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Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-9303

*RE: Proposed NASD Rule 2821- Suitability and Supervision in Variable Annuity Distribution;
Release No. 34-54023, File No. SR-NASD-2004-183.*

Dear Ms. Morris:

We greatly appreciate the opportunity to share our views on proposed NASD Rule 2821 concerning the supervision and suitability of variable annuity sales. ACLI is a national trade association with 377 members that account for 91 percent of the industry's total assets, 90 percent of life insurance premiums, and 95 percent of annuity considerations.

Many of our member companies offer and distribute variable annuities through affiliated and independent broker-dealers. Over 50% of the NASD's 658,210 registered representatives work for broker-dealers affiliated with life insurance companies. The initiative would have a significant negative impact on our industry.

We have actively participated in numerous NASD rule proposals, and submitted comment on NASD Rule 2821, a suitability and supervision rule for variable annuity sales.¹ The NASD's 2005 proposal generated over 1,400 letters of comment expressing significant concern.² The proposal has become a lightning rod for broad industry alarm. The SEC's involvement in this rulemaking, therefore, is essential.

The recent modifications to the proposal merit thorough discussion and analysis. The rule's amendments are significant and have been evolving since August 2004, when the NASD invited comment on the initiative from its membership. The release does not reference any emergency regulatory situations needing immediate action. The SEC should provide an extended comment period allowing robust analysis of this controversial NASD initiative,³ and should allow more than a brief 21 day comment period during the peak of the summer vacation season on a

¹ See <http://www.sec.gov/rules/sro/nasd/nasd2004183/cbwilkinson091905.pdf> for a copy of our position on initial Rule 2821 noticed for comment in 2005. For a copy of our comment on the draft NASD proposal, see http://www.nasd.com/web/groups/rules_regs/documents/notice_to_members/nasdw_010087.pdf.

² See comment file at <http://www.sec.gov/rules/sro/nasd/nasd2004183.shtml>.

³ ACLI filed a request for an extension of the extremely brief 21 day nominal comment period. See <http://www.sec.gov/rules/sro/nasd/nasd2004183/srnasd2004183-167.pdf>. The fundamental focus of the rule is currently addressed by various NASD rules and Notices to Members. A regulatory void, therefore, does not exist. Active public input should not be shortchanged. The NASD itself spent nearly eight months (approximately 240 days) analyzing and revising the proposal after the initial comment period ended.

controversial self-regulatory rule proposal.

Overview of the Proposal

In its Rule 2821 filing, NASD explains that the revised proposal has four primary provisions:

- requirements governing recommendations, including a suitability obligation, specifically tailored to deferred variable annuity transactions;
- principal review and approval obligations;
- a specific requirement for broker-dealers to establish and maintain written supervisory procedures reasonably designed to achieve compliance with the standards set forth in the proposed rule; and
- a targeted training requirement for broker-dealers' associated persons, including their registered principals.

The revised Rule 2821 would establish the following specific requirements:

Recommendation Requirements. When recommending a deferred variable annuity transaction, Rule 2821 requires broker-dealers and salespersons to have a reasonable basis to believe that the:

- customer has been informed of the material features of the deferred variable annuity,
- customer would benefit from the unique features of a deferred variable annuity (e.g., tax-deferred growth, annuitization or a death benefit); and
- deferred variable annuity as a whole and the underlying sub-accounts or riders are suitable for the particular customer.

Rule 2821 requires these determinations to be documented and signed by the salesperson recommending the transaction. Rule 2821 would also require salespersons to make reasonable efforts to obtain information concerning customers' age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the variable annuity, investment time horizon, existing investment and insurance holdings, liquidity needs, liquid net worth, risk tolerance, tax status and other information used by the salesperson in making recommendations.

Supervisory Review. Under revised Rule 2821, a registered principal of the broker-dealer must review and approve the transaction no later than two days after the customer's application is transmitted to a life insurer for acceptance, irrespective of whether the transaction had been recommended. In reviewing the transaction, the registered principal would need to take into account the extent to which:

- customer would benefit from the unique features of a deferred variable annuity;
- customer's age or liquidity needs make the investment inappropriate;

- amount of money invested would result in an undue concentration in a deferred variable annuity or deferred variable annuities in the context of the customer’s overall investment portfolio; and,
- the customer involved an exchange of a deferred variable annuity: will incur surrender charges, face a new surrender period, lose death or existing benefits, have increased mortality and expense fees, appears to have a need for any potential product enhancements and improvements, or had another deferred variable annuity exchange within the preceding 36 months.
- Under Rule 2821, the supervisory review standards must be signed and documented by the registered principal that reviewed and approved the transaction.

Supervisory Procedures. Rule 2821 requires broker-dealers to establish and maintain specific written supervisory procedures reasonably designed to achieve and evidence compliance with the standards in Rule 2821. The broker-dealer must have procedures to screen and have principal review of the recommendations requirements in Rule 2821, and determine whether the salesperson has a particularly high rate of effecting deferred variable annuity exchanges.

Training. Under the proposal, broker-dealers would need to develop and document specific training policies or programs designed to ensure that salespersons recommending transactions, and registered principals who review transactions, in deferred variable annuities comply with the requirements of Rule 2821 and that they understand the material features of deferred variable annuities, including liquidity issues, sales charges, fees, tax treatment, and market risks.

Summary of Position

- Life insurers condemn unsuitable variable annuity sales. There is no place for unscrupulous practices in variable annuity distribution. The life insurance industry has a long history of developing and supporting substantive regulatory initiatives protecting insurance consumers.⁴

⁴ Examples of these actions include:

- Creation of the Insurance Marketplace Standards Association⁴ (IMSA), a voluntary 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;⁴
- ACLI’s significant involvement in the design of variable annuity registration Forms N-3 and N-4, which streamline and simplify variable annuity disclosure, and promote informed decision making ;
- 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;
 - Amendments to the Unfair Trade Practices Act; and,
 - The Model Annuity Disclosure Regulation.
- ACLI’s consumer resources for annuity purchasers, including *Individual Annuities: Tips for Seniors* and a *Variable Annuity Kit* that covers fees, exchanges and buying tips, among other things.
- Continuous commitments to constructive market conduct through avenues such as ACLI’s Compliance Education Seminars, Regulatory Update Services, website compliance services, and Regulatory Alerts.

- Consistent, strong enforcement of current NASD suitability and supervision standards provides the most effective prophylactic against marketplace abuses. A single-product suitability rule may thwart enterprise-wide compliance uniformity.
- Comprehensive compliance procedures, meaningful prospectus disclosure, investor education, and informed decision-making are essential ingredients to variable annuity sales.
- Substantive rulemaking demands careful scrutiny and compelling justification. New rules must carefully balance benefits to be achieved against burdens created.
- The NASD has not provided any economic or competitive impact analysis regarding Rule 2821. Without this information, the SEC cannot execute its statutory duty to assure that the self-regulatory rule does not create unwarranted anti-competitive burdens.
- Several aspects of the proposal are functionally unworkable. Superior solutions exist.

Guideposts to SRO Initiatives

Self-regulatory rulemaking should thoroughly explain the need for new rules, practices, or interpretations supported by quantifiable rationale. The nexus between regulatory solutions and regulatory need should be clearly stated. Burdens of new regulations must be carefully balanced against the regulatory goals of each proposal. Every self-regulatory initiative should include a meaningful economic and competitive impact statement. Each rule should exhibit clear drafting to avoid interpretive ambiguity, and should be fully explained in the adopting Notice to Members. These essential approaches to rulemaking ensure that new rules and responsive enterprise-wide compliance procedures are appropriate. Our letter reviews the proposal against these benchmarks.

Measuring Market Conduct and Compliance

Substantive rulemaking demands careful scrutiny and compelling justification. The proposal voices concern over increased patterns of unsuitable variable annuity sales. The initiative asserts that “some investors continue to be confused by certain features” of variable annuities, although no consumer survey is referenced in support of this proposition. The joint SEC-NASD report on variable contract distribution highlighted both commendable and deficient conduct, but did not

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- ACLI’s Board-approved regulatory agenda actively supporting nationwide adoption of the NAIC Senior Protection in Annuity Transactions Model Regulation and the NAIC Annuity Disclosure Model Regulation, to demonstrate life insurers’ commitment to the highest standard in the sale of individual annuities.
 - Careful examination of the constructive recommendations in the June 2004 SEC-NASD Report on Variable Annuity Distribution to further enhance comprehensive compliance procedures protecting variable annuity consumers. The observations are taken very seriously. Life insurers and their customers alike are served poorly by unsuitable sales.

quantify any of the deficient practices listed.

The current suitability and supervision rules have ensured appropriate variable annuity sales practices, as measured by meaningful yardsticks. ACLI has created a complete database of all reported NASD disciplinary actions over the past five years. The database categorizes and quantifies all the disciplinary actions according to type of wrongdoing, security involved, fines, penalties, and parties. We have also studied the nature and relative incidence of SEC complaint data. These objective data sources provide valuable perspective and scope. In contrast, the NASD has no data base that can be polled for breakdowns and categorization of its disciplinary actions.⁵

Here are the facts: over 50% of the NASD's 658,210 registered salespersons work for broker-dealers affiliated with life insurers.⁶ Unsuitable variable annuity sales account for 0.32% of the NASD's total disciplinary actions on average over the past five years. As a matter of reference, there were 19,669,000 individual variable annuity contracts outstanding in 2004.⁷

Similarly, the SEC's Office of Investor Education and Assistance tabulates complaints about broker-dealers marketing variable annuities. The SEC logged 14 times as many broker-dealer complaints about equity securities as variable annuities, and 4.5 as many mutual fund complaints as variable annuities for the 12 months ending May 31, 2004.⁸

With these statistics at hand, we have serious concerns about the reasons cited for the new regulation.⁹ To make sure there is no uncertainty about our position on the issue, we reiterate that life insurers condemn unsuitable variable annuity sales. The life insurance industry fully supports strong enforcement against inappropriate variable annuity sales. We question, however, the proposal's dearth of analysis and functional deficiencies.

The proposal fails to show that the regulatory revisions will have any impact on the cited regulatory concerns. By creating unique, single-product supervision, suitability, and oral disclosure standards, the initiative will actually thwart effective system-wide uniformity and compliance.

⁵ On August 15, 2004, the chair of the NASD's Small Firm Advisory Board contacted ACLI by e-mail to obtain access to ACLI's data base on NASD disciplinary actions, stating "I've asked [the NASD] for statistics such as these, and as your letter stated, the NASD does not compile them."

⁶ Moreover, broker-dealers unaffiliated with life insurers also have problems with the proposal.

⁷ Source: ACLI Product Line Surveys (2006).

⁸ The SEC's data reflects aggregate complaints without regard to the merits of the complaint, and do not tabulate the correlation of final administrative or enforcement actions associated with the complaints. The SEC provided this data in response to an ACLI Freedom of Information Act (FOIA) request dated Sept. 10, 2004. In order to evaluate market conduct referenced in the NASD proposal, ACLI also sought copies of variable annuity complaints during a selected time period, in its FOIA request. Our review of the actual complaints reveals that many are ministerial in nature rather than market conduct related. Therefore, undifferentiated aggregate figures cannot be accurately used as a barometer of abusive sales practices to support new rulemaking.

⁹ The NASD's unquantified observations about variable annuities are unreliable and may serve other unreferenced NASD agendas. See Steven Milloy, *Junk Science Judo: Self Defense Against Health Scams* (Cato Institute, 2001) ["Junk science is faulty scientific data and analysis used to further a special agenda."].

No demonstration has been made that consistent enforcement of existing NASD supervision and suitability standards cannot remedy the targeted conduct. Strong broker-dealer enforcement against sales practice abuses provides the best deterrent to negative market conduct. The combined impact of SEC, NASD, and state insurance laws provide a comprehensive network of protection assuring appropriate sales.

No other financial product faces three levels of state and federal regulation. The introduction of unique single-product suitability and supervision rules exacerbates the existing challenges of multi-tiered patterns of regulation. The proposal also establishes individualized supervisory requirements that will be unnecessarily burdensome as a matter of compliance program uniformity.

In sum, the proposal has overstated the relative incidence of inappropriate variable annuity sales. The need for new regulatory procedures is unconvincing. The NASD can constructively address its concerns and protect consumers by requiring broker-dealers to strongly encourage consumers to carefully and critically review the prospectus. Prospectus disclosure and vigilant enforcement are more effective than new single-product suitability standards.

While there have been recent, well-publicized enforcement actions against several broker-dealers and bank distributors of variable annuities, they are not indicative of a systemic problem in the insurance industry. Rather, they are examples of unique, isolated practices. Life insurers and their distributors carefully follow state and federal suitability and supervision rules, and serve their customers with high standards of fairness and professionalism. Moreover, the cases demonstrate that the system works efficiently to isolate and prosecute unsuitable conduct.

Duplicate Regulatory Standards

Other Federal securities law requirements currently govern central aspects of Rule 2821, such as fees, charges, risks, and liquidity. The variable annuity prospectus already requires plain-English disclosure on these items in a uniform, comparable format that must be delivered to every purchaser. The discussion below highlights the overlap of this disclosure process.

Form N-4 Synopsis, Fee Table and Risk Disclosure. Variable annuity Registration Form N-4¹⁰

¹⁰ 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 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,

mandates streamlined, simplified disclosure, and requires the prospectus to “clearly and 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 2002.¹¹ The SEC staff identifies the fee table as the “current lynchpin of cost disclosure.”¹² 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.¹³

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 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

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.

¹¹ See Release No. IC-25802 (Nov 13, 2002) [CCH Fed. Sec. L. Rep 86801].

¹² See Report-Letter, CCH Fed. Sec. L. Rep. #2018, June 25, 2003.

¹³ See Arthur Levitt, *Plain English in Prospectuses*, New York State Bar Journal (Nov. 1997) at 36.

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 are modeled after the mutual fund fee table in form N-1A, and facilitate full disclosure of cost information in a uniform format that lends to comparison shopping.

The SEC's comprehensive prospectus simplification projects, particularly with regard to fees, charges and risks, provides valuable information for consumers.¹⁴ One of the central goals of the SEC's project was to thwart corrosive "disclosure creep."¹⁵ The potentially inconsistent oral disclosure required in the proposal will dilute the value of uniform prospectus disclosure and overload consumers with redundant information.

The proposal's requirement for salespersons to confirm a customer's understanding of "the material features of the variable annuity" is largely an oral substitute for the written point-of-sale document the NASD dropped from the 2004 version of the rule. A clear, but unstated, premise in the proposal is that consumers do not read their prospectuses. We do not agree with this presumption. In any event, it is the SEC's responsibility to address this issue, not the NASD's.

Simplified VA Profile Prospectus Disclosure. ACLI established a CEO Task Force on Annuities in 2005 that has developed substantive, constructive regulatory enhancements for annuity disclosure and suitability. Concomitantly, NASD conducted a roundtable on annuities on May 5, 2006 that recommended, among other things, simplified summary disclosure as an aid to variable annuity purchasers. The CEO Task Force has developed a Variable Annuity Profile Plus modeled after the mutual fund Profile Plus disclosure advocated by the NASD. The National Association of Variable Annuities has worked in conjunction with ACLI on the Variable Annuity Profile Plus, which ACLI shared with NASD staff for early input. The Variable Annuity Profile Plus follows the SEC's recommended approach to "layered disclosure" and uses "click through" links allowing consumers to "drill down" for more detailed information they may desire.

Proposed SEC Point-of-Sale Disclosure. The SEC has proposed point-of-sale disclosure in confirmation rule amendments.¹⁶ We commend the NASD for dropping its written point-of-sale

¹⁴ 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.

¹⁵ *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 NASD proposal for oral disclosure could create the very kind of blurring disclosure Chairman Levitt condemned.

¹⁶ Rule 15c2-2(b) would require broker-dealers to give customers written confirmation of :

- The date of the transaction;
- The issuer and class of the covered security;
- The net asset value of the shares or units and, if different, the public offering price of the shares or units;
- The number of shares or units of the security purchased or sold by the customer, the total dollar amount paid or received in the transaction and the net amount of the investment bought or sold in

proposal, although the requirement that the customer has been informed of the unique features of the variable annuity is largely oral disclosure about the same matters. Rule 2821's oral disclosure would contain the same category of information in the SEC's point-of-sale proposal. The need for required oral disclosure duplicating prospectus disclosure *and* the SEC's proposed point-of-sale requirement is not compelling.

State Insurance Regulation. Several aspects of the proposal unnecessarily duplicate existing requirements of state insurance laws and regulations. A good example is the proposal's requirement that the registered principal review and approve whether the customer's account has had another deferred variable annuity exchange within the preceding 36 months.

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 B to this comment letter. The NASD proposal, therefore, duplicates existing state insurance law standards.

We have also included in Appendix C 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 founded on a well-substantiated regulatory need.

the transaction;

- Any commission, markup or other remuneration received or to be received by the broker, dealer or municipal securities dealer from the customer in connection with the transaction;
- any deferred sales load that the customer has incurred or will incur in connection with the transaction; and,
- when applicable, the fact that the broker-dealer involved is not a member of SIPC.

The proposed amendments to Rule 15c2-2(c) would require added disclosure about:

- The amount of any sales load that the customer has incurred or will incur at the time of purchase, expressed in dollars and as a percentage of the net amount invested, together with:
 - If the customer will incur a sales load at the time of sale, information about the availability of breakpoints;
 - If the customer will not incur a sales load at the time of sale, information about the availability of breakpoints with regard to a different class of the covered security.
- An explanation of the potential amount of any deferred sales load that the customer may incur in connection with any subsequent sale of the shares or units purchased in the transaction;
- An explanation of any asset-based sales charges and asset-based service fees incurred, or to be incurred, by the issuer of the covered security in connection with the customer's purchase of the shares or units;
- The amount of any dealer concession that the broker, dealer or municipal securities dealer will earn in connection with the transaction, expressed in dollars and as a percentage of the net amount invested;
- Disclosure of payments to broker-dealers attributable to revenue sharing and portfolio securities transactions; and
- Disclosure about differential compensation practices related to the covered security purchased.

Multiple Moving Parts. An impressive number of state and federal initiatives are underway that address the supervision, suitability, and disclosure about variable annuities. The NASD annuity roundtable will have a number of task forces on these matters that will promulgate recommendations. ACLI participated in the NASD roundtable and has a proactive CEO Task Force on Annuities that developed a comprehensive initiative on streamlined annuity disclosure and meaningful suitability procedures. State regulators are also actively developing initiatives to address similar matters. With so many moving parts, it is premature to advance Rule 2821 at this time. Moreover, the SEC must require the NASD to properly justify its proposal and provide an economic and competitive impact statement until the statutory hurdles of the 1934 Act are satisfied. It is the wrong time to create non-uniform standards in the middle of so many interrelated regulatory projects under development. Rule 2821 has great potential for redundancies and policy conflicts.

Competitive and Economic Impact

The NASD's proposal contains no economic impact statement, and does not quantify the burdens on broker-dealers or variable product manufacturers under the proposed changes. The initiative would impose unnecessary expenses on these groups. The economic burden of the proposal greatly overshadows its benefits. The proposal may impose substantial, unwarranted competitive burdens on the variable annuity industry. These are important considerations for the SEC in reviewing and approving this specific NASD initiative.

When it amended the Exchange Act in 1975, Congress specifically charged the SEC with the responsibility to evaluate competitive burdens of SRO rules and rule changes. The Senate report on the legislation stated that:

Sections 6(b)(8), 19(b) and 19(c) of the Exchange Act would obligate the Commission to review existing and proposed rules of the self-regulatory organizations and to abrogate any present rule, or to disapprove any proposed rule, having the effect of a competitive restraint it finds to be neither necessary nor appropriate in furtherance of a legitimate regulatory objective.¹⁷

Section 23(a) of the Exchange Act was also added in 1975, and requires the SEC to consider the anti-competitive effects of rule changes, and to balance any impact against the regulatory benefit to be obtained.¹⁸ Similarly, Sections 15A(b)(6) and (9) of the 1934 Act require the SEC to evaluate carefully the competitive impact of proposed SRO rules and amendments.

¹⁷S. Rep. 94, 94th Cong., 1st Sess. (April 14, 1975) at 12.

¹⁸*Id.* at 12.

The Securities Act Amendments of 1975 significantly expanded the SEC’s oversight and regulatory powers concerning SRO rules, and specifically directed the SEC to carefully evaluate competitive factors in exercising its SRO oversight. Importantly, Congress did not intend to confer general antitrust immunity on SRO rulemaking that was subject to the SEC’s oversight review.¹⁹ Congress did not intend the SEC to delegate or abdicate to the NASD this important protection against anticompetitive conduct.²⁰

The antitrust immunity created by Congress contemplates active oversight by the SEC in executing its responsibilities to ensure consistency with the securities laws, and to blunt the anticompetitive behavior inherent in self-regulatory conduct. Otherwise, a Congressional grant of substantial regulatory authority to private organizations without federal regulatory oversight would violate the constitutional prohibition against the delegation of legislative powers.

In order for SEC review to provide immunity for self-regulatory conduct, the review must be active, and must result in a ruling by the SEC that is judicially reviewable.²¹ Section 25 of the 1934 Act states that the SEC’s actual findings are conclusive if supported by substantial *evidence*, and that its decisions should be overturned only if “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, the excess of statutory jurisdiction, authority, or limitations, or short of statutory right, or without observance of procedures required by law.” The proposed rule amendments fail the statutory safeguards to competition set forth above.

In a different context, 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,

¹⁹See, Smythe, *Government Supervised Self-Regulation in the Securities Industry and the Antitrust Laws: Suggestions for an Accommodation*, 62 N.C. L. Rev. 475 (1984) at 504 [the SEC has an obligation in reviewing SRO conduct to “weigh the competitive impact in reaching regulatory conclusions”]. See also Linden, *A Reconciliation of Antitrust Law with Securities Regulation: the Judicial Approach*, 45 GEO. Wash. L. Rev (1977); Johnson, *Application of Antitrust Laws to the Securities Industry*, 20 SW. L.J. (1966); Note, *The Application of Antitrust Laws to the Securities Industry*, 10 Wm. & Mary L. Rev. (1968).

²⁰ A number of studies have identified and criticized patterns of anticompetitive SRO conduct. See Securities Markets: Competition and Multiple Regulators Heighten Concerns about Self-Regulation (03-MAY-02, GAO-02-362) [“Heightened competition has generated concern that an SRO might abuse its regulatory authority—for example, by imposing rules or disciplinary actions that are unfair to the competitors it regulates;” at 1; “Some SRO members expressed concern that increased competition between SROs and their members had given SROs a greater incentive to abuse their regulatory authority;” at 7; “Oversight of SEC and the NASD and NASDR boards of directors...are intended to provide additional assurance against abuses of regulatory authority;” at 12 (emphasis added)]; Securities Markets: Opportunities Exist to Enhance Investor Confidence and Improve Listing Program Oversight (08-APR-04, GAO-04-75); Financial Regulation: Industry Changes Prompt Need to Reconsider U.S. Regulatory Structure (06-OCT-04, GAO-05-61).

²¹See Smythe *supra* note 18.

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.²²

The NASD's rule request for SRO rule approval does not fulfill the important SEC and statutory goals to protect both competition and investors. The SEC should not approve the NASD initiative without modifications to remedy the rules' anticompetitive impact.

Rule 2821 imposes a variety of significant competitive burdens. The rule will disrupt enterprise wide uniformity of compliance procedures for a single product. All other securities face the NASD's traditional suitability and supervision rules, while a separate suitability and supervision rule would apply for variable annuities. The new rule would not have all the administrative and judicial history that currently attach to the existing suitability and supervision rules, and may, therefore, be the source of inconsistent interpretation, irregular examination practices, and litigation or arbitration because of aberrations in the proposed rule.

The competitive burden occurs for several additional reasons: (i) conversion to the new rule will introduce significant new systems and compliance expenses, will provide openings for inadvertent and transitional violations, and may dampen distributors' enthusiasm for selling a product with suitability and supervision standards different from all other securities; (ii) broker-dealers' sales of other competing products, like mutual funds, have a greater incidence of NASD disciplinary actions for unsuitable sales and have been the source of numerous NASD admonitions in Notices to Members, but do not face non-uniform suitability and supervision standards that strain enterprise wide compliance uniformity²³ that would dampen distributors' sales enthusiasm for fear of regulatory reprisals or technical violations; and, (iii) the NASD has not adequately justified a regulatory need, or demonstrated that the solution will better protect consumers.

Some of our members estimate that conversion to proposed Rule 2821 will require expensive new systems and operational changes that could initially total more than \$200,000 for broker-dealers to implement and monitor enterprise-wide. Moreover, the ongoing cost of complying with regulatory disparities will be significant and immeasurable. These types of burdens offset the NASD's unsubstantiated need for the new, single product suitability and supervision rule. The selective creation of a unique new suitability rule only for variable annuities is troubling

²² 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>

²³ This is not a new concern in the industry. See Securities Markets: Competition and Multiple Regulators Heighten Concerns about Self-Regulation (03-MAY-02, GAO-02-362), which contained the following observation:

When discussing the overall effect of differences in rules and their interpretations with officials of several broker-dealers, they stressed that their concerns were not about the cost of one of more specific instances of differences in rules and their interpretations, but about their *cumulative effect on the efficient use of compliance resources*. Broker-dealers emphasized that the purpose of compliance is to protect the integrity of the markets and investors, and the *effort needed to sort out compliance with multiple rules and rule interpretations strains these resources*. *Id.* at 18 (emphasis added).

because other competing financial products, such as mutual funds, have a significant incidence of unsuitable sales, but face no separate suitability rule proposal.

By way of example, we have attached as Appendix D, a compilation of reported NASD disciplinary actions involving unsuitable mutual fund sales between May 1999 and April 2006. In light of this range of unsuitable mutual fund sales, it is uncertain why the NASD would have a concentrated focus only on variable annuities. Selective application of a new single-product suitability standard raises unresolved antitrust issues.

If the proposed single-product suitability rule advances, it will be incumbent on the NASD promptly to adopt multiple single-product suitability and supervision rules for securities incurring a marked incidence of disciplinary actions and complaints. Otherwise, the NASD would be targeting one of many financial products in a discriminatory, burdensome fashion without firm rationale. As a point of reference, the NASD has published suitability and supervision concerns about various other securities, such as collateralized mortgage obligations, funds of hedge funds, non-conventional investments, mutual funds, and direct participation programs, without creating free-standing suitability or supervision rules.²⁴

Without a proper economic and competitive impact statement, the SEC will have abdicated its statutory obligation to thoroughly review the risk of anticompetitive conduct in SRO rules. Additionally, the SEC's Division of Market Regulation cannot properly ignore, through delegated authority, the SEC's explicit duty to evaluate the anticompetitive consequences of all SRO rules.

Historical Implementation of Antitrust Standards in the 1934 Act

Although Congress amended the 1934 Act to require specific review on the anticompetitive impact of self-regulatory rules, the SEC has not regularly fulfilled this mandate in approving NASD rule proposals. In its rule filings, the NASD traditionally provides a single sentence assertion that "NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act."

NASD rule filings typically do not provide any economic or competitive impact statements in support of proposed rules' purposes or addressing the rules' impact on competition. Appendix E to this letter provides a chart summarizing the extent to which the NASD rule filings, from 2002 to present, provide any more than the rote statement on competitive burdens quoted in the paragraph above. This research indicates that the NASD has historically failed to provide any substantive analysis or justification of its rule filings regarding competitive burdens. Nevertheless, the SEC has consistently approved the NASD's rule filings in spite of this omission.

²⁴ See Notice to Members 93-73 [Members Obligations When Selling Collateralized Mortgage Obligations]; NASD Investor Alert-*Funds of Hedge Funds: Higher Costs and Risks for Higher Potential Return* (Aug. 23, 2003); Notice to Members 03-07[Non-Conventional Investments]; Notice to Members 94-16 [NASD Reminds Members of Mutual Fund Sales Practice Obligations (on break points and switching)]; Notice to members 95-80 [NASD Further Explains Members Obligations and Responsibilities Regarding Mutual fund Sales Practices]; Notice to Members 91-69[Secondary Market in Direct Participation Programs]. To address break point abuses in mutual fund sales, the NASD issued IM-2830-1, not new suitability and supervision rules.

Without meaningful analysis of competitive and economic impact, the SEC cannot functionally fulfill the explicit Congressional mandate to consider the anticompetitive effects of rule changes, and to balance any impact against the regulatory benefit to be obtained. NASD rule approval absent careful analysis of competitive and economic impact effectively abdicates the SEC's statutory duty to the NASD. The SEC's Division of Market Regulation lacks discretion to waive the explicit statutory requirements for the Commission by delegated authority.

Complacent approval practices do not provide sufficient rigor to protecting against anticompetitive SRO behavior. The NASD's structure and governance have a direct impact on policy priorities and rulemaking initiatives. Although greater than 50% of the NASD registered representatives work for broker-dealers affiliated with life insurers, they are underrepresented in the NASD's governance. Occasionally, a single representative from the life insurance industry has served on the NASD's board of governors. At other times no life insurance industry representative has served. Full-service broker-dealers typically comprise the single largest representation on the NASD's board.

Only one NASD committee is exclusively devoted to variable contracts. A second NASD committee on independent distributors partially covers insurance affiliated broker-dealer issues, but these broker-dealers do not comprise a majority of the committee members. NASD rulemaking is initiated and developed in its committee process. With governance tilted toward full service broker-dealers, rule proposals may not fully address the competitive impact on broker-dealers affiliated with life insurers.

Two examples may help illuminate our concerns about unexamined anticompetitive burdens. The NASD currently has pending before the SEC a rule filing to (i) establish an annual "branch office processing fee" and (ii) waive the branch office registration fee for one office per NASD member per year.²⁵ NASD asserts that the proposed rule change "will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act." Nothing in the NASD filing elaborates on the competitive burdens that would occur under the rule. The modifications will have a profoundly disproportionate impact on broker-dealers affiliated with life insurers and will unnecessarily impair competition among broker-dealers.

In 2005, the NASD substantially overhauled the definition of the term "branch office" in Rule 3110, which was revised from a functional definition based on activities at the branch office to a numerical definition based solely on the number of salespersons in the office. As a result of the new branch office definition, many offices previously operating as non-branch locations were transformed into branch offices. For the life insurance industry, thousands of locations were reclassified as branch offices. The impact on full service broker-dealers was insignificant because these groups historically operate out of large branch offices compared to the numerous one or two person locations common in the life insurance industry.

