

VIA ELECTRONIC MAIL

February 6, 2001

Carolyn J. Johnson, CLU, Senior Counsel
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108

Re: Proposed Suitability of Sales of Life Insurance and Annuities Model Regulation
(January 6, 2001 Draft)

Dear Carolyn:

The following comments on the above-referenced draft (the "Draft") are submitted to the NAIC on behalf of the National Association of Insurance and Financial Advisors (NAIFA).

As a preliminary matter, NAIFA continues to have serious questions regarding the appropriateness and necessity of developing a separate model regulation that would establish suitability standards and requirements that must be met in the sale of non-registered life insurance and annuity products. As we have previously stated, the characteristics that distinguish the securities and insurance industries coupled with the strong and more-than-adequate consumer protections already in place in the states, along with the impossibility of developing a definitive, objective standard by which to judge suitability, present strong arguments against the desirability of adopting a suitability model regulation.

Also of significant concern to NAIFA is the fact that the Draft does not contain the requirement found in the August 2, 2000 draft model regulation that required an insurer to use its own suitability standards in determining whether a policy is appropriate for a consumer. NAIFA believes that it is clearly in the best interest of the consumer, that responsibility for the suitability of a proposed sale should rest with both the producer and the insurer. While the producer is best positioned to obtain information about the applicant's financial situation and personal circumstances, suitability is not a concept that is best applied only at the point of application. Rather, it is a concept that must also be

considered after review and analysis of the customer's circumstances. To give consumers the best possible "safety net" of careful review and analysis of a proposed transaction, the insurer must necessarily be required to accept the responsibility of standing behind any final review and making the determination that the producer's recommendation is, in fact, suitable for the customer and his or her own unique circumstances. In other words, companies that train agents may have confidence to allow them to make the final decision on suitability and companies that appoint agents should have the latitude of reposing the same confidence in their agents. This is, of course, the principal of agency—allowing another to act in your behalf but with liability for the actions of the agent if the agent does not carry out his/her duties in the required manner. Conversely, some companies may wish to review each decision to sell a policy by an agent. The imposition of final responsibility for suitability on insurers will, in either case, make companies much more careful in assuring "suitable" sales are made. If a suitability regulation is to succeed in its stated goal of ensuring that insurers and producers recommend products that are appropriate for their clients, insurers must do more than just "monitor" or "oversee" general compliance. They must stand behind the sale of their products.

NAIFA again would mention that the NAIC's White Paper on Suitability and its Long-Term Care Insurance Model Regulation call for the insurer to have responsibility for determining the suitability or appropriateness of a sale. We believe the Working Group should require this same standard for insurers in the Draft.

In addition to the general concerns expressed above, we have the following comments on several sections of the Draft:

- 1) Section 3(G) Definition of "relevant information". We are concerned about the all-inclusive nature of the list of items and that all of these must be considered before a suitable recommendation is made. In spite of the grant of discretion to producers under Section 6(B) "to determine what information is relevant or necessary...", the exhaustive nature of the list creates a real concern that it will subsequently be used in a legal or administrative forum to establish an unreasonable standard for the producer's efforts. Furthermore, the list itself contains more items than the NASD requires to be gathered and considered in determining the suitability of the sale of securities and variable products. At a minimum, we suggest changing "includes" to "may include".
- 2) Section 4(A) Exemption for direct response solicitations. Direct response solicitations and sales should not be exempt from coverage under the regulation. Direct response transactions, where the consumer does not have the benefit of the advice and counsel of an insurance professional, are precisely the type of situations where protection of the consumer from unsuitable sales is most called for and warranted. Direct response solicitations should be removed from the list of exemptions, and the

insurer making the solicitation or sale should have direct responsibility for determining the suitability of the product being sold.

As stated above, we continue to have broad concerns regarding the need and advisability of a suitability regulation as well as the fact that the Draft does not require the insurer to share responsibility for determining the suitability of the sale. NAIFA appreciates the opportunity to offer these comments, and we look forward to further discussion of these important issues at the upcoming meeting in Kansas City.

Sincerely,

Roland L. Panneton