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

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Other \_\_\_\_\_

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Agent's Signature

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Date

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Applicant's Signature

\_\_\_\_\_  
Date

**ARC**

**INSURANCE DIVISION [191]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 507B and 2006 Iowa Acts, Senate File 2365, the Insurance Division hereby amends Chapter 15, “Unfair Trade Practices,” Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 21, 2006 as **ARC 5173B**.

The rules in Chapter 15 describe certain minimum standards and guidelines of conduct by identifying unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, as prohibited by Iowa Code chapter 507B. The new rules set forth standards and procedures for recommendations made to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the times of the transactions are appropriately addressed. Iowa insurance companies and producers shall comply with the rules beginning January 1, 2007.

Written comments were received by the Division. In addition, oral comments were heard by the Division at a public hearing held at Division offices on July 11, 2006. As a result of the written and oral comments, the Division withdrew the amendment to rule 15.8(4) which changed the term “not unsuitable” to “suitable;” that language in the rule remains unchanged.

These amendments are intended to implement Iowa Code chapter 507B, and will become effective September 20, 2006.

ITEM 1. Amend subrule 15.8(4) as follows:

**15.8(4) Suitability.** A producer shall not recommend to any person the purchase, sale or exchange of any life insurance policy, ~~annuity~~ or any rider, endorsement or amendment thereto, without reasonable grounds to believe that the transaction or recommendation is not unsuitable for the person based upon reasonable inquiry concerning the person's insurance objectives, financial situation and needs, age and other relevant information known by the producer. For purposes of this subrule, when a producer recommends a group life insurance policy ~~or annuity~~, "person" shall refer to the intended group policyowner.

ITEM 2. Amend 191—Chapter 15 by adopting the following new rules:

## DIVISION V

### SUITABILITY IN ANNUITY TRANSACTIONS

**191—15.68(507B) Purpose.** The purpose of these rules is to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the times of the transactions are appropriately addressed. The rules in this division apply to all annuities not exempted under rule 15.69(507B) that are issued on or after January 1, 2007.

**191—15.69(507B) Applicability and scope.**

15.69(1) These rules shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or by an insurer where no producer is involved, that results in the purchase or exchange recommended.

15.69(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.

b. Contracts used to fund the following:

(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), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC) if 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;

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

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

(6) Formal prepaid funeral contracts.

**191—15.70(507B) Definitions.** For purposes of this division:

*“Annuity”* means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

*“Insurer”* means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

*“Insurance producer”* means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

*“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.

**191-15.71(507B) Duties of insurers and of insurance producers.**

15.71(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 the consumer’s investments and other insurance products and as to the consumer’s financial situation and needs.

15.71(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.

15.71(3) An insurer or insurance producer's recommendation shall be reasonable under all circumstances actually known to the insurer or insurance producer at the time of the recommendation. However, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under subrule 15.71(1) related to any recommendation if a consumer:

- a. Refuses to provide relevant information requested by the insurer or insurance producer;
- b. Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or
- c. Fails to provide complete or accurate information.

15.71(4) Establishment and maintenance of a system of supervision.

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 15.71(4) “c” to “e”, or shall establish and maintain such a system, including, but not limited to:

(1) Maintaining written procedures; and

(2) 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, but not limited to:

(1) Maintaining written procedures; and

(2) 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 15.71(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 15.71(4)“c” is performing the functions required under 15.71(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:

(1) Annually obtain a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to

represent, and does represent, that the third party is performing the required functions;  
and

(2) Based on reasonable selection criteria, periodically select third parties contracting under 15.71(4)"c" for a review to determine whether the third parties are performing the required functions. In conducting the review, the insurer shall perform those procedures that are reasonable under the circumstances.

e. An insurer that contracts with a third party pursuant to 15.71(4)"c) and that complies with the requirements to supervise in 15.71(4)"d" shall have fulfilled its responsibilities under 15.71(4)"a".

f. An insurer, general agent or independent agency is not required by 15.71(4)"a" or "b" to:

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

(2) 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 15.71(4)"c" shall promptly, when requested by the insurer pursuant to 15.71(4)"d", give a certification as described in 15.71(4)"d" or give a clear statement that the general agent or independent agency is unable to meet the certification criteria.

h. No person may provide a certification under 15.71(4)"d"(1), unless:

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

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

15.71(5) Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this rule for the recommendation of variable annuities. However, nothing in this subrule shall limit the insurance commissioner's ability to enforce the provisions of this rule.

**191—15.72(507B) Mitigation of responsibility.**

15.72(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 the rules of this division;

b. An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of the rules of division; 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 the rules of division.

15.72(2) Any applicable penalty under Iowa Code chapter 507B for a violation of the rules in Division V of this chapter may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

**191—15.73(507B) Record keeping.**

15.73(1) 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 ten 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.

15.73(2) Records required to be maintained by this rule may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Adopted this 26th day of July 2006 by Susan E. Voss, Iowa Insurance Commissioner.

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