Quite simply, broker-dealers affiliated with life insurers are unique from full-service broker-dealers in operation and structure. As a result of these differences, the NASD's fee request

²⁵ See File No. SR-NASD-206-065; Annual NASD Branch Office System Processing Fees and Waiver of Annual NASD Branch Office Registration Fees.

imposes a significant and disproportionate economic and competitive burden on these broker-dealers that has been neither discussed nor justified. Incidentally, the definitional rule change will generate substantial new and recurrent revenue for NASD. Although the life insurance industry raised substantial concerns about the rule's anticompetitive burdens throughout the rulemaking, the SEC did not require the NASD to provide any competitive or economic impact statements regarding the initiatives.²⁶

In 1997, the NASD issued NTM 97-2, an interpretation applying its conduct rules to a registered representative's sale of *unregistered* variable life insurance or variable annuity contracts to qualified retirement plans. This interpretation conflicted with Congressional intent in the Government Securities Act Amendments of 1993, and was not approved by the SEC when it authorized expanded NASD sales practice authority over exempted government securities, as defined in Section 3(a)(12) of the 1934 Act.²⁷ The SEC only approved authority to regulate the sale of unregistered *government* securities, not other categories of exempt securities. Nonetheless, the NASD asserted jurisdiction and applied its position in broker-dealer inspections and interpretive letters.

In 2002, the NASD subsequently sought to obtain SEC approval for its governance over these unregistered group variable life and annuity contracts in a Form 19b-4 petition for Approval of Proposed Rule Change applying NASD Conduct Rules to the Sale of Unregistered Securities.²⁸ The life insurance industry commented extensively on the NASD's unauthorized expansion of jurisdiction and discussed the unwarranted and inequitable competitive burdens the action imposed. The NASD offered no analysis of competitive or economic impact in its filing on the matter. Like the branch office registration proposal, the SEC approved the NASD's request absent substantive information on competitive burdens. Like the branch office definitional change, the NASD's jurisdiction over unregistered variable contracts generated substantial new and recurrent revenue for NASD through enlarged FOCUS reports, and allowed broker-dealers to obtain a commission haircut on products not required to be registered as securities.

In sum, the historical patterns highlighted in Appendix E demonstrate that the Division of Market Regulation, by delegated authority, has habitually approved NASD rule filings that contained little more than a rote representation, without analysis, that the proposals did not have a negative competitive impact. Good rulemaking demands more. Fulfillment of the mandate in the 1934 Act for SEC scrutiny over the competitive burdens of SRO rule filings demands substantive economic and competitive impact statements by the NASD. The SEC should set the course straight.

²⁶ A copy of ACLI's comments on the branch office definition and its impact on the insurance industry can be found at <http://www.sec.gov/comments/sr-nasd-2006-065/nasd2006065-1.pdf> . ACLI has consistently brought its concerns to the SEC regarding anticompetitive NASD rule initiatives. *See, e.g.,* <http://www.sec.gov/rules/proposed/s70301/wilkers1.htm> .

²⁷ The limited expansion of authority was noticed for comment in NASD NTM 94-62, and the SEC's approval was published in NASD NTM 96-86.

²⁸ *See* File No. SR-NASD-00-38, Rel. No. 34-43370. ACLI filed an extensive letter of comment with the SEC on this action outlining the initiative's burden on competition and the NASD's lack of authority under the Government Securities Act Amendments of 1993 (GSAA). The legislative history under the GSAA specifically and exclusively referenced NASD jurisdiction over broker-dealer sales of unregistered government securities. It did not, however, make any reference to authority over unregistered variable contracts.

General Response to Revised Rule 2821

As noted above, we strongly believe that the rule is unwarranted and has not been properly justified. The NASD has not quantified the scope of the problem to be addressed by the rule, and failed to provide any analysis of the economic or competitive impact of the proposal. The SEC cannot, therefore, approve the NASD initiative without disregarding its statutory obligation to assure that the self-regulatory rule does not impose unreasonable competitive impairments.

Many of the proposal's requirements are already subsumed in current NASD standards. The repackaging of existing requirements in separate rules thwarts coordinated system-wide compliance procedures. The proposed rule effectively restates requirements that already apply under NASD's current Conduct Rules, including Rule 2310²⁹ (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). This approach does not improve compliance or market conduct. In fact, it impedes consistent, system-wide compliance practices.

For example, Rule 2821 does not apply to recommendations to reallocate subaccounts after the initial purchase or exchange of a variable annuity. The release explains that any recommendation for subsequent reallocations are, however, subject to the general NASD suitability Rule 2310. As a result, two different NASD suitability rules would apply: 2821 to the initial sale, and 2310 to subsequent reallocations. A single suitability rule would better enhance enterprise-wide compliance uniformity. Applying two suitability rules to different phases of the variable annuity creates unnecessary administrative and compliance complexity. Other securities, such as mutual funds, apply a single suitability rule for recommendations to purchase as well as to reallocate.³⁰

²⁹ 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.

(c) For purposes of this Rule, the term "non-institutional customer" shall mean a customer that does not qualify as an "institutional account" under Rule 3110(c)(4).

³⁰ Some observers find that Rule 2821(a)(1) should be clarified to state that the rule's suitability standards do not apply to premiums transmitted to an insurer after the initial purchase of the variable annuity contract because allocations later associated with subsequent premium payments are separate from recommendations associated with the initial premium payment. This suggestion is sound.

In addition to NASD suitability standards, variable product salespersons fulfill a significant network of state suitability standards protecting consumers and the integrity of the sales process.³¹ Added layering of repetitive obligations is unconstructive.

Analysis of Specific Provisions in Revised Rule 2821

If the NASD can properly justify the need for the rule, supply the required economic and competitive impact statement, and commit to establish similar free-standing suitability rules for other competing products with a greater degree of unsuitable misconduct, then we recommend a number of changes to the proposed rule. We have attached a marked version of the rule in Appendix A denoting the changes discussed below. Our recommendation of changes, however, does not represent an endorsement of the proposed rule's need, purpose, or competitive imbalances. It is far preferable to strongly enforce the existing suitability standards and guidance than to impose poorly focused standards that unnecessarily deviate from decades of administrative, judicial, and interpretive history.

Recommendation Requirements

Proposed Rule 2821(b)(1)(B) would create a required determination that

“the customer *would* benefit from the *unique* features of a deferred variable annuity (e.g., tax-deferred growth, annuitization or a death benefit).” [emphasis added]

The highlighted provisions above create unnecessary, unprecedented, and unclear deviations from uniform suitability Rule 2310. These abnormal requirements need revision in several respects. The standard should be revised to provide that customers *could* benefit from the features of a deferred variable annuity. Similarly, the proposal's requirement that the customer benefit from the variable annuity's *unique* features is unprecedented, unwarranted and unexplained. Selective aberrations are inappropriate and unparalleled.

NASD Rules 2310 and 3010 do not require that salespersons and principals determine, for example, that customers would benefit from the unique features of particular mutual funds purchased (e.g., tax status, availability of alternative index, no-load or ETF funds, portfolio turnover and liquidity, revenue sharing arrangements, differential compensation, Rule 12b-1 distribution charges, deferred sales charges). Likewise, similar esoteric standards are not required in real estate limited partnerships, or oil and gas investments. The modifier *unique* should be stricken.

³¹ See Wilkerson, *Covering All the Bases: An Integrated Approach to Suitability*, Association of Life Insurance Counsel Proceedings (2002) at 1; Wilkerson, *Variable Product Distribution: A Continuing Study of Compliance Examinations, Inspections Sweeps and Evolving Regulatory Standards*, Understanding Securities Products of Insurance Companies, Practising Law Institute (2001) at 295.

If a single product suitability rule is adopted for variable annuities, the rule should not impose standards that are aberrational from general suitability concepts and contain vague concepts that cannot be concretely satisfied. The vague imprecision in these highlighted standards will lead to unnecessary and avoidable interpretive disputes, legal liability, and examination deficiencies. Moreover, the NASD's deviated standards are competitively imbalanced and unfair. In solution, therefore, proposed Rule 2821(b)(1)(B) should be revised to provide:

the customer *could* benefit from the features of a deferred variable annuity (e.g., tax-deferred growth, annuitization or a death benefit).

Proposed Rule 2821(b)(2) requires salespersons and broker-dealers to obtain a variety of background information from customers such as age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the deferred variable annuity, investment time horizon, existing investment and life insurance holdings, liquidity needs, liquid net worth, risk tolerance, tax status and other information. This requirement should be expanded as a matter of parallel treatment to provide:

If the customer declines to provide the above categories of information upon request, the person associated with the member shall not be required to obtain this information.

This recommendation restores the NASD's historical position regarding suitability standards when customers refuse to provide personal financial information to salespersons upon reasonable request. There is no reason that a different standard should apply to variable annuity sales than for other securities. To do so would impose an unwarranted competitive impediment that the NASD has not explained or justified.

Principal Review and Approval

Proposed Rule 2821(c)(1) provides that:

No later than two business days following the date when a member or person associated with a member transmits a customer's application for a deferred variable annuity to the issuing insurance company for processing and irrespective of whether the transaction has been recommended, a registered principal shall review and determine whether he or she approves of the purchase or exchange of the deferred variable annuity.

This requirement unnecessarily deviates from standards applied to other comparable products, like mutual funds, in uniform suitability rule 2310.³² Rule 2821(c)(1) deviates further in light of the NASD's explanation that the principal's review must be completed, rather than "in process,"

³² NASD has clarified that the suitability rule applies only to recommendations, stating "[y]es, it's important to emphasize at the outset, however, that the suitability rule applies only to securities that a broker/dealer "recommends" to customers. Simply effecting a trade that a customer initiated does not trigger the suitability rule." —NASD Assistant General Counsel Nancy Libin, NASD Online Suitability Workshop, June 20, 2001 at 5. http://www.nasdr.com/pdf-text/rc_trans6.pdf

within two business days of transmission of the application to the life insurer.³³ Rule 3010 does not require a two-day approval timetable, and does not require equivalent supervisory review of transactions that are not recommended by salespersons. The basis for an aberrational standard has been neither explained nor justified.

Likewise, the standard here fails to accommodate this hybrid insurance-security product. Supervision practices for variable annuities have several levels. Principals will typically review the VA contract, initial underlying fund allocation decisions, guarantees, optional benefits or riders. Appropriately, principals devote sufficient time to evaluating the recommendation's essential ingredients and pursuing any necessary follow up. Arbitrary supervisory deviations create unwarranted competitive hurdles for both the product and its distribution. The SEC should not permit the adoption of aberrations that thwart through review and product's equal regulatory treatment.

Thorough review of core facts and circumstances achieves confirmation of appropriate recommendations. An inflexible two-day standard competes with these worthwhile objectives. The two-day standard prioritizes speed over quality, and may thwart principals' good faith endeavors to track down necessary information from salespersons and customers. The supervisory review should not be subject to a "beat the clock" mentality.

In similar contexts, the SEC by rule allows insurance companies two business days after receipt to process a variable annuity application³⁴ and by order exempts insurance companies from the standard t+3 settlement time frame.³⁵ The revised rule's two day supervisory review conflicts with important regulatory practices fully recognizing, and developed around, the application and review process. For example, the two-day five-day pricing practices allowed in Rule 22(c)-1(c) under the Investment Company Act of 1940 recognize the significance of the application process in pricing variable contracts promptly. The same kinds of considerations warrant more time for suitability supervision here. Moreover, state insurance laws typically give customers the right to return a variable annuity contract after it is delivered through "free look" provisions. We have included a chart summarizing free look provisions as Appendix F.

"Free look" provisions offer a greater opportunity to redress unsuitable sales after the fact than for products that do not offer a right to return and for which the proposed transactional delay would not apply. Imposing an inflexible two day approval timeframe is both unnecessary and arbitrary. Moreover, it may injure customers by rushing supervisory review.

Some of the verifications the rule would require principals to make are challenging because the principal is not in the position to reduplicate each step of the salesperson's analysis of the customer's facts. NASD Supervision Rule 3010 requires instead a verification that the salesperson made a recommendation meeting an identified objective of the customer based on

³³ 71 Fed Reg. at 36, 845.

³⁴ Rule 22c-1(c) under the Investment Company Act allows two business days for processing an initial variable annuity application that is in good order. The rule allows up to five business days to complete a variable annuity application that is not in good order, or longer if the customer consents.

³⁵ Securities Transaction Settlement, Securities Act Release No. 7177 (June 6, 1995) (available on Westlaw 1995 WL 357899); Industry Comment Letter (publicly available November 3, 1995) (available on Westlaw 1995 WL 815284).

facts elicited, and that the transaction is not unsuitable for the customer. It does not require the principal to fully reduplicate all the salesperson's suitability determinations. Instead, the rule requires that the principal determine that the salesperson had a reasonable basis founded on sufficient information to make a suitable determination. The proposal should not have a different approach as a matter of consistency and uniformity.

Section 2821(c)(1) should be changed to require that the broker-dealer principal *promptly* review and approve the salesperson's recommendation. This standard tracks the review timetables for other securities under Rule 3010 and provides a better benchmark for meaningful supervisory review. Nothing in the NASD filing explains the basis for the time period selected. It is simply arbitrary and unsubstantiated without reference to any rationale. The NASD's two day timetable for supervisory review should be replaced with a prompt review standard.

The trigger point for the prompt supervisory review should begin after receipt of the application in good order. The NASD left this concept out of its initiative. Principals are in the best position to execute suitability review with a complete recommended transaction in good order. Again, there is no good reason to put a premium on speed over thorough, thoughtful supervisory review. Accordingly, Section 2821(c)(1) should be revised as follows:

A registered principal shall promptly review and document by signature the approval of the purchase or exchange of a deferred variable annuity recommended by a registered representative after receipt of the application in good order. In reviewing the purchase or exchange of a deferred variable annuity, the registered principal shall consider:

Section (c)(1)(A) of revised Rule 2821 would require principals in reviewing and approving salespersons' recommendations to consider:

[t]he extent to which the customer *would* benefit from the *unique* features of a deferred variable annuity (e.g., tax-deferred growth, annuitization or a death benefit)[emphasis added].

For the reasons explained above concerning Section (b)(1)(B), we recommend that this provision be modified as follows:

[t]he extent to which the customer could benefit from the features of a deferred variable annuity (e.g., tax-deferred growth, annuitization or a death benefit).

This recommended change likewise creates equivalent practices with Rule 3010 suitability standards applied to all other securities recommendations, and keeps the standards within revised Rule 2821 parallel for both salesperson and principal.

Revised Rule 2821(c)(1)(C) would require principals in reviewing and approving salespersons' recommendations to consider:

[t]he extent to which the amount of money invested would result in an *undue concentration* in a deferred variable annuity or deferred variable annuities in the context of the customer's overall investment portfolio [emphasis added].

We object to the italicized language above because the term “undue concentration” is imprecise and capable of multiple interpretations. More properly, Section (c)(1)(B) requires supervising principals to consider the customer's liquidity needs. This standard is more clearly applied, and subsumes the apparent intent of the italicized language in Section (c)(1)(C) of revised Rule 2821. The creation of undefined terms of art in a new suitability and supervision rule needlessly invites disputes, interpretive differences, exposure to litigation, and technical examination deficiencies. The imprecision should be excised if Rule 2821 advances, as follows:

[t]he amount of money invested was determined in the context of the customer's overall investment portfolio;

Section (d) of revised Rule 2821 requires broker-dealers to establish specific written supervisory procedures to fulfill the rule's standards. Additionally, this section indicates that:

In particular, the member must implement procedures to screen the transaction and require a registered principal to consider those items enumerated in paragraph (c) of this Rule, as well as whether the associated person effecting the transaction has a *particularly high rate* of effecting deferred variable annuity exchanges. [emphasis added]

The last clause of this provision should be eliminated because it is vague and unworkable. A “particularly high rate” of deferred variable annuity exchanges is undefined and nebulous. This imprecision invites interpretive confusion and unnecessary *ad hoc* disputes with regulators. The SEC and the NASD have long encouraged management of abusive variable annuity exchanges with exception reporting. This sensible systemic approach relying on periodic trend analysis is an effective solution to unsuitable exchanges. The implicit suggestion in this clause that principals would implement a transaction by transaction review is microscopically unworkable. Further, Section (c)(1)(D) of revised Rule 2821 establishes the standards for review and approval of variable annuity exchanges. The concluding clause in Section (d), therefore, is both confusing and duplicative. It should be eliminated if Rule 2821 is advanced.

Section (c)(2) would require registered principals to sign the salespersons' suitability documentation required by Section (b)(2) of revised Rule 2821. Section (c)(2) should be deleted because it would establish an unprecedented standard requiring principals to fully endorse all of the considerations leading to the salespersons' recommendations. Rule 3010 and other NASD rules do not require principals to fully endorse every aspect of the salespersons' suitability determination. The NASD has failed to explain any reason for imposing a unique standard for broker-dealers supervising variable annuity sales. No other security sale requires broker-dealers to fully reaffirm all suitability facts and circumstances. Rather, principals must affirm the *fact* that salespersons elicited information for completion of the suitability documents, but do not have to attest to the actual facts elicited.

Principals are not in a position to double check and reaffirm *all* of the facts and circumstances in the salespersons' suitability determination and documentation. The supervisory review process would bog down considerably, and would impose an unwarranted aberrational condition on the supervision of variable annuity sales. This would create an unacceptable competitive burden with no countervailing rationale. The NASD's proposed creation of this unique requirement is arbitrary and capricious. It should be eliminated if Rule 2821 is advanced. Moreover, this standard would make principals effectively guarantors of the salespersons' elicited facts and circumstances from customers. This unprecedented standard would unnecessarily expose principals to legal liability that exists for no other securities recommendation.

Training

Section (e) of revised Rule 2821 would require broker-dealers to develop and document specific training policies or programs reasonably designed to ensure that salespersons recommending variable annuity transactions, and principals supervising the transactions comply with the rule's requirements and understand the material features of variable annuities. This standard goes beyond that required for other securities sales, with no identified rationale. Other existing aspects of the NASD's rules require periodic training of regulatory and firm elements. These conditions adequately cover the development and documentation of specific training policies related to variable annuities.

As an alternative, we recommend that Section (e) be revised as follows:

(e) Product Knowledge

Members shall ensure that associated persons who effect and registered principals who review transactions in deferred variable annuities comply with the requirements of this Rule and that they understand the material features of deferred variable annuities, including those described in paragraph (b)(1)(A) of this Rule.

This recommended revision properly focuses on reaffirming the acquisition of appropriate product knowledge without confusing or reduplicating the training programs currently required for periodic firm and regulatory information. There is no reason for the NASD to create deviations from other securities requirements.

Automated Supervisory Review.

The NASD's rule submission indicates that the proposed rule would not preclude firms from using automated supervisory systems, or a mix of automated and manual supervisory systems, to facilitate compliance with the rule. In addition, NASD delineated what, at a minimum, a principal would need to do if his or her firm intends to rely on automated supervisory systems to comply with the proposed rule. Specifically, a principal would need to (1) approve the criteria that the automated supervisory system uses, (2) audit and update the system as necessary to ensure compliance with the proposed rule, (3) review exception reports that the system creates, and (4) remain responsible for each transaction's compliance with the proposed rule. Finally, NASD noted that a principal would be responsible for any deficiency in the system's criteria that would result in the system not being reasonably designed to comply with the rule.

The NASD's statement about automated systems of supervision unnecessarily introduces interpretive ambiguity by suggesting standards for automated supervisory systems different from standards for manual supervision. There is no basis for this distinction. Rule 3010 and the conditions in Rules 3012 and 3013 properly govern any automated suitability and supervisory systems. The NASD's introduction of supplemental requirements for automated or mixed supervisory systems is unexplained and without merit. The NASD has not documented why only one product category would face unusual and conflicting standards. The supplemental, ambiguous requirements proposed for automated variable annuity supervisory systems should be jettisoned. They will cause interpretive conflicts, and contradict enterprise-wide uniformity in compliance procedures for broker-dealers. Moreover, they will add another unwarranted disincentive for broker-dealers to sell variable annuities. The competitive burden of abnormal, confusing supervisory conditions cannot be endorsed.

Request to Meet with SEC Staff to Discuss Rule 2821

We believe it would be constructive to meet with SEC staff to discuss our concerns and submission in greater detail. In the interest of full input under the Administrative Procedure Act, we respectfully request the opportunity to meet with the SEC staff for these purposes.

Conclusion

The life insurance industry condemns any unsuitable variable annuity sales. There is no place for unscrupulous practices. Abusive sales conduct harms consumers and life insurers alike. We support firm application of the securities laws against wrongdoing.

The most effective solution to inappropriate variable annuity sales is strong enforcement of existing suitability and supervision standards. The current suitability and supervision rules provide significant, uniform standards assuring appropriate market conduct. The NASD has comprehensive enforcement and examination tools at its disposal. Likewise, state insurance laws provide important additional consumer protections through replacement regulations and free-look provision—things other securities purchasers do not enjoy.³⁶

The variable annuity prospectus communicates uniform and essential disclosure about many of the issues identified by the NASD. The fee table, Example, synopsis, and risk disclosure convey valuable information to consumers making purchase decisions, and provide a consistent source of updated content reviewed by the SEC. We would welcome the opportunity to work with the SEC to enhance the variable annuity prospectus standards. A more constructive alternative to the proposal would require broker-dealers to strongly encourage consumers to carefully read the prospectus. Similarly, the draft Variable Annuity Profile Plus provides constructive abbreviated disclosure for consumers to evaluate.

³⁶ Many life insurers are members of the Insurance Marketplace Standards Association and follow principles of ethical conduct assuring appropriate needs-based sales, and who submit to independent assessment of their performance.

The proposal does not adequately demonstrate a need for new regulations based on objective empirical data. There is no demonstration that the proposed rule changes will materially change the targeted conduct. The initiative lacks any quantification of economic impact. The proposal has not fulfilled the important antitrust standards Congress established for SRO rulemaking. If Rule 2821 advances, it will be incumbent on the NASD to adopt parallel single-product suitability and supervision rules for other financial products that have an incidence of abuse, in order to avoid anticompetitive SRO regulation.

Objective data on NASD disciplinary actions and SEC complaint history do not support the initiative's stated purpose. The proposed rule repackages current training, supervision, and suitability standards and may thwart enterprise-wide compliance uniformity. Detailed federal securities and state insurance laws comprehensively govern the manufacture and sale of variable annuities, and provide important consumer protection.

In sum, the burdens of the proposal greatly outweigh its putative benefits. Responsible rulemaking requires rigorous analysis and articulate justification. On these measures, the proposal should be dropped. If the proposal is advanced further, it needs substantial modification to eliminate confusing imprecision and unwarranted burdens.³⁷

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

Sincerely,



Carl B. Wilkerson

cc: The Honorable Christopher Cox, Chairman
The Honorable Cynthia Glassman, Commissioner
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
The Honorable Annette L. Nazareth, Commissioner

³⁷ The SEC should provide an extensive comment period and allow robust evaluation of the significant modifications in Amendment No. 2. An extensive comment period will not unduly lengthen this regulatory matter, and will foster constructive, thoughtful input on the issues raised in the release. The regulatory process and the public interest will be better served by a deliberative, not rushed, review of the NASD's rule amendments. These regulatory modifications are too important to miss full exposure to public scrutiny.

Appendix A

Appendix A: Redrafted Rule 2821 Showing Recommended Changes

2821. Members' Responsibilities Regarding Deferred Variable Annuities

(a) General Considerations

(b) Recommendation Requirements

(1) No member or person associated with a member shall recommend to any customer the purchase or exchange of a deferred variable annuity unless such member or person associated with a member has a reasonable basis to believe that

(A) the customer has been informed of the material features of a deferred variable annuity, such as the potential surrender period and surrender charge; potential tax penalty if the customer sells or redeems the deferred variable annuity before he or she reaches the age of 59½; mortality and expense fees; investment advisory fees; potential charges for and features of riders; the insurance and investment components of a deferred variable annuity; and market risk;

(B) the customer could benefit from the features of a deferred variable annuity (e.g., tax-deferred growth, annuitization or a death benefit); and

Deleted: would

Deleted: unique

(C) the particular deferred variable annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity and riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also is suitable) for the particular customer based on the information required by paragraph (b)(2) of this Rule. These determinations shall be documented and signed by the associated person recommending the transaction.

(2) Prior to recommending the purchase or exchange of a deferred variable annuity, a member or person associated with a member shall make reasonable efforts to obtain, at a minimum, information concerning the customer's age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the deferred variable annuity, investment time horizon, existing investment and life insurance holdings liquidity needs, liquid net worth, risk tolerance, tax status and such other information used or considered to be reasonable by the member or person associated with the member in making recommendations to customers. If the customer declines to provide the above categories of information upon request, the person associated with the member shall not be required to obtain this information.

Deleted: No later than two business days following the date when a member or person associated with a member transmits a customer's application for a deferred variable annuity to the issuing insurance company for processing and irrespective of whether the transaction has been recommended, a registered principal shall review and determine whether he or she approves of the purchase or exchange of the deferred variable annuity.

(c) Principal Review and Approval

(1) A registered principal shall promptly review and document by signature the approval of the purchase or exchange of a deferred variable annuity recommended by a registered

representative after receipt of the application in good order. In reviewing the purchase or exchange of a deferred variable annuity, the registered principal shall consider

(A) the extent to which the customer could benefit from the features of a deferred variable annuity (e.g., tax-deferred growth, annuitization or a death benefit);

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(B) the extent to which the customer's age or liquidity needs make the investment inappropriate;

(C) the amount of money invested was determined in the context of the customer's overall investment portfolio; and

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(D) if the transaction involves an exchange of a deferred variable annuity, the extent to which (i) the customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose death or existing benefits, or be subject to increased fees or charges (such as mortality and expense fees, investment advisory fees and charges for riders and similar product enhancements), and (ii) the customer would benefit from any potential product enhancements and improvements.

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Deleted: , and (iii) the customer's account has had another deferred variable annuity exchange within the preceding 36 months. These considerations shall be documented and signed by the registered¶ principal who reviewed and approved the transaction

(d) Supervisory Procedures

In addition to the general supervisory and recordkeeping requirements of Rules 3010, 3012, 3013 and 3110, a member must establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in this Rule. In particular, the member must implement procedures to screen the transaction and require a registered principal to consider those items enumerated in paragraph (c) of this Rule.

Deleted: (2) When a member or a person associated with a member has recommended the purchase or exchange of a deferred variable annuity, a registered principal, taking into account the underlying supporting documentation described in paragraph (b)(2) of this Rule, shall review, determine whether to approve and, if approved, sign the suitability determination document required by paragraph (b)(1) of this Rule no later than two business days following the date when the member or person associated with the member transmits the customer's application for a deferred variable annuity contract to the issuing insurance company for processing.¶

(e) Product Knowledge

Members shall ensure that associated persons who effect and registered principals who review transactions in deferred variable annuities comply with the requirements of this Rule and that they understand the material features of deferred variable annuities, including those described in paragraph (b)(1)(A) of this Rule.

* * * * *

(b) Not applicable.

(c) Not applicable.

Deleted: as well as whether the associated person effecting the¶ transaction has a particularly high rate of effecting deferred variable annuity exchanges

Deleted: Training

Deleted: develop and document specific training policies or programs¶ reasonably designed to

Appendix B

I. NAIC Insurance and Annuities Replacement Model Regulation¹

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.

1. The amendments eliminate administrative and compliance burdens from the NAIC's 1998 model opposed by the life insurance industry.
2. 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 promote uniformity among state regulations.
3. Citation: Insurance and Annuities Replacement Model Regulation, NAIC Model Regulation Service-July 2000 at III-621-1, *See*, http://www.naic.org/1papers/models/Table_of_Contents2000.htm.

B. Approach of the amended regulation

1. The amended regulation establishes duties for insurance producers, replacing insurers, and existing insurers designed to protect consumers.
 - a. For example, insurers using insurance producers must, among other things:
 - (1) Maintain a *system of supervision and control*;
 - (2) Have the *capacity to monitor* each producer's life and annuity replacements for that insurer;
 - (3) Ascertain that required *sales material and illustrations are complete and accurate*; and
 - (4) *Maintain records* of required notification forms and illustrations that can be produced.

¹ Prepared by Carl B. Wilkerson, ACLI Vice President & Chief Counsel-Securities & Litigation, ©2006.

- b. A required notice of replacement must be presented, read to consumers, and signed by the producer and consumer.
2. 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 restitution, and restore policy values with interest when violation are material to the sale. [*See*, Section 8 of the regulation].

C. Overview of Issue

1. A replacement occurs when an individual uses existing life insurance policy or annuity contract values to purchase a new policy or contract.
2. 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.
3. 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.
 - a. External replacement occurs when a company replaces the life or annuity product of another company.
 - b. 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

1. To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.
2. 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:
 - a. Assure that purchasers receive information with which a decision can be made in his or her own best interest;
 - b. Reduce the opportunity for misrepresentation and incomplete disclosure; and
 - c. Establish penalties for failure to comply with the regulation.

E. *Regulation Applies to Variable Life Insurance and Variable Annuity Replacements*

1. 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:
 - a. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
 - b. 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;
 - c. Amended so as to effect either a reduction in force of for which benefits would be paid;
 - d. Reissued with any reduction in cash value; or
 - e. Used in a financed purchase.
2. 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.
 - a. 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.
 - b. In all other respects, the regulation fully applies to individual variable contract replacements.

F. *Exceptions from regulation for group contracts*

1. The regulation does not apply to transactions involving:
 - a. 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, where the plan, for purposes of ERISA, is established or maintained by an employer;
 - (3) 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
 - (4) A non-qualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
- b. Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer.
 - c. Credit life insurance.

G. Duties of Producers and Insurers in Replacement Transactions

1. Duties of insurers that use producers [Section 4.]

a. Under the regulation, each insurer must:

- (1) *Maintain a system of supervision and control* to insure compliance with the requirements of this regulation that shall *include at least* the following:
 - (a) *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;
 - (b) *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;
 - (c) *A system to review the appropriateness* of each replacement transaction *that the producer does not indicate is in accord with the regulation's standards*;
 - (d) Procedures to *confirm* that the *requirements* of this regulation have been *met*; and

- (e) 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.
- (2) *Have the capacity to produce*, upon request, and make available to the Insurance Department, *records of each producer's*:
 - (a) *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;
 - (b) *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;
 - (c) 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
 - (d) *Replacements, indexed by replacing producer and existing insurer.*
- (3) 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;
- (4) 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 Attachment 1 to the regulation;
- (5) 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;
- (6) 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

- (7) 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.

2. Duties of Replacing Insurers that Use Producers [Section 6].

- a. Where a replacement is involved in the transaction, the replacing insurer shall:
 - (1) Verify that the required forms are received and are in compliance with the regulation;
 - (2) 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.*]
 - (3) 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
 - (4) 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.

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

3. Duties of the Existing Insurer [Section 6].

- a. Where a replacement is involved in the transaction, the existing insurer shall:
 - (1) 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.
 - (2) 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.
 - (3) 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.

4. Duties of Producers [Section 4].

- a. 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.

