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## SUITABILITY IN ANNUITY TRANSACTIONS

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Must be completed and accompany applications for annuities

Applicant's Name \_\_\_\_\_

Applicant's Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I have made reasonable efforts to obtain the following information regarding the applicant's financial status and objectives prior to making the recommendation of this product.

- |  |   |
|--|---|
| <input type="checkbox"/> Tax Status            | <input type="checkbox"/> Source of funds              |
| <input type="checkbox"/> Investment Objectives | <input type="checkbox"/> Dependent information        |
| <input type="checkbox"/> Liquidity needs       | <input type="checkbox"/> Need for Income              |
| <input type="checkbox"/> Investment experience | <input type="checkbox"/> Need for an annuity contract |

Other \_\_\_\_\_

I understand I must keep records of the information used in making this recommendation, and I agree that I will provide those records to the insurer upon request. The time period for record retention will be no less than that required by the Suitability in Annuity Transactions regulation as adopted by the state in which the contract is issued.

\_\_\_\_\_  
Agent's Signature

\_\_\_\_\_  
Date

If the annuity sold is not the product recommended, the applicant must read the following statement and sign below.

I have chosen to purchase an annuity other than the recommended product.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

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## SUITABILITY IN ANNUITY TRANSACTIONS

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Must be completed and accompany applications for annuities

Applicant's Name \_\_\_\_\_

Applicant's Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I have made reasonable efforts to obtain the following information regarding the applicant's financial status and objectives prior to making the recommendation of this product.

- |  |   |
|--|---|
| <input type="checkbox"/> Tax Status            | <input type="checkbox"/> Source of funds              |
| <input type="checkbox"/> Investment Objectives | <input type="checkbox"/> Dependent information        |
| <input type="checkbox"/> Liquidity needs       | <input type="checkbox"/> Need for Income              |
| <input type="checkbox"/> Investment experience | <input type="checkbox"/> Need for an annuity contract |

Other \_\_\_\_\_

\_\_\_\_\_

I understand I must keep records of the information used in making this recommendation, and I agree that I will provide those records to the insurer upon request. The time period for record retention will be no less than that required by the Suitability in Annuity Transactions regulation as adopted by the state in which the contract is issued.

\_\_\_\_\_

Agent's Signature

\_\_\_\_\_

Date

If the annuity sold is not the product recommended, the applicant must read the following statement and sign below.

I have chosen to purchase an annuity other than the recommended product.

\_\_\_\_\_

Applicant's Signature

\_\_\_\_\_

Date

**R590. Insurance, Administration.**

**R590-230. Suitability in Annuity Transactions.**

**R590-230-1. Authority.**

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for recommendations and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

**R590-230-2. Purpose.**

(1) The purpose of this rule is to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

**R590-230-3. Scope.**

(1) This rule shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the recommended purchase or exchange.

(2) Unless otherwise specifically included, this rule shall not apply to recommendations involving:

(a) direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this rule; and

(b) 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 Internal Revenue Code (IRC) Sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;

(iii) a government or church plan defined in IRC Section 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under IRC Section 457;

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) formal prepaid funeral contracts.

**R590-230-4. Definitions.**

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Annuity" means:

(a) an annuity as defined in Section 31A-1-301; and

(b) a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

(2) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

**R590-230-5. Duties of Insurers and of Insurance Producers.**

(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

- (a) the consumer's financial status;
- (b) the consumer's tax status;
- (c) the consumer's investment objectives; and
- (d) such other information used or considered to be

reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

(3)(a) Except as provided under Subsection (3)(b), neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under Subsection (1) related to any recommendation if a consumer:

- (i) refuses to provide relevant information requested by the insurer or insurance producer;
- (ii) decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or
- (iii) fails to provide complete or accurate information.

(b) An insurer or insurance producer's recommendation subject to Subsection (3)(a) shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

(4)(a) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this rule is established and maintained by complying with Subsections (4)(c) to (4)(e) or shall establish and maintain such a system, including:

- (i) maintaining written procedures; and
- (ii) conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this rule.

(b) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this rule, or shall establish and maintain such a system, including:

- (i) maintaining written procedures; and
- (ii) conducting periodic reviews of records that are

reasonably designed to assist in detecting and preventing violations of this rule.

(c) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Subsection (4)(a) with respect to insurance producers under contract with or employed by the third party.

(d) An insurer shall make reasonable inquiry to assure that the third party contracting under Subsection (4)(c) is performing the functions required under Subsection (4)(a) and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(i) the insurer annually obtains from a third party's senior manager, who has responsibility for the delegated functions, a certification that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(ii) the insurer, based on reasonable selection criteria, periodically selects third parties contracting under Subsection (4)(c) for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

(e) An insurer that contracts with a third party pursuant to Subsection (4)(c) and that complies with the requirements to supervise in Subsection (4)(d) of this subsection shall have fulfilled its responsibilities under Subsection (4)(a).

(f) An insurer, general agent or independent agency is not required by Subsection (4)(a) or (4)(b) to:

(i) review, or provide for review of all insurance producer solicited transactions; or

(ii) include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

(g) A general agent or independent agency contracting with an insurer pursuant to Subsection (4)(c), shall promptly, when requested by the insurer pursuant to Subsection (4)(d), give a certification as described in Subsection (4)(d) or give a clear statement that the third party is unable to meet the certification criteria.

(h) No person may provide a certification under Subsection (4)(d)(i) unless:

(i) the person is a senior manager with responsibility for the delegated functions; and

(ii) the person has a reasonable basis for making the certification.

(5) Compliance with the National Association of Securities Dealers (NASD) Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the commissioner's ability to enforce the provisions of this

rule.

**R590-230-6. Mitigation of Responsibility.**

(1) The commissioner may order:

(a) an insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this rule;

(b) an insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this rule; and

(c) a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this rule.

(2) Any applicable penalty under 31A-2-308 for a violation of Subsection R590-230-5.(1), (2), or (3)(b) may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

**R590-230-7. Records.**

Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for the current calendar year plus three years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

**R590-230-8. Enforcement Date.**

The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

**R590-230-9. Severability.**

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.

**KEY: insurance, annuity suitability**

**Date of Enactment or Last Substantive Amendment: August 29, 2006**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-425**