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Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
Room 6184, Stop 6-9
450 Fifth Street, N.W.
Washington, D.C. 20549

BY E-MAIL

RE: *Proposed Point-of-Sale Disclosure and Confirmation Requirements for Transactions in Mutual Funds, Variable Contract Separate Accounts, and College Savings Plans*; File No. S7-06-04; Release No. 33-8544.¹

Dear Mr. Katz:

The American Council of Life Insurers respectfully offers its views on the SEC's proposed point-of-sale and confirmation initiative that would require broker-dealers to provide customers with targeted information about costs and conflicts of interest in the sale of mutual funds, college savings plans, and variable insurance products. The release specifically invites comment on the appropriateness of written point-of-sale disclosure for variable annuities and variable life insurance.

The release reopened the comment period and invited supplemental comment on modifications to an initial proposal published in January 2004. Release No. 33-8544 appeared in the Federal Register Vol. 70, No. 42, dated March 4, 2005, and contained a 30-day comment period expiring April 4, 2005.

The American Council of Life Insurers is a national trade association representing 354 life insurers that comprise 74% of total industry assets. Many life insurers offer variable annuities and variable life insurance. Over 50% of the NASD's 660,000 registered representatives work for broker-dealers affiliated with life insurance companies. The initiative would have a significant impact on our industry, and may impose anticompetitive burdens. We greatly appreciate the opportunity to share our views on this regulatory proposal.

¹ The release was also issued coextensively under Release Nos. 34-51274 and IC-26778.

Overview of the Proposal

On January 29, 2004, the SEC initially proposed two new rules and rule amendments under the Securities Exchange Act of 1934 designed to enhance the information broker-dealers provide customers purchasing variable contracts, mutual funds, and college savings plans. The initiative elicited over 5,000 letters of comment. On March 24, 2005, the SEC reopened the comment period and invited supplemental input on a new “point-of-sale” document. The proposal would require “targeted information” at the point-of-sale about fees, charges, and broker-dealer conflicts of interest. The initiative also proposed amendments to the post-sale confirmation statements required under the federal securities laws.

Summary of Position

- The life insurance industry has a long history of developing and supporting substantive regulatory initiatives protecting insurance consumers. We oppose the point-of-sale proposal, however, because it serves variable life insurance and variable annuity consumers poorly.
- The proposal was designed on the template of mutual funds. In contrast, variable contracts have a significantly wider range of contract options and mortality related features uniquely tied to each customer’s age, gender and risk class. These features cannot be accurately or easily depicted in the point-of-sale document.
- Variable life insurance and variable annuity prospectuses promote informed purchase decisions and critical comparison shopping, including comparison of cost features. Very recently, the SEC upgraded prospectus requirements for variable life insurance and variable annuities that provide plain-English disclosure and cost information in a clear fee table.²
- The delivery of redundant cost information in a point-of -sale document competes with the SEC’s endeavors to streamline disclosure, and discourages consumers from reading the primary information document—the prospectus. More disclosure is not better disclosure.
- Insurance and annuity purchasers have access to multiple sources of detailed information. In addition to the point-of-sale document, consumers also receive a prospectus, a variable contract, buyers’ guides, NASD-approved sales literature, and replacement disclosure forms when a replacement is involved. The point-of sale

² Final compliance with these changes for variable annuities became effective January 1, 2004. *See* Investment Company Act Rel. No. 25802 (Nov. 13, 2002). Final compliance for variable life insurance separate accounts organized as unit investment trusts became effective December 1, 2003. *See* Securities Act Rel. No. 8088 (Apr. 12, 2002). The variable life registrations form was developed through a deliberative 10 year process of rulemaking petition, proposal and final adoption.

document dilutes the value of meaningful disclosure and overloads consumers with redundant information.

- Variable contracts are the only financial products in today’s securities marketplace with free-look provisions. These features give consumers a meaningful opportunity to carefully evaluate purchases after the sale, and to change their mind for any reason, including cost factors. Other securities, like mutual funds, do not offer free-look enhancements.³
- The regulatory need for the proposal has not been adequately quantified. Several aspects of the investor interviews cited in support of the initiative suffer significant defects, especially regarding variable contracts.
- The revised proposal substantially increases broker-dealers’ exposure to liability for inaccurate disclosure. Additionally, the revised proposal mandates individualized cost calculations that some broker-dealers may be unable to generate.
- The proposal’s burdens greatly outweigh its benefits. We recommend other equally effective, but less onerous, solutions to the SEC’s concerns.
- The proposal has significantly migrated from limited conflict of interest disclosure into a “comprehensive” fee and charge document. The foundation for this extensive expansion is not firm, and provides a cure that may be more harmful than the perceived ailment.
- The scant 30-day comment period on this significantly enlarged proposal betrays the purpose and intent of the Administrative Procedure Act. Constructive review and input produces superior, enduring rulemaking. An unnecessary race to completion often generates deficient policy.
- Notwithstanding the release’s assertion that the SEC has considered the rule’s impact on competition, some of the changes in the proposal will unreasonably burden competition. Because it fits variable products poorly, the proposal unfairly impairs the marketplace.

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 Association⁴ (IMSA), a voluntary

³ Appendix C provides a chart of free-look provisions under state insurance laws.

⁴ After a two-year period of development, ACLI established the Insurance Marketplace Standards Association, a

insurance industry membership organization promoting high ethical standards in the sale of individual life insurance and annuity products;

- ACLI's substantive rulemaking petition leading to new variable life insurance Form N-6, an integrated registration emphasizing streamlined, simplified, plain-English disclosure;⁵
- 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.