- b. 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 Attachment 1 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.
- c. 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.
- d. 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.
- e. 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

- 1. 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.”
 - a. 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*.

2. 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.”

I. Several aspects of the amended NAIC model regulation parallel SEC and NASD positions concerning Section 1035 exchanges and bonus annuity sales.

1. Selected list of parallel regulatory concepts

a. NASD Guideline on Variable Life Insurance Distribution: NASD NTM 00-44 (June 2000).

b. NASD Guidelines on Supervisory Responsibilities: NASD NTM 99-45 (June 1999).

c. NASD Statement on Variable Annuity Distribution: NASD NTM 99-35 (May 1999).

d. SEC Office of Compliance Inspections and Examinations: Indicators of “Good” Internal Controls in Variable Contract Distribution.

(1) A compilation of the SEC’s indicators drawn from speeches and seminar comments is discussed in Wilkerson, *Variable Product Distribution: A Continuing Study of Compliance Examinations, Inspections Sweeps and Evolving Regulatory Standards*, ACLI Compliance Section Annual Meeting (July 19, 2000) at 20.

e. SEC Examination of Variable Annuity “Bonus” Programs

(1) Several of the items requested in the SEC’s inspection letter requested documents and information that the amended NAIC Model Replacement Regulation also addresses.

(a) Scope of documents requested in the SEC’s examinations was outlined in *Variable Product Distribution: A Continuing Study of Compliance Examinations, Inspections Sweeps and Evolving Regulatory Standards*, ACLI Compliance Section Annual Meeting (July 19, 2000) at 6.

f. NASD and SEC inspection sweeps focusing on “ Section 1035 exchanges” of variable contracts and “life financing” arrangements (1998 and 1996.)

(1) These sweeps and the documentation they elicited were discussed in *Variable Product Distribution: A Continuing Study of Compliance Examinations, Inspections Sweeps and Evolving Regulatory Standards*, ACLI Compliance Section Annual Meeting (July 19, 2000) at 11 and 15.

J. NAIC Model Replacement Regulation: State-by-State Chart

1. Set forth on the next page a chart listing the status, as of August 26, 2000, of the NAIC Model Replacement Regulation.

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Attachment 1 to Appendix B 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?

(Attachment 2 to Appendix B)

**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 B-2

LIFE INSURANCE LAW SURVEY Replacement of Life Insurance and Annuities

This multi-state compilation identifies the states that have based their life and annuity replacement requirements (for the most part) on the NAIC's Life and Annuities Replacement Model Regulation. The compilation specifically notes the states that have adopted the most current (1998) version of the model and includes a summary of exemptions. Rather than summarizing other replacement requirements, the compilation provides citations to state law or regulations that correspond with several key elements of the NAIC model: definitions, duties of producers and insurers, and forms. Links are provided to the state chapters of the [*Market Conduct Compliance Service*](#) on ACLI's Web site where the cited provisions and most forms are located.

This survey does not constitute a legal opinion by ACLI staff. The *Life Insurance Law Surveys* are reviewed and updated annually. Users are encouraged to refer to the text of the statutes and regulations cited for the most current and complete information.

September 2005

State			
<u>Alabama</u>	Yes (1998)	<p>Applies to life insurance and annuities. Exemptions: Ala. Admin. Code r. 482-1-133-.02</p> <ul style="list-style-type: none"> • Credit life • Certain group life and group annuities • An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with the commissioner • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Various pension, welfare, or deferred compensation plans • Non-contributory group life • Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed • Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities that are purchased with proceeds from an existing policy are not exempted from the requirements of this regulation • Structured settlements • Registered contracts (exempt from some requirements with provisos) 	<p>Effective 1/1/05: Definitions: Ala. Admin. Code r. 482-1-133-.03 Duties:</p> <ul style="list-style-type: none"> • Producers: Ala. Admin. Code r. 482-1-133-.04 • All insurers using producers: Ala. Admin. Code r. 482-1-133-.05 • Replacing insurers that use producers: Ala. Admin. Code r. 482-1-133-.06 • Existing insurers: Ala. Admin. Code r. 482-1-133-.07 • Direct response: Ala. Admin. Code r. 482-1-133-.08 <p>Forms: Ala. Admin. Code 482-1-133 Appendix A, Appendix B, Appendix C</p>
<u>Alaska</u>	N/A		No applicable provisions
<u>Arizona</u>	Yes (1998)	<p>Applies to life insurance and annuities. Exemptions: Ariz. Rev. Stat. Ann. § 20-1241.01</p> <ul style="list-style-type: none"> • Credit life • Group policies and contracts that do not involve direct solicitation by producer • Policies and contracts used to fund prearranged funeral agreements • Various pension, welfare, or deferred compensation plans • An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with the director • Existing life insurance that is a nonrenewable and nonconvertible term life insurance policy that will expire in five years or less • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Non-contributory group life • Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities that are purchased with proceeds from an existing policy are subject to this article • Structured settlements • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Ariz. Rev. Stat. Ann. § 20-1241 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>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Arkansas</u>	No	<p>Applies to permanent life insurance (currently) and annuities (beginning 1/1/05): Bulletins 8-2004 and 8A-2004. Exemptions: Bulletin 14-83</p> <ul style="list-style-type: none"> • Term life • Credit life • Group insurance • Life insurance issued in connection with a pension, profit-sharing or other benefit plan 	<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>
<u>California</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: Cal. Ins. Code § 10509.3</p> <ul style="list-style-type: none"> • Credit life • Group life or group annuities • Application to the existing insurer that issued the existing life insurance when a contractual change or a conversion privilege is being exercised • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same insurer • Transactions where the replacing insurer and the existing insurer are the same, with provisos • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Cal. Ins. Code § 10509.2 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>
<u>Colorado</u>	Yes (1998)	<p>Applies to life insurance and annuities. Exemptions: Col. Code Regs. 3 Colo. Code Regs § 4-1-4, Section 3</p> <ul style="list-style-type: none"> • Credit life • Certain group life and group annuities • An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with the commissioner • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Various pension, welfare, or deferred compensation plans • Non-contributory group life • Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed • Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities that are purchased with proceeds from an existing policy are not exempted from the requirements of this regulation • Structured settlements • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Col. Code Regs. 3 Colo. Code Regs § 4-1-4, Section 4 Exemptions: Col. Code Regs. 3 Colo. Code Regs § 4-1-4, Section 3 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>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Connecticut</u>	N/A		Conn. Gen. Stat. § 38a-435 authorizes insurance commissioner to make regulations governing replacement of life insurance and annuities. No regulations to date.
<u>Delaware</u>	Yes	<p>Applies to life insurance and annuities.</p> <p>Exemptions: Del. Admin. Code tit. 18, Regulation 1204, Section 4.0</p> <ul style="list-style-type: none"> • Credit life • Group life or group annuities • An application to the existing insurer that issued the existing life insurance and a contractual change or conversion privilege is being exercised • Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control. • Registered contracts (exempt from some requirements with provisos) • Life insurance or annuity products issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums (with provisos) 	<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>
<u>District of Columbia</u>	N/A		No applicable provisions.
<u>Florida</u>	Yes	<p>Applies to life insurance and annuities.</p> <p>Exemptions (from some requirements): Fla. Admin. Code Ann. 69B-151.004 and 69O-151.004</p> <ul style="list-style-type: none"> • Industrial insurance • Group, franchise, and individual credit life • Group life insurance and life insurance policies issued in connection with a pension, profit sharing or other benefit plan qualifying for tax deductibility of premiums • An application to the existing insurer that issued the existing life insurance where a contractual change or conversion privilege is being exercised • Existing life insurance that is a non-convertible term life insurance policy which will expire in five years or less and cannot be renewed, unless such policy has tabular cash values • Proposed life insurance that is to replace existing life insurance issued under a binding or conditional receipt delivered by the same company • Variable life insurance or annuities under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account 	<p>Definitions: Fla. Admin. Code Ann. 69B-151.002 and 69O-151.002 (replacement); 69B-151.003 and 69O-151.003 (other)</p> <p>Duties:</p> <ul style="list-style-type: none"> • Producers: Fla. Admin. Code Ann. 69B-151.005 and 69O-151.005 (agent); 69B-151.006 and 69O-151.006 (replacing agent) • Replacing insurers: Fla. Admin. Code Ann. 69O-4-151.007 • Existing insurers: Fla. Admin. Code Ann. 69O-4-151.008 <p>Forms: OIR-B2-312 "Notice to Applicant Regarding Replacement of Life Insurance" and OIR-B2-313 "Comparative Information Form." Also, for information on churning, see: Fla. Stat. Ann. §§ 626.9541(1)(aa); 627.573; Fla. Admin. Code Ann. 69B-151.201 - 203; and Form DI4-1180 "Policy Disclosure Form and Instructions."</p>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Georgia</u>	Yes	Applies to life insurance and annuities replacing existing life insurance. Exemptions: Ga. Comp. R. & Regs. 120-2-24-.04 <ul style="list-style-type: none"> • Replacement of annuity contracts • Credit life • Group life • Life insurance issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, with provisos 	Definitions: Ga. Comp. R. & Regs. 120-2-24-.03 Duties: <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 Forms: Ga. Comp. R. & Regs. Chapter 120-2-24, Exhibit A (replacement notice)
<u>Hawaii</u>	Yes (1998)	Applies to life insurance and annuities. Exemptions: Hawaii Rev. Stat. § 431:10D-501; Hawaii Administrative Code § 16-3-3 <ul style="list-style-type: none"> • Credit life • Certain group life insurance or group annuities • An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Various pension, welfare, or deferred compensation plans • Non-contributory group life • Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed • Immediate annuities that are purchased with proceeds from an existing contract; provided that immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this part • Structured settlements. • Registered contracts (exempt from some requirements with provisos) 	Definitions: Hawaii Rev. Stat. § 431:10D-502; Hawaii Administrative Code § 16-3-2 Exemptions: Hawaii Rev. Stat. § 431:10D-501; Hawaii Administrative Code § 16-3-3 Duties: <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 Forms: Hawaii Rev. Stat. § 431:10D-502 (direct response); Hawaii Administrative Code § 16-3-7, Exhibit A (disclosure statement); Exhibit B (notice)

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Idaho</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: Idaho Administrative Code 18.01.41 Section 011</p> <ul style="list-style-type: none"> • Credit life • Group life or group annuities • Existing insurer--An application to the insurer that issued the existing life insurance and a contractual change or conversion privilege being exercised • Binding or conditional receipt issued by same company--proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Common ownership or control--transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control, with provisos 	<p>Definitions: Idaho Administrative Code 18.01.41 Section 004 (replacement), Section 005 (other) 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>
<u>Illinois</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: Ill. Adm. Code tit. 50, Section 917.50</p> <ul style="list-style-type: none"> • Credit life • Group life and group annuities • Life insurance policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for the tax deductibility of premiums • Registered contracts except that the appropriate prospectus or offering circular shall be given to the applicant • Existing life insurance that is a non-convertible term life insurance policy which will expire in five years or less and cannot be renewed • Transactions where the replacing insurer and the existing insurer are the same or are subsidiaries under common ownership or control, with provisos • The total cash surrender value of all existing policies which would be affected by the replacement is less than \$500 and the sum of their face amounts is less than \$5,000 	<p>Definitions: Ill. Adm. Code tit. 50, Section 917.30 (replacement); Section 917.40 (other) 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>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Indiana</u>	Yes	Applies to life insurance and annuities. Exemptions: Ind. Admin. Code tit. 760 r. 1-16.1-4 <ul style="list-style-type: none"> • Individual and group credit life • Group life and life policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, with provisos • An existing life insurance policy in which a contractual change or conversion privilege is being exercised 	Definitions: Ind. Admin. Code tit. 760 r. 1-16.1-2 (replacement); r. 1-16.1-3 (other) Duties: <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 Forms: Ind. Admin. Code tit. 760 r. 1-16.112.5, Exhibit A (agent); r. 1-16.113.5, Exhibit B (direct response)
<u>Iowa</u>	Yes (1998)	Applies to life insurance and annuities. Exemptions: Iowa Admin. Code r. 191—16.23(507B) <ul style="list-style-type: none"> • Credit life • Certain group life insurance or group annuities • An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised, or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Various pension, welfare, or deferred compensation plans • New coverage provided under a life insurance policy or contract where the cost is borne wholly by the insured's employer or by an association of which the insured is a member • Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed • Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this chapter • Structured settlement annuities • Registered contracts (exempt from some requirements with provisos) 	Definitions: Iowa Admin. Code r. 191—16.22(507B) Duties: <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) Forms (NAIC models): Iowa Admin. Code r. Chapter 16, Appendix A; Appendix B; Appendix C

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Kansas</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: Kan. Admin. Regs. § 40-2-12(b)</p> <ul style="list-style-type: none"> • Application for the new life insurance is made to the same insurer that issued the existing life insurance, and a contractual policy change or conversion privilege is being exercised • New life insurance is provided under: (A) group life; or (B) mass marketed group life • Existing life insurance is a non-convertible term policy with five years or less to expire and which cannot be renewed • Solicitation is made by direct mail with provisos • Policy is issued in connection with a pension, profit sharing, an individual retirement account, or other benefit plan qualifying for an income tax deduction of premiums 	<p>Definitions: Kan. Admin. Regs. § 40-2-12(a) 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>
<u>Kentucky</u>	Yes (1998 in part)	<p>Applies to life insurance. Exemptions from some requirements: Ky. Rev. Stat. Ann. § 304.12-030(4)</p> <ul style="list-style-type: none"> • Credit life • Certain group life insurance or group annuities • An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised, or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner • Existing life insurance that is a nonconvertible term life insurance policy which will expire in five years or less and cannot be renewed • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Various pension, welfare, or deferred compensation plans • New coverage provided under a life insurance policy or contract where the cost is borne wholly by the insured's employer or by an association of which the insured is a member • Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this section • Structured settlements 	<p>Definitions: Ky. Rev. Stat. Ann. § 304.12-030(1); 806 Ky. Admin. Regs. 12:080, Section 2 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>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Louisiana</u>	Yes (1998)	<p>Applies to life insurance and annuities. Exemptions: La. Admin. Code tit. 37, § 8905 (Reg. 70)</p> <ul style="list-style-type: none"> • Credit life • Certain group life or group annuities • Application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised, or when the existing policy or contract is being replaced by the same insurer pursuant to a program approved by the commissioner of insurance • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Various pension, welfare, or deferred compensation plans • Non-contributory group life • Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed • Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this regulation • Structured settlement annuities • Any insurer that markets under the Home Service Marketing Distribution System • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: La. Admin. Code tit. 37, § 8903 (Reg. 70) 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>
<u>Maine</u>	N/A		No applicable provisions for life and annuity products.

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Maryland</u>	Yes (1998)	<p>Applies to life insurance and annuities. Exemptions: Md. Regs. Code 31.09.05.02</p> <ul style="list-style-type: none"> • Credit life • Certain group life or group annuities • An application to an insurer that issued an existing life insurance policy or existing annuity contract if: (a) A contractual change or a conversion privilege is being exercised; or (b) The existing life insurance policy or existing annuity contract is being replaced by the same insurer under a program filed with and approved by the Commissioner • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same insurer • Various pension, welfare, or deferred compensation plans • Non-contributory group life • Existing life insurance that is a nonconvertible term life insurance policy that will expire in 5 years or less and cannot be renewed • Immediate annuities that are purchased with proceeds from an existing annuity contract • Structured settlements 	<p>Definitions: Md. Regs. Code 31.09.05.03 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>
<u>Massachusetts</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: Mass. Regs. Code tit. 211, § 34.03</p> <ul style="list-style-type: none"> • Credit life • Group life and group annuities • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Internal replacements where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control • Non-contributory group life • Life insurance policies issued in connection with a pension, profit sharing or other benefit plan qualifying for tax deductibility of premiums • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Mass. Regs. Code tit. 211, § 34.02 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	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Michigan</u>	Yes	<p>Applies to life insurance, excluding annuities in definition of life insurance. Exemptions: Mich. Admin. Code r. 500.601 and r. 500.605</p> <ul style="list-style-type: none"> • Application for the new life insurance made to the same insurer that issued the existing life insurance or to an affiliate of the existing insurer • New life insurance provided under any of the following plans with provisos: (a) group term life; (b) certain mass marketed policies; (c) life insurance policies issued in connection with a pension, profit sharing, or other benefit plan qualifying for tax-deductibility of premiums • Existing life insurance is a nonconvertible term policy which cannot be renewed and which would expire within five years after the initiation of the transaction 	<p>Definitions: Mich. Admin. Code r. 500.601 Duties:</p> <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 <p>Forms: Insurance Bureau Bulletin 84-6</p>
<u>Minnesota</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: Minn. Stats. Ann. § 61A.54</p> <ul style="list-style-type: none"> • Credit life • Group life or group annuities • Application to the existing insurer that issued the existing life insurance or annuity, where a contractual change or a conversion privilege is being exercised • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos 	<p>Definitions: Minn. Stats. Ann. § 61A.53 Duties:</p> <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 <p>Forms: Minn. Stats. Ann. § 61A.60, Subdivisions 1, 2, and 3</p>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Mississippi</u>	Yes (1998)	<p>Applies to life insurance and annuities. Exemptions: Miss. Ins. Reg. 99-2.1</p> <ul style="list-style-type: none"> • Credit life • Certain group life insurance or group annuities • An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Various pension, welfare, or deferred compensation plans • Non-contributory group life • Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed; • Immediate annuities that are purchased with proceeds from an existing contract • Structured settlements • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Miss. Ins. Reg. 99-2.2 Duties:</p> <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 <p>Forms: Miss. Ins. Reg. 99-2, Appendix A, Appendix B, and Appendix C</p>
<u>Missouri</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: Mo. Code Regs. Ann. tit. 20, § 400-5.400(4)</p> <ul style="list-style-type: none"> • Credit life • Group life or group annuities • Application to the existing insurer that issued the existing life insurance where a contractual change or conversion privilege is being exercised • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Transactions where the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control; with provisos • Policies issued in connection with a pension, profit sharing and individual retirement account or other benefit plan qualifying for tax deductibility of premium • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Mo. Code Regs. Ann. tit. 20, § 400-5.400(2) and (3) Duties:</p> <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) <p>Forms: Mo. Code Regs. Ann. tit. 20, § 400-5.400, Exhibit A and Exhibit B</p>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Montana</u>	Yes (1998)	<p>Applies to life insurance and annuities. Exemptions: Mont. Admin. Reg. 6.6.304</p> <ul style="list-style-type: none"> • Credit life • Certain group life or group annuities • Application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised, or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Various pension, welfare, or deferred compensation plans • Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed • Non-contributory group life • Immediate annuities that are purchased with proceeds from an existing contract • Structure settlements • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Mont. Admin. Reg. 6.6.303 Duties:</p> <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 <p>Forms: NAIC model forms—Appendices A, B, and C—incorporated by reference</p>
<u>Nebraska</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: 210 Neb. Admin. Code Ch. 19, section 005</p> <ul style="list-style-type: none"> • Credit life • Group life or group annuities • An application to the existing insurer that issued the existing life insurance and a contractual change or conversion privilege is being exercised • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: 210 Neb. Admin. Code Ch. 19, section 003 (replacement); 210 Neb. Admin. Code Ch. 19, section 004 (other) 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>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Nevada</u>	Yes	<p>Applies to life insurance (annuities are neither included nor specifically excluded).</p> <p>Exemptions: Nev. Admin Code § 686A.540</p> <ul style="list-style-type: none"> • Individual credit life • Group life insurance, group credit life insurance or life insurance issued in connection with a pension, profit-sharing or other benefit plan that qualifies for tax deductibility of premiums • Variable life under which the death benefits and cash values vary in accordance with the unit values of investments held in a separate account • Application made to an insurer under an existing policy for a contractual change or the exercise of a privilege of conversion • Existing policy which is a nonconvertible, term policy, will expire in five years or less and cannot be renewed • Proposed life insurance which is to replace life insurance under a binding or conditional receipt issued by the same company • Policy solicited through direct response with a face value of \$5,000 or less 	<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>
<u>New Hampshire</u>	Yes (1998)	<p>Applies to life insurance and annuities.</p> <p>Exemptions: N.H. Code Admin. R. Ann. Ins. 302.02</p> <ul style="list-style-type: none"> • Credit life • Certain group life or group annuities • An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Various pension, welfare, or deferred compensation plans • Non-contributory group life • Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed • Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this regulation • Structured settlements • Registered contracts (exempt from some requirements with provisos) 	<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>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>New Jersey</u>	Yes (1998)	<p>Applies to life insurance. Exemptions: N.J. Admin. Code § 11:4-2.1</p> <ul style="list-style-type: none"> • Credit life • Certain group life insurance or group annuities. • An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner • Various pension, welfare, or deferred compensation plans • New coverage provided under an employer-paid life policy • Immediate annuities purchased with proceeds from exiting contract • Structured settlements • Registered contracts (exempt from some requirements with provisos) • Existing life insurance that is a non-convertible term life insurance policy which will expire in five years or less and cannot be renewed • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company 	<p>Definitions: N.J. Admin. Code § 11:4-2.2 Duties:</p> <ul style="list-style-type: none"> • Producers: N.J. Admin. Code § 11:4-2.3 • Insurers that use producers: N.J. Admin. Code § 11:4-2.5 • Replacing insurers: N.J. Admin. Code § 11:4-2.4 • Existing insurers: N.J. Admin. Code § 11:4-2.6 • Direct response: N.J. Admin. Code § 11:4-2.7 <p>Forms: N.J. Admin. Code § 11:4-2, Appendix A Appendix B Appendix C (Also see Bulletin No. 05-02.)</p>
<u>New Mexico</u>	Yes (1998)	<p>Applies to life insurance and annuities. Exemptions: N.M. Admin Code tit. 13, § 9.6.2</p> <ul style="list-style-type: none"> • Credit life • Group life or group annuities where no direct solicitation by insurance producer • Group life and annuities used to fund prearranged funeral contracts • Application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised or when existing policy is being replaced by same insurer, with provisos • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Policies or contracts issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, with provisos, or nonqualified deferred compensation arrangement established or maintained by employer or plan sponsor • New coverage provided under an employer-paid life policy • Existing life insurance that is non-convertible term life insurance policy which will expire in five years or less and cannot be renewed • Immediate annuities purchased with proceeds from exiting contract • Structured settlements • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: N.M. Admin Code tit. 13, § 9.6.7 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; § 9.6.15, Appendix B; § 9.6.16, Appendix C</p>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>New York</u>	Yes (but with many variations)	<p>Applies to life insurance and annuities. Exemptions: N.Y. Comp. Codes R. & Regs. tit. 11, § 51.3</p> <ul style="list-style-type: none"> • The application for the new life insurance policy or new annuity contract is made to the same insurer that issued the existing life insurance policy or annuity contract and a contractual conversion privilege is being exercised • A policy change customarily granted by the insurer is being exercised, provided such change results in no additional surrender or expense charge or suicide or contestable restrictions, and only to the extent such change is approved by the Superintendent of Insurance • New coverage under certain group life policies or group annuities • Individual life or individual annuity whose cost is borne wholly by the applicant's employer or by an association of which the applicant is a member • Certain mass marketed individual life policies or individual annuity contracts • The existing life insurance is a nonrenewable, nonconvertible term policy with five years or less to its expiration date 	<p>Definitions: N.Y. Comp. Codes R. & Regs. tit. 11, § 51.2 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>
<u>North Carolina</u>	Yes (1998)	<p>Applies to life insurance and annuities. Exemptions: N.C. Admin Code tit. 11, r. 12.0604</p> <ul style="list-style-type: none"> • Credit life • Group life or group annuities where no direct solicitation by insurance producer • Group life and annuities used to fund prearranged funeral contracts • Application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised or when existing policy is being replaced by same insurer, with provisos • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Policies or contracts issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, with provisos, or nonqualified deferred compensation arrangement established or maintained by employer or plan sponsor • New coverage provided under an employer-paid life policy • Existing life insurance that is non-convertible term life insurance policy which will expire in five years or less and cannot be renewed • Immediate annuities purchased with proceeds from exiting contract • Structured settlements • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: N.C. Admin Code tit. 11, r. 12.0602 and 12.0603 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>
<u>North Dakota</u>	N/A		No applicable provisions.

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Ohio</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: Ohio Admin. Code § 3901-6-05(C)</p> <ul style="list-style-type: none"> • Credit life • Group life, group annuities, and life insurance policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums with provisos • Application to the insurer that issued the existing life insurance where a contractual change or a conversion privilege is being exercised • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Ohio Admin. Code § 3901-6-05(D) 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>
<u>Oklahoma</u>	No	<p>Applies to life insurance and annuities. Exemptions: Okla. Stat. Ann. tit. 36, § 4032</p> <ul style="list-style-type: none"> • Credit life • Group life or group annuities • Contracts issued in connection with employee benefits or welfare plans as defined by ERISA • The exercise by an insured of an existing contractual right with the same insurer for the purchase of additional insurance under a guaranteed insurability provision or conversion option or any other contractual policy change privilege • Short-term nonrenewable life insurance policies written to cover periods of 31 days or less • An existing nonconvertible term life insurance policy which will expire in five years or less and which cannot be renewed • Proposed life insurance policy that is to replace life insurance under a binding or conditional receipt issued by the same company issuing the policy which is to be replaced 	<p>Definitions: Okla. Stat. Ann. tit. 36, § 4033 and § 4037 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	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Oregon</u>	Yes (1998)	<p>Applies to life insurance and annuities. Exemptions: Or. Admin. R. 836-080-0001(4) and (5)</p> <ul style="list-style-type: none"> • Credit life • Certain group life or group annuities • An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the Director • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same insurer • Various pension, welfare, or deferred compensation plans • Noncontributory group life • Existing life insurance that is a nonconvertible term life insurance policy that will expire in five years or less and cannot be renewed • Immediate annuities purchased with proceeds from an existing contract • Structured settlements • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Or. Admin. R. 836-080-0005 Duties:</p> <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 <p>Forms: Or. Admin. R. 836-080, Appendix A, Appendix B, and Appendix C</p>
<u>Pennsylvania</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: 40 Pa. Code § 81.3</p> <ul style="list-style-type: none"> • Group life policies issued to creditors • Credit life • Group life or group annuities • Application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: 40 Pa. Code § 81.2 Duties:</p> <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 <p>Forms: 40 Pa. Code Chapter 81, Appendix A and Appendix B</p>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Rhode Island</u>	Yes	<p>Applies to life insurance. Exemptions: R. I. Ins. Reg. 29, sec. 5</p> <ul style="list-style-type: none"> • Annuities • Individual credit life • Group life; group credit life, and life insurance policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, with provisos • Variable life under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account • An application to the existing insurer that issued the existing life insurance and a contractual change or conversion privilege is being exercised • Existing life insurance that is non-convertible term life insurance policy which will expire in five years or less and cannot be renewed • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company 	<p>Definitions: R. I. Ins. Reg. 29, sec. 3 (replacement); R. I. Ins. Reg. 29, sec. 4 (other) Duties:</p> <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 <p>Forms: R. I. Ins. Reg. 29, Exhibit A (different companies); Exhibit B (same company); Exhibit C (direct response); Exhibit D (comparative form)</p>
<u>South Carolina</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: S. C. Code Regs. 69-12.1, sec. 4</p> <ul style="list-style-type: none"> • Credit life • Group life and group annuities • Application to the insurer that issued the existing life insurance to effect a change permitted by contract or to exercise a conversion privilege contained in the contract • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Transactions where the replacing insurer and the existing insurer are the same with provisos • Existing life insurance that is a non-convertible term life insurance policy which will expire in five years or less and cannot be renewed • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: S. C. Code Regs. 69-12.1, sec. 2 (replacement); 60-12.1, sec. 3 (other) Duties:</p> <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 <p>Forms: S. C. Code Regs. 69-12.1, Exhibit A</p>
<u>South Dakota</u>	No	<p>Applies to life insurance and annuities. Exemptions: S. D. Admin. R. 20:06:08:40</p> <ul style="list-style-type: none"> • Credit life • Group life or group annuities • Application to the insurer that issued the existing life insurance or annuity exercising a contractual change or conversion privilege • Proposed life insurance that is to replace life insurance or annuity under a binding or conditional receipt issued by the same company 	<p>Definitions: S. D. Admin. R. 20:06:08:38 Duties:</p> <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 <p>Forms: S. D. Admin. R. 20:06:08:41 (describes contents of notice)</p>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Tennessee</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: Tenn. Comp. R. & Regs. 0780-1-24-.04</p> <ul style="list-style-type: none"> • Credit life • Group life insurance • Application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Tenn. Comp. R. & Regs. 0780-1-24-.02 (replacement); 0780-1-24-.03 (other) Duties:</p> <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 <p>Forms: Tenn. Comp. R. & Regs. 0780-1-24, Exhibit A</p>
<u>Texas</u>	N/A		No applicable provisions.
<u>Utah</u>	Yes (1998)	<p>Applies to life insurance and annuities. Exemptions: Utah Admin. Code R590-93-2</p> <ul style="list-style-type: none"> • Credit life • Certain group life or group annuities • An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Various pension, welfare, or deferred compensation plans • Noncontributory group life • Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed • Immediate annuities purchased with proceeds from an existing contract • Structured settlements • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Utah Admin. Code R590-93-3 Duties:</p> <ul style="list-style-type: none"> • Producers: Utah Admin. Code R590-93-4 • All insurers using producers: Utah Admin. Code R590-93-5 • Replacing insurers that use producers: Utah Admin. Code R590-93-6 • Existing insurers: Utah Admin. Code R590-93-7 • Direct response: Utah Admin. Code R590-93-8 <p>Forms: Utah Admin. Code R590-93-3, Appendix A, Appendix B, and Appendix C adopted by reference.</p>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>Vermont</u>	Yes (1998)	<p>Applies to life insurance and annuities. Exemptions: Reg. I-2001-03, Sec. 1.B.</p> <ul style="list-style-type: none"> • Credit life • Certain group life or group annuities • Application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Various pension, welfare, or deferred compensation plans • Noncontributory group life • Existing life insurance that is a nonconvertible term life insurance policy that will expire in five years or less and cannot be renewed • Immediate annuities that are purchased with proceeds from an existing contract • Structured settlements • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Reg. I-2001-03, Sec. 2 Duties:</p> <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 <p>Forms: Reg. I-2001-03, Sec. Appendices A, B, and C</p>
<u>Virginia</u>	Yes	<p>Applies to life insurance and annuities used to replace existing life insurance. Exemptions: 14 Va. Admin. Code § 5-30-30</p> <ul style="list-style-type: none"> • Replacement of annuity contracts • Credit life • Life insurance issued in connection with a pension, profit-sharing, group, or other benefit plan qualifying for tax deductibility of premiums with provisos • Situations where the replacing insurer and the existing insurer are the same 	<p>Definitions: 14 Va. Admin. Code § 5-30-20 Duties:</p> <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 <p>Forms: 14 Va. Admin. Code § 5-30, Exhibit A</p>
<u>Washington</u>	Yes	<p>Applies to life insurance and annuities. Exemptions: Wash. Admin. Code § 284-23-430</p> <ul style="list-style-type: none"> • Credit life • Certain group life or group annuities • Application to the existing insurer that issued the existing life insurance when a contractual change or conversion privilege is being exercised • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos • Registered contracts (exempt from some requirements with provisos) 	<p>Definitions: Wash. Admin. Code § 284-23-410 (replacement); § 284-23-420 (other) Duties:</p> <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 <p>Forms: Wash. Admin. Code § 284-23-485</p>

State	Based On Current or Previous Versions of NAIC Model (Including Variations)	Applicability and Exemptions	Key Elements/Citations
<u>West Virginia</u>	Yes [Ed. Note: 2005 Laws, HB 2937 provides that commissioner shall file emergency rule based on NAIC's current model. Department expects rule to be filed in October 2005.]	Applies to life insurance. Exemptions: W. Va. Code § 33-11-5a(c); W. Va. Code St. R. § 114-8-3 <ul style="list-style-type: none"> • Annuities • Individual credit life • Group life, group credit life and life insurance policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums with provisos • Variable life under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account • Application to the existing insurer that issued the existing life insurance and a contractual policy change or conversion privilege or a privilege of policy change granted by the insurer is being exercised • Existing life insurance that is a nonconvertible term life insurance policy which will expire in five years or less and cannot be renewed; or • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company 	Definitions: W. Va. Code § 33-11-5a(a); W. Va. Code St. R. § 114-8-2 Duties: <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 Forms: W. Va. Code St. R. § 114-8, Appendix A (different companies); Appendix B (same company); Appendix C (direct response); Appendix D (comparative form)
<u>Wisconsin</u>	No	Applies to life insurance and annuities. Exemptions: Wisc. Admin. Code Ins 2.07(2) <ul style="list-style-type: none"> • Credit life • Group life or group annuities • Certain contracts issued in connection with employee benefit or welfare plans as defined by Section 3(3) of the federal employee retirement income security act of 1974 (ERISA) • Purchase, within the same insurer, of insurance under a guaranteed insurability option or conversion option • Short-term nonrenewable life insurance policies written for periods of 31 days or less 	Definitions: Wisc. Admin. Code Ins 2.07(3) Duties: <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) Forms: Wisc. Admin. Code Ins 2.07, Appendix I (notice if agent); Appendix II (notice if no agent); Appendix III (definitions)
<u>Wyoming</u>	Yes	Applies to life insurance and annuities. Exemptions: Wy. Ins. Regs. ch. 12, sec. 4 <ul style="list-style-type: none"> • Credit life • Group life or group annuities • Application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised • Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company • Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos 	Definitions: Wy. Ins. Regs. ch. 12, sec. 3 Duties: <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 Forms: Wy. Ins. Regs. ch. 12, Exhibit A

Appendix C

Appendix C

VARIABLE CONTRACTS FULFILL A COMPREHENSIVE STATE AND FEDERAL SYSTEM OF REGULATION

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.¹

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, 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

¹This 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).

