. 40 §510c(a)(1)	Prominently printed on 1st page or attached thereto	10 days
	tit. 40 §§510c(a)(2), 510c(b)(2)	Prominently printed on the first page of such policy or attached thereto	At least 45 days
	tit. 40 §§510c(a)(3), 510c(b)(3)	Prominently printed on the first page of such policy or attached thereto	At least 20 days
	tit. 40 §510c(b)(1)	Prominently printed on the first page of such policy or attached thereto	At least 10 days
	tit. 40 §510d(a)(1)	Prominently printed on 1st page or attached thereto	10 days
	tit. 40 §510d(a)(2)	Prominently printed on the first page of such policy or attached thereto	45 days
	tit. 40 §576	Prominently printed on 1st page or attached thereto	10 days
	31 Pa. Code §81.6(d)	Prominently printed on 1st page or attached thereto	20 days
	31 Pa. Code §82.24(1)(v)	Caption provision prominently printed on 1st page	At least 10 days

State	Citation	Provision Location	Days
Rhode Island	R.I. Gen. Laws §27-4-6.1	Contained in policy or stamped or printed conspicuously on 1st page	A minimum of 10 days
	§27-34.2-6(g)	Prominently printed on 1st page or attached thereto	30 days
	R.I. Code R. 29 §§5 and 7.C.	In “Notice Regarding Replacement of Life Insurance” and in either policy or in separate written notice delivered with policy (but see §7.C for other requirements of replacing insurer if free look is not provided)	20 days
South Carolina	S.C. Code Ann. §38-63-220(b))	Clear, understandable, and conspicuous on 1st page of policy	Not less than 10 days
	§38-63-220(b)	Clear, understandable, and conspicuous on 1st page	20 days
	§38-63-220(b)	Clear, understandable, and conspicuous on 1st page of policy	31 days
	§38-69-120(2)	Clear, understandable, and conspicuous on 1st page of policy	10 days
	§38-69-120(2)	Clear, understandable, and conspicuous on 1st page	20 days
	§38-69-120(2)	Clear, understandable, and conspicuous on 1st page	31 days
	§38-72-60(E)	Prominently printed on 1st page or attached thereto	30 days
	S.C. Code Ann. Regs. 69-12.1, §7(D)	In policy or separate notice	20 days
South Dakota	69-12 Part B, art. IV, §3(a)(5)	Captioned provision on the cover page or pages corresponding to the cover page	10 days
	S.D. Codified Laws §58-15-8.1	Printed on or attached to the face page of policy	10 days
	§58-15-59.1	Printed on or attached to the annuity contract	10 days
	§58-17B-9	Prominently printed on or attached to 1st page of policy	30 days

State	Citation	Provision Location	Days
South Dakota (cont'd.)	§58-28-24.1	In contract or notice attached thereto	10 days
Tennessee	Tenn. Code Ann. §56-7-702(a)(17)	Clear, understandable, and conspicuous provision required	10 days
	§56-42-105(f)(1)	Prominently printed on 1st page or attached thereto	30 days
	§56-42-105(f)(2)	Prominently printed on 1st page or attached thereto	30 days
	Tenn. Comp. R. & Regs. 0780-1-24-.04, 0780-1-24-.07(4)	In policy or in separate written notice	20 days
	0780-1-40-.04, 0780-1-40-.02	In policy or policy summary	At least 10 days (if no unconditional refund provision/offer, the insurer shall provide to all prospective purchasers a Buyer's Guide and Policy Summary prior to accepting the applicant's initial premium or premium deposit)
Texas	Tex. Rev. Civ. Stat. art. 3.70-12; §5 (Texas is recodifying its statutes. Because the recodification may not be published until mid-2004, the current numbering system remains in use. Art. 3.70-12 was reviewed and received no changes.)	Prominently printed on 1st page or attached thereto	30 days
	Texas Admin. Code tit. 28, §3.804(3)(A)(v)	Captioned provision on cover page or pages corresponding to cover page	10 days
	§3.3829(a)(5)	Captioned provision printed on 1st page or attached thereto	30 days
Utah	Utah Code Ann. §31A-22-423	Prominently printed on or attached to cover or front page	10 days; 20 days if replacement policy or certificate
	Utah Admin. R590-93-7(C)(5)		20 days

State	Citation	Provision Location	Days
Utah (cont'd)	R590-93-8(C)(5)		20 days
Vermont	Vt. Stat. Ann. tit. 8, §8058 Vermont Code R. I-2001-03 §§1.B, 5(A)(4) 77-2 §§3(B), 5(a) I-88-3 Art. IV. §3(a)(5)	Prominently printed on 1st page or attached thereto May be included in Appendix A or Appendix C In policy or policy summary Captioned provision on cover page or pages corresponding to the cover page	30 days 30 days At least 10 days (if no unconditional refund provision/offer, the insurer shall provide to all prospective purchasers a Buyer's Guide and a Policy Summary prior to accepting the applicant's initial premium or premium deposit) 10 days
Virginia	Va. Code Ann. §§38.2-3300, 38.2-3301 §38.2-5208 §38.2-3342 §38.2-3724(D)(7) Va. Admin. Code tit. 14 §5-80-300(1)	Printed on policy Prominently printed on 1st page or attached Printed on policy Printed on policy or certificate Printed on policy	10 days 30 days 10 days At least 10 days 10 days
Washington	Wash. Rev. Code Ann. §48.23.380 §48.20.013 §48.18A.035 §48.84.050 §48.84.050	Printed on face of policy or attached thereto Printed on its face or attached thereto Prominently displayed on 1st page Prominently displayed on 1st page Prominently displayed on 1st page	10 days 10 days 10 days 30 days 60 days

State	Citation	Provision Location	Days
Washington (cont'd)	Wash. Admin. Code §§284-23-455(4), 284-23-430	In policy or in separate written notice delivered with policy	20 days
West Virginia	W. Va. Code §33-6-11b	Prominently printed on 1st page	10 days
	§33-15A-6(f)(1)	Prominently printed on 1st page or attached thereto	10 days
	§33-15A-6(f)(2)	Prominently printed on 1st page or attached thereto	30 days
	W. Va. Regs. §§114-32-5.1, 114-32-5.1.1	Prominently printed on 1st page or attached thereto	30 days
	§114-32-5.1.2	Prominently printed on 1st page	10 days
	§§114-8-3, 114-8-5	In policy or in separate written notice delivered with policy	30 days
Wisconsin	Wis. Sta. Ann. §632.73(1), (3)	Conspicuously printed on 1st page or attached hereto	10 days
	§632.73(2m)	Prominently printed on 1st page of policy or certificate or attached thereto	30 days
	Wis. Admin. Code Ins. §2.07(5)(d)	Written notice attached to or part of 1st page	20 days
	§§2.14(2)(b), (4)(c)	Guarantee to the policyholder	30 days (if no 30-day right to return, insurers shall provide to all prospective purchasers a Buyer's Guide at the time the application is taken)
Wyoming	Wyo. Stat. Ann. §26-38-105(j)	Prominently printed on 1st page or attached thereto	30 days
	Admin. Rules & Regs. of Wyo. Ins., ch. 12, §§4, 7(d), 8(c)(iv)	In policy or separate written notice delivered with policy	20 days