Evaluating the Proposal's Purpose

Substantive rulemaking demands careful scrutiny and compelling justification. The proposal voices concern over mutual fund cost disclosure with little supporting explanation. The SEC's 2004 proposal simply indicates that:

[t]he proposed new rules *respond to concerns* that investors in mutual fund shares, UIT interests (including certain insurance company separate accounts that issue variable insurance products) and municipal fund securities used for education savings lack adequate information about certain distribution-related costs, as well as certain distribution arrangements, that create conflicts of interest for brokers, dealers, municipal securities dealers, and their associated persons.⁶

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 and at IMSA's website imsaethics.org.

⁵ See ACLI's rulemaking petition filed with the SEC January 13, 1993. Final compliance with new Form N-6 for variable life insurance separate accounts organized as unit investment trusts became effective December 1, 2003. See Securities Act Rel. No. 8088 (Apr. 12, 2002). 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 Wilkerson, *The Administrative History of Variable Life Insurance Registration Form N-6: the Proposal's Purpose, Design and Intent*, ALI-ABA Conference on Life Insurance Company Products (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.

⁶ See Investment Company Act Rel. No. 26341 (Feb. 10, 2004) at 3.

Whose concerns? The 2004 release does not quantify or articulate the “concerns” forming the basis for this proposal. Were they the SEC’s concerns? Investors? How many? What scope? To what extent did these concerns encompass variable contracts? We can’t tell from the release. Good rulemaking demands better articulation of purpose and need.

The proposal fails to demonstrate that the regulatory revisions will resolve the thinly explained regulatory “concerns.” These uncertainties preclude meaningful scrutiny and analysis. The proposal also contains a largely unstated premise that consumers do not read prospectuses. This observation is unsubstantiated in the release.

The reproposal is quite different from the initial proposal, in purpose and scope. The release states that:

[m]any investors wanted point of sale disclosure to provide comprehensive information about all the costs of owning covered securities, not just distribution-related costs. They sought comprehensive information about ownership costs, in percentage terms and in dollar terms, to better inform them about the total costs associated with purchasing and owning these securities.⁷

The background and volume of the “many investors” is important to properly and fairly evaluate the initiative. The 2004 release does not specifically identify any commentators or investors making this point, however. Nothing in the release quantifies the “many” investors requesting cost disclosure at the point of sale.

The SEC retained consultants to elicit feedback from investors on “comprehensive” cost information in model point-of-sale documents.⁸ The direction of the revised proposal relied heavily on the consultant’s limited investor interviews. While we respect the SEC’s determination to utilize consultants, we question the validity of the survey methods used, especially regarding variable contracts.

The consultants’ conclusions are based on individual one-hour interviews with 33 participants. The report characterizes these surveys as “in-depth” interviews. All participants in the study were required to have purchased a mutual fund within the past two years.⁹ The

⁷ See Investment Company Act Rel. No. 26778 (March 4, 2004) at text accompanying footnote 7 (emphasis added).

⁸ The release cites the consultant’s reports in footnote 12. See Investment Company Act Rel. No. 26778 (March 4, 2004).

⁹ To qualify for the study, each participant: (i) either solely or jointly made investment decisions; (ii) graduated high school, attended some college or graduated college (those with graduate degrees were excluded); (iii) made a mutual fund purchase through a broker in person, over the phone or online in the past (those who had only purchased online were excluded); (iv) made a mutual fund purchase from a financial representative or broker within the past two years; (v) passed an articulateness test. See consultant’s survey report at 10 [<http://www.sec.gov/rules/proposed/s70604/rep110404.pdf> and <http://www.sec.gov/rules/proposed/s70604/sup-rep010705.pdf>].

The survey’s participant thresholds are so unfocused that they fail to generate meaningful information. Why were participants with graduate degrees excluded? Why weren’t the participants grouped or measured on the basis of economic background to better translate the responses? The survey’s approach was principally geared to mutual funds and failed to generate a study population germane to variable contracts. The survey’s least common denominator approach yielded unreliable information for purposes of significant SEC rulemaking. While the survey report may provide a collection of generalized feedback, it is hardly sufficient to provide the basis for a

survey screening did not require participants to have experience with variable life insurance or variable annuities. The survey methodology is underwhelming. The report states that:

[g]enerally, respondents had little experience with variable annuities. While some had actually invested in them, even they could not clearly describe the features of the product.

The consultants' report apparently provided a primary foundation for the point-of-sale documents that were expanded to include "comprehensive" cost information. The survey appears unacceptably small to provide "tested" justification for the proposed point-of-sale documents. Moreover, the consultants did not offer survey participants the prospectus Fee Table or Example to address their quest for cost information. We believe the responses would have been far different had participants reviewed this existing cost information.

The participants' background and meager number comprise too small of a sample for reliable research conclusions supporting significant disclosure modifications. While the study reports contain numerous observations, the scope and reliability of the sampling techniques raises significant questions about the validity of the conclusions and the point-of-sale documents they address.

We are troubled with a survey using a narrow sample of participants having little experience with variable annuities. The report does not reveal whether the participants understood variable life insurance or had ever purchased a policy. The participants' input on variable contract cost disclosure has limited value, therefore, if any. The sample size for variable contracts was effectively zero because none of the participants had purchased a variable life contract or could clearly describe the features of variable annuities. In our view, the SEC needs to base significant new disclosure practices on a more substantial and authoritative foundation.

To make sure there is no uncertainty about our position on the issue, we reiterate that life insurers fully support full disclosure of information leading to informed decision making. We encourage uniform depiction of fees, charges and expenses in a manner complimentary to the SEC's prospectus modernization and simplification initiatives.

We strongly disagree, however, with the proposal's isolated approach to cost disclosure at the point of sale. This format drowns consumers with disclosure redundant of the fee table. Additional tiers of disclosure and added broker-dealer responsibilities need justification to properly balance benefits against burdens.