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.² 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].”³ 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.

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

²The 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.

³ *See* Section 6, Power of Commissioner, Model Unfair Trade Practices Act, NAIC Model Regulation Service at 880-9(1993).

insurance commissioner orders and authorizes immunity from prosecution for witnesses who attend, testify or produce books, records or other paper correspondence.⁴

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.⁵

MARKET CONDUCT EXAMINATIONS

Nearly every jurisdiction has enacted a version of the NAIC Model Law on Examinations.⁶ This Act is designed to provide an effective and efficient system for 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.⁷

⁴See Sections 8, 9, 10, 11 and 14 of the Model Unfair Trade Practices Act, NAIC Model Regulation Service at 880-10 through 13(1994).

⁵See NAIC Insurance Fraud Prevention Model Act, NAIC Model Reporting Service at 680-1(1995).

⁶See NAIC Model Regulation Service at 390-1(1991).

⁷See 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.

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.⁸

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,⁹ which appears virtually in every state, governs the qualifications and procedures for licensing insurance and annuity agents and brokers. This

⁸Certain 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 raised. 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."

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.

⁹See NAIC Model Regulation Service at 210-1 (1990).

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.¹⁰ 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 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.¹¹ 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.

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

¹⁰See NAIC Model Regulation Service at 215-1 (1990).

¹¹See NAIC Model Regulation Service at 260-1 (1984).

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 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.

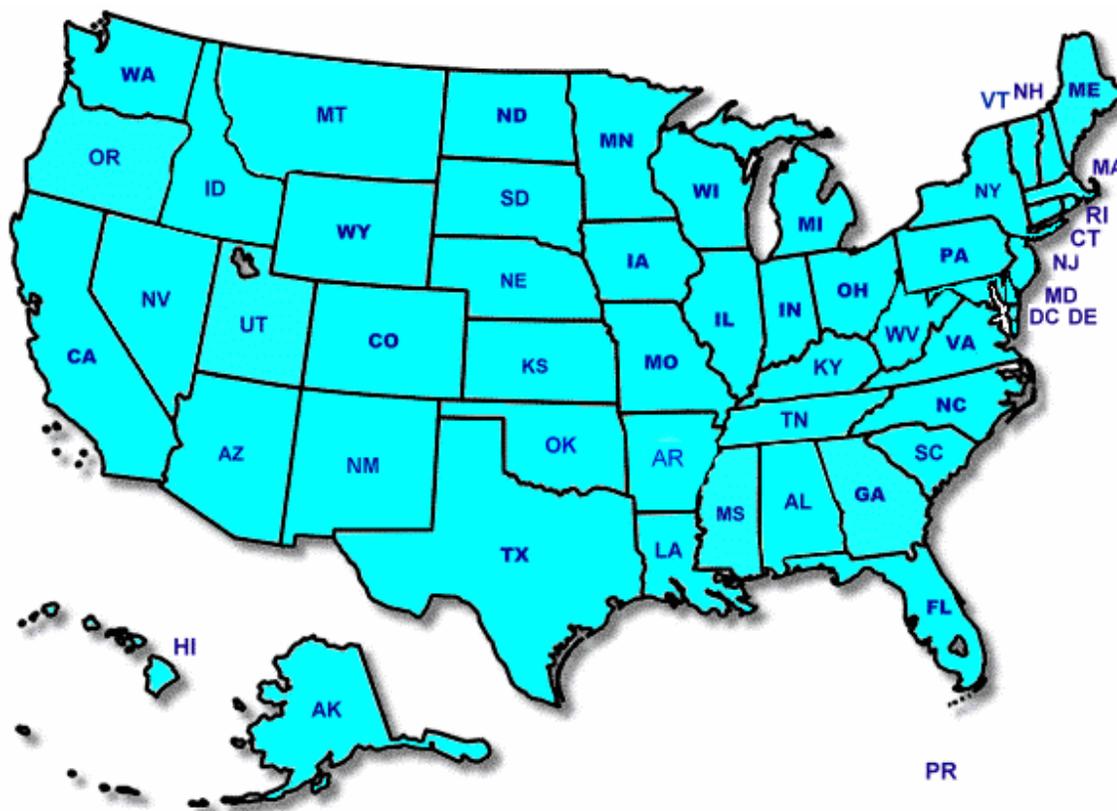
The NIPR Gateway is an electronic communication network that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of producer information; including license applications, appointments, and terminations. To date, data standards have been developed for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

In several significant regards, the ERISA statute was patterned after the Investment Company Act of 1940 concerning prohibitions against self-dealing, fiduciary duty, and information reporting. As a general standard, employee benefit plans must be operated for the exclusive benefit and solely in the interest of plan participants and beneficiaries. Plan sponsors are subject to high standards of prudence in executing their responsibilities, and are subject to liability for breaches of fiduciary duty that are punishable by severe penalties. Retirement plans funded by variable contract separate accounts must fulfill these rigorous fiduciary and regulatory standards administered by the Department of Labor.

A plan sponsor has a fiduciary duty to select appropriate funding vehicles, such as group variable annuities, and to continually monitor their performance.¹² This responsibility includes a

¹²Unlike other suitability standards that are measured only at the time of purchase, ERISA requires plan sponsors to continually monitor the appropriateness of qualified plan funding vehicles. The broad scope of this fiduciary duty is comprehensively discussed in Knickerbocker, *Fiduciary Responsibility Under ERISA* (Michie) (1997).

thorough evaluation of the insurance company and the investment manager's experience, and execution of due diligence in ascertaining the manager's good professional character and appropriate licensing. If the fiduciary fails to act prudently and exercise due diligence, the fiduciary is liable to plan participants for any losses attributable to the inexperience of the investment manager.

The problems of churning and inappropriate replacements are circumscribed under ERISA which requires that a fiduciary act solely in the interest and for the exclusive benefit of plan participants and beneficiaries.¹³ In addition, ERISA specifically prohibits a fiduciary from dealing with assets of a plan in his/her own interest or for his/her own account.¹⁴

ERISA prevents any person who has been convicted of certain crimes from serving: as a plan administrator, fiduciary, trustee, custodian or representative in any capacity of any employee benefit plan; as a consultant or advisor to any employee benefit plan; or, in any capacity that involves decision making authority or custody or control of plan assets.¹⁵

In another example of regulatory parallels, ERISA grants the Labor Department the power, in order to determine whether any person has violated or is about to violate any provision of ERISA or any regulation thereunder, to conduct an investigation, and to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Labor Department. In addition, the Labor Department has the authority to enter business places, inspect books and records, and question persons to enable the Department to determine the facts relative to such investigation.¹⁶ These inspection and examination powers correspond to the authority of securities administrators to examine registered broker/dealers, and ensure regulatory supervision of qualified plan administration.

Similarly, ERISA requires extensive recordkeeping, and mandates that certain plan administrators must furnish to participants an individual statement containing information about each participant's benefits.¹⁷ Additionally, ERISA requires each administrator of a pension plan to furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information, the total benefits accrued and the nonforfeitable pension benefits which have accrued or the earliest date on which such benefits will become nonforfeitable.¹⁸

¹³*Id.* at Sections 404(a).

¹⁴*Id.* at Section 406(b)(1).

¹⁵*Id.* at Section 411.

¹⁶*Id.* at Section 504(a).

¹⁷*Id.* at Section 105.

¹⁸Section 103 of ERISA requires plan administrators to engage an independent qualified public accountant to conduct such an examination of a financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. This requirement applies to plans covering 100 or more participants, and also mandates that the accountant shall conduct such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant.

Among other things, the annual report required in Section 103 must have information in separate schedules concerning: a statements of the assets and liabilities of the plan aggregated by categories and valued at the current value; a

The fundamental structure of ERISA and state fiduciary laws place the responsibility for the investment of retirement plan assets on plan fiduciaries, who select and monitor institutions managing plan assets and, with respect to 401(k) plans, also assure participant access to a prudent and diverse range of investments for individual accounts. Failure to fulfill these obligations in a prudent manner and solely in the interests of plan participants and beneficiaries subjects the fiduciary to ERISA's enforcement regime.

Under ERISA, a participant, beneficiary or the Secretary of Labor can bring a civil action against the fiduciary who breached his or her duties. The fiduciary is personally liable to make good to the plan any losses resulting from the breach and to restore to the plan any profits that inured to the fiduciary. The fiduciary is also subject to other equitable or remedial relief as a court may deem appropriate.

DOL DISCLOSURE INITIATIVES AFFECTING QUALIFIED PLANS

There have been significant developments at the Department of Labor concerning the range of funding options available to plan participants and the risk attributable to each option, and noteworthy strides in educating plan participants about retirement plan funding alternatives. After careful analysis and critical scrutiny, the Department of Labor issued its Section 404(c) regulations in 1992 that provide plan participants with useful additional information about, and more control over, their investment choices.¹⁹

In order to rely on the Section 404(c) regulations, a plan sponsor or plan administrator must offer at least three diversified investment vehicles, each of which has different risk and return characteristics. Further, the plan must permit participants to transfer among the vehicles at least once within each three-month period, and more frequently for investment vehicles subject to fluctuating performance patterns.

Significantly, the Section 404(c) rules require the plan sponsor to assure that plan participants are given, or can obtain, the information necessary to make an informed investment decision. At a minimum, sponsors must give employees information about each investment option, including its objectives, risk and return characteristics, and type of portfolio assets, as well as information about transfer procedures, the expenses and performance of each investment option, and a prospectus for vehicles registered under the Securities Act of 1933.

Since adopting the Section 404(c) regulations concerning fiduciary responsibilities for self-directed individual account plans, the Department of Labor issued Interpretative Bulletin 96-1 on June 6, 1996, which provides guidance to encourage employer-provided education for plan participants. The

schedule of all assets held for investment purposes aggregated and identified by issuer, borrower or lessor, maturity date in valuation and a schedule of all loans or fixed income obligations.

Section 102(a)(1) requires that the summary plan description for participants and beneficiaries shall be written in a manner calculated to be understood by the average plan participants and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. This requirement parallels the SEC's plain English initiative. Collectively, these requirements impose high thresholds for monitoring activities involving qualified plans and plan assets, and preventing abusive practices. This parallels SEC and NASD plain English and participant education initiatives.

¹⁹Section 404(c) under ERISA gives plan sponsors or plan administrators of self-directed plans protection from certain fiduciary liabilities if the conditions of Section 404(c) are followed.

Department of Labor sought to provide a safe harbor for retirement plans delineating the type of investor education that could be provided to plan participants without becoming investment advice. The Department of Labor issued this interpretation in view of the important role that investment education can play in assisting participants and beneficiaries in making informed investment and retirement-related decisions.

Interpretative Bulletin 96-1 identifies four increasingly specific categories of investment information and materials that can be provided within the ambit of investment education. These are plan information, general financial and investment information, asset allocation models, and interactive investment materials. This category includes information and materials that inform a plan participant or beneficiary about (i) general financial and investment concepts, such as risk and return, diversification, dollar cost averaging, compound returns and tax-deferred investment; (ii) historic differences in rates of return between different asset classes (*e.g.*, equities, bonds or cash) based on standard market indices; (iii) the effects of inflation; (iv) how to estimate future retirement income needs; (v) how to determine investment time horizons; and (vi) how to assess risk tolerance.

In October 1998, the Department of Labor published a detailed consumer disclosure booklet on 401(k) plan fees.²⁰ This Department of Labor action evidences active regulation of qualified plan funding vehicles.

C. OTHER FEDERAL STATUTES ENHANCING COMPLIANCE PROCEDURES AND MARKET CONDUCT

The *Federal Violent Crime Control Act of 1994* (“The Act”), and the *Federal Sentencing Guidelines for Organizations* have an important impact on the prevention of abusive sales practices. Together, these statutes provide material protections for qualified plans and their participants.

Several provisions in the *Federal Violent Crime Control Act of 1994*²¹ relate to sales practices within the insurance industry. The law punishes with fines and a jail term up to five years anyone who *participates* in the business of insurance and has been convicted of a felony involving dishonestly or a breach of trust. Likewise anyone convicted of violating the Act itself cannot participate in the business of insurance and is punished with fines and jail. There are fines and jail terms for anyone who willfully allows a person to participate in the business of insurance who has been convicted of a felony involving dishonesty or a breach of trust. Consequently, anyone who willfully *allows* a person who has been convicted of a felony involving dishonesty or a breach of trust to participate in the business of insurance will be prohibited from participating in the business of insurance themselves.

The law applies to all insurance companies, regardless of the lines of business sold or the state of domicile. Persons who “*participate*” in the business of insurance include officers, directors, agents, employees, or persons authorized to act on behalf of such persons. The “*willfully permits*” language means that even if the felony was before the effective date, that person cannot be allowed to continue to participate in the business.

²⁰On several occasions, the DOL has publicly stated its intent to develop a standardized fee disclosure statement to facilitate comparison among competing funding arrangements for 401(k) plans. See Winokur, *Labor Dept. Is Developing 1-Page Fee Disclosure Form*, *American Banker* (Nov. 6, 1998) at 6.

²¹Ch. 47, Title 18, U.S.C. at subsection 1033 (1996).

The Federal Crime Control Statute imposes an important prophylactic parallel to the NASD's barrier to statutorily disqualified individuals in the broker/dealer industry. This protection applies to all life and annuity sales, including variable annuities marketed to qualified plans.

Importantly, the *Sentencing Reform Act of 1984* has made a dramatic change in the federal court sentencing system since its enactment.²² Essentially, the law provides that evidence of effective compliance programs will be regarded favorably as mitigating factors in the imposition of sentence upon a conviction for criminal behavior. The guidelines as provided in the *United States Sentencing Commission Guidelines Manual: Sentencing of Organizations*, are:

"An effective program to prevent and detect violations of law means a program that been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal conduct. Failure to prevent or detect the instant offense, by itself, does not mean that the program was not effective. The hallmark of an effective program to prevent and detect violations of law is that the organization exercised due diligence in seeking to prevent and detect criminal conduct by its employees and other agents. Due diligence requires at a minimum that the organization must have taken the following types of steps:

- (1) The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal conduct.
- (2) Specific individual(s) within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures.
- (3) The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in illegal activities.
- (4) The organization must have taken steps to communicate effectively its standards and procedures to all employees and other agents, *e.g.*, by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.
- (5) The organization must have taken reasonable steps to achieve compliance with its standards, *e.g.*, by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report criminal conduct by others within the organization without fear of retribution.

²²The particular provisions noted above are from the *Organizational Sentencing Guidelines*, and took effect on November 1, 1991.

(6) The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense. Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however, the form of discipline that will be appropriate will be case specific.

(7) After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses -- including any necessary modifications to its program to prevent and detect violations of law."

Significantly, organizations are now strongly motivated to establish compliance standards and procedures and to monitor those procedures through a self evaluative process. Through this process, corporations can reduce exposure to liability, both criminally and civilly. Insurance and annuity consumers benefit from these initiatives.

D. 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.²³

²³IMSA's Executive Director is Brian Atcheson. An independent board of directors sets policy for IMSA.

Appendix D

ACLI Report: NASD Disciplinary Actions Involving Unsuitable Mutual Fund Sales Between May 1999 and April 2006

Date 4/25/2000

Case Number: C05990043

Edward Thomas Rush (CRD #812872, Registered Representative, Hampton Bays, New York) was fined \$48,096.89, suspended from association with any NASD member in any capacity for 50 days, and barred from association with any NASD member in any capacity. The fine shall be due and payable prior to re-entry in the securities industry. The sanctions were based on findings that Rush made unsuitable recommendations to public customers in regard to short term trading in mutual funds and did so to reap commissions. The findings also stated that Rush exercised discretion in the accounts of public customers without written authorization from the customers and prior written acceptance of the accounts as discretionary from his member firm. In addition, Rush failed to respond to NASD requests for information. (NASD Case #C05990043)

Date 6/23/2000

Case Number: C01970014

Richard Emmit Monroe (CRD #1005672, Registered Representative, Petaluma, California) submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid either prior to reassociation with a member firm following the one-year suspension or prior to any application for request for relief from any statutory disqualification from this or any other event or proceeding, whichever is earlier. Without admitting or denying the allegations, Monroe consented to the described sanctions and to the entry of findings that he recommended unsuitable purchases and sales of mutual funds to public customers and effected these transactions in the customers' accounts. The transactions were unsuitable for the customers in light of the transaction costs involved; the availability of intra-fund exchange privileges; and the customers' other security holdings, financial situations, and needs. Monroe's suspension began July 3, 2000, and will conclude at the close of business on July 2, 2001. (NASD Case #C01970014)

Date 12/27/2000

Case Number: C01000033

Donny Randall Wells (CRD #1089583, Registered Representative, Santa Rosa, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000, suspended from association with any NASD member in any capacity for four months, and required to requalify by taking and passing the Series 7 exam. Without admitting or denying the allegations, Wells consented to the described sanctions and to the entry of findings that he failed to inform public customers and his member firm, that an individual subject to an NASD bar was making false assertions and generating false documents to make customers believe that their mutual fund investments were invested with or through a member firm. Furthermore, the NASD found that Wells failed to disclose to his present member firm, in a timely manner, that he was named as a defendant in lawsuits pertaining to the individual's misconduct, and failed to keep his registration information current by amending a Form U-4 to disclose the lawsuits, in a timely manner. Wells' suspension began January 2, 2001, and will conclude at the close of business on May 1, 2001. (NASD Case #C01000033)

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Date 3/31/2001

Case Number: C05010009

Ralph C. Evans (CRD #-5042,) - Case No. C05010009 Ralph C. Evans settled the following charges without admitting or denying NASD Regulation allegations. The findings include: Evans sold a \$325,000 annuity contract into a revocable trust for the benefit of a 76-year-old widow. Funds for the purchase were derived from the sale of Class B mutual funds, for which the account incurred contingent deferred sales charges, and from a margin loan. The transaction was unsuitable because Evans had not made any determination about whether the anticipated holding period was long enough such that the tax-deferred benefits would be likely to outweigh the fees imposed on the annuity relative to other investments. These included the contingent deferred sales charges paid in connection with the sale of the mutual fund shares and the margin interest. Evans was censured, fined \$10,000, and ordered to pay restitution to the affected customer in the amount of \$20,130.61. (NASD Case #C05010009)

Date 4/30/2001

Case Number: C07010011

Jefferson Pilot Securities Corp. f.k.a. Chubb Securities (CRD #3870, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that during the course of its branch office audits and subsequent reviews of a registered representative's activities, the firm discovered a mutual fund switching by the representative. The NASD determined that, although the firm addressed the mutual fund switching with the representative, it failed to adequately address this issue in a timely manner and, therefore, failed to supervise, establish, and maintain a supervisory system that would ensure compliance with its suitability obligations. (NASD Case #C07010011)

Date 4/30/2001

Case Number: C07000075

Robert Scott Cash (CRD #2063885, Registered Representative, St. Petersburg Beach, Florida) was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 business days for engaging in outside business activities, and suspended from association with any NASD member in any capacity for 60 days for making unsuitable recommendations. The sanctions were based on findings that Cash recommended that a public customer purchase a single premium deferred annuity outside of the scope of his employment with his member firm and failed to provide prior written notice to, or receive written approval from, his member firm before such recommendation. Cash also recommended to a public customer the purchase of mutual funds and then changed the customer's account from a cash account to a margin account, without the customer's knowledge or consent, and without ever having discussed the use of margin with the customer, and engaged in a series of transactions in the customer's account that were unsuitable for the customer based upon the customer's investment objective, financial situation, and needs. Cash's suspension began April 16, 2001, and will conclude at the close of business July 24, 2001. (NASD Case #C07000075)

Date 4/30/2001

Case Number: C3B010003

Gary Dale Fresk (CRD #1075245, Registered Representative, Bellevue, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Fresk consented to the described sanctions and to the entry of findings that he recommended the sale of \$342,525 worth of mutual funds to a public customer without having reasonable grounds for believing that the recommendation was suitable for the customer. The findings also stated that Fresk exercised discretionary power in the customer's account, without the customer's prior written authorization or without the written acceptance of the account as discretionary by his member firm. Fresk's suspension began April 16, 2001, and concluded at the close of business April 25, 2001. (NASD Case #C3B010003)

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Date 4/30/2001

Case Number: ACLI05044

Stifel, Nicolaus & Company, Inc. (CRD #793, St. Louis, Missouri) and two individuals, Michael G. Grimes and his supervisor, William J. Lasko, for violating NASD rules in connection with the sale of Class B mutual fund shares. NASD Regulation found that between June 1996 and May 1998, Grimes made unsuitable sales totaling over \$7 million to 44 customers in Class B mutual fund shares, and that Lasko and the firm failed to supervise Grimes with respect to these unsuitable sales. As part of a settlement with the NASD, Stifel has agreed to exchange the Class B shares sold to these customers for Class A shares at no charge. The cost of this restitution offer, should every customer make the exchange, is approximately \$225,000, which will be paid jointly by Stifel and Grimes. Mutual funds can be offered for sale to investors in different classes. In this case, the Class A shares incurred a front-end sales load, but had lower on-going expenses than Class B shares. Customers who purchased Class B shares did not pay a sales charge at the time of purchase, but may have paid a charge when they sold their shares, unless they held them for six years. B Shares also incurred higher on-going distribution expenses than Class A shares. Over a two-year period, NASD Regulation found that Grimes engaged in a pattern of making unsuitable recommendations of Class B shares to customers. He recommended that each of 15 customers purchase over \$250,000 in Class B shares, when it would have been more cost-effective for those customers to purchase Class A shares. In fact, the fund had a maximum purchase limitation of \$250,000 in Class B shares. NASD Regulation found that recommendations to purchase over \$250,000 in Class B shares exceeded the maximum purchase limitation and were unsuitable in light of the amount sold, the sales and distribution charges incurred and because the customers could have purchased the A Shares with substantially lower sales charges. Stifel failed to supervise by not having a system in place to detect sales in excess of the maximum purchase limits on the funds it sold. NASD Regulation found that Stifel and Grimes earned sales commissions of over \$290,000 or four percent of the purchase on the sale of Class B shares. The sales commissions would have been less than half this amount had they sold Class A shares. In another instance, NASD Regulation found that Grimes recommended to 29 customers that they liquidate another mutual fund and purchase, in the aggregate, over \$500,000 of Class B shares. Again, the customers were eligible to purchase Class A shares, the more cost-effective purchase at the time because of a temporary marketing promotion offered by the fund that eliminated a sales load at either the time of purchase or the time of sale. Stifel and Grimes earned \$21,000 on the sale of these Class B shares, and would not have earned any sales commission had they sold Class A shares. As a result of the NASD disciplinary action, Grimes has been suspended for 30 days and will pay a fine of was fined \$30,000. Lasko has been suspended for 10 days in a supervisory capacity, and has been fined, together with the firm, \$25,000. Stifel has agreed to pay a total fine of was fined \$41,000, which includes the violations noted above. Both the firm and the two respondents have neither admitted nor denied the allegations, but have consented to the entry of findings pursuant to the settlement. (NASD Case #ACLI05044)

Date 5/31/2001

Case Number: C3B940028

Kenneth Craig Krull (CRD #730915, Registered Representative, Bellingham, Washington) was censured, fined \$20,000, barred from association with any NASD member in any principal or supervisory capacity, and suspended from association with any NASD member in any capacity for one year. In addition, Krull was required to requalify as a general securities representative prior to reassociating with any NASD member and ordered to pay \$81,705 in restitution to public customers. The Ninth U.S. Court of Appeals affirmed the sanctions following appeal of a December 1998 SEC decision. The sanctions were based on findings that Krull recommended unsuitable mutual fund switches in the accounts of public customers without having reasonable grounds for believing that such transactions were suitable for the customers in view of the frequency of the transactions, the type of transaction being recommended, and the customers' financial situations, circumstances, and needs. Krull's bar in any principal or supervisory capacity became effective July 25, 1997. Krull's suspension in any capacity began June 4, 2001, and will conclude at the close of business June 3, 2002. (NASD Case #C3B940028)

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Date 9/30/2001

Case Number: C07010053

Norman Gerald Lieberman (CRD #823757, Registered Representative, Weston, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 30 days and further suspended in all capacities after the expiration of the 30-day suspension until he requalifies. In light of his financial status, no monetary sanction was imposed. Without admitting or denying the allegations, Lieberman consented to the described sanctions and to the entry of findings that he recommended to a public customer the purchase of securities, including mutual funds on a short-term basis with the use of margin, without having reason to believe such recommendations were suitable for the customer in light of the customer's investment objectives and financial situation. Lieberman's suspension began August 6, 2001, and concluded at the close of business September 4, 2001. (NASD Case #C07010053)

Date 10/31/2001

Case Number: C3B010014

Robert David Trowbridge (CRD #1314808, Registered Principal, Sedro-Woolley, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$50,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Trowbridge reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Trowbridge consented to the described sanctions and to the entry of findings that, while acting as an investment adviser, he recommended and engaged in transactions in the managed accounts of public customers involving the purchase on margin of speculative, low-priced equity securities totaling \$616,108 without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers on the basis of their financial situations, investment objectives, and needs. In connection with the managed accounts, the findings also stated that Trowbridge's purchase of individual equity securities did not comply with the mutual fund timing & asset allocation service agreements executed by the public customers that permitted him to purchase or sell individual equity securities for their managed accounts. Trowbridge did not receive commissions and was compensated through periodic fee payments. Trowbridge's suspension began September 17, 2001, and will conclude at the close of business September 16, 2003. (NASD Case #C3B010014)

Date 10/31/2001

Case Number: C02010003

Robert David Mayfield (CRD #2386752, Registered Representative, Sun City, California) submitted an Offer of Settlement in which he was censured, fined \$8,451.50, and ordered to pay \$2,219.50 in restitution to public customers. Without admitting or denying the allegations, Mayfield consented to the described sanctions and to the entry of findings that he recommended to public customers the purchase and sale of securities without having reasonable grounds for believing that such recommendations were suitable for the customers in light of the nature of the transactions and the facts disclosed by the customers as to their other securities holdings, financial situation, investment objectives, circumstances, and needs. The findings also stated that Mayfield engaged in unethical conduct in that he provided the customers and his member firm with a materially false and misleading mutual fund switch form, negatively impacting their ability to assess the suitability of the transactions accurately. (NASD Case #C02010003)

Date 11/30/2001

Case Number: C8A010079

Leader Investments, Inc. (CRD #42927, Arlington Heights, Illinois) and Richard Joseph Kapsch, Sr. (CRD #876560, Registered Principal, Palatine, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$27,500, jointly and severally, which includes restitution of \$10,712.91 to a public customer and disgorgement of \$8,868. The firm agreed to amend its written supervisory procedures relating to its mutual fund business to the satisfaction of the NASD. Kapsch was suspended from association with any NASD member in any principal capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kapsch, failed to supervise a registered representative by failing to promptly detect and take adequate steps to curtail the excessive and unsuitable trading in mutual fund shares by the representative in the individual

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retirement account (IRA) of a public customer. The findings also stated that the firm, acting through Kapsch, failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to the firm's mutual fund business in that, among other things, the firm's procedures failed to include a sufficiently clear identification of the person(s) responsible for ensuring compliance; a statement as to what steps and reviews will be taken by the responsible person to ensure compliance; a statement as to how often the responsible person will conduct such reviews; and a statement as to how such reviews will be evidenced. Kapsch's suspension will begin December 17, 2001, and will conclude at the close of business January 15, 2002. (NASD Case #C8A010079)

