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The NAIC solicits comments on this draft. Comments should be sent electronically by Feb. 5, 2001 to Carolyn Johnson, NAIC, 2301 McGee, Suite 800, Kansas City, Missouri, 64108; e-mail address is cjohnson@naic.org.

LIFE INSURANCE AND ANNUITIES SUITABILITY MODEL REGULATION

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Section 1. Purpose and Scope

The purpose of this regulation is to regulate the activities of insurers and producers that make recommendations to consumers to purchase certain life insurance and annuity products. The goal of this regulation is to ensure that insurers and producers will make suitable recommendations based on relevant information obtained from persons who purchase life insurance and annuity products.

This regulation shall apply to all recommendations for the purchase of individually sold fixed life insurance and annuity products that are not specifically exempted.

Section 2. Authority

This regulation is issued under the authority of [insert reference to unfair trade practice act].

Section 3. Definitions

- A. “Customer” means an individual who seeks to obtain, obtains or has obtained an insurance product covered by this regulation from a producer or directly from an insurer.
- B. “Direct response solicitation” means a solicitation through a sponsoring or endorsing entity or individually sold through mail, telephone, the Internet or other mass communications media.

- C. “Insurance transaction” means the purchase of an individually sold fixed life insurance or annuity product that is offered by an insurer pursuant to the insurance laws of this state.
- D. “Person” means an individual, aggregation of individuals, trust, association, partnership, corporation or similar entity.
- E. “Producer” means an agent, broker or producer licensed in this state.
- F. “Registered contract” means a variable annuity contract or a variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.
- G. “Relevant information” includes, but is not limited to, occupation, marital status, age, number of dependents, sources of income, yearly income, the customer’s need or primary objective for purchasing insurance, affordability of premiums to keep the policy in force, the customer’s existing insurance, investments or savings, liquid net worth, tax status, need or desire for tax advantages or benefits provided by a product, investment experience of the customer, customer concern for preservation of principal, product time horizon, and the customer’s awareness of liquidity limitations or surrender charges.
- H. “Sophisticated purchaser” means an institution, trust or individual represented by a certified public accountant or legal counsel in the purchase of a life insurance or annuity product. A sophisticated purchaser also includes a person purchasing business-owned life insurance, business related or employer-sponsored life insurance, corporate-owned life insurance, structured settlement contracts, funding agreements, life insurance owned by a tax exempt organization under the Internal Revenue Code Section 501 and other similar products.
- I. “Suitable recommendation” means a recommendation for the purchase of a life insurance or annuity product not exempted from this regulation, which is based upon relevant information obtained from a potential purchaser and that meets the purchaser’s insurable needs or financial objectives.

Section 4. Exemptions

Unless otherwise specifically included, this regulation shall not apply to recommendations for purchases involving:

- A. Direct response solicitations where there is no recommendation by a producer or agent of an insurer;
- B. Registered contracts;
- C. Long term care insurance products;

- D. Products sold to sophisticated purchasers;
- E. Group life insurance or annuity products where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual; or
- F. Policies or contracts used to fund:
 - (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (2) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code (IRC), as amended, is established or maintained by an employer;
 - (3) A government or church plan defined in Section 414 of the IRC, a government 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 IRC; or
 - (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

Section 5. Duties of Insurers

- A. An insurer shall establish, maintain and enforce policies and procedures reasonably designed to ensure that its producers make suitable recommendations. An insurer's policies and procedures shall be appropriate to the methods of distribution and products sold.
- B. An insurer's policies and procedures shall include at least the following:
 - (1) Informing its producers of the requirements of this regulation and incorporating those requirements into any relevant producer training manuals prepared by the insurer;
 - (2) Providing each producer with the insurer's guidelines as to information that should be obtained from a customer prior to making recommendations to a customer; and
 - (3) Establishing and maintaining a system reasonably designed to detect, on either an individual or aggregate basis, producer practices that are not in

compliance with guidelines established in accordance with this section. Compliance with this regulation may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters or programs of internal monitoring.

- C. An insurer may contract with a third party, such as an insurance agency or brokerage firm, to deliver information and perform the functions described in Subsection B(1) and (2). An insurer utilizing such a contract shall perform a reasonable inquiry to assure that the third party is performing all duties required by this regulation.
- D. An insurer shall be deemed to comply with the requirements of this regulation if the insurer can demonstrate to the satisfaction of the commissioner any one or more of the following:
 - (1) The insurer complies on a continuing basis with the membership requirements of the Insurance Marketplace Standards Association;
 - (2) The insurer requires that suitability requirements established by the National Association of Securities Dealers are used for products sold pursuant to this regulation; or
 - (3) The insurer's policies and procedures require collection of appropriate relevant information for the type of product being recommended.

Section 6. Duties of Producers

- A. In recommending the purchase of life insurance or annuity products covered by this regulation, producers shall make suitable recommendations.
- B. Producers shall have reasonable discretion to determine what information is relevant or necessary for any specific recommendation or insurance transaction.
- C. Producers shall maintain for [insert number] years, from the date of providing a recommendation covered by this regulation, documentation of the relevant information that was considered in making the recommendation. Documentation need not be retained if no policy or contract is issued. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.
- D. The determination of whether a producer has met his or her obligations under this section shall be based on the circumstances known by the producer that existed at the time the recommendation is made to a customer and shall not be judged upon facts that arose or were made known at any time after the recommendation was made. A rebuttable presumption that a recommendation was a suitable recommendation is created if the producer can demonstrate:

- (1) Collection and consideration of relevant information; and
 - (2) Conformance with an insurer's policies and procedures, prior to making a recommendation.
- E. Neither a producer nor an insurer shall have any obligation of any nature to a customer under this regulation related to any recommendation or insurance transaction if a customer:
- (1) Refuses to provide the kinds of information described in Subsection B of this section; or
 - (2) Decides to enter into an insurance transaction that is contrary to a recommendation of the producer.

Section 7. Recordkeeping

Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Section 8. Severability

If any section, term or provision of this regulation shall be judged invalid for any reason, that judgment shall not affect, impair or invalidate any other section, term or provision of this regulation, and the remaining sections, terms and provisions shall be and remain in full force and effect.

Section 9. Effective Date

This regulation shall become effective [insert date] and shall apply to contracts and policies recommended or sold on or after the effective date.

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