If the prospectus and fee table need further refinement to become more useful and informative about conflicts of interest and costs, we support deliberately developed prospectus enhancements. Uncoordinated layering of duplicate disclosure is, however, destructive to informed decision making.

The excessive emphasis on isolated fee, charge, and expense information will unwittingly lead some consumers to poor decisions and misguided comparison shopping. In

"comprehensive" revision of disclosure at the point of sale or for a significant transformation of the initial proposal. Good rulemaking demands better methodology.

elevating the point-of-sale information as segmented information first delivered, it transforms the document from cost disclosure to a primary purchase brochure. This distorted emphasis undermines the fundamental purpose of securities disclosure.

With disproportionate reliance on isolated presentation of cost information, consumers will be steered toward the lowest apparent cost rather than the product best matching their financial needs. The proposal's approach is like selecting a new car based exclusively on the miles per gallon sticker. Cost disclosure is one of several important ingredients of informed decision making best done in the complete picture of the prospectus.

We are troubled that the proposal's deviation from long standing SEC disclosure principles appears to occur in a vacuum without a thorough view of the large picture. These aspects of the proposal have a particularly poor application to variable contracts. Isolated segmentation of cost disclosure is akin to naval navigation by dead reckoning before scientific measures of longitude were developed.¹⁰ The imperfect point-of-sale data may ultimately lead consumers on a misdirected financial course.

Regrettably, the proposal may injure consumers by layering them with duplicate, redundant materials that directly contradict the SEC's disclosure simplification program and other current and proposed SEC rules. The proposal introduces individualized requirements that will make compliance unnecessarily burdensome as a matter of compliance program uniformity.

In sum, the need for new regulatory procedures is unconvincing. Prospectus disclosure coupled with vigilant supervision and suitability practices 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 clear disclosure. 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-4.¹¹ The form requires the prospectus to "clearly and

¹⁰ For an explanation of this concept, see Dava Sobel, *Longitude: the True Story of a Lone Genius Who Solved the Greatest Scientific Problem of His Time* (1996) Walker Publishing Company at 13.

¹¹ 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

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 2002.¹² January 1, 2004 was the final date for compliance with these standards. The SEC staff identifies the fee table as the “current lynchpin of cost disclosure.”¹³ 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.¹⁴

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 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

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.

¹² See Release No. IC-25802 (Nov 13, 2002) [CCH Fed. Sec. L. Rep 86801].

¹³ See Report-Letter, CCH Fed. Sec. L. Rep. #2018, June 25, 2003.

¹⁴ See Arthur Levitt, *Plain English in Prospectuses*, New York State Bar Journal (Nov. 1997) at 36.

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 facilitate full disclosure of cost information in a uniform format that lends to comparison shopping. 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.

Form N-6 Synopsis, Fee Table and Risk Disclosure. Parallel fee, charge and expense provisions appear in the newly adopted Form N-6, which sets forth registration and prospectus requirements for variable life insurance separate accounts organized as unit investment trusts.¹⁵ As with the variable annuity fee table discussed above, VLI prospectus materials effectively and efficiently convey comparative expense, fee and cost information in a uniform and accurate fashion.

Prospectus illustrations, personalized illustrations, and underlying fund performance are three linked features that give consumers additional tools to evaluate a variable life contract and to make an “apples-to-apples” comparison among different variable life contracts, including the impact of charges on the contract.¹⁶ These factors obviate the need for point-of-sale cost disclosure, and highlight how VLI is different from the sale of mutual funds.

There are a variety of other reasons why the point-of-sale document is an exceptionally poor fit for VLI. For example, these contracts have significant age, gender and risk class components in their pricing structure that does not lend to individualized cost computations in the field by broker-dealers. Some contracts are issued on a basis different from that for which the customer applied due to underwriting issues or maximum limits on contract size. In that case, the point-of-sale information would be inaccurate to that customer. These are but a few of the reasons why the proposal does not work for VLI. Applying the mutual fund-oriented proposal to variable contracts is like squeezing a round peg into a square hole.

We are hard pressed to believe that the point-of-sale document can improve on the SEC’s comprehensive prospectus simplification projects, particularly with regard to fees,

¹⁵ Sources of Form N-6 administrative history can be found in: Conner, *Converting Variable Life Prospectuses to the SEC’s New Form N-6*, ALI-ABA Conference on Life Insurance Company Products: Current Securities and Tax Issues (2002); Breen and Lawson, *Form N-6: Where We Are and How We Got There*; ALI-ABA Conference on Life Insurance Company Products: Current Securities and Tax Issues (1998); Cohen, *Disclosure of Variable Insurance Products: Profile, Simplified and Electronic Prospectuses*; ALI-ABA Conference on Life Insurance Company Products: Current Securities and Tax Issues (1997); Wilkerson, *VLI Prospectus Simplification: A Worthy Work in Progress*; ALI-ABA Conference on Life Insurance Company Products: Current Securities and Tax Issues (1996).

¹⁶ Consumers obtain an understanding of policy mechanics and the effect of fees and charges through hypothetical illustrations; A picture of how a VLI contract would fit the unique characteristics of a purchaser can be conveyed through personalized illustrations calculated according to factors independently selected by consumers, such as age, risk-class, policy size, and targeted rate of return; a barometer of the capacity of portfolio managers to achieve the rates of return selected by the consumer in the personalized illustrations can be conveyed through historic underlying fund performance

charges and risks.¹⁷ The point-of-sale document fails in this task.

Delivery of the point-of-sale document reduces the likelihood consumers will read streamlined, plain-English disclosure promoted by the SEC. The point-of-sale document effectively displaces the priority of complete, whole-context disclosure.