Date 2/28/2002

Case Number: C04020002

Dain Rauscher, Inc. (CRD #31184 Minneapolis, Minnesota) and Gary Franklin Hayden (CRD #240386, Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. In addition, the firm and Hayden were jointly and severally liable for costs of the exchange of shares offered to public customers of \$82,942.87 and Hayden was fined \$15,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Hayden recommended the purchase of Class B shares of growth funds to public customers and omitted to inform the customers that they would have benefited from investing in Class A shares because of the ability to receive discounts on sales charges of large purchases and the lower ongoing fees and expenses of the Class A shares. The findings also stated that Hayden failed to disclose material facts necessary to make the statements made in the course of his recommendations not misleading, including a comparison of the 12b-1 fees, front-end sales charges, and the impact of time on these costs and charges; thus, the customers were not adequately informed of their investment options. The NASD determined that the firm failed to maintain adequate procedures to provide for the prompt review of large purchases of Class B mutual funds or otherwise provide specific tools or other supervisory policies to assist its sales practice supervisors in adequately assessing the suitability of Class B share purchases by public customers. Furthermore, the findings stated that the firm had no automated or manual system in place to detect mutual fund breakpoints, purchase limitations, or problematic patterns in Class B share purchases of mutual funds. Finally, the firm's written supervisory procedures gave no direction to branch office managers or other supervisors as to how to detect and prevent breakpoint problems, Class B share purchase suitability problems, and how to evidence their supervisory review. Hayden's suspension began February 19, 2002, and concluded at the close of business March 4, 2002. (NASD Case #C04020002)

Date 4/30/2002

Case Number: C06020002

Steven Mark Reed (CRD #2642807, Registered Representative, Suisun, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Reed consented to the described sanctions and to the entry of findings that he recommended and engaged in purchase and sale transactions in the accounts of a public customer which involved mutual fund switching without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer based on her security holdings, financial situation, and needs. Reed's suspension began May 6, 2002, and concluded at the close of business May 10, 2002. (NASD Case #C06020002)

Date 5/31/2002

Case Number: C02020017

Joseph Gantcharevitch (CRD #858617, Registered Representative, Whittier, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$3,614, suspended from association with any NASD member in any capacity for 10 days, and required to pay \$19,554 in restitution to a public customer. Without admitting or denying the allegations, Gantcharevitch consented to the described sanctions and to the entry of findings that he recommended unsuitable mutual fund transactions to a public customer without a reasonable basis to believe that the transactions were suitable for the customer in light of the nature of the transactions and the facts disclosed by the customer regarding her other securities

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holdings, financial situation, and needs. Gantcharevitch's suspension began June 3, 2002, and concluded at the close of business June 12, 2002. (NASD Case #C02020017)

Date 5/31/2002

Case Number: C05020015

James Michael Spaulding (CRD #1277538, Registered Representative, Huntland, Tennessee) and Donald Carl Dickson (CRD #67486, Registered Principal, Huntsville, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which Spaulding was fined \$15,000 and suspended from association with any NASD member in any capacity for 10 days. Dickson was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 10 days. The fine must be paid before Dickson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Spaulding recommended and effected sales of class B mutual fund shares in the aggregate amount of \$3,000,000 to a public customer without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation and needs. The findings also stated that Dickson, in connection with Spaulding's unsuitable transactions, failed and neglected to adequately supervise Spaulding in that he neglected to follow his member firm's written procedure requiring branch managers to obtain written approval from a customer when aggregate investments in mutual funds of more than \$1 million are not invested in class A shares. Spaulding's suspension began May 20, 2002, and concluded at the close of business May 29, 2002. Dickson's suspension began May 20, 2002, and concluded at the close of business May 30, 2002. (NASD Case #C05020015)

Date 9/30/2002

Case Number: C9B020053

First Montauk Securities Corp. (CRD #13755, Red Bank, New Jersey) and Herbert Kurinsky (CRD #276776, Registered Representative, Long Branch, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$25,000 jointly and severally. The firm was also fined \$20,000, required to pay \$17,293 in restitution to public customers, and required to update its written supervisory procedures to address deficiencies regarding its mutual fund procedures. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kurinsky, failed to establish, maintain, and enforce an adequate supervisory system and written supervisory procedures regarding its mutual fund business. The findings stated that the firm failed to reasonably supervise a former registered representative who was engaged in a pattern of unsuitable mutual fund recommendations to public customers. NASD found that the firm incorrectly reported the trader in National Market Securities (NMS), NASDAQ SmallCapSM and OTC securities to the Automated Confirmation TransactionSM service (ACTSM) and reported the incorrect modifier, incorrect price, incorrect volume, and incorrect capacity. Furthermore, NASD found that the firm failed to report trades to the Fixed Income Pricing SystemSM (FIPSSM) as required, and executed a customer order without using reasonable diligence to determine the best inter-dealer market for the relevant security so that the resultant price to the customer was as favorable as possible under prevailing market conditions. In addition, the findings stated that the firm failed to comply with Securities and Exchange Commission (SEC) Rule 17a-3, in that order tickets processed by the firm were not properly time-stamped. (NASD Case #C9B020053)

Date 9/30/2002

Case Number: C9B020057

Harry Michael Anthony (CRD #2356706, Registered Representative, Belle Vernon, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, required to pay \$1,600 in disgorgement of commissions, and required to pay \$1,375 in restitution to public customers. In addition, Anthony will attend sales-practice training with an emphasis on mutual fund-related issues. The fine must be paid before Anthony reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Anthony consented to the described sanctions and to the entry of findings that he made unsuitable mutual fund recommendations to his member firm's customers and engaged in short-term trading in a customer's account. The findings also stated that Anthony engaged in unsuitable switching by recommending that a customer switch from Class A shares to

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Class B shares in different fund families. NASD determined that these recommendations were unsuitable because there were funds within a family of funds that were sold with investment objectives and holdings comparable to the funds that were purchased. The findings stated that the customer could have taken advantage of "free exchanges" within his existing funds at no additional cost. Instead, the customer incurred higher fees and a contingent deferred sales charge period while Anthony received a full commission on each new purchase. In addition, NASD determined that Anthony effected transactions in the account of a public customer without obtaining prior written authorization from the customer and written acceptance of the account as discretionary by his member firm. Anthony's suspension began October 7, 2002, and will conclude at the close of business October 18, 2002. (NASD Case #C9B020057)

Date 9/30/2002

Case Number: C9B020054

Jordan Robert Belkin (CRD #2955234, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for nine months and required to requalify by exam as a general securities representative. In light of the bankruptcy filing, no monetary sanction has been imposed. Without admitting or denying the allegations, Belkin consented to the described sanctions and to the entry of findings that he engaged in a pattern of unsuitable mutual fund recommendations to public customers. NASD found that Belkin failed to ensure that his customers obtained the benefit of breakpoints, mutual fund promotions, and rights of accumulations to lower transaction costs; engaged in unsuitable switching by failing to utilize free exchanges; and engaged in unsuitable short-term trading in customer accounts. The findings also stated that Belkin failed to disclose to certain customers cost-savings available through letters of intent, breakpoints, and rights of accumulation. NASD determined that as a result of Belkin's recommendations, the customers incurred unnecessary charges totaling \$35,000, while Belkin generated an additional \$20,000 in commissions for himself. Belkin's suspension began September 16, 2002, and will conclude June 15, 2003. (NASD Case #C9B020054)

Date 9/30/2002

Case Number: C9B020056

Dale Edward Groce (CRD #2869325, Registered Representative, Glenshaw, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, suspended from association with any NASD member in any capacity for 10 business days, and required to pay \$18,800 in disgorgement of commissions. Groce also will attend sales practice training. Without admitting or denying the allegations, Groce consented to the described sanctions and to the entry of findings that he made unsuitable mutual fund recommendations to his member firm's customers. NASD found that Groce recommended that customers switch from Class A to Class B shares in different fund families. The findings stated that these recommendations were unsuitable because there were funds within the family of funds that were sold with investment objectives and holdings comparable to the funds that were purchased. As a result, customers could have taken advantage of "free exchanges" within their existing funds at no additional cost. Instead, the customers incurred higher fees and a contingent deferred sales charge period, while Groce received a full commission on each new purchase. In addition, NASD found that Groce also failed to take advantage of a promotion by one mutual fund family that was offering discounted sales charges and lower contingent deferred sales charges on certain shares, and received additional commissions through the unsuitable recommendations. Groce's suspension began September 16, 2002, and concluded at the close of business September 27, 2002. (NASD Case #C9B020056)

Date 9/30/2002

Case Number: C9B020055

George Michael Loughry (CRD #1241921, Registered Representative, Greensburg, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, suspended from association with any NASD member in any capacity for 10 business days, and required to disgorge \$4,250 in commissions received. In addition, Loughry will attend sales practice training with an emphasis on mutual fund issues. The fine must be paid before Loughry reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Loughry consented to the described sanctions and to the entry of findings that he made unsuitable mutual fund recommendations to his member firm's customers. NASD found that Loughry recommended that customers switch from Class A shares to Class B shares in different fund families. NASD

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determined that these recommendations were unsuitable because there were funds within a family of funds that were sold with investment objectives and holdings comparable to the funds that were purchased. The findings stated that, as a result, the customers could have taken advantage of "free exchanges" within their existing funds at no additional cost; instead, the customers incurred higher fees and a contingent deferred sales charge period while Loughry received a full commission. Loughry's suspension began September 16, 2002, and concluded at the close of business September 27, 2002. (NASD Case #C9B020055)

Date 9/30/2002

Case Number: C05010012

Wendell D. Belden (CRD #1324913, Registered Principal, Tulsa, Oklahoma) NASD's National Adjudicatory Council (NAC) upheld an NASD Hearing Panel's decision that Wendell D. Belden made unsuitable sales of Class B mutual fund shares. Belden is the sole owner of Southmark, Inc. based in Tulsa, OK. He was fined \$40,000, suspended in all capacities for one year, and ordered to pay restitution of \$55,567, plus interest. Belden was also ordered to requalify as a principal by examination and assessed costs of the proceeding. The NAC determined that a registered representative's suitability obligation includes the requirement to minimize the sales charges paid for mutual fund shares, when consistent with the customer's investment objectives. In this case, the NAC found that the recommendations were unsuitable because the purchase of Class B shares instead of Class A shares of the same fund resulted in significantly higher commission costs, including the payment of a contingent deferred sales charge upon the sale of the shares. Specifically, Belden recommended and sold more than \$2.1 million in Class B shares rather than A shares to his customer, a retired individual. While Class A shares typically involve a front-end sales charge, these fund shares incur lower ongoing charges and there is no contingent deferred sales charge upon the sale of the shares. Class B mutual fund shares generally do not incur a front-end sales charge, but are subject to higher ongoing charges and a contingent deferred sales charge upon the sale of shares. In this case, the customer purchased shares in two mutual fund families. The amount invested in one fund family was more than \$1 million dollars, which would have entitled the customer to purchase Class A shares with no front-end sales charge. The customer's investment in the second fund family was over \$800,000, which would have entitled the customer to receive the largest discount on the front-end sales charge offered by the fund. The NAC stated that over an eight-year period the ongoing fund charges for Class B shares would have been 64 percent higher than the same charge for Class A shares. The NAC also found that Belden placed his customer in Class B shares to generate higher commissions for himself and explained that its finding was bolstered by Belden's statement that he could not stay in business if he had to rely on the lower commissions from the sale of Class A shares. In this case, Belden and his employer firm earned commissions on the sale of B shares of \$84,000. The commissions on the sale of A shares would have only been \$28,000. Belden appealed a Nov. 12, 2001, hearing panel decision that imposed a 90-day suspension along with the monetary sanctions affirmed by the NAC. The NAC increased the suspension because "Belden intentionally favored his financial interest to the detriment of one customer." Belden has since appealed the NAC decision to the SEC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C05010012)

Date 10/31/2002

Case Number: C11020036

Allmerica Investments, Inc. (CRD #3960, Worcester, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish an adequate supervisory system reasonably designed to prevent and detect unsuitable mutual fund transactions in customer accounts. The findings also stated that the firm failed to establish reasonable written supervisory procedures for identifying the process the firm used in reviewing and detecting unsuitable mutual fund transactions, and to the extent the firm had written supervisory procedures related to mutual fund transactions, the firm failed to take steps to ensure that the procedures were followed. (NASD Case #C11020036)

Date 12/31/2002

Case Number: C9B020082

C.J.M. Planning Corporation (CRD #5698, Pompton Lakes, New Jersey) and Joseph Charles Musumeci (CRD #821112, Registered Principal, Waldwick, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$55,000, jointly and severally. Musumeci was also

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suspended from association with any NASD member in any principal capacity for 14 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Musumeci, failed to establish, maintain, and enforce adequate written supervisory procedures regarding the variable annuity business. In addition, the findings stated that the firm, acting through Musumeci, failed to maintain customer account records for customers who had purchased units in an offering and mutual fund shares. NASD found that the firm, acting through Musumeci, failed to maintain complete customer account and suitability information for customers who purchased variable annuity contracts. The findings also stated that the firm, acting through Musumeci, failed to comply with the Firm Element of NASD's Continuing Education Rule in that the firm failed to prepare a written needs analysis and training plan for 2000, and failed to maintain records documenting the content of its continuing education programs and completion of the programs by covered registered persons. Musumeci's suspension began December 2, 2002, and concluded at the close of business on December 16, 2002. (NASD Case #C9B020082)

Date 4/30/2003

Case Number: C9B030015

Citistreet Equities, LLC (CRD #7447, East Brunswick, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to enforce its written supervisory procedures regarding the review of mutual fund and variable annuity transactions. The findings also stated that the firm failed to obtain principal review of variable annuity and mutual fund transactions. In addition, NASD found that the firm failed to maintain complete customer account and suitability information. (NASD Case #C9B030015)

Date 7/31/2003

Case Number: ACLI05119

McLaughlin, Piven, Vogel Securities, Inc. (MPV) (CRD #7404, New York) and its Chairman were censured and fined \$100,000 for supervisory violations and unsuitable sales of Class B shares of mutual funds, and directed restitution of approximately \$90,000 to customers. Additionally, NASD suspended MPV's Chairman James C. McLaughlin for a period of 30 business days in his capacity as a principal. Today's action is part of a larger, ongoing focus of NASD on the sale of Class B mutual fund shares. In the last two years NASD has brought more than half a dozen significant enforcement cases involving sales violations of Class B shares. In the enforcement action, NASD found that from June 1998 through May 2002, MPV violated NASD's suitability rules by recommending purchases of large volumes of Class B shares of mutual funds in the accounts of 21 MPV customers totaling approximately \$9.3 million. The large purchases of Class B shares deprived customers of the lower or potentially lower sales charges available through Class A shares of the same funds. In one instance, a broker recommended the purchase of Class B shares of mutual funds in four different fund families for a single customer's account in lieu of the less costly Class A shares. The positions accumulated in these shares in each of the fund families ranged from \$375,000 to \$650,000. NASD also found that MPV and its Chairman and supervisory principal, James C. McLaughlin, failed to establish, maintain, and enforce an adequate supervisory system that would have detected and prevented the unsuitable large Class B share positions. In settling this matter, MPV and McLaughlin neither admitted nor denied the allegations, but consented to the entry of findings. MPV also agreed to hire an independent consultant to review and recommend revisions to its supervisory system in connection with its investment company securities business. (NASD Case #ACLI05119)

Date 7/31/2003

Case Number: C9B030046

Qimat R. Goyal (CRD #-5120, Roseland, New Jersey), associated with Marsco Investment Corp., of Roseland, NJ, was fined \$48,346 and suspended for nine months for unsuitable mutual fund B share recommendations to five customers (NASD Case #C9B030046)

Date 7/31/2003

Case Number: C9A030025

Robert Barmen (CRD #-5123, Pennsylvania), associated with UBS Financial Services, Inc.'s Pittsburgh, PA office, was fined \$2,500 and suspended for 10 business days for unsuitable mutual fund B share recommendations to a customer. (NASD Case #C9A030025)

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Date 8/31/2003

Case Number: C05010012

Wendell Duane Belden (CRD #1324913, Registered Principal, Tulsa, Oklahoma) was fined \$40,000, required to pay \$55,567.03, plus interest, in restitution to the estate of a public customer, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam as a principal before functioning in any principal capacity. The SEC affirmed the sanctions following an appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that Belden made unsuitable recommendations to a public customer by recommending Class B mutual fund shares instead of Class A shares in order to receive higher commissions. Belden's suspension began August 18, 2003, and will conclude at the close of business August 17, 2004. (NASD Case #C05010012)

Date 9/30/2003

Case Number: C02030049

Richard Allen Adler (CRD #846959, Registered Principal, Bluffon, South Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$108,948, including disgorgement of \$88,948 in ill-gotten gains, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Adler reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Adler consented to the described sanctions and to the entry of findings that he recommended unsuitable mutual fund transactions to a public customer without a reasonable basis to believe that the transactions were suitable for the customer in light of the nature of the transactions and the facts disclosed by the customer regarding her other securities holdings, financial situation, and needs. Adler's suspension began September 15, 2003, and will conclude at the close of business September 14, 2004. (NASD Case #C02030049)

Date 9/30/2003

Case Number: C06030019

David Lowell Walch (CRD #1242890, Registered Principal, Provo, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 18 months. In light of the financial status of Walch, no monetary sanction has been imposed. Without admitting or denying the allegations, Walch consented to the described sanction and to the entry of findings that he recommended and effected high-risk mutual fund transactions for public customers without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers on the basis of the customers' financial situation and needs. Walch's suspension will begin October 20, 2003, and will conclude at the close of business April 19, 2004. (NASD Case #C06030019)

Date 10/31/2003

Case Number: C07030061

Robert Waldo Leavenworth (CRD #2766524, Registered Representative, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, ordered to disgorge \$5,232.86 in commissions as partial restitution to public customers, and suspended from association with any NASD member in any capacity for 90 days. The fine and disgorgement must be paid before Leavenworth reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Leavenworth consented to the described sanctions and to the entry of findings that he made unsuitable recommendations to public customers in that he failed to recommend the lowest cost alternative to customers when recommending the purchase of loaded mutual funds. Leavenworth's suspension began September 17, 2003, and will conclude December 13, 2003. (NASD Case #C07030061)

Date 10/31/2003

Case Number: C02030067

XCU Capital Corporation, Inc. (CRD #19899, Carlsbad, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$87,000, and required to offer to convert the B shares of public customers to A shares at its expense using a letter that includes a comparison of the cost of purchasing B shares with the cost of purchasing A shares over at least seven years and that includes the effect of internal expenses. The firm shall also require in-person attendance of all of its registered

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representatives and principals at a training program that addresses the economic considerations applicable to the recommendations of B shares and the availability of sales charge breakpoints. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through its agents, recommended and effected, or caused to be effected, purchases of large positions of Class B mutual fund shares in customer accounts without a reasonable basis for believing them to be suitable for the customers. The findings stated that the firm, acting through its agents, failed to establish, maintain, and enforce a supervisory system reasonably designed to enable the firm and its supervisors to prevent and detect unsuitable large Class B share positions. The findings further stated that the firm, acting through a registered representative, utilized sales materials that consisted of a hypothetical sales charge projection that was unbalanced and failed to provide prospective investors with a sound basis for evaluating the facts. NASD also found that the firm failed to file the projection with NASD's Advertising Regulation Department. (NASD Case #C02030067)

Date 12/31/2003

Case Number: C9B030080

Calvin Livingston Coolidge, II (CRD #1029033, Registered Supervisor, Milford, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, suspended from association with any NASD member in any capacity for six months, and ordered to pay \$20,384, plus interest, in restitution to a public customer. The fine and restitution must be paid before Coolidge reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Coolidge consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in the account of a public customer that were unsuitable. The findings also stated that Coolidge recommended and effected various transactions in Class B mutual funds for the customer that were unsuitable because Class A shares should have been recommended, as the customer would have received breakpoints reducing the cost of the Class A front-end sales charges, paid lower ongoing expenses, and avoided contingent deferred sales charges if Class A shares had been recommended and purchased. Coolidge's suspension began January 5, 2004, and will conclude July 4, 2004. (NASD Case #C9B030080)

Date 12/31/2003

Case Number: C07030081

John Carroll Gallo (CRD #1892609, Registered Representative, Indialantic, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 15 days, and ordered to pay disgorgement of \$25,122 in commissions in partial restitution to a public customer. Without admitting or denying the allegations, Gallo consented to the described sanctions and to the entry of findings that he recommended to a public customer that it purchase over \$2 million in Class B mutual fund shares on the basis that the customer would not pay any up-front sales charges. The findings stated that Gallo's recommendations were unsuitable based on the dollar amount being invested by the customer, as the customer could have invested in Class A shares without paying any up-front sales charges and the Class A shares have lower on-going expenses than Class B shares and no contingent deferred sales charge. Gallo's suspension began January 5, 2004, and will conclude at the close of business January 19, 2004. (NASD Case #C07030081)

Date 1/31/2004

Case Number: C06030042

MONY Securities Corporation (CRD #4386, Dallas, Texas), Joseph Francis Presutti, Jr. (CRD #367520, Registered Principal, Paradise Valley, Arizona), and Irving Mestel (CRD #1172195, Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$35,837, including disgorgement of \$30,837 in commissions; fined \$5,000, jointly and severally with Presutti; and required to undertake to offer a customer the opportunity to exchange the Class B shares she currently holds for Class A shares at the price at which the Class A shares could have been purchased at the time of the customer's purchase of the Class B shares within 30 business days. Presutti was also suspended from association with any NASD member in any principal capacity for 20 business days. Mestel was fined \$36,867, including disgorgement of \$29,367 in commissions, fined \$7,500, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Mestel

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recommended that a public customer purchase more than \$1.5 million worth of Class B mutual fund shares in 10 different mutual fund families. NASD found that Mestel's recommendations were unsuitable for the customer in light of the dollar amount being invested. The findings also stated that the firm, acting through Presutti, failed to reasonably supervise Mestel in connection with his unsuitable investment recommendations to a public customer. Mestel's suspension will begin February 17, 2004, and will conclude at the close of business March 17, 2004. Presutti's suspension will begin February 17, 2004, and will conclude at the close of business March 15, 2004. (NASD Case #C06030042)

Date 1/31/2004

Case Number: C02030073

James Clinton Pearce (CRD #1206325, Registered Principal, Ashburn, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 30 business days, and ordered to requalify as a general securities representative within 90 days following the suspension. Without admitting or denying the allegations, Pearce consented to the described sanctions and to the entry of findings that he recommended and effected, or caused to be effected, purchases of large positions of mutual funds in the accounts of public customers. The findings stated that Pearce's recommendations were made without a reasonable basis for believing them to be suitable for the customers. Pearce's suspension will begin February 17, 2004, and will conclude at the close of business March 29, 2004. (NASD Case #C02030073)

Date 1/31/2004

Case Number: C06030044

Jere Boyd Spurlock (CRD #1039936, Registered Representative, Fort Worth, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, including disgorgement of \$2,360 in earned commissions, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Spurlock consented to the described sanctions and to the entry of findings that, while associated with a member firm, he recommended that a public customer switch from an income-producing mutual fund to a high-risk capital appreciation fund without having reasonable grounds for believing that the recommendation and resultant transaction were suitable for the customer. The findings also stated that, to effect the unsuitable recommendation, Spurlock included inaccurate information on the customer profile used to make the investment. NASD found that Spurlock advised the customer to redeem his existing fund, and then he retrieved the proceeds of the redemption from the customer and used them to make the new investment. NASD determined that this, together with indicating that the source of funds for the new investment was from discretionary income, prevented the "switch" letter that was required pursuant to the member firm's procedures from being generated. Spurlock's suspension will begin February 17, 2004, and will conclude at the close of business March 29, 2004. (NASD Case #C06030044)

Date 1/31/2004

Case Number: ACLI06612

John Steven Blount (CRD #2253398, Registered Representative, Lake Charles, Louisiana) has been barred from association with any NASD-regulated securities firm and ordered to pay more than \$1.5 million in restitution plus interest to 10 customers for unsuitable sales of variable annuities and mutual funds totaling over \$6 million. The unsuitable sales by Blount generated almost \$220,000 in commissions. NASD found that Blount schemed to defraud investors and to frustrate attempts by his employer to supervise his activities. The transactions took place between 1998 and 2001 while Blount was a registered representative of NYLife Securities, Inc. This settlement follows an NASD complaint filed last July that charged Blount with these violations. Blount's customers were older, conservative investors who were generally seeking current income from their investments. NASD found that Blount's investment recommendations exposed his customers to excessive market risk, lacked sufficient liquidity, and failed to address the customers' needs for current income. In one instance, the customer was a 62-year-old retiree who wished to keep his principal investment safe, and had told Blount that he anticipated the need within a few months for \$50,000 to buy a car and to make home repairs. Despite the customer's near-term need for liquidity, Blount recommended that the customer invest almost all of his liquid assets in a variable annuity contract that imposed surrender charges for early withdrawals during the first six years of the contract. Furthermore, Blount recommended allocating the investment to high-risk sub-accounts that were not consistent with the customer's desire to

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keep his principal safe. In order to buy a car and make home repairs, the customer was forced to draw on his home equity and subsequently had to take early withdrawals from his variable annuity to make the resulting loan payments. NASD also found that Blount misrepresented material features of the variable annuities in order to induce customers to purchase the products. Additionally, in an effort to circumvent his firm's review of annuity and mutual fund transactions, Blount directed his sales assistant to falsify firm records regarding customers' financial situations and investment objectives. (NASD CASE #ACLI06612)

Date 2/29/2004

Case Number: C3A040005

SunAmerica Securities, Inc. (CRD #20068, Phoenix, Arizona) and Michael Robert Roeser (CRD #1304673, Registered Principal, Libertyville, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$75,000, and ordered to pay a cash settlement in the amount of \$105,769.86 to public customers. The firm was also ordered to establish procedures regarding recommendations of Class B share purchases and to require its representatives and principals to complete an online training module that addresses the economic considerations applicable to the recommendation of Class B shares, the availability of sales charge breakpoints, and the use of Mutual Fund Analyzers/ Calculators that compare the expenses of the different fund classes. Roeser was fined \$5,000; ordered to pay \$39,000 to public customers, which represents disgorgement of his additional commissions earned by selling Class B shares; suspended from association with any NASD member in any capacity for 30 days; and ordered to requalify as an investment company and variable contracts representative. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Roeser, recommended and sold approximately \$9.6 million of Class B mutual fund shares to public customers and, because the purchase of Class B shares were recommended, the customers did not obtain the benefit of sales charge breakpoints to which they would have been entitled if the accounts had purchased Class A shares in fewer funds and fund families. The findings also stated that the recommendations to purchase Class B shares were unsuitable because the internal expenses of the Class B shares over the period that the customers expected to hold the shares exceeded the amount of the sales charges that would have been paid on the purchase of Class A shares, thus costing the customers more to purchase and hold Class B shares than Class A shares. In addition, NASD determined that the firm failed to establish, maintain, and enforce adequate written proceedings and a supervisory system reasonably designed to detect and prevent unsuitably large purchases of Class B mutual fund shares. Roeser's suspension began March 1, 2004, and will conclude at the close of business March 30, 2004. (NASD Case #C3A040005)

Date 2/29/2004

Case Number: C3A030036

Robert Michael Dooley (CRD #2735594, Registered Representative, Highlands Ranch, Colorado) was fined \$49,400, suspended from association with any NASD member in any capacity for two years, and ordered to pay \$4,258 in restitution to a public customer. The sanctions were based on findings that Dooley made unsuitable recommendations to a public customer to purchase mutual funds without having a reasonable basis for believing that the recommendations made were suitable for the customer, based on the customer's circumstances and needs. Dooley's suspension began February 17, 2004, and will conclude at the close of business February 16, 2006. (NASD Case #C3A030036)

Date 2/29/2004

Case Number: C3B040001

James Allen Kenas (CRD #2095140, Registered Principal, Coeur d'Alene, Idaho) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for six months. In light of the financial status of Kenas, no monetary sanction has been imposed. Without admitting or denying the allegations, Kenas consented to the described sanction and to the entry of findings that he made recommendations to public customers that they purchase \$80,000 in mutual fund shares using the proceeds from a mortgage on their home. The findings also stated that Kenas' recommendations were made without reasonable grounds for believing that such recommendations were suitable for the customers upon the basis of the facts disclosed by the customers as to their other security holdings, financial situation, and needs. Kenas' suspension began March 1, 2004, and will conclude at the close of business August 31, 2004. (NASD Case #C3B040001)

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Date 2/29/2004

Case Number: C05040006

Leaudria Maria Polk (CRD #2136432, Registered Representative, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$15,000, including disgorgement of \$2,798.92 in financial benefits received, and suspended from association with any NASD member in any capacity for four months. Without admitting or denying the allegations, Polk consented to the described sanctions and to the entry of findings that she recommended and effected a series of transactions for public customers without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of the customers' financial situations and needs. The findings also stated that Polk sent communications to public customers in connection with the sale of equities and mutual funds that failed to present the risks of the security in a balanced manner, contained unwarranted and misleading statements, omitted material facts, and included exaggerated statements and claims. In addition, NASD found that the communications contained annual rates of return and projections of returns that appeared to predict investment results. Polk's suspension will begin April 1, 2004, and will conclude July 31, 2004. (NASD Case #C05040006)

Date 2/29/2004

Case Number: C04040002

Timothy Patrick Shively (CRD #1664561, Registered Representative, San Antonio, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$200,000, including disgorgement of \$147,193.26 in commissions, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Shively consented to the described sanctions and to the entry of findings that he recommended that public customers purchase and accumulate large positions in mutual fund Class B shares without a reasonable basis to believe that the recommendations were suitable because the customers could have purchased Class A shares with a reduced sales charge by applying breakpoints, using letters of intent, and/or using rights of accumulation. The findings also stated that Shively recommended that public customers purchase mutual fund Class B shares without a reasonable basis to believe that the recommendations were suitable because the customers who were liquidating other mutual funds and incurring liquidation charges could have purchased Class A shares at net asset value, would have incurred lower annual costs, and would not have been subject to contingent deferred sales charges (CDSCs). NASD also found that Shively recommended that public customers purchase mutual fund Class B shares without a reasonable basis to believe the recommendations were suitable because the customers could have purchased other share classes with lower charges and/or fees, and, by utilizing the breakpoints available through the other share classes, the customers could have reduced or eliminated CDSCs. Shively's suspension will begin April 16, 2004, and will conclude at the close of business July 15, 2004. (NASD Case #C04040002)

Date 2/29/2004

Case Number: C05040001

John Philip Warner (CRD #2094770, Registered Representative, Covington, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Warner reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Warner consented to the described sanctions and to the entry of findings that he borrowed \$31,219.17 from a public customer and recommended and executed the liquidation of mutual funds in the account of the customer for the purpose of funding the loan to himself. The findings also stated that Warner persuaded the customer to loan him the funds by offering a nine percent return, thereby replacing the customer's original investment with an unsecured loan without reasonable grounds for believing that the recommendation and resultant transactions were suitable for the customer on the basis of the customer's financial situation, investment objectives, or needs. Warner's suspension began February 2, 2004, and will conclude May 1, 2004. (NASD Case #C05040001)