One of the central goals of the SEC's prospectus simplification project was to thwart corrosive "disclosure creep."¹⁸ 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 contract.¹⁹ 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 point-of-sale document highlights the main features of the financial product is inaccurate. It principally focuses on fees, charges and expenses. These are not the "main features" of a variable contract purchase, but only those selectively chosen for emphasis. This isolated, non-contextual disclosure may lead consumers to focus principally on fees and charges, instead of whether the variable contract is suitable for their needs and circumstances.

A clear, but unstated, premise in the proposal is that consumers do not read their prospectuses. We do not fully agree. If, however, changes to prospectus readability are needed, that would be an infinitely more worthwhile endeavor than developing an insular disclosure solution based on untested premises. The effectiveness of prospectus delivery and

¹⁷ 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.

¹⁸ *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 point-of-sale document would create the very kind of blurring disclosure Chairman Levitt condemned.

¹⁹ Indeed, the release indicates that the proposal should not lend to one-size-fits-all disclosure and encourages multiple, endless variations.

comprehension is significantly more important than an ad hoc endeavor to isolate cost information at the point-of-sale.

Burying customers with multiple pages of duplicate information thwarts meaningful disclosure and contradicts prospectus simplification. Under the proposal, variable contract consumers would be faced with multiple detailed items: a prospectus, a variable annuity contract, and the point-of-sale document. Consumers could also face the NASD's proposed fee and risk disclosure statement, buyers' guides and replacement disclosure under state insurance law, and NASD approved sales literature. Variable life insurance may also have personalized illustrations presented in the sales process.

The SEC needs to focus on the totality of required disclosure confronting variable contracts as products fully regulated under both state insurance and federal securities laws. This is quite different from the more limited range of point-of-sale documents facing mutual fund customers. Excessive disclosure quickly approaches the point of diminishing returns and moves to disclosure obfuscation. We are greatly concerned that the proposal would achieve this unproductive level for variable contracts.

If a replacement is involved, the state insurance law replacement materials will be delivered for a total of four document packages at the sales point. If the NASD's risk disclosure document is adopted, consumers will face up to five disclosure documents at the outset. This achieves dysfunctional disclosure. It is regulatory overkill.

State insurance laws establish meaningful free look provisions. These unique insurance product factors reduce the need for compressed and excessive disclosure all at the point of sale. The added time these provisions provide for unpressured evaluation of the variable contract reduces the need for redundant presentation of cost information. Indeed, the free look provisions may substantially increase the likelihood that customers make and take the time to read the prospectus, the fee table and the example. We have included a chart on free look provisions in the Appendix C to this letter.

Proposed NASD Risk Disclosure Statement. The NASD has recently proposed a rule that would require broker-dealers to provide variable annuity customers a current prospectus and a separate, brief, and easy-to-read risk disclosure document²⁰ 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;

²⁰ See NASD Notice to Members 04-45 (June 2004). According to the NASD's later filing with the SEC on this initiative, "NASD has not included the written-disclosure requirements contained in its Notice to Members in the current proposed rule change, *but will continue to explore this issue and will separately consider whether to propose such requirements in the future.*" [emphasis added]; See NASD pending rule filing at 15 http://www.nasd.com/web/groups/rules_regs/documents/rule_filing/nasdw_012780.pdf. As a result of the NASD's proposal and statements in its rule filing, this potential action would impose completely redundant standards largely mirroring the SEC's proposal. NASD action would further exacerbate the excessive "disclosure creep" criticized by former SEC Chairman Levitt. See footnote 17 *infra*.

- 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.

Under the NASD initiative, a registered principal of the broker-dealer would be required to review and approve the transaction promptly following the date of execution of a variable annuity application. 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).

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.

Under the NASD's 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. According to the NASD proposal, broker-dealers would be required to establish and maintain specific written supervisory procedures reasonably designed to achieve and evidence compliance with the standards in the proposed rule.

The SEC's point-of-sale proposal is exceptionally unconstructive when coupled with NASD's proposed risk disclosure statement. The information in the NASD's risk disclosure initiative 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 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.

The NASD has also indicated very recently that it plans to further overhaul its cash and non-cash compensations rules to properly capture other potentially transparent sales incentives such as sales contests.²¹ The coextensive and apparently uncoordinated issuance of several parallel rulemaking initiatives greatly risks engulfing consumers in repeated and redundant disclosure that will ensure the prospectus is never read.

On March 31, 2005, the NASD announced yet another suggested cost and risk disclosure document called the "profile plus" prospectus.²² This reflects blind devotion to the notion that more disclosure is better disclosure. The collective weight of SEC and NASD alternatives to the prospectus is mind-boggling and uncoordinated. These endless alternatives to prospectus disclosure need to properly quantify regulatory need and balance the burdens of the proposals against the perceived benefits.²³ A far better solution would simply revise the

²¹ See Investment News March 21, 2005 at 10, where NASD president Mary Shapiro outlines the agenda for these rule amendments.

²² See NASD press release dated April 4, 2005 that outlines the recommendations of the NASD's Mutual Fund Task Force to provide a short two page document with basic information about a mutual fund, including its investment objectives, risks, performance, fees and expenses, and information about potential conflicts of interest. Although the NASD's task force lacked insurance industry representation, it nevertheless offered suggestions about variable contract risk and cost information. The risk of yet another "simple disclosure document" will further burden investor's comprehension and appetite for reading the prospectus. The NASD's suggestion implicitly concludes that mutual fund investors do not read prospectuses and provides a meager two page substitute for informed purchase decision making.

²³ The NASD hired the same consultant as the SEC to conduct 20 "interviews" of investors about the two-page alternative to the prospectus. It appears that the research did not test the utility of the current prospectus fee table and example to the interview participants as a less intrusive and more functional disclosure alternative. See

prospectus rather than designing insufficient sources of inferior purchase brochures.

State Insurance Regulation. Several state insurance laws and regulations provide relevant protections reducing the need for the point-of-sale document. A good example is the can be found in replacement regulations under state insurance laws. Of course, there are numerous other aspects of state insurance regulation that provide significant protections and disclosure standards for variable product consumers.

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.

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.

Accurate Depiction of Fees, Charges and Expenses

While it is true that variable annuity fees and charges are different from other products like mutual funds, it is also true that variable contracts are completely different products with long-term mortality guarantees, and options for a variety of contract riders. Fees and charges for these features 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. 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.

Variable life insurance provides fundamental death benefit protection with account values correlating with the performance of allocation options in the separate account. Mutual funds, in contrast, do not contain death benefits or guaranteed streams of income. The fees and charges associated with variable contracts, therefore, are customer specific and do not fit easily or accurately in the proposed disclosure document.

As a consequence of these unique features, variable annuities and variable life insurance are not "comparable" with other financial products. Forms N-4 and N-6 require a fee table "example" highlighting comparative variable annuity costs at one, three, five, and ten-

http://www.nasd.com/web/groups/rules_regs/documents/rules_regs/nasdw_013692.pdf Our comments about the SEC's consultants at text accompanying footnotes 8-10 *infra*.

year intervals. These costs include contract owner transaction expenses, contract fees, separate account annual expenses, and [portfolios company] fees and expenses. This presentation appropriately establishes a basis for similar comparison of similar products—variable annuity to variable annuity, or variable life insurance to variable life insurance.

The prospectus 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 point-of-sale document largely reduplicates the recently upgraded fee table, is infeasible, and will inundate consumers with information of marginal value.

Suitability and Supervision Standards

Several NASD suitability and supervision standards help ensure that consumers find a good match of their financial needs with variable products. A subset of this function includes the fees, charges and expenses associated with these products. These rules, as summarized below, provide another backstop consistent with the objectives of prospectus disclosure, the fee table and its accompanying example.

NASD's current Rules, including Rule 2310²⁴ (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), impose meaningful standards that buttress the purpose of prospectus and cost disclosure.

Rule 2310(a) 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

²⁴ 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.

customer's investment objectives and other information needed to make suitable recommendations.

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.²⁵ These existing suitability standards apply to variable contract distribution and assure that customers' needs are paramount. Moreover, this customer specific standard greatly parallels the proposal's goal of individualized product and charge fit.

Similarly, NASD Rules 2110, 2120, IM-2210-2 and 3010 require that broker-dealers and their associated persons have a reasonable basis to believe that the customer has been informed of the material features of variable contracts.

Rules 2310, 3010(d)(1) and 3110(c)(1)(C) require 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.

In sum, these NASD rules compliment the purposes of prospectus and cost disclosure. Unwittingly, the proposal undermines coordinated enterprise-wide compliance practices, and contradicts the recently upgraded variable contract prospectuses.

Anticompetitive Burdens

Several aspects of the proposal will impose inappropriate anticompetitive burdens contrary to the federal securities laws.²⁶ The proposal was designed and tested on the template

²⁵ 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 recommends the broker-dealer 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.

²⁶ Former SEC Chairman Levitt emphasized the importance of reviewing the impact of rulemaking on competition when he stated:

In response to the National Securities Markets Improvement Act of 1996 (NSMIA), the Commission has rededicated itself to considering how rules affect competition, efficiency, and capital formation as part of its public interest determination. Accordingly, the Commission intends to focus increased attention on these issues when it considers rulemaking initiatives. In addition, the Commission measures the benefits of proposed rules against possible anti-competitive effects, as required by the Exchange Act. *See* testimony of Arthur Levitt, SEC Chairman, concerning appropriations for fiscal year 1998 before the Subcommittee on Commerce, Justice, and State, the Judiciary, and Related Agencies of the House Committee on Appropriations (Mar 14, 1997), which appears at <http://www.sec.gov/news/testimony/testarchive/1997/tsty0497.txt>

of mutual funds and addresses perceived problems largely endemic to the mutual fund industry. The proposed point-of-sale document translates poorly to variable contracts as long-term accumulation products with a significantly wider range of contract options and mortality related features uniquely tied to each customer's age, gender and risk class. These features cannot be accurately or easily depicted in the point-of-sale document. Forced usage of an ill-fitting sales brochure unnecessarily inhibits marketplace competition.

Moreover, some observers have expressed concern that broker-dealers will gravitate toward products whose manufacturers provide the point-of-sale information, and away from products for which the broker-dealer would generate the data. In this event, the proposal may inject an anticompetitive burden favoring larger complexes likely to provide this data over medium and smaller groups. In turn, investors may also suffer if broker-dealers become less inclined to recommend mutual funds, 529 plans or variable contracts whose sponsors do not generate point-of-sale information.

Inadequate Rulemaking Procedures

While we appreciate the opportunity to participate in this important rulemaking dialog, we strongly object to the grossly insufficient 30-day comment period. The initial proposal was a lightning rod of controversy, generating over 5,000 letters of comment. No emergency exists to warrant a race to rulemaking. The 30-day comment period contradicts the purpose of the Administrative Procedure Act and effectively disenfranchises many commentators. The SEC unreasonably ignored several worthwhile requests for a brief comment period extension.²⁷ Rulemaking is best done with thoughtful deliberation and meaningful opportunity to comment.²⁸

Preferable Alternative Solutions

We oppose the point-of-sale proposal for the reasons stated above. There are, however, several alternatives that address proper communication of cost related disclosure.