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Date 3/31/2004

Case Number: C9B040007

Robert Joseph Calamunci, Sr. (CRD #1618899, Registered Principal, Tinton Falls, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$13,460.15, which represents disgorgement of commissions, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Calamunci consented to the described sanctions and to the entry of findings that he recommended numerous Class B mutual fund transactions to public customers that were unsuitable. The findings also stated that, had Class A shares been recommended instead of Class B shares, the customers would have (1) been eligible to receive breakpoints on Class A share purchases; (2) paid lower 12b-1 fees; and (3) avoided being subject to contingent deferred sales charges. Calamunci's suspension began March 1, 2004, and concluded at the close of business March 12, 2004. (NASD Case #C9B040007)

Date 3/31/2004

Case Number: C9B030051

Paul John Pallo (CRD #1068684, Registered Principal, Mahwah, New Jersey) submitted a Offer of Settlement in which he was fined \$10,000, including \$5,000 in disgorgement of commissions, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Pallo consented to the described sanctions and to the entry of findings that he recommended and effected the purchase of Class B mutual fund shares in the accounts of public customers without having reasonable grounds for believing that such transactions were suitable for the customers in view of the amount of shares purchased and the nature of the transactions, and in light of the customers' financial situation, investment objectives, circumstances, and needs. The findings also stated that Pallo's recommendations were unsuitable in that he should have recommended that the customers purchase Class A mutual fund shares given the amount invested so that the customers would have been eligible to receive breakpoints on Class A shares purchases, paid lower 12b-1 fees, and avoided being subject to contingent deferred sales charges. NASD also found that Pallo recommended and effected unsuitable mutual fund switch transactions in the account of a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the nature of the recommended transactions, and in light of the customer's financial situation, investment objectives, circumstances, and needs. The findings further stated that these transactions were unsuitable in that the customer incurred unnecessary expenses because the investment objectives of the Class A shares that were sold were nearly identical to the Class A shares that were purchased. Pallo's suspension began April 4, 2004, and will conclude at the close of business April 16, 2004. (NASD Case #C9B030051)

Date 3/31/2004

Case Number: ACLI05153

James A. Kenas (CRD #2095140, Coeur d'Alene, Idaho), and formerly a registered representative with WMA Securities, Inc., was suspended for 6 months for violating NASD's Suitability Rule by recommending that his customers purchase mutual fund shares, when the only funds available to those customers for the purchases were from mortgaging their home. (NASD Case #ACLI05153)

Date 4/30/2004

Case Number: C04040015

Washington Square Securities, Inc. (CRD #2882, Des Moines, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$50,000, and ordered to pay \$48,955.35 in partial restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through its agents, it effected, or caused to be effected, purchases of large positions of Class B mutual fund shares in the accounts of public customers that were unsuitable because they deprived the customers of the benefit of sales charge breakpoints, which they would have received had they purchased Class A shares, including those acquired through letters of intent or rights of accumulation. The findings also stated that these purchases deprived the customers of lower 12b-1 fees that they would have received had they purchased Class A shares and also exposed the customers to potentially higher contingent deferred sales charges upon liquidation. NASD also found that the firm, acting through its agents, failed to establish, maintain, and enforce a supervisory system

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reasonably designed to enable the firm and its supervisors to scrutinize Class B share purchases with a view to detecting and preventing unsuitably large Class B share purchases. (NASD Case #C04040015)

Date 4/30/2004

Case Number: C05040016

Paul Samuel Porter, II (CRD #2045684, Registered Representative, River Ridge, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Porter consented to the described sanctions and to the entry of findings that he recommended and effected the purchase of Class B mutual funds by a public customer in the aggregate amount of \$80,000 without having reasonable grounds for believing the recommendations and resultant transactions were suitable for the customer on the basis of the customer's financial situation and needs. Porter's suspension began April 19, 2004, and will conclude at the close of business May 18, 2004. (NASD Case #C05040016)

Date 4/30/2004

Case Number: C9B040021

Frederick Gus Schiffman (CRD #1398182, Registered Representative, Jackson, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Schiffman consented to the described sanctions and to the entry of findings that he recommended that public customers sell certain investments and purchase growth technology mutual funds in their accounts. The findings also stated that Schiffman made these recommendations without having reasonable grounds for believing that his recommendations and the resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. Schiffman's suspension began April 19, 2004, and concluded at the close of business April 30, 2004. (NASD Case #C9B040021)

Date 4/30/2004

Case Number: C11040011

Thomas Hans Underdahl, Jr. (CRD #1614866, Registered Representative, Yarmouth, Maine) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$4,000, \$1,500 of which represents disgorgement of his commissions, and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Underdahl reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Underdahl consented to the described sanctions and to the entry of findings that he sold income-oriented investments and purchased Class B mutual funds for the account of a public customer without having reasonable grounds for believing that his recommendations and resultant transactions were suitable for the customer on the basis of her financial situation, investment objectives, and needs. Underdahl's suspension began April 19, 2004, and concluded at the close of business April 30, 2004. (NASD Case #C11040011)

Date 5/31/2004

Case Number: C04040015

Washington Square Securities, Inc. (CRD #2882, Des Moines, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$50,000, and ordered to pay \$48,955.35 in partial restitution to public customers who purchased Class B shares. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through its agents, it effected, or caused to be effected, purchases of large positions of Class B mutual fund shares in firm customer accounts. The findings also stated that the purchases were unsuitable because they deprived the customers of the benefit of sales charge breakpoints that they would have received had they purchased Class A shares, including those acquired through letters of intent or rights of accumulation. NASD also found that the purchases deprived the customers of lower 12b-1 fees that they would have received if they had purchased Class A shares, while also exposing the customers to potentially higher contingent deferred sales charges upon liquidation and to the costs of purchasing Class B shares possibly exceeding the costs of purchase of Class A shares. In addition, NASD found that the firm, acting through its agents, failed to establish, maintain, and enforce a supervisory system reasonably designed to enable the firm and its

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supervisors to scrutinize Class B share purchases with a view towards detecting and preventing unsuitably large Class B share purchases. (NASD Case #C04040015)

Date 5/31/2004

Case Number: C9A040012

Theodore Gerald Rothman (CRD #405741, Registered Principal, Philadelphia, Pennsylvania) and David Lorin Rothman (CRD #1408470, Registered Principal, Richboro, Pennsylvania) submitted a Notice of Acceptance, Waiver, and Consent in which T.G. Rothman was fined \$45,000 and suspended from association with any NASD member in any capacity for 30 days. D.L. Rothman was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, T.G. Rothman and D.L. Rothman consented to the described sanctions and to the entry of findings that they recommended and effected Class S shares of a mutual fund in the accounts of public customers without reasonable grounds to believe their recommendations were suitable because, in all instances, one or more of the other fund share classes was less costly and/or otherwise more advantageous to investors. T.G. Rothman's suspension will begin June 21, 2004, and will conclude at the close of business July 20, 2004. D.L. Rothman's suspension began June 7, 2004, and will conclude at the close of business June 18, 2004. (NASD Case #C9A040012)

Date 6/30/2004

Case Number: C9B040048

Nicholas Andrew DeNucci (CRD #1835469, Registered Representative, Denville, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, including disgorgement of \$2,500 in commissions, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, DeNucci consented to the described sanctions and to the entry of findings that he exercised discretionary authority over the account of a public customer without prior written authorization of the customer and prior written acceptance of the account as discretionary. The findings also stated that DeNucci recommended that a public customer purchase \$462,000 of Class B shares in mutual funds without reasonable grounds for believing the Class B shares were suitable for the customer as opposed to Class A shares, for which the customer would have received breakpoints reducing the cost of the front-end sales charges, paid lower on-going expenses, and avoided contingent deferred sales charges. DeNucci's suspension began July 6, 2004, and will conclude at the close of business July 26, 2004. (NASD Case #C9B040048)

Date 6/30/2004

Case Number: C07040053

Charles Middleton Kelley, Jr. (CRD #1708813, Registered Principal, Staunton, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$30,000, \$20,950 of which shall be paid to public customers as restitution for the margin interest charges incurred, and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Kelley consented to the described sanctions and to the entry of findings that he made recommendations to public customers to purchase mutual funds and invest in a variable annuity through the use of margin, even though the recommendations were unsuitable in light of the customers' investment objectives, income, and net worth. Kelley's suspension began July 6, 2004, and will conclude at the close of business August 19, 2004. (NASD Case #C07040053)

Date 7/31/2004

Case Number: C9A040018

Adam Douglas Grodin (CRD #1818807, Registered Principal, Pittsburgh, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$51,744, including \$46,744 in disgorgement of commissions received, and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Grodin consented to the described sanctions and to the entry of findings that he recommended that a public customer purchase Class B mutual fund shares that were unsuitable for the customer because the customer could have purchased Class A shares that would have paid lower 12b-1 fees and would have avoided being subject to contingent deferred sales charges. Grodin's suspension began July 19, 2004, and concluded at the close of business August 13, 2004. (NASD Case #C9A040018)

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Date 7/31/2004

Case Number: C9B040060

Samuel Kluff Koltun (CRD #1739664, Registered Representative, Jupiter, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500, including disgorgement of \$7,864.14 in commissions, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Koltun consented to the described sanctions and to the entry of findings that he recommended numerous Class B mutual fund transactions to public customers that were unsuitable for the customers. The findings also stated that the recommendations were unsuitable since Class A shares should have been recommended instead of Class B shares. The findings also stated that, had Class A shares been recommended, the customers would have been eligible to receive breakpoints on Class A share purchases, paid lower 12b-1 fees, and avoided being subject to contingent deferred sales charges. Koltun's suspension began August 2, 2004, and concluded at the close of business August 13, 2004. (NASD Case #C9B040060)

Date 7/31/2004

Case Number: C8A030078

Scott Emil Wiard (CRD #1509365, Registered Principal, Ypsilanti, Michigan) and James Davis Reisinger (CRD #1275258, Registered Principal, Dexter, Michigan) were barred from association with any NASD member in any capacity. The sanctions were based on findings that Wiard and Reisinger made a material change in the investment strategy they were employing for clients without the authorization of the clients. The findings also stated that Wiard and Reisinger failed to determine the suitability of leaving their clients fully invested in volatile equities sub-accounts or mutual funds. NASD also found that Wiard exercised discretion over the investment decisions of public customers even though his continued association with his member firm required that he not maintain discretionary accounts. In addition, NASD found that Wiard failed to update his Form U4 in a timely manner. This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C8A030078)

Date 8/31/2004

Case Number: C9B030081

Matthew Alan Lesnikowski (CRD #1530281, Registered Supervisor, Eden Prairie, Minnesota) submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member in any principal or supervisory capacity for 30 business days. Without admitting or denying the allegations, Lesnikowski consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise a registered representative that was reasonably designed to detect and prevent unsuitable mutual fund transactions in the account of a public customer and achieve compliance with applicable securities laws, regulations, and NASD rules. The findings also stated that Lesnikowski failed to consider the class of mutual funds purchased when performing the suitability review of the registered representative's mutual fund transactions. Lesnikowski approved Class B purchases executed by the registered representative even though the purchases were made in violation of firm policy requiring pre-approval by a branch manager of mutual fund transactions over \$100,000, and were made in contravention of a prohibition contained in the fund prospectus against purchases of Class B shares over \$250,000. In addition, NASD found that the public customer would have been eligible for breakpoints, paid lower on-going expenses, and avoided contingent deferred sales charges if Class A shares had been recommended and purchased in his account. Lesnikowski's suspension began September 7, 2004, and will conclude at the close of business October 18, 2004. (NASD Case #C9B030081)

Date 9/30/2004

Case Number: C02040028

Thomas Michael Curtis (CRD #2903099, Registered Representative, Marina Del Rey, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$14,412 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Curtis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Curtis consented to the described sanctions and to the entry of findings that he recommended the purchase of Class B mutual fund shares to public customers even though each fund also offered the same mutual fund investment in Class A shares, thereby

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depriving the customers of discounts on sales charges that they were entitled to receive through commission breakpoints, rights of accumulation, or letters of intent. The findings also stated that the Class B shares were subject to higher annual expenses than Class A shares and were subject to penalties should the customers redeem shares within six years of the purchase. NASD also found that Curtis made recommendations without having a reasonable basis to believe that the transactions were suitable for the customers in light of the nature of the transactions and the facts disclosed by the customers regarding their other securities holdings, financial situation, and needs. Curtis' suspension began September 20, 2004, and will conclude at the close of business October 19, 2004. (NASD Case #C02040028)

Date 9/30/2004

Case Number: C11040031

Bernard Edward Nugent, Jr. (CRD #1209387, Registered Principal, Yarmouthport, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Nugent consented to the described sanctions and to the entry of findings that he recommended that a public customer liquidate approximately \$317,000 in mutual fund shares and purchase a variable annuity without having a reasonable basis for believing that the recommendation was suitable based on his client's investment objectives, financial situation, and needs. Nugent's suspension began October 4, 2004, and will conclude at the close of business December 3, 2004. (NASD Case #C11040031)

Date 11/30/2004

Case Number: C9B040020

Cory Andrew Mongno (CRD #2648751, Registered Representative, Bridgewater, New Jersey) submitted an Offer or Settlement in which he was suspended from association with any NASD member in any capacity for six months and ordered to pay \$22,500 in restitution to a public customer. Restitution must be paid before Mongno reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mongno consented to the described sanctions and to the entry of findings that he engaged in a pattern of unsuitable mutual fund switches for profit in the accounts of a public customer. The findings also stated that Mongno recommended the transactions without having reasonable grounds for believing that such transactions were suitable for the customer in view of the frequency of the transactions, the type of investments being recommended, and the customer's financial situation and investment objectives. Mongno's suspension began November 1, 2004, and will conclude April 30, 2005. (NASD Case #C9B040020)

Date 11/30/2004

Case Number: C9B040095

William Robert Montes (CRD #1576939, Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Montes consented to the described sanction and to the entry of findings that he recommended to public customers that they over-concentrate their investment assets in a speculative mutual fund without having reasonable grounds for believing that the recommendations were suitable for the customers in light of their financial situations, investment objectives, and financial needs. The findings also stated that Montes failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C9B040095)

Date 11/30/2004

Case Number: C02040041

Ryan Garrett Robinson (CRD #2682661, Registered Representative, Northridge, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Robinson consented to the described sanctions and to the entry of findings that he recommended the purchase of mutual fund "C" shares in the accounts of public customers without having a reasonable basis for believing these transactions were suitable for the customers; further, the recommendations were unsuitable because the customers' accounts were economically disadvantaged by the costs associated with the purchase of "C" shares relative to the costs they would have incurred by purchasing "A" shares of the

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same mutual funds. Robinson's suspension began December 6, 2004, and will conclude at the close of business December 27, 2004. (NASD Case #C02040041)

Date 12/31/2004

Case Number: C05040083

James Lee Johnstone (CRD #2357330, Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Johnstone reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Johnstone consented to the described sanctions and to the entry of findings that he made material written representations to a public customer in connection with the sale of securities that were false in that a deferred variable annuity has no guaranteed contract value and there can be no assurance that an investment in mutual fund shares will not decrease in value. The findings also stated that Johnstone recommended and effected the sale of Class B mutual fund shares in the aggregate amount of \$1,093,000 to a public customer without reasonable grounds for believing the recommendations and transactions were suitable for the customer on the basis of his financial situation and needs. Johnstone's suspension began January 3, 2005, and will conclude July 2, 2006. (NASD Case #C05040083)

Date 12/31/2004

Case Number: C3A040020

Gregory Adam Jurkiewicz (CRD #2582435, Registered Representative, Dunedin, Florida) was barred from association with any NASD member in any capacity and ordered to pay \$1,729.86, plus interest, in restitution to a public customer. The sanctions were based on findings that Jurkiewicz failed to respond to NASD requests for information and that he made unsuitable recommendations to public customers. The findings also stated that Jurkiewicz negligently failed to disclose material information when he recommended that a public customer purchase mutual funds and failed to disclose that Class B shares of mutual funds incurred higher annual internal expenses than Class A shares, that Class A shares were available at discounted charges for purchases exceeding certain dollar amounts, and that he would receive a higher commission if the customer purchased Class B shares. (NASD Case #C3A040020)

Date 12/31/2004

Case Number: C05040080

Earl Lee Richardson (CRD #2218514, Registered Supervisor, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 30 business days. Without admitting or denying the allegations, Richardson consented to the described sanctions and to the entry of findings that he failed and neglected to supervise adequately a registered representative who recommended and effected the sale of Class B mutual fund shares in the aggregate amount of \$1,093,000 to a public customer without having a reasonable basis for believing the recommendations and transactions were suitable for the customer on the basis of the customer's financial situation and needs. The findings also stated that Richardson approved the transactions without sufficiently investigating whether the customer's investment objectives could have been achieved through an investment in Class A shares where the customer would have been able to take advantage of breakpoints. Richardson's suspension began December 6, 2004, and concluded at the close of business January 14, 2005. (NASD Case #C05040080)

Date 1/31/2005

Case Number: C8A040126

American Express Financial Advisors, Inc. (CRD #6363, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to demonstrate the adequacy and effectiveness of the supervisory tools the firm devised to detect and prevent mishandling of public customer accounts by registered representatives and to improve the accuracy of firm Redemption/Purchase Reports. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to supervise a general securities representative with respect to his handling of public customer accounts. The findings also stated that the firm assigned four consecutive supervisors to the representative who failed to take corrective action when

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the accounts of the representative's customers appeared on numerous Redemption/Purchase Reports, disclosing unsuitable trading through redemptions and subsequent purchases of different share funds of different mutual fund families within a 30-day period. NASD also found that the Redemption/ Purchase Reports that the firm prepared for the supervisory review of significant activity in customer accounts contained inaccuracies and were difficult to decipher, severely limiting their usefulness as a supervisory tool. (NASD Case #C8A040126)

Date 1/31/2005

Case Number: C11040044

David Andrew Coombs (CRD #2260355, Registered Representative, Laconia, New Hampshire) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for four months, and ordered to pay \$14,451, plus interest, in disgorgement and partial restitution to public customers. The fine and restitution amounts must be paid before Coombs reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Coombs consented to the described sanctions and to the entry of findings that he recommended that public customers liquidate mutual funds in their accounts and invest the proceeds into individual stocks without having reasonable grounds for believing the recommendation was suitable based upon the clients' investment objectives, financial situation, and needs. The findings also stated that the customers incurred \$9,000 in losses and paid \$5,451 in commission to Coombs as a result of Coombs recommendations. Coombs' suspension began January 18, 2005, and will conclude at the close of business May 17, 2005. (NASD Case #C11040044)

Date 1/31/2005

Case Number: C8A040125

Scott Kenneth Fischer (CRD #2486473, Registered Principal, Lake In The Hills, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fischer consented to the described sanction and to the entry of findings that he recommended securities transactions to public customers without having a reasonable basis for believing the recommendations and resulting sales were suitable for the customers. The findings also stated that Fischer executed mutual fund switches in the accounts of public customers without written authorization. NASD also found that Fischer prepared and/or submitted falsified documents containing the purported signatures of public customers on forms required by his member firm that explained the financial impact of transactions in connection with mutual fund switches that occurred in their accounts. (NASD Case #C8A040125)

Date 1/31/2005

Case Number: C11040048

Paul Joseph Welch (CRD #2327685, Registered Representative, Stoneham, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Welch reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Welch consented to the described sanctions and to the entry of findings that he recommended to a public customer that she liquidate approximately \$148,000 of her no-load mutual fund shares and apply the proceeds toward the purchase of a fixed annuity without a reasonable basis for believing that these liquidating transactions were suitable for the customer in light of her financial situation and needs. Welch's suspension began February 7, 2005, and will conclude at the close of business March 8, 2005. (NASD Case #C11040048)

Date 1/31/2005

Case Number: ACLI05094

Todd M. Eberhard (CRD #1636538, Registered Principal, New York, New York) the former chairman of New York's Park South Securities, LLC, from the securities industry for federal securities fraud and other, multiple violations of NASD rules. Eberhard was known to millions as a guest analyst and commentator who appeared frequently on financial television programs on CNN, CNNfn, CNBC, Fox News Channel, and on PBS' Nightly Business Report. The bar stems from NASD charges announced in October 2002 that

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Eberhard had committed securities fraud in connection with scores of mutual fund transactions. Park South was liquidated in 2003. In 2004, Eberhard pleaded guilty in federal court to mail and wire fraud, as well as conspiracy, investment adviser fraud, and obstruction of justice. "This high-profile broker's misconduct cost his customers millions of dollars," said NASD Vice Chairman Mary L. Schapiro. "He compounded his fraudulent activities by trying to silence complaining customers and by hiding evidence of those complaints from regulators. That kind of conduct merits the most severe sanction that NASD can impose." NASD found that during the period December 1998 through October 2001, Eberhard made, or caused to be made, scores of fraudulent and unsuitable mutual fund transactions in four customers' accounts. Eberhard intentionally or recklessly failed to disclose material information to those customers. He purchased on behalf of customers large volumes of Class B mutual fund shares that increased his commission revenue, but deprived his customers of volume "breakpoint" discounts available through Class A shares and/or the lower, shorter term sales charges available through Class C shares. Eberhard defrauded and deceived customers by employing a pattern of short-term trading of mutual funds in order to maximize his commissions. NASD also found that Eberhard effected numerous unauthorized transactions in customer accounts. For one customer, Eberhard created, or caused to be created, account statements that contained false valuations—the prices or net asset values of many securities were inflated to reflect a greater portfolio value than the true value of the accounts, to induce the customer to continue to maintain accounts with Eberhard. Many customers eventually complained to Eberhard about the activity in their accounts. NASD found that between June 1997 and December 2001, Eberhard improperly settled 14 complaints made by 11 customers. Those settlements, which totaled more than \$3.6 million, were made without the knowledge and consent of the brokerage firms employing Eberhard at the time—Linsco/Private Ledger Corp., Royal Alliance Associates, and Clearing Services of America, Inc. In resolving 10 customer complaints, Eberhard included improper confidentiality agreements that effectively prohibited the customers from cooperating with NASD investigations and from disclosing the underlying facts of their complaints and the settlement terms to NASD. In many instances, Eberhard either failed to report, or failed to report on a timely basis, customer complaints and settlements to NASD and other regulators on the securities industry registration Form U-4, as required by the federal securities laws. NASD found that when Eberhard amended his Forms U-4, he willfully failed to disclose material information and/or misrepresented material information, including the nature of customers' complaints. For example, on one Form U-4, Eberhard misrepresented the nature of a customer complaint by stating that the client was unhappy with the performance of her portfolio when, in fact, the customer had accused Eberhard of severely churning her account for commissions, repeatedly making investments that benefited Eberhard more than the customer. Eberhard also willfully failed to disclose that he had been discharged by Royal Alliance Associates for violating investment-related statutes, regulations, rules, or industry standards of conduct. Additionally, he willfully failed to disclose that he had been named as a defendant in an investment-related, consumer-initiated civil lawsuit, which alleged that he was involved in sales practice violations. Finally, NASD found that when Eberhard was questioned by NASD investigators, he provided false, misleading and evasive testimony. In settling this matter, Eberhard neither admitted nor denied the charges, but consented to the entry of NASD's findings and to the sanction of a lifetime bar from the securities industry. (NASD Case #ACLI05094)

Date 2/28/2005

Case Number: C07040054

William Robert Goodhue (CRD #225161, Registered Representative, Wellington, Florida) submitted an Offer of Settlement in which he was fined \$9,800 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Goodhue reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Goodhue consented to the described sanctions and to the entry of findings that he recommended the purchase of mutual funds to a public customer although, based on the amounts being invested by the customer, Goodhue's recommendations were unsuitable, in that they were not the lowest cost available. NASD found that the customer could have invested in Class D shares in the respective mutual funds by paying lower ongoing expenses than the class B shares which he purchased, and without paying any up-front sales charges. Goodhue's suspension began December 10, 2004, and concluded at the close of business December 23, 2004. (NASD Case #C07040054)

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Date 3/31/2005

Case Number: ACLI70019

Citigroup Global Markets, Inc., (CRD #7059, New York, New York) American Express Financial Advisors, and Chase Investment Services were fined \$21,250,000 and censured for suitability and supervisory violations relating to mutual fund sales practices between January 2002 and July 2003. These cases are part of a larger, ongoing investigation into mutual fund sales practices. The cases against Citigroup and Chase involve their recommendations and sales of Class B and Class C shares of mutual funds, while the action involving American Express relates only to Class B shares. In all three cases, the firms made recommendations and sales of mutual funds to their customers without considering or adequately disclosing, on a consistent basis, that an equal investment in Class A shares would generally have been more economically advantageous for their customers by providing a higher overall rate of return. The firms also had inadequate supervisory and compliance policies and procedures relating to these mutual fund sales. In particular, NASD found that the firms did not consistently consider that large investments in Class A shares of mutual funds entitle customers to breakpoint discounts on sales charges, generally beginning at the \$50,000 investment level, which are not available for investments in other share classes. Investors may be entitled to breakpoints based on the amount of a single mutual fund purchase; the total amount of multiple purchases in the same family of funds; and/or the total amount of mutual fund investments held, at the time of the new purchase, by members of the customer's "household"—typically, accounts of close family members. Unlike Class A shares, Class B shares are also subject to contingent deferred sales charges (CDSCs) for a period of time, generally six years. Class B and Class C shares are also subject to higher ongoing fees than Class A shares for as long as they are held. Even though investors do not pay a front-end sales charge for Class B or Class C shares, the potential CDSCs and the higher ongoing fees significantly affect the return on mutual fund investments, particularly at higher dollar levels. "In recommending mutual funds that offer different share classes, brokers must consider the costs for each class and the effect those costs will have on a customer's investment, and recommend the share class that is most advantageous to the customer," said NASD Vice Chairman Mary L. Schapiro. Since 2002, NASD has provided an online Mutual Fund Expense Analyzer to assist brokers and investors in comparing how sales charges, fees, and other fund expenses can affect returns. In resolving these actions, the firms have agreed to a remediation plan that includes over 50,000 households and more than 275,000 transactions in Class B shares, and, to a lesser extent, Class C shares. The plan generally covers investors who, between January 1, 2002 and March 22, 2005, purchased Class B shares aggregating to \$50,000 or more, depending upon the particular fund's pricing structure. A limited number of investors who purchased Class C shares during the same time frame (generally those who purchased \$500,000) will also be included in the remediation plan. A number of exclusions also apply. NASD's settlement with Citigroup includes more than 18,000 households, involving more than 90,000 Class B and Class C share transactions. NASD fined Citigroup \$6.25 million, which takes into consideration the \$20 million fine and other sanctions the Securities and Exchange Commission (SEC) is imposing on Citigroup to settle a related enforcement action involving sales of Class B shares, among other things. NASD's settlement with American Express includes more than 30,000 households and 182,000 Class B share transactions. NASD fined American Express \$13 million. NASD's settlement with Chase involves more than 2,000 households and 4,000 Class B and C share transactions. NASD fined Chase \$2 million. The amount of the fines was based on the estimated additional commissions each firm received in connection with affected Class B share transactions. Within approximately five months, each firm will notify affected customers that they will have an opportunity to convert certain of their Class B and/or Class C shares to Class A shares so that customers will be restored to the position they would have been in had they originally purchased Class A shares. In addition, those customers who sold some or all of their Class B or Class C shares may be eligible to receive a cash payment relating to the shares that were sold. The plan will take up to nine months to complete, and each firm will provide a response center to handle customer inquiries and to assist affected customers. NASD is posting a special section on its Web site—Improper Sale of Mutual Fund Class B and C Shares: Remediation Information for Investors—to assist investors covered by the remediation plan. For information about the differences in mutual fund share classes, see the NASD Investor Alerts Understanding Mutual Fund Classes and Class B Mutual Fund Shares: Do They Make the Grade? (For information about breakpoint discounts on Class A share investments, see the NASD Investor Alerts Mutual Fund Breakpoints: A Break Worth Taking and Mutual Fund Breakpoints: Are You Owed A Refund?) Each of the firms settled the actions without admitting or denying the allegations, but consented to the entry of NASD's findings. (NASD Case #ACLI70019)

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Date 4/30/2005

Case Number: ACLI70027

Louis E. Stough (CRD #8323,)a former broker with First Command Financial Planning Inc. will serve a 10-month suspension and was fined \$25,000 in connection with a series of unsuitable recommendations and sales involving liquidation of investments in the firm's Systematic Investment Plans. First Command is a Fort Worth, TX broker-dealer that specializes in sales to military personnel. Last December, NASD ordered First Command to pay \$12 million dollars in fines and restitution for misleading statements in the sale of Systematic Investment Plans. To date, First Command has issued more than 8,000 restitution checks totaling more than \$3.6 million to affected customers, primarily active duty and retired military personnel. Restitution is expected to total approximately \$5 million. NASD's Investor Education Foundation will use the remaining fine money to create investor education programs for the military. Investors in Systematic Investment Plans purchase mutual funds through monthly contributions over a 10- or 15-year period, and are charged a sales load of 50 percent of the first year's contributions. In this action, NASD found that between August 2002 and January 2003, Stough recommended to 12 customers that they liquidate their Systematic Investment Plan investments and reinvest the proceeds in Class A shares of mutual funds. Stough failed to inform those customers that they had the option of transferring assets directly from their Systematic Investment Plans to funds in the same mutual fund family without incurring sales charges. Instead, he recommended and sold them shares of other mutual fund families and charged them sales loads of up to 5.75 percent. "Brokers must consider sales charges when recommending that a customer move assets from one investment to another," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "Brokers must also consider the costs to the customer of moving investments from one mutual fund family to another. In this case, the broker acted improperly by failing to consider comparable options within a fund family that carried no sales charges and failed to disclose that option to his customers." NASD also found that rather than having customers complete direct fund-to-fund rollovers as required by First Command's procedures, Stough instructed his clients to liquidate their Systematic Investment Plans, place the proceeds in a bank account, and then write a check from the bank account to purchase new mutual funds. Stough also failed to indicate in required documentation that the customer's money for the new purchases had come from Systematic Investment Plan liquidations. Instead, he labeled the source of the money as "bank IRA." As a result, these unsuitable transactions went undetected for approximately six months. Stough's unsuitable recommendations and sales to the 12 clients involved 47 separate transactions that generated total commissions of more than \$34,400 to First Command. Stough received \$16,500 of that total. First Command has paid restitution to all affected customers, and Stough has returned his commissions to First Command. Stough neither admitted nor denied NASD's charges, but consented to the entry of NASD's findings. Last December, when it settled NASD charges of making misleading statements and omitting important information when selling its Systematic Investment Plans, First Command neither admitted nor denied the charges, but consented to the entry of NASD's findings. (NASD CASE #ACLI70027)