We encourage the SEC to adopt an affirmative obligation for broker-dealers to strongly encourage consumers to read the prospectus carefully, including the fee table, example, and prospectus illustrations, in making a purchase decision. These uniformly presented depictions of cost and expense information give consumers the ability to make an informed purchase

²⁷ ACLI and the Securities Industry Association, among others, requested comment period extensions.

²⁸ The special time burdens confronting regulated industries and large organizations in digesting regulatory proposals were explicitly recognized by the Administrative Conference of the United States in its publication entitled *A Guide to Federal Agency Rulemaking*, which observes:

The 60-day period established by Executive Order 12044 for significant regulations (and no longer in effect unless adopted by agency rule) is a more reasonable *minimum* time for comment. However a longer time may be required if the agency is seeking information on particular subjects or counter-proposals from regulated industry. *"Interested persons" often are large organizations and they need time to coordinate and approve an organizational response or to authorize expenditure of funds to do the research needed to produce informed comments. See, A Guide to Federal Agency Rulemaking (1983) at 124 (emphasis added).*

The SEC itself spent over twelve months (approximately 365 days) analyzing and revising the proposal after the initial comment period ended. In light of this lengthy time period for revision of the initial proposal, industry commentators should have been entitled to a reasonable period of comment longer than 30 days.

decision in a comprehensive disclosure context. It avoids the significant risk that the point-of-sale cost disclosure becomes the primary purchase document—a dangerous regulatory result.

Directing consumers to the prospectus also avoids the unnecessary duplication of originally created point-of-sale documents by broker-dealers in the field, and reduces the significant exposure to broker-dealer liability for misleading information innocently created. Orientation toward the prospectus preserves its primacy in purchase decisions, and prevents a limited cost document at the point of sale from becoming the principal sales document or obviating the prospectus.

If the SEC believes that the prospectus does not currently convey cost and conflict of interest information sufficiently, then a vastly more constructive approach would be to update, refine and polish the prospectus. Recent statements by SEC commissioners indicate that mutual fund prospectus overhaul is on the upcoming agenda for the Division of Investment Management.²⁹ This action plan provides an opportunity for coordinated, comprehensive disclosure correctives rather than piece-meal solutions that frustrate streamlined, plain-English disclosure.

If the SEC is determined to require a page of cost and conflict of interest disclosure to be delivered at the point-of-sale, it would be far preferable to require distribution of a photocopy of the fee table, example, and associated narrative. While we firmly believe that disclosure should not be segmented in isolated dribs and drabs, this approach is superior to requiring broker-dealers to create infinite variations of this data in ways that may be incorrect or misleading. Moreover, use of the fee table and example assures ongoing SEC input and oversight on uniform, comparable, and accurate disclosure.

Variable products will never be effectively and efficiently depicted in the proposed point-of-sale document. The proposal is oriented to the more limited range of mutual fund cost ingredients that do not vary according to consumers' individual characteristics such as age, gender and risk class. Variable contracts have a greater number of useful custom tailored enhancements to meet individual customer or target market needs. The expense and cost features of these products, therefore, are best depicted in the prospectus fee table and example. Digestible prospectus disclosure coupled with strong supervision and suitability standards represents the best approach.

In sum, we strongly believe the prospectus reflects the best source of information for valid purchase decisions, including disclosure about expenses, costs and conflicts of interest. That the point-of-sale document would supplant the prospectus or retard customers' inclination to read the prospectus is greatly troubling.

Variable products are quite different from mutual funds, and cannot be easily or accurately depicted in the proposed document. It would be short-sited and regrettable if consumers were steered toward the limited range of information in the point-of-sale document to select and purchase financial products. A far better solution would do everything possible to

²⁹ See, *For Roye's Successor, Improved Disclosure Ranks High on to-do List*, Investment News (Mar. 14, 2005) at 2. The article quotes Commissioner Goldschmid in support of eliminating redundancy in disclosure, something the point-of-sale proposal exacerbates. SEC Chairman Donaldson also indicated in a recent speech that the SEC will be developing reformed and simplified mutual fund prospectuses. See <http://www.sec.gov/news/speech/spch031405whd.htm>

ensure consumers read streamlined, plain-English prospectus disclosure in making purchase decisions.

Conclusion

We respectfully oppose the SEC's point-of-sale and confirmation proposal. It serves variable contract purchasers poorly. Requiring broker-dealers to strongly encourage consumers to carefully read the prospectus is a more constructive action that does not undermine the SEC's commendable prospectus simplification projects. Undisciplined adoption of more regulation is not better regulation.

The proposal fails to identify adequately a need for the proposal. There is no demonstration that the proposed rule changes will materially enhance informed consumer decision making. The "extensive investor interviews" cited in the revised proposal are inadequate and should not form the basis for disclosure overhaul unless they are based on proper sampling and scope in a statistically significant manner. We have concerns with the consultant's procedures and conclusions.

Detailed federal securities and state insurance laws comprehensively govern the manufacture and sale of variable annuities. In several respects, concerns in the proposal are addressed under provisions of state insurance laws, such as "free look" provisions and replacement regulations. Mutual funds do not share equivalent free look features or substantive state regulation.

Variable contracts are significantly different from mutual funds in purpose and structure. The point-of-sale document fits these long term accumulation products badly, and would mandate a misleading purchase document because of customer-specific features unique to variable insurance products.

The proposed point-of-sale document 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.

In sum, the burdens of the proposal greatly outweigh its putative benefits. Responsible rulemaking requires rigorous analysis and articulate justification. Prioritizing the prospectus as the primary disclosure document will better serve consumers.

We support any necessary enhancements to the prospectus and the fee table that further enhance informed decision making and comparison shopping. While we strongly endorse disclosure in a single whole-context basis like the prospectus, if the SEC is determined to mandate a point-of-sale document, a photocopy of the fee table and example are far superior to the proposal.

If the SEC proceeds with its proposal, we strongly recommend that the definition of "covered security" in the proposal be revised to exclude variable life insurance and variable annuities. This is warranted because the proposal is designed to address problems largely

endemic to mutual funds. The proposal would inappropriately subject variable contracts to ill-fitting regulation designed and tested on the template of mutual funds. Enhancement of the prospectus remains, however, a preferable alternative to piece-meal disclosure.

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

Sincerely,

Carl B. Wilkerson

Carl B. Wilkerson

Appendix A to ACLI letter of Comment on SEC Point-of-Sale Proposal³⁰

I. 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:
 - i. Maintain a system of supervision and control;
 - ii. Have the capacity to monitor each producer's life and annuity replacements for that insurer;
 - iii. Ascertain that required sales material and illustrations are complete and accurate; and
 - iv. 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

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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 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:
 - i. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - ii. 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;
 - iii. 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
 - iv. 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:
 - i. *Maintain a system of supervision and control* to insure compliance with the requirements of this regulation that shall *include at least* the following:
 1. *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;
 2. *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;
 3. *A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with the regulation's standards;*
 4. Procedures to *confirm* that the *requirements* of this regulation have been *met*; and
 5. 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.
 - ii. *Have the capacity to produce, upon request, and make available to the Insurance Department, records of each producer's:*
 1. *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;*
 2. *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;

3. 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

4. *Replacements, indexed by replacing producer and existing insurer.*

- iii. 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;
- iv. 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;
- v. 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;
- vi. 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
- vii. 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:
 - i. Verify that the required forms are received and are in compliance with the regulation;
 - ii. 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.*]
 - iii. 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
 - iv. 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:
 - i. Require with each application a statement signed by the producer that:
 1. Represents that the producer *used only company-approved sales material*;
 2. *Lists*, by identifying number or other descriptive language, the *sales material that was used*; and
 3. States that copies of all sales material were left with the applicant in accordance with Section 3(D); and
 - ii. Within ten days of the issuance of the policy or contract:
 1. 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);
 2. Provide the applicant with a *toll free number* to contact *company personnel involved in the compliance function* if such is not the case; and
 3. Stress the importance of retaining copies of the sales material for future reference; and
 - iii. *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:
 - i. 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.
 - ii. 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.
 - iii. 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 Annuities³¹

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>

³¹ © American Council of Life Insurers, 101 Constitution Avenue, NW, Washington, DC 20001-2133. All rights reserved.

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	Definitions: Mich. Admin. Code r. 500.601 Duties: <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 Forms: Insurance Bureau Bulletin 84-6
Minnesota	Definitions: Minn. Stats. Ann. §61A.53 Duties: <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 Forms: Minn. Stats. Ann. §61A.60, Subdivisions 1, 2, and 3
Mississippi	Definitions: Miss. Ins. Reg. 99-2.2 Duties: <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 Forms: Miss. Ins. Reg. 99-2, Appendix A, Appendix B, and Appendix C
Missouri	Definitions: Mo. Code Regs. Ann. tit. 20, §400-5.400(2) and (3) Duties: <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) Forms: Mo. Code Regs. Ann. tit. 20, §400-5.400, Exhibit A and Exhibit B
Montana	Definitions: Mont. Admin. Reg. 6.6.303 Duties: <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 Forms: NAIC model forms—Appendices A, B, and C—incorporated by reference

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	Definitions: Or. Admin. R. 836-080-0005 Duties: <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 Forms: Or. Admin. R. 836-080, Appendix A, Appendix B, and Appendix C
Pennsylvania	Definitions: 40 Pa. Code §81.2 Duties: <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 Forms: 40 Pa. Code Chapter 81, Appendix A and Appendix B
Rhode Island	Definitions: R. I. Ins. Reg. 29, sec. 3 (replacement); R. I. Ins. Reg. 29, sec. 4 (other) Duties: <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 Forms: R. I. Ins. Reg. 29, Exhibit A (different companies); Exhibit B (same company); Exhibit C (direct response); Exhibit D (comparative form)
South Carolina	Definitions: S. C. Code Regs. 69-12.1, sec. 2 (replacement); 60-12.1, sec. 3 (other) Duties: <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 Forms: S. C. Code Regs. 69-12.1, Exhibit A
South Dakota	Definitions: S. D. Admin. R. 20:06:08:38 Duties: <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 Forms: S. D. Admin. R. 20:06:08:41 (describes contents of notice)

State	Key Elements/Citations
Tennessee	Definitions: Tenn. Comp. R. & Regs. 0780-1-24-.02 (replacement); 0780-1-24-.03 (other) Duties: <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 Forms: Tenn. Comp. R. & Regs. 0780-1-24, Exhibit A
Texas	No applicable provisions.
Utah	Definitions: Utah Admin. Code R590-93-3 (replacement); R590-93-4 (other) Duties: <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 Forms: Utah Admin. Code R590-93, Addendum (notice)
Vermont	Definitions: Reg. I-2001-03, Sec. 2 Duties: <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 Forms: Reg. I-2001-03, Sec. Appendices A, B, and C
Virginia	Definitions: 14 Va. Admin. Code §5-30-20 Duties: <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 Forms: 14 Va. Admin. Code §5-30, Exhibit A
Washington	Definitions: Wash. Admin. Code §284-23-410 (replacement); §284-23-420 (other) Duties: <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 Forms: Wash. Admin. Code §284-23-485

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 REGULATION³²

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.³³

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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³³This 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, reading, 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.³⁴ 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].”³⁵ 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.