Date 7/31/2005

Case Number: C3A050032

Nalico Equity Corporation (CRD #15530, Giessen, Germany) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to create and maintain a complete and accurate itemized daily record of all receipts and disbursements of funds and purchases and sales of securities. The findings stated that the firm's net capital computation was inaccurate several times because it mischaracterized as an allowable asset controlled by persons no longer associated with the firm. The findings also stated that the firm did not maintain its daily record of all receipts and disbursements of funds and of purchases and sales of securities and ledgers reflecting debits and credits and did not maintain its checkbooks, bank statements, cancelled checks, and bank account reconciliations as required by SEC and NASD rules and regulations. NASD found that the firm's supervisory system and procedures were inadequate with respect to annual compliance interviews, obtaining suitability information, compliance with financial recordkeeping rules, monitoring employee transactions at firms other than Nalico Equity Corporation, compliance with Regulation S-P, detecting and preventing unauthorized transactions, enforcing NASD Conduct Rule 3060 regarding gifts and gratuities, timely and accurate submission of Forms U4 and U5, and monitoring mutual fund transactions for unsuitable "B" share recommendations and violations of rules governing non-cash compensation. In addition, the findings stated that the firm did not maintain a

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current firm element continuing education program in that its needs analysis and training plan were not updated annually and its firm element training included only participation in the annual compliance interview. Furthermore, the findings stated that the firm's AML test was not independent, and its AML program was not approved by senior management after the customer identification program provisions became effective, and was not reasonably designed to achieve compliance with all aspects of the Bank Secrecy Act and the regulations promulgated thereunder. (NASD Case #C3A050032)

Date 7/31/2005

Case Number: C07050041

William Ramey Mead, Jr. (CRD #330671, Registered Representative, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$88,000, including disgorgement of excessive commissions, and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Mead reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mead consented to the described sanctions and to the entry of findings that he made unsuitable recommendations to public customers in that he offered Class B share mutual funds that were not the lowest-cost alternative available and recommended the use of margin to a public customer for the purchase of mutual fund shares, which was unsuitable in view of the customer's limited assets, lack of investment experience, and knowledge. Mead's suspension began July 5, 2005, and will conclude October 2, 2005. (NASD Case #C07050041)

Date 7/31/2005

Case Number: C8A050053

Robert Earl Messinger (CRD #1234161, Registered Representative, Cincinnati, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, ordered to pay \$30,711.71 in partial restitution to public customers, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Messinger consented to the described sanctions and to the entry of findings that he recommended that public customers purchase and accumulate large positions in mutual fund Class B shares and Class C shares without a reasonable basis to believe that the recommendations were suitable for each customer because the customers could have purchased Class A shares in each fund at a reduced sales charge by applying breakpoints, using letters of intent, and/or using rights of accumulation. Messinger's suspension began July 18, 2005, and concluded at the close of business July 29, 2005. (NASD Case #C8A050053)

Date 7/31/2005

Case Number: C10050042

Tomislav Skibola (CRD #2791236, Registered Representative, Long Island City, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Skibola consented to the described sanction and to the entry of findings that he executed transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The findings also stated that Skibola engaged in the short-term trading of mutual fund shares in the account of a public customer, which was inconsistent with his fundamental responsibility for fair dealing with the customer, and also entailed the recommendation of securities transactions that were not suitable for the customer. In addition, NASD found that Skibola generated, or caused to be generated, false or inaccurate records in that he took actions to create the false appearance in firm records that the customer placed the orders via the Internet and were thus unsolicited when, in fact, Skibola caused the placement of the orders from his firm's offices. (NASD Case #C10050042)

Date 8/31/2005

Case Number: E9B02004201

Hennion & Walsh, Inc. (CRD #25766, Parsippany, New Jersey), William Walter Walsh (CRD #1174993, Registered Principal, Mountain Lakes, New York) and Richard Hennion (CRD #1315386, Registered Principal, Totowa, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was fined \$35,000, including \$15,000 that was jointly and severally with Walsh and \$15,000 that was jointly and severally with Hennion. In addition, the firm was suspended as an underwriter or selling group member for any offering of closed-end mutual funds for 30 days and required to retain an independent consultant to

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review and make recommendations concerning the adequacy of the firm's current policies and procedures relating to past deficiencies, as well as the firm's 3070 reporting, underwriting activities, and suitability of recommendations. Walsh and Hennion were also each suspended from association with any NASD member in a general securities principal capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to report written grievances from public customers on quarterly reports and reported written grievances from customers in an untimely manner. The findings also stated that the firm solicited and received payment from public customers for the purchase of shares prior to the effective **Date** in the underwritings of closed-end mutual funds in violation of Section 5(a) of the Securities Act of 1933. NASD found that the firm, acting through Walsh and Hennion, failed to establish and maintain a supervisory system and written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules. The firm's suspension began September 1, 2005, and will conclude at the close of business September 30, 2005. Walsh's suspension will begin November 18, 2005, and will conclude at the close of business December 2, 2005. Hennion's suspension will begin September 19, 2005, and will conclude at the close of business September 30, 2005. (NASD Case #E9B02004201)

Date 8/31/2005

Case Number: E3A2004005401

J. Scott Securities Corporation (CRD #47007, Golden, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that its supervisory system and the written procedures established to implement that system were not reasonably designed to achieve compliance with rules regarding the suitability of mutual fund share class recommendations and the disclosure of all information relevant to a customer's election to purchase a particular share class. The findings stated that the firm failed to develop and implement a written AML program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act, 32 U.S.C. sec. 5311, et seq., and the regulations promulgated thereunder. NASD also found that the firm conducted securities business while failing to maintain the required net capital. (NASD Case #E3A2004005401)

Date 9/30/2005

Case Number: E3A2002001601

Presidential Brokerage, Inc. (CRD #28784, Greenwood Village, Colorado), Anthony Joseph Campen (CRD #1959903, Registered Principal, Meza, Arizona) and Eric Joel Lempe (CRD #1483459, Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$70,000, jointly and severally, with Campen, of which \$65,083 shall be allocated as restitution to public customers and required to attest in writing that it complied with the requirements of NASD Rule 3070. Campen was suspended from association with any NASD member in a principal capacity for 15 business days. Lempe was fined \$224,618 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Campen, reported customer complaints with inaccurate information and failed to report, or reported late, matters that required disclosure within 10 days pursuant to NASD Rule 3070. The findings stated that the firm, acting through Campen, reported late amendments to Forms U4 and U5 and did not disclose information required to be disclosed on a Form U5. The findings also stated that the firm, acting through Campen, failed to establish a supervisory system, and failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules pertaining to Rule 3070, reporting the timely and accurate filing of Forms U4 and U5, and the suitability of mutual funds share class recommendations. NASD found that the firm, acting through an employee, failed to supervise the activities of registered representatives who were employing trading strategies with customers located abroad in a manner reasonably designed to achieve compliance with NASD rules. In addition, the findings stated that the firm, acting through Lempe, recommended the purchase of mutual fund "Class B" shares to customers for whom a recommendation of "Class A" shares would have been economically more beneficial. Campen's suspension began September 19, 2005, and concluded at the close of business October 7, 2005. Lempe's suspension began September 19, 2005, and will conclude at the close of business March 18, 2006. (NASD Case #E3A2002001601)

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Date 9/30/2005

Case Number: E112003006901

Prime Capital Services, Inc. (CRD #18334, Poughkeepsie, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$200,000, and required to review the firm's written supervisory procedures regarding the preservation of electronic mail communications for compliance with NASD rules and federal securities laws and regulations. The firm was also required to offer public customers options to convert class B shares into class A shares at no cost. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to establish, maintain and enforce supervisory procedures that were reasonably designed to achieve compliance with advertising rules, branch office inspections, review and approval of new brokerage and variable annuity applications, review of principals' customer transactions and mutual fund share class suitability. The findings stated that the firm failed to report customer complaints and registered representative terminations in a timely manner and neglected to preserve certain required books and records of its registered representatives including email communications. (NASD Case #E112003006901)

Date 9/30/2005

Case Number: E0420040097-02

QA3 Financial Corporation (CRD #14754, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to establish, maintain and enforce a supervisory system reasonably designed to enable the firm and its supervisors to scrutinize mutual fund share purchases to detect and prevent unsuitable Class B share purchases. (NASD Case #E0420040097-02)

Date 9/30/2005

Case Number: E0420040097-01

David Alexander Rourke, Sr. (CRD #2089364, Registered Representative, Wellesley, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD member firm in any capacity for ten business days. Without admitting or denying the allegations, Rourke consented to the described sanctions and to the entry of findings that he recommended the purchase of Class B mutual funds to public customers without having reasonable grounds to believe that the Class B shares, as opposed to the Class A shares, were suitable for the customers. Rourke's suspension began October 3, 2005, and concluded at the close of business October 14, 2005. (NASD Case #E0420040097-01)

Date 10/31/2005

Case Number: C8A050029

Arthur Joseph Booze (CRD #2570386, Registered Representative, Chicago, Illinois) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Booze consented to the described sanctions and to the entry of findings that he altered a mutual fund product switch form and failed to provide a copy of the switch letter with the true and accurate sales charge to the public customer. The findings stated that Booze recommended securities transactions in the accounts of customers without having a reasonable basis for believing that the transactions were suitable for the customers based on the customers' financial statuses, investment objectives and without discussing the possibility of purchasing similar mutual funds within the existing fund family. Booze's suspension began October 17, 2005, and will conclude October 16, 2006. (NASD Case #C8A050029)

Date 11/30/2005

Case Number: E9B2003042103

Jason Eugene Abuzere (CRD #4121049, Registered Principal, Conshohocken, Pennsylvania) submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Abuzere reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Abuzere consented to the described sanctions and to the entry of findings that he

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recommended and effected mutual fund switch transactions in public customers' accounts without having reasonable grounds that such transactions were suitable for them. The findings stated that each of these transactions generated additional compensation for Abruzere while subjecting the public customers to one or more of the following: higher annual expenses (immediately or in the near future), reduced yield and/or returns, a lengthier contingent deferred sales charge (CDSC) period and/or a CDSC charge. NASD also found that Abruzere failed to disclose to public customers, or otherwise afford them, the opportunity to reduce their annual expenses on mutual fund investments by either remaining in the mutual fund shares that they had owned for several years or by effecting a free exchange into a comparable fund within the same family. The findings further stated that Abruzere misrepresented and omitted to state material facts to customers. Abruzere's suspension began November 21, 2005, and will conclude May 20, 2006. (NASD Case #E9B2003042103)

Date 12/31/2005

Case Number: C9B040098

Scott Michael Epstein (CRD #4268699, Registered Representative, Marlboro, New Jersey) was barred from association with any NASD member in any capacity. The decision was based on findings that Epstein engaged in a pattern of unsuitable mutual fund switching in public customers' accounts without having reasonable grounds for believing that the transactions were suitable for them in view of the nature of the recommended transactions, and in light of their financial situations, investment objectives, circumstances and needs. NASD found that in addition to the switch transaction, Epstein recommended that customers invest in funds utilizing proceeds for other funds that were nearly identical, thereby incurring higher annual expenses and lower returns. The findings stated that Epstein also recommended that a customer invest in bond funds utilizing proceeds from an IRA account. The findings also included that, in connection with the mutual fund recommendations to customers, Epstein, by use of the instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud customers by making untrue statements of material facts or omitting material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C9B040098)

Date 12/31/2005

Case Number: ACLI6009

Merrill Lynch (CRD #7691, New York, New York) was fined \$14,000,000 for suitability and supervisory violations relating primarily to sales of Class B mutual fund shares as well as some Class C mutual fund shares. These cases are part of NASD's continuing investigation into mutual funds sales practices. Wells Fargo Investments and Linsco/Private Ledger Corporation were also fined. The amount of the fines approximate the additional commissions the firms received by selling Class B shares rather than Class A mutual fund shares. In addition, each firm is implementing a remediation plan to compensate affected customers—collectively involving more than 29,000 households and nearly 140,000 transactions. NASD's investigation examined transactions during an 18-month period between January 2002 and July 2003. Investigators focused on 23,000 households at Merrill Lynch with 105,000 Class B and C share transactions; 4,500 households at Wells Fargo with 12,000 Class B and C share trades; and approximately 2,000 households with 22,400 Class B and C share trades at Linsco. During this period, the three firms recommended and sold Class B and/or Class C share mutual funds to their customers without considering or adequately disclosing on a consistent basis that an equal investment in Class A shares would generally have been more advantageous to those customers in view of all relevant considerations. Before recommending a share class, brokers must consider the customer's anticipated holding period and all costs associated with each share class including front-end sales charges, annual expenses and contingent deferred sales charges. The firms also had inadequate supervisory and compliance procedures relating to the manner in which the firms' sales personnel recommended and sold Class B and Class C shares. "In recommending mutual funds with different share classes, brokers must understand, consider and disclose information about which particular share class would be most beneficial for the customer from an expense perspective," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "The failure by these firms to do this resulted in their customers purchasing Class B and C shares when they would have been better served with Class A shares. The firms have agreed to a remediation plan that will give affected customers the opportunity to convert their holdings to a more financially advantageous mutual fund share class." Class A shares typically charge a front-end sales charge and also may be subject to an asset-based

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sales charge, but it generally is lower than the asset-based sales charge imposed by Class B or Class C shares. Mutual funds may offer discounts, called breakpoints, on the front-end sales charge for Class A shares if an investor makes a large purchase, already holds other mutual funds offered by the same fund family, or commits to regularly purchasing the mutual fund's shares. To determine the appropriate discounts, an investor is often allowed to aggregate his purchases with holdings of other family members. Class B shares typically do not charge a front-end sales charge, but they do impose asset-based sales charges that may be higher than those associated with Class A shares. Class B shares also normally impose a contingent deferred sales charge (CDSC) which the investor may pay at the time the investor sells the shares. While the investor holds the shares, the CDSC normally declines and eventually is eliminated after a certain number of years. After the CDSC is eliminated, Class B shares often "convert" into Class A shares. When they convert, they will be subject to the same, lower asset-based sales charge as the Class A shares. Class C shares usually do not impose a front-end sales charge on the purchase but they are often subject to a CDSC if sold within a short time of purchase, usually one year. Class C shares also typically impose higher asset-based sales charges than Class A shares, and since their shares generally do not convert into Class

A shares, their asset-based sales charge will not be reduced over time. So even though investors do not pay a front-end sales charge for Class B or Class C shares, the potential CDSCs and the higher ongoing fees significantly affect the return on mutual fund investments, particularly at higher dollar levels. In resolving this matter, the firms have agreed to a remediation plan that generally covers investors who, between January 1, 2002 and the dates of the settlement with each firm, purchased Class B shares totaling \$50,000 or more depending upon the expenses and charges of the fund and who under any ordinary circumstance would have been better off had they purchased A shares instead. The offer will also be extended to a limited number of Class C share investors who, during the same time frame, made purchases of \$500,000 or more and who, in view of all relevant circumstances, would have been better off had they purchases A shares instead. A number of mutual fund transaction exclusions from the plan also apply. NASD has posted a special section on its Web site—Improper Sales of Mutual Fund Class B and Class C Shares—Remediation Information for Investors—to assist investors covered by the remediation plan. The firms will contact affected customers within five months. Those customers will be given the opportunity to convert their Class B or Class C shares to Class A shares in a way that will restore the customers to the position they would have been in had they originally purchased Class A shares. Affected customers who have sold some or all of their Class B or Class C shares will be eligible to receive a cash payment in addition to, or instead of, receiving Class A shares. Each firm will establish a response center to assist affected customers. The entire remediation process is expected to take approximately nine months to complete. The three firms settled these actions without admitting or denying the allegations, but consented to the entry of NASD's findings. (NASD Case #ACLI6009)

Date 12/31/2005

Case Number: ACLI6009

Wells Fargo Investments, LLC (CRD #10582, San Francisco, California) was fined \$3,000,000 for suitability and supervisory violations relating primarily to sales of Class B mutual fund shares as well as some Class C mutual fund shares. These cases are part of NASD's continuing investigation into mutual funds sales practices. Merrill Lynch Linsco were also part of this. The amount of the fines approximate the additional commissions the firms received by selling Class B shares rather than Class A mutual fund shares. In addition, each firm is implementing a remediation plan to compensate affected customers—collectively involving more than 29,000 households and nearly 140,000 transactions. NASD's investigation examined transactions during an 18month period between January 2002 and July 2003. Investigators focused on 23,000 households at Merrill Lynch with 105,000 Class B and C share transactions; 4,500 households at Wells Fargo with 12,000 Class B and C share trades; and approximately 2,000 households with 22,400 Class B and C share trades at Linsco. During this period, the three firms recommended and sold Class B and/or Class C share mutual funds to their customers without considering or adequately disclosing on a consistent basis that an equal investment in Class A shares would generally have been more advantageous to those customers in view of all relevant considerations. Before recommending a share class, brokers must consider the customer's anticipated holding period and all costs associated with each share class including front-end sales charges, annual expenses and contingent deferred sales charges. The firms also had inadequate supervisory and compliance procedures relating to the manner in which the firms' sales

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personnel recommended and sold Class B and Class C shares. "In recommending mutual funds with different share classes, brokers must understand, consider and disclose information about which particular share class would be most beneficial for the customer from an expense perspective," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "The failure by these firms to do this resulted in their customers purchasing Class B and C shares when they would have been better served with Class A shares. The firms have agreed to a remediation plan that will give affected customers the opportunity to convert their holdings to a more financially advantageous mutual fund share class." Class A shares typically charge a front-end sales charge and also may be subject to an asset-based sales charge, but it generally is lower than the asset-based sales charge imposed by Class B or Class C shares. Mutual funds may offer discounts, called breakpoints, on the front-end sales charge for Class A shares if an investor makes a large purchase, already holds other mutual funds offered by the same fund family, or commits to regularly purchasing the mutual fund's shares. To determine the appropriate discounts, an investor is often allowed to aggregate his purchases with holdings of other family members. Class B shares typically do not charge a front-end sales charge, but they do impose asset-based sales charges that may be higher than those associated with Class A shares. Class B shares also normally impose a contingent deferred sales charge (CDSC) which the investor may pay at the time the investor sells the shares. While the investor holds the shares, the CDSC normally declines and eventually is eliminated after a certain number of years. After the CDSC is eliminated, Class B shares often "convert" into Class A shares. When they convert, they will be subject to the same, lower asset-based sales charge as the Class A shares. Class C shares usually do not impose a front-end sales charge on the purchase but they are often subject to a CDSC if sold within a short time of purchase, usually one year. Class C shares also typically impose higher asset-based sales charges than Class A shares, and since their shares generally do not convert into Class A shares, their asset-based sales charge will not be reduced over time. So even though investors do not pay a front-end sales charge for Class B or Class C shares, the potential CDSCs and the higher ongoing fees significantly affect the return on mutual fund investments, particularly at higher dollar levels. In resolving this matter, the firms have agreed to a remediation plan that generally covers investors who, between January 1, 2002 and the dates of the settlement with each firm, purchased Class B shares totaling \$50,000 or more depending upon the expenses and charges of the fund and who under any ordinary circumstance would have been better off had they purchased A shares instead. The offer will also be extended to a limited number of Class C share investors who, during the same time frame, made purchases of \$500,000 or more and who, in view of all relevant circumstances, would have been better off had they purchases A shares instead. A number of mutual fund transaction exclusions from the plan also apply. NASD has posted a special section on its Web site—Improper Sales of Mutual Fund Class B and Class C Shares—Remediation Information for Investors—to assist investors covered by the remediation plan. The firms will contact affected customers within five months. Those customers will be given the opportunity to convert their Class B or Class C shares to Class A shares in a way that will restore the customers to the position they would have been in had they originally purchased Class A shares. Affected customers who have sold some or all of their Class B or Class C shares will be eligible to receive a cash payment in addition to, or instead of, receiving Class A shares. Each firm will establish a response center to assist affected customers. The entire remediation process is expected to take approximately nine months to complete. The three firms settled these actions without admitting or denying the allegations, but consented to the entry of NASD's findings. (NASD Case #ACLI6009)

Date 12/31/2005

Case Number: ACLI6009

Linsco/Private Ledger Corp., (CRD #-5142, Massachusetts) was fined \$2,400,000 for suitability and supervisory violations relating primarily to sales of Class B mutual fund shares as well as some Class C mutual fund shares. These cases are part of NASD's continuing investigation into mutual funds sales practices. Merrill Lynch and Wells Fargo were also part of this. The amount of the fines approximate the additional commissions the firms received by selling Class B shares rather than Class A mutual fund shares. In addition, each firm is implementing a remediation plan to compensate affected customers— collectively involving more than 29,000 households and nearly 140,000 transactions. NASD's investigation examined transactions during an 18month period between January 2002 and July 2003. Investigators focused on 23,000 households at Merrill Lynch with 105,000 Class B and C share transactions; 4,500 households at Wells Fargo with 12,000 Class B and C share trades; and approximately 2,000 households with 22,400 Class B and C share trades at Linsco. During this period, the three firms recommended and sold Class B

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and/or Class C share mutual funds to their customers without considering or adequately disclosing on a consistent basis that an equal investment in Class A shares would generally have been more advantageous to those customers in view of all relevant considerations. Before recommending a share class, brokers must consider the customer's anticipated holding period and all costs associated with each share class including front-end sales charges, annual expenses and contingent deferred sales charges. The firms also had inadequate supervisory and compliance procedures relating to the manner in which the firms' sales personnel recommended and sold Class B and Class C shares. "In recommending mutual funds with different share classes, brokers must understand, consider and disclose information about which particular share class would be most beneficial for the customer from an expense perspective," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "The failure by these firms to do this resulted in their customers purchasing Class B and C shares when they would have been better served with Class A shares. The firms have agreed to a remediation plan that will give affected customers the opportunity to convert their holdings to a more financially advantageous mutual fund share class." Class A shares typically charge a front-end sales charge and also may be subject to an asset-based sales charge, but it generally is lower than the asset-based sales charge imposed by Class B or Class C shares. Mutual funds may offer discounts, called breakpoints, on the front-end sales charge for Class A shares if an investor makes a large purchase, already holds other mutual funds offered by the same fund family, or commits to regularly purchasing the mutual fund's shares. To determine the appropriate discounts, an investor is often allowed to aggregate his purchases with holdings of other family members. Class B shares typically do not charge a front-end sales charge, but they do impose asset-based sales charges that may be higher than those associated with Class A shares. Class B shares also normally impose a contingent deferred sales charge (CDSC) which the investor may pay at the time the investor sells the shares. While the investor holds the shares, the CDSC normally declines and eventually is eliminated after a certain number of years. After the CDSC is eliminated, Class B shares often "convert" into Class A shares. When they convert, they will be subject to the same, lower asset-based sales charge as the Class A shares. Class C shares usually do not impose a front-end sales charge on the purchase but they are often subject to a CDSC if sold within a short time of purchase, usually one year. Class C shares also typically impose higher asset-based sales charges than Class A shares, and since their shares generally do not convert into Class A shares, their asset-based sales charge will not be reduced over time. So even though investors do not pay a front-end sales charge for Class B or Class C shares, the potential CDSCs and the higher ongoing fees significantly affect the return on mutual fund investments, particularly at higher dollar levels. In resolving this matter, the firms have agreed to a remediation plan that generally covers investors who, between January 1, 2002 and the dates of the settlement with each firm, purchased Class B shares totaling \$50,000 or more depending upon the expenses and charges of the fund and who under any ordinary circumstance would have been better off had they purchased A shares instead. The offer will also be extended to a limited number of Class C share investors who, during the same time frame, made purchases of \$500,000 or more and who, in view of all relevant circumstances, would have been better off had they purchases A shares instead. A number of mutual fund transaction exclusions from the plan also apply. NASD has posted a special section on its Web site—Improper Sales of Mutual Fund Class B and Class C Shares— Remediation Information for Investors—to assist investors covered by the remediation plan. The firms will contact affected customers within five months. Those customers will be given the opportunity to convert their Class B or Class C shares to Class A shares in a way that will restore the customers to the position they would have been in had they originally purchased Class A shares. Affected customers who have sold some or all of their Class B or Class C shares will be eligible to receive a cash payment in addition to, or instead of, receiving Class A shares. Each firm will establish a response center to assist affected customers. The entire remediation process is expected to take approximately nine months to complete. The three firms settled these actions without admitting or denying the allegations, but consented to the entry of NASD's findings. (NASD Case #ACLI6009)

Date 2/28/2006

Case Number: ACLI6016

David Lerner Associates, Inc. (DLA) (CRD #-5165, Syosset, New York) was fined \$400,000 and suspended from engaging in any new variable life insurance or variable annuity business for 30 calendar days for engaging in replacement sales of variable life insurance and variable annuities that violated NASD and New York State rules. The suspension begins on March 20, 2006, and will conclude at the close of business on April 19, 2006. NASD also fined and suspended two of the firm's principals. Martin Lerner, the firm's

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Executive Vice President of Sales, was suspended from acting in a supervisory capacity for 20 business days. Russell Moss, the firm's Assistant Vice President and Director of Insurance Services, was suspended in all capacities for 20 business days. Lerner and Moss were each held jointly and severally liable for \$25,000 of the fine against the firm. Both suspensions will begin on March 20, 2006, and will conclude at the close of business on April 17, 2006. NASD found that between November 1998 and February 2004, David Lerner employees failed to comply with New York State Insurance Department Regulation 60 in connection with variable life insurance and variable annuity replacement sales. The regulation is aimed at ensuring that investors have full and clear information prior to making a decision to replace an existing insurance policy or annuity contract, and at reducing the opportunity for misrepresentations and incomplete comparisons in replacement situations. The circumvention of the New York State regulation also constitutes a violation of NASD rules requiring compliance with just and equitable principles of trade. "New York's Regulation 60 is designed to protect investors from unsuitable recommendations by brokers to replace variable life and annuity contracts," said NASD Senior Vice President and Acting Head of Enforcement James Shorris. "It's intended to arm investors with the information they need about the costs and other implications of making such replacements before their decision is final. The firm's routine circumvention of the regulation denied investors the required opportunities to fully consider and understand these important investment decisions." Regulation 60 requires two separate interactions with a customer before a replacement can be completed. In step one, the customer is informed in writing—through a Definition of Replacement form—that a replacement is being considered. The customer must complete a Client Authorization form to allow the firm to collect information about the customer's existing life insurance policy or annuity contract, so that the customer will be able to make a meaningful comparison. Both forms must be signed and dated by the customer. In step two, among other disclosures, the customer must be provided with a Disclosure Statement setting forth information comparing the old and new life insurance policies or annuity contracts, including the primary reason(s) for recommending the new policy or contract and the reason(s) why the existing policy or contract can no longer meet the applicant's objectives. The customer must sign and **Date** an acknowledgement stating that the customer received and read the completed Disclosure Statement before signing the application for the new annuity contract or life insurance policy. NASD's investigation showed that David Lerner's employees routinely circumvented the required Regulation 60 replacement process. NASD found that at their initial meetings with customers to discuss a potential variable life insurance or variable annuity replacement sale, the firm's employees routinely instructed customers to sign—but leave undated—all of the required step one and step two Regulation 60 documents. Subsequently, the David Lerner employees would forward the Regulation 60 documentation to an unregistered David Lerner employee in the firm's main office in Syosset, NY, who was responsible for processing all such paperwork. That employee, with the knowledge of certain members of David Lerner management, routinely completed the required information on the pre-signed paperwork. This included filling in the necessary "Agent's Statement" on the Disclosure Statement, on which the representative was required to list the primary reason(s) for recommending the new life insurance policy or annuity contract and why the existing life insurance policy or annuity contract could not meet the applicant's objectives. That employee completed the required Agent's Statement by consistently listing boilerplate information without having any direct knowledge or understanding of the reason for the proposed replacement in each particular case. Additionally, that employee, with the knowledge of certain members of the firm's management, routinely inserted fictitious dates on the pre-signed Regulation 60 documentation in order to create the false appearance that the required two-step procedure had been followed. The employee reviewed, completed, and processed all Regulation 60 documentation without any principal of the firm ever reviewing the documentation for compliance, as required by the regulation. By having their clients during the initial meeting pre-sign undated and incomplete Regulation 60 documentation, David Lerner's sales force was in many instances able to effect variable life or variable annuity replacement sales before their clients ever received or reviewed the Regulation 60 documentation as completed by the unregistered employee at the firm's Syosset headquarters. NASD found that during the relevant period, David Lerner effected at least 527 variable life insurance replacement sales to New York State residents and generated total revenue of more than \$3,431,000 from those sales. The firm also effected at least 259 variable annuity replacement sales to New York State residents and generated total revenue of more than \$1,372,000 from those sales during the relevant time period. In addition to the Regulation 60 violations and related books and records violations, NASD also charged the firm, acting through Martin Lerner and Russell Moss, with failing to supervise the firm's sales force with a view towards preventing the Regulation 60 violations, as well as with registration violations for permitting Moss to function as a principal at the firm without being properly registered. In

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concluding this settlement, David Lerner Associates, Lerner and Moss neither admitted nor denied the charges, but consented to the entry of NASD's findings. David Lerner Associates was fined \$115,000 last September to settle charges of using misleading marketing materials with the public, including radio advertising, client seminars and other communications. In addition, the firm was ordered not to conduct any public seminars for 30 days. Earlier, NASD fined the firm \$100,000 for running improper sales contests to promote certain David Lerner proprietary mutual funds and selected variable annuity and variable life insurance products. (NASD Case #ACLI6016)