³⁴The 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.

³⁵ *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.³⁶

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.³⁷

MARKET CONDUCT EXAMINATIONS

Nearly every jurisdiction has enacted a version of the NAIC Model Law on Examinations.³⁸ This Act is designed to provide an effective and efficient system for

³⁶See Sections 8, 9, 10, 11 and 14 of the Model Unfair Trade Practices Act, NAIC Model Regulation Service at 880-10 through 13(1994).

³⁷See NAIC Insurance Fraud Prevention Model Act, NAIC Model Reporting Service at 680-1(1995).

³⁸See 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.³⁹

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.⁴⁰

³⁹See 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.

⁴⁰Certain 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 raise. 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,⁴¹ 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.⁴² 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.

⁴¹See NAIC Model Regulation Service at 210-1 (1990).

⁴²See 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.⁴³ 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

⁴³See 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.

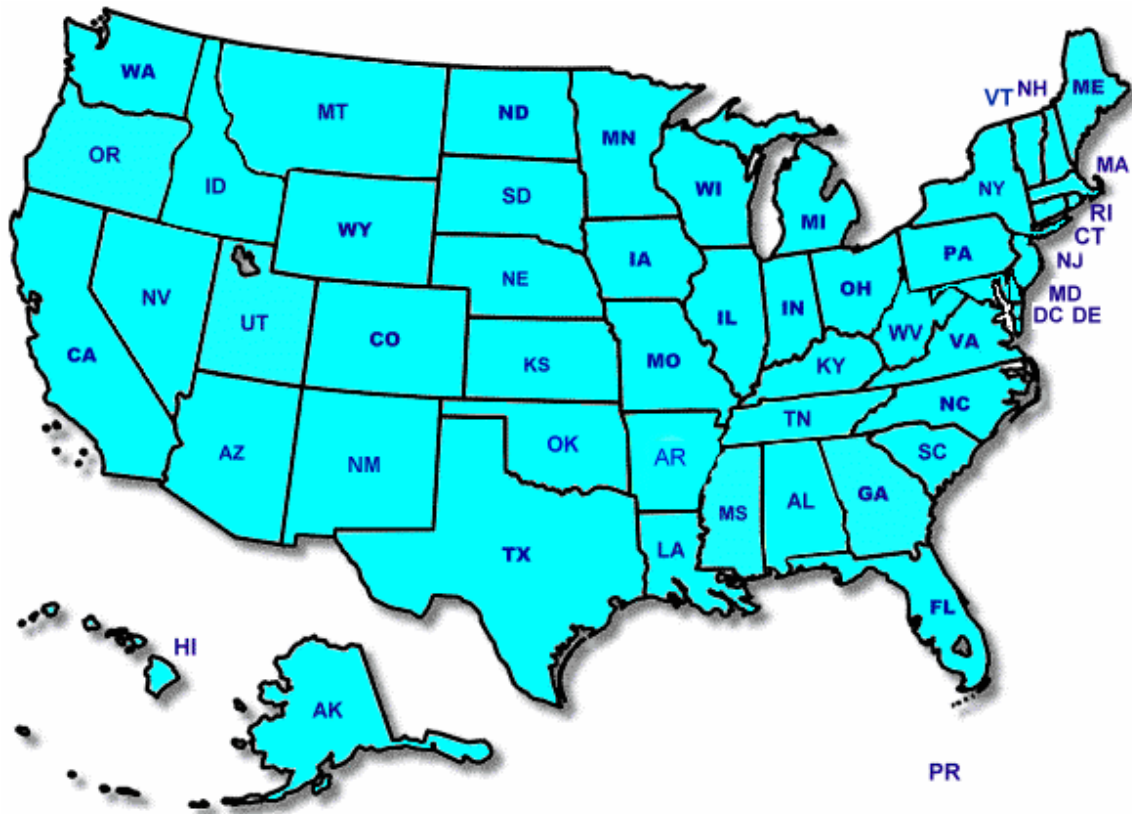
The NIPR Gateway is an electronic communication network that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of producer information; including license applications, appointments, and terminations. To date, data standards have been developed for 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. 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.⁴⁴

⁴⁴ An independent board of directors sets policy for IMSA.

Appendix C: Free Look/Right To Return Requirements⁴⁵

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 r. 4-157.114(2)(c)	Prominently printed on 1st page or attached thereto	30 days 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
69-12 Part B, art. IV, §3(a)(5)	Captioned provision on the cover page or pages corresponding to the cover page	10 days	
South Dakota	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	Prominently printed on 1st page or attached thereto	30 days
	Vermont Code R. I-2001-03 §§1.B, 5(A)(4)	May be included in Appendix A or Appendix C	30 days
	77-2 §§3(B), 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 prior to accepting the applicant's initial premium or premium deposit)
	I-88-3 Art. IV. §3(a)(5)	Captioned provision on cover page or pages corresponding to the cover page	10 days
Virginia	Va. Code Ann. §§38.2-3300, 38.2-3301	Printed on policy	10 days
	§38.2-5208	Prominently printed on 1st page or attached	30 days
	§38.2-3342	Printed on policy	10 days
	§38.2-3724(D)(7)	Printed on policy or certificate	At least 10 days
	Va. Admin. Code tit. 14 §5-80-300(1)	Printed on policy	10 days
Washington	Wash. Rev. Code Ann. §48.23.380	Printed on face of policy or attached thereto	10 days
	§48.20.013	Printed on its face or attached thereto	10 days
	§48.18A.035	Prominently displayed on 1st page	10 days
	§48.84.050	Prominently displayed on 1st page	30 days
	§48.84.050	Prominently displayed on 1st page	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