Date 3/31/2006

Case Number: ACLI6017

Merrill Lynch, Pierce, Fenner & Smith Inc. (CRD #7691, New York, New York) was fined \$5,000,000 for supervisory failures, registration violations, impermissible sales contests and other violations in connection with the operation of its Financial Advisory Center (FAC) located in Hopewell, NJ and Jacksonville, FL. The firm was also prohibited from staging any sales contests for FAC personnel for three years. In addition, Merrill Lynch was ordered to retain, at its own expense, an independent consultant to recommend corrective measures to firm policies and supervisory and compliance procedures and systems for the FAC. Until those corrective measures are implemented, Merrill Lynch must impose special supervisory procedures, including monitoring calls between FAC personnel and customers. In connection with the announcement, NASD is releasing a new Investor Alert, "Customer Advisory Centers: Not Your Typical Securities Firm Call Center." "Regardless of the size of their brokerage account, all investors are entitled to services from registered representatives acting in their clients' best interests who are reasonably supervised by properly registered professionals," said NASD Senior Vice President and Acting Head of Enforcement James Shorris. "In this case, Merrill Lynch failed to meet these basic standards by permitting its call center to function without proper supervisory controls, which gave rise to impermissible sales contests, unsuitable mutual fund switches and other systemic failures." NASD found that, from 2001 to 2004, Merrill Lynch did not have an adequate supervisory system and procedures that were reasonably designed to oversee the trading activities of its registered representatives at the FAC, referred to within the firm as Investment Service Advisors (ISAs). Certain of the ISAs engaged in a pattern of mutual fund switch recommendations that were accompanied by misrepresentations and omissions of facts to customers. Further, Merrill Lynch permitted individuals lacking the proper securities licenses and qualifications to be responsible for the supervision of the ISAs. Merrill Lynch also conducted several sales contests which improperly awarded non-cash compensation to ISAs in the form of rock concert tickets, sporting events and dinners based solely on the sale of the firm's proprietary mutual funds. The FAC was originally designed as a centralized "call center," where customers could call with questions or requests about their accounts and which initially held only a small number of customer accounts. NASD found that the character of the FAC changed in 2001. As a result of an overall Merrill Lynch strategy to improve its retail business by "segmenting" customer accounts, the firm began relocating thousands of customer accounts from branch offices throughout the country to the FAC. Generally, smaller accounts with assets of \$100,000 or less, or those with minimal transactional activity, were moved to the FAC, in part so that Merrill Lynch's full service Financial Advisors in branch offices could devote more attention to larger accounts. NASD found that between March 2001 and August 2002, more than 1 million customers were transferred to the FAC. At its peak size in 2002, the FAC had approximately 1.3 million accounts holding approximately \$20 billion in assets. That year, the FAC had gross revenues of approximately \$210 million. For new FAC accounts, Merrill Lynch promised around-the-clock customized financial advice from a "team of Merrill Lynch professionals." NASD found that Merrill Lynch failed to disclose that the ISAs often had five years or less brokerage experience, and that when making recommendations regarding securities, they were limited to mutual funds. ISAs were prohibited from soliciting orders in equities or bonds, unless requested to do so by a client. ISAs solicited securities transactions from the newly transferred customers, generating millions of dollars in annual gross revenues for Merrill Lynch. There was significant mutual fund switching activity. For example, in one week in March 2002, there were approximately 1,324 mutual fund switches reported by the FAC. Moreover, NASD found that several ISAs recommended mutual fund switches that were not suitable for their customers. For example, ISA's had an obligation, before making a recommendation, to consider whether many of those switches were necessary given that reasonable, free-exchange alternatives were available for customers within their existing mutual fund families. NASD also found that, in connection with the unsuitable switches, certain of the ISAs made false representations to customers, and/or omitted material facts, concerning costs and other important information. NASD found that, from 2001 through 2004, Merrill Lynch lacked an

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adequate supervisory system and procedures reasonably designed to supervise the ISAs, particularly given the growth of the FAC. Merrill Lynch, among other things, lacked adequate written supervisory procedures regarding mutual fund recommendations (including switch transactions); did not employ a sufficient number of properly trained and qualified supervisors to monitor activities within the FAC; and failed to conduct annual compliance audits for the FAC's two most active years. Thousands of mutual fund switches were not reviewed or were not adequately reviewed by Merrill Lynch principals. NASD also found that Merrill Lynch's form "switch letters" sent to customers were often inaccurate. Specifically, the letters represented that the administrative manager signing the letter had discussed the mutual fund switch with the ISA to confirm that proper disclosure of costs had been made to the customer. In fact, the administrative managers rarely discussed this issue with the ISA before sending the switch letters. Merrill Lynch allowed its FAC sales managers to exercise direct supervisory responsibility over the ISAs. The majority of those sales managers, however, were not properly registered as securities principals. They were therefore not qualified to supervise ISAs. NASD also found that, even with approximately 300 ISAs generating thousands of trades per day, Merrill Lynch employed only three to six registered principals to review all of the transactions. NASD's investigation showed that, in 2002, the FAC conducted three sales contests that violated the noncash compensation rule because they favored the sale of Merrill Lynch's proprietary mutual funds. NASD rules prohibit non-cash compensation arrangements between firms and their brokers for sales of mutual funds and variable contracts that are not based on concepts of "total production" and "equal weighting"—that is, the contests must be based on total sales of all products within a single category, such as mutual funds. NASD found that the firm offered and awarded various forms of non-cash compensation to the contest winners. For example, one contest rewarded the six ISAs who sold the most proprietary mutual fund products with tickets to a rock concert. Another offered a total of \$10,000 in expense credits to the top four teams of ISAs in total of proprietary product sales. These contests, along with several other contests based on overall production, contributed to a dramatic increase in the volume of proprietary mutual fund sales by the FAC. For example, in the first half of 2002, gross sales of proprietary products increased from \$36.4 million in the first quarter to \$138.7 million in the second quarter— an increase of nearly 300 percent. In settling this matter, the firm neither admitted nor denied the charges, but consented to the entry of NASD's findings. (NASD Case #ACLI6017)

Appendix E

ACLI Chart of NASD SRO Rule Filings: Has the NASD Provided Competitive Impact Analysis Required Under 1934 Act?

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to Amend Interpretive Material 2210-4 Regarding Hyperlinks to NASD's Web Site	SR-NASD-2006-073	06/06/2006	NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.	None
Proposed Rule Change to Amend Interpretive Material 2210-4 Regarding Hyperlinks to NASD's Web Site	SR-NASD-2006-073	06/06/2006	Same minimal sentence on competitive impact.	None
Proposed Rule Change Relating to Technical Amendments to Rule 3210	SR-NASD-2006-071	06/02/2006	Same minimal sentence on competitive impact.	None
Proposed Rule Change Relating to Amendment to the Safe Harbor For Business Expansions	SR-NASD-2006-070	06/02/2006	Same minimal sentence on competitive impact.	None
Proposed Rule Change Extending the Pilot Relating to Manning Price-Improvement Standards for Decimals	SR-NASD-2006-069	06/01/2006	Same minimal sentence on competitive impact.	None
Proposal to Amend Rule 2340 to Relieve Members from the Requirement to Send Quarterly Account Statements to Customer Accounts that are Carried on a DVP/RVP Basis	SR-NASD-2006-066	05/23/2006	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend Schedule A to the NASD By-Laws Regarding Branch Office Fees	SR-NASD-2006-065	05/23/2006	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposal to Adopt New NASD Rule 3160 Relating to Extension of Time Requests	SR-NASD-2006-064	05/15/2006	Same minimal sentence on competitive impact.	None
Amendment to Section 8 of Schedule A to NASD By-Laws to Increase the Service Charge for Processing Extension of Time Requests	SR-NASD-2006-063	05/15/2006	Same minimal sentence on competitive impact.	None
Amendment to Rule 6957(c) to Revise the Effective Date for Recent Amendments to NASD's Order Audit Trail System Rules	SR-NASD-2006-062	05/15/2006	Same minimal sentence on competitive impact.	None
Proposal to Adopt Rule 3170 Regarding Electronic Filing of All Regulatory Notices or Documents as Specified by NASD	SR-NASD-2006-060	05/16/2006	Same minimal sentence on competitive impact.	None
Proposed Amendments to Section 3 of Schedule A to the NASD By-Laws to Require the Reporting of Transactions Subject to a Regulatory Transaction Fee in an Automated Manner	SR-NASD-2006-055	04/21/2006	Same minimal sentence on competitive impact.	None
Rule Change to Revise the Effective Date of Certain Amendments to NASD's Order Audit Trail System Rules	SR-NASD-2006-052	04/20/2006	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to Extend Operation of NASD's Alternative Display Facility as a Temporary Pilot	SR-NASD-2006-050	04/18/2006	Same minimal sentence on competitive impact.	None
Technical Amendments to Rule 3080 Regarding Disclosures to Associated Persons When Signing Form U-4	SR-NASD-2006-046	04/13/2006	Same minimal sentence on competitive impact.	None
Amendments to Rules 2520 and 2522 to Recognize Additional Complex Option Spread Strategies and Amend Provisions for Permitted Offsets	SR-NASD-2006-045	04/03/2006	Same minimal sentence on competitive impact.	None
Proposal to Adopt New IM-3060 to Require Members to Adopt Written Policies and Procedures Concerning Business Entertainment	SR-NASD-2006-044	04/11/2006	Same minimal sentence on competitive impact.	None
Proposed Amendments to NASD's Current Order Audit Trail System (OATS) Rules	SR-NASD-2006-040	03/28/2006	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rules Regarding Trading and Quotation Halts in OTC Equity Securities	SR-NASD-2006-039	03/22/2006	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rule 1013 to Adopt a Standardized New Member Application Form	SR-NASD-2006-038	03/10/2006	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Extension of Effective Date of NASD Rule 3010(g)(2)(A) and IM-3010-1 (Uniform Branch Office Definition)	SR-NASD-2006-037	03/14/2006	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend NASD Interpretive Material 3013	SR-NASD-2006-036	03/07/2006	Same minimal sentence on competitive impact.	None
Proposed Amendments to IM-2110-2 to Clarify the Application of the Manning Rule to Non-Market Makers	SR-NASD-2006-035	03/06/2006	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rule 6530 to Clarify the Removal Process for the Securities of OTCBB Issuers	SR-NASD-2006-029	02/27/2006	Same minimal sentence on competitive impact.	None
Proposed Amendment to Rule 2860 to Extend a Pilot Program	SR-NASD-2006-025	02/16/2006	Same minimal sentence on competitive impact.	None
Proposed Amendments to IM-2110-2 to Clarify the Application of the Manning Rule to Non-Market Makers	SR-NASD-2006-012	01/27/2006	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rule 2211 Regarding Principal Pre-Use Approval of Member Correspondence	SR-NASD-2006-011	01/27/2006	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Amendments to Rule 2860 to Revise the Definition of the Term Underlying Index and Allow Members to Calculate Position Limits for Certain Conventional Equity Options	SR-NASD-2006-007	01/23/2006	Same minimal sentence on competitive impact.	None
Proposal to Expand the Scope of Rule 2440 and IM-2440 to Apply to All Securities Transactions with or for a Customer	SR-NASD-2006-005	01/19/2006	Same minimal sentence on competitive impact.	None
NASD is Filing Notice to Members 06-03, Which Provides Guidance Regarding the Application of New Rule 2111 Prohibiting Members from Trading Ahead of Customer Market Orders Under Certain Circumstances	SR-NASD-2006-003	01/06/2006	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Extend the Current Pilot Price-Improvement Standards for Decimalized Securities Contained in NASD Interpretive Material 2110-2	SR-NASD-2005-152	12/23/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Expand the Scope of IM-2110-2 (the "Manning Rule")	SR-NASD-2005-146	12/09/2005	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to Add New NASD Rule 3380 Relating to Order Entry and Execution Practices	SR-NASD-2005-144	12/08/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend Rule 2111 to Delete References to Rule 6440(f)(2) in Light of Recent Rule Change Repealing Rule 6440(f)	SR-NASD-2005-139	12/01/2005	Same minimal sentence on competitive impact.	None
Proposed Amendments Relating to the Status of Former Registered Persons Serving in the Armed Forces of the United States	SR-NASD-2005-135	11/15/2005	Same minimal sentence on competitive impact.	None
Proposed Amendments Relating to the Status of Registered Persons and Sole Proprietors Serving in the Armed Forces of the United States	SR-NASD-2005-134	11/15/2005	Same minimal sentence on competitive impact.	None
Proposed Amendment to Section 4 fo Schedule A to NASD By-Laws to Increase Certain Qualification Examination Fees	SR-NASD-2005-133	11/15/2005	Same minimal sentence on competitive impact.	None
Proposed Amendment to Section 4 of Schedule A to NASD By-Laws to Increase the Session Fee for the Regulatory Element Continuing Education Program	SR-NASD-2005-132	11/22/2005	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Amendments to NASD Rule 6210(a), the Definition of "TRACE-eligible security," and NASD Rule 6260, the TRACE Notification Provision	SR-NASD-2005-130	11/09/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Repeal Rule 6440(f)	SR-NASD-2005-124	10/24/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change Relating to Amendments to Rule 3012, Rule 3013, and IM-3013	SR-NASD-2005-121	10/14/2005	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rule 6250 Regarding Dissemination of TRACE-eligible Securities Transactions	SR-NASD-2005-120	10/14/2005	Same minimal sentence on competitive impact.	None
Proposal to Make Permanent Bond Mutual Fund Volatility Ratings Rules	SR-NASD-2005-117	09/28/2005	Same minimal sentence on competitive impact.	None
Proposed Amendments for Rule 2810 Addressing Compensation Fees and Expenses in Public Offerings of REITS and DPPS	SR-NASD-2005-114	09/28/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend NASD Rule 3360 Regarding Short Interest Reporting Requirements	SR-NASD-2005-112	09/20/2005	Same minimal sentence on competitive impact.	None
Proposed Revisions to the Series 9/10 Examination Program	SR-NASD-2005-111	09/13/2005	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Revisions to the Series 6 Examination Program	SR-NASD-2005-110	09/13/2005	Same minimal sentence on competitive impact.	None
Proposed Revisions to the Series 4 Examination Program	SR-NASD-2005-109	09/13/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Extend the Provisions of NASD Rule 2210(c)(3) and Interpretive Material 2210-5 on a Pilot Basis	SR-NASD-2005-104	08/29/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend NASD Rule 3110	SR-NASD-2005-103	08/29/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend NASD Rules 6951 and 6952 Regarding Order Audit Trail System Reporting	SR-NASD-2005-101	08/25/2005	Same minimal sentence on competitive impact.	None
Proposed New Rule 2231 Regarding Transaction-Specific Disclosures for Customers in Debt Securities Transactions	SR-NASD-2005-100	08/19/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend NASD Rule 6740 Regarding Submission of Rule 15c2-11 Information on Non-Nasdaq Securities	SR-NASD-2005-098	08/18/2005	Same minimal sentence on competitive impact.	None
Proposed Amendment to Rule 2860 to Extend Pilot Program	SR-NASD-2005-097	08/10/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend NASD Rule 6750 Relating to Non-Nasdaq OTC Equity Securities	SR-NASD-2005-095	07/28/2005	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to Amend Rule 10308 of the NASD Code of Arbitration Procedure Relating to the Classification of Arbitrators	SR-NASD-2005-094	07/22/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Extend the Operation of NASD's Alternative Display Facility ("ADF") on a Pilot Basis	SR-NASD-2005-092	07/20/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change Relating to NASD's Direct Authority for the Activities Related to or in Support of Trading in Over-the-Counter Equity Securities	SR-NASD-2005-089	07/19/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Reflect Nasdaq's Separation from NASD Upon Nasdaq's Anticipated Approval as a National Securities Exchange	SR-NASD-2005-087	07/08/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amendment to Article VIII of the By-Laws, Relating to District Committees and District Nominating Committees	SR-NASD-2005-086	07/05/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Extend the Pilot Relating to Manning Price-Improvement Standards for Decimals	SR-NASD-2005-085	06/29/2005	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to Amend NASD Rule 3012 Regarding General Supervisory Requirements	SR-NASD-2005-084	06/24/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend Rule 7010(k)(3) Relating to Definition of "Non-Professional" and Use of TRACE Transaction Data	SR-NASD-2005-083	06/23/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Establish New NASD Rule 2290 Regarding Fairness Opinions	SR-NASD-2005-080	06/22/2005	Same minimal sentence on competitive impact.	None
Proposed Rule change to Revise Rule 10322 of the NASD Code of Arbitration Procedure, which Pertains to Subpoenas and the Power to Direct Appearances	SR-NASD-2005-079	06/17/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend Rule 7010(k)(3) Relating to Definition of "Non-Professional" and Use of TRACE Transaction Data	SR-NASD-2005-074	06/22/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Rescind the Pilot Rule in IM-10100(f) of the NASD Code of Arbitration Procedure	SR-NASD-2005-070	05/31/2005	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to Rules 6530 and 7010 to Clarify the Availability of a Process to Review Eligibility Determinations Under Rule 6530 and to Adopt Service Based Fees for Issuers Quoted on the OTC Bulletin Board ("OTCBB")	SR-NASD-2005-067	12/15/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend NASD Rule 3011 and Adopt New Related Interpretive Material, Specifically IM-3011-1 and IM-3011-2	SR-NASD-2005-066	05/23/2005	Same minimal sentence on competitive impact.	None
Proposed Amendment to IM-8210-2	SR-NASD-2005-064	05/12/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend NASD Rule 7010(k)	SR-NASD-2005-063	05/12/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Extend for an Additional Two-Year Period NASD's Authority Under the Cease and Desist Pilot Program	SR-NASD-2005-061	05/11/2005	Same minimal sentence on competitive impact.	None
Proposed Amendments to NASD Rules 3150 and 3230	SR-NASD-2005-058	05/02/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Delay Implementation Date of Revisions to the Series 4 Examination Program	SR-NASD-2005-053	04/18/2005	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to Provide Payment to Arbitrators for Deciding Discovery-Related Motions Without a Hearing	SR-NASD-2005-052	04/14/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend the Arbitration Fees Applicable to Certain Statutory Employment Discrimination Claims	SR-NASD-2005-046	04/08/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend NASD Rule 3110(f)(2)(B)	SR-NASD-2005-045	04/04/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Provide an Exemption From the Research Analyst Qualification Examination for Certain Associated Persons	SR-NASD-2005-043	04/01/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend Rule 2860	SR-NASD-2005-040	03/30/2005	Same minimal sentence on competitive impact.	None
Proposed Amendment to Rule 3010(b)(2)(L) Relating to Taping Rule "Opt Out" and Exemption Provisions	SR-NASD-2005-033	03/22/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Provide Written Explanations in Arbitration Awards Upon the Request of Customers or Associated Persons	SR-NASD-2005-032	03/15/2005	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Form BR (Uniform Branch Office form) Conforming Changes and Technical Revisions to the Form U4 and Form U5	SR-NASD-2005-030	03/11/2005	Same minimal sentence on competitive impact.	None
Proposed Rule change to Amend NASD Rule 7010(k) Relating to Transaction Reporting and Compliance Engine (TRACE) Transaction Data and Data Fees	SR-NASD-2005-026	02/11/2005	Same minimal sentence on competitive impact.	None
Revisions to the Series 4 Examination Program	SR-NASD-2005-025	02/09/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change Amends Rule 10316 and Adopts Rule 10408 of the NASD Code of Arbitration Procedure to Address Attorney Representation in Arbitration and Mediation	SR-NASD-2005-023	02/09/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Provide an Exemption from the Research Analyst Qualification Examination for Certain Associated Persons Who Prepare Technical Research Reports	SR-NASD-2005-022	02/04/2005	Same minimal sentence on competitive impact.	None
Guidance Regarding Members' Regulatory Transaction Fees	SR-NASD-2005-021	02/04/2005	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Revisions to the Series 55 Examination Program	SR-NASD-2005-015	01/31/2005	Same minimal sentence on competitive impact.	None
Proposed Revisions to the Series 11 Examination Program	SR-NASD-2005-014	01/31/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Rule 6530 to Limit the Eligibility for Quotation on the OTCBB	SR-NASD-2005-011	01/28/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend the Code of Arbitration Procedure by Adopting a New Interpretive Material (IM) 10308 on Mediators Serving as Arbitrators	SR-NASD-2005-007	01/19/2005	Same minimal sentence on competitive impact.	None
Proposed Rule 2342 Requiring Members to Provide Customers with SIPC's Web Site and Telephone Number	SR-NASD-2005-005	01/18/2005	Same minimal sentence on competitive impact.	None
Proposed Amendment to Rule 3010(a)(7) to Require Registered Principals to Attend Annual Compliance Meetings	SR-NASD-2005-004	01/13/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend NASD Rule 3360 in Light of the SEC Regulation SHO	SR-NASD-2005-001	01/07/2005	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend Rule 7010(k)	SR-NASD-2004-189	12/29/2004	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed New Rule 2821 Regarding Transactions in Deferred Variable Annuities	SR-NASD-2004-183	12/14/2004	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Extend the Pilot Rule in IM-10100(f) of the NASD Code of Arbitration Procedure Relating to the California Waiver Program Until September 30, 2005	SR-NASD-2004-180	12/09/2004	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend Section 13 of Schedule A to the NASD By-Laws to Adjust the Review Charge for Advertisement, Sales Literature, and Other Such Materials Filed With or Submitted to NASD	SR-NASD-2004-179	12/08/2004	Same minimal sentence on competitive impact.	None
Proposed Rule Change To Amend Section 7 of Schedule A to the NASD By-Laws to Adjust Fees for Filing Documents Pursuant to the Corporate Financing Rule	SR-NASD-2004-177	12/03/2004	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Extend Through June 30, 2005, the Current Pilot Price-Improvement Standards for Decimalized Securities Contained in NASD Interpretive Material 2110-2 - Trading Ahead of Customer Limit Order	SR-NASD-2004-176	12/02/2004	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to Repeal NASD Rule 3110(b)(1), Rule 3210, Rule 3370(b) and Rule 11830 in Light of SEC Regulation SHO	SR-NASD-2004-175	11/30/2004	Same minimal sentence on competitive impact.	None
Proposed Amendment to Rule 2212 (Telemarketing) Regarding the Frequency of Updates from the National Do-Not-Call Registry	SR-NASD-2004-174	11/24/2004	Same minimal sentence on competitive impact.	None
Amendments to Rule 2340 (Customer Account Statements)	SR-NASD-2004-171	11/1/2004	Same minimal sentence on competitive impact.	None
Proposed Rule Change Relating to NASD Rule 2790	SR-NASD-2004-165	10/29/2004	Same minimal sentence on competitive impact.	None
Random Selection of Arbitrators by the Neutral List Selection System; Accelerated Effectiveness Requested	SR-NASD-2004-164	10/27/2004	Same minimal sentence on competitive impact.	None
Extension of Pilot for Bond Trade Dissemination Service ("BTDS") Professional Delayed-Time Data Display Fee	SR-NASD-2004-163	10/26/2004	Same minimal sentence on competitive impact.	None
Proposed Rule Change To Extend Operation of NASD's Alternative Display Facility as a Temporary Pilot	SR-NASD-2004-160	10/21/2004	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to Allow NASD to Review on a Pilot Basis Denial of Access Complaints Related to the Alternative Display Facility	SR-NASD-2004-159	10/22/2004	Same minimal sentence on competitive impact.	None
Options Position Limits - Exemption for OTC Derivatives Dealers	SR-NASD-2004-153	10/12/2004	Same minimal sentence on competitive impact.	None
Proposed Amendment to TRACE Rule 6250 (Dissemination of Transaction Information); Filed for Immediate Effectiveness)	SR-NASD-2004-148	9/30/2004	Same minimal sentence on competitive impact.	None
Amendments to Schedule A to the NASD By-Laws (Fees for Qualification Examinations)	SR-NASD-2004-145	9/29/2004	Same minimal sentence on competitive impact.	None
Amendments to NASD Rule 2711 to Prohibit Participation by Research Analysts in Road Shows	SR-NASD-2004-141	9/17/2004	Same minimal sentence on competitive impact.	None
Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the OATS Rules to Require that ECNs Capture Routed Order Identifier Information	SR-NASD-2004-137	9/17/2004	Same minimal sentence on competitive impact.	None
Treatment of Commodity Pool Trail Commissions under Rule 2810	SR-NASD-2004-136	9/7/2004	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Disclosure and Consent Requirements When Trading on a Net Basis With Customers	SR-NASD-2004-135	9/1/2004	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rule 9522	SR-NASD-2004-133	8/31/2004	Same minimal sentence on competitive impact.	None
Amendments to Rule 2320(g) and Rule 3110(b)(2) Relating to Foreign Securities	SR-NASD-2004-130	8/26/2004	Same minimal sentence on competitive impact.	None
Proposed Rule Change Relating to Section 3 of Schedule A to the NASD By-Laws; Filed for Immediate Effectiveness	SR-NASD-2004-129	8/20/2004	Same minimal sentence on competitive impact.	None
Extension of Pilot Rule in IM-10100(f) of the NASD Code of Arbitration Procedure Regarding Waiver of California Arbitrator Disclosure Standards; Immediate Effectiveness Requested	SR-NASD-2004-126	8/19/2004	Same minimal sentence on competitive impact.	None
Proposal to Delete Rule Series 3400 and IM-2210-4(b) as Obsolete	SR-NASD-2004-123	8/10/2004	Same minimal sentence on competitive impact.	None
Amendments to NASD's Minor Rule Violation Plan	SR-NASD-2004-121	8/10/2004	Same minimal sentence on competitive impact.	None
Amendments to Supervisory Control and Inspection Procedures Rules	SR-NASD-2004-116	8/10/2004	Same minimal sentence on competitive impact.	None
Amendments to Reduce the Fee for the Regulatory Element of Continuing Education Program	SR-NASD-2004-115	7/26/2004	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Extension of the Pilot Relating to Manning Price-Improvement Standards for Decimals	SR-NASD-2004-112	7/22/2004	Same minimal sentence on competitive impact.	None
Amendments to NASD, NASD Regulation, and NASD Dispute Resolution By-Laws Relating to Divestiture of American Stock Exchange	SR-NASD-2004-110	7/15/2004	Same minimal sentence on competitive impact.	None
Treatment of Commodity Pool Trail Commissions Under Rule 2810	SR-NASD-2004-108	7/13/2004	Same minimal sentence on competitive impact.	None
Amendments to the Rule 9600 Series; Filed for Immediate Effectiveness	SR-NASD-2004-100	6/25/2004	Same minimal sentence on competitive impact.	None
Proposed Amendments to Eliminate Exemptions from the Continuing Education Regulatory Element Requirements	SR-NASD-2004-098	6/24/2004	Same minimal sentence on competitive impact.	None
Policy to Conduct Fingerprint-based Background Checks of NASD Employees and Independent Contractors	SR-NASD-2004-95	6/17/2004	Same minimal sentence on competitive impact.	None
Proposed Amendments to TRACE Rule 6250 and Related TRACE Rules to Disseminate Transaction Information on All TRACE-Eligible Securities and Facilitate Dissemination	SR-NASD-2004-094	6/17/2004	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
To Establish a Revised Effective Date for Amendments to Order Audit Trail System Rules Relating to Execution Reports	SR-NASD-2004-093	6/15/2004	Same minimal sentence on competitive impact.	None
Proposed Amendments to Require Price Improvement to Limit Orders in Certain Circumstances	SR-NASD-2004-089	6/8/2004	Same minimal sentence on competitive impact.	None
Technical Amendment to Section 4 of Schedule A to the NASD By-Laws and to Rule 10308(d) of the NASD Code of Arbitration Procedure; Filed for Immediate Effectiveness	SR-NASD-2004-087	6/7/2004	Same minimal sentence on competitive impact.	None
Amendment to NASD Rule 1022 to Establish Qualification Requirements for Supervisors of Research Analysts	SR-NASD-2004-078	5/7/2004	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rule 11870 Relating to Non-Standard Transfers of Customer Account Assets	SR-NASD-2004-058	3/31/2004	Same minimal sentence on competitive impact.	None
Proposed Amendment to Reduce The Reporting Period for Transactions in TRACE-Eligible Securities	SR-NASD-2004-057	3/31/2004	Same minimal sentence on competitive impact.	None
Series 86/87 Examination and Development Fees	SR-NASD-2004-049	3/18/2004	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Amendments to Require Market Order Protection	SR-NASD-2004-045	3/11/2004	Same minimal sentence on competitive impact.	None
Proposed Amendments Relating to Short Sale Delivery Requirements	SR-NASD-2004-044	3/9/2004	Same minimal sentence on competitive impact.	None
Disclosure of Fees and Expenses in Mutual Fund Performance Sales Material	SR-NASD-2004-043	3/9/2004	Same minimal sentence on competitive impact.	None
Proposed Foreign Hearing Location Rule	SR-NASD-2004-042	3/8/2004	Same minimal sentence on competitive impact.	None
Extension of Pilot Rule in IM-10100(f) of the NASD Code of Arbitration Procedure Regarding Waiver of California Arbitrator Disclosure Standards; Immediate Effectiveness Requested	SR-NASD-2004-040	3/5/2004	Same minimal sentence on competitive impact.	None
Reducing the Time for Chairperson Selection	SR-NASD-2004-039	3/3/2004	Same minimal sentence on competitive impact.	None
To Establish Effective Date For NASD Rule 3370, Affirmative Determination Requirements	SR-NASD-2004-031	2/13/2004	Same minimal sentence on competitive impact.	None
Proposed Amendment to Rule Relating to Execution of Investment Company Portfolio Transactions	SR-NASD-2004-027	2/10/2004	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rule 2320(a), NASD's Best Execution Rule	SR-NASD-2004-026	2/11/2004	Same minimal sentence on competitive impact.	None
Amendments to NASD's Minor Rule Violation Plan	SR-NASD-2004-025	2/10/2004	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Amendments to Order Audit Trail System Rules Relating to Execution Reports	SR-NASD-2004-023	2/4/2004	Same minimal sentence on competitive impact.	None
Shelf Offering Amendments	SR-NASD-2004-022	2/3/2004	Same minimal sentence on competitive impact.	None
Amendment to NASD Rule 1050 Related to Registration and Qualification of Research Analysts	SR-NASD-2004-020	2/2/2004	Same minimal sentence on competitive impact.	None
Series 86/87 Examination Program	SR-NASD-2004-017	1/28/2004	Same minimal sentence on competitive impact.	None
Online Arbitration Claim Filing Pilot Program	SR-NASD-2004-016	1/28/2004	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Adopt Interpretative Material 3150 ("IM-3150") to Establish Exemptions From the Reporting Requirements of NASD Rule 3150	SR-NASD-2004-014	1/26/2004	Same minimal sentence on competitive impact.	None
Reorganization and Revision of NASD Mediation Rules	SR-NASD-2004-013	1/23/2004	Same minimal sentence on competitive impact.	None
Proposed Rule Change To Extend Operation of NASD's Alternative Display Facility as a Temporary Pilot	SR-NASD-2004-012	1/26/2004	Same minimal sentence on competitive impact.	None
Reorganization and Revision of NASD Arbitration Rules Relating to Industry Disputes	SR-NASD-2004-011	1/16/2004	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
To Establish Effective Date For NASD Rule 1050, Registration of Research Analyst	SR-NASD-2004-010	1/16/2004	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Amend NASD Rule 2370	SR-NASD-2004-005	1/8/2006	Same minimal sentence on competitive impact.	None
To Establish Effective Date For Recently Amended Provisions of NASD Rule 2711(h)	SR-NASD-2004-003	1/8/2004	Same minimal sentence on competitive impact.	None
Amendments to Alternative Display Facility Rules to Require Advance Written Notice of Denial of Direct or Indirect Electronic Access	SR-NASD-2004-002	1/7/2004	Same minimal sentence on competitive impact.	None
Proposal to Increase the Fee for Panel Member Training	SR-NASD-2004-001	1/7/2004	Same minimal sentence on competitive impact.	None
Amendments to Schedule A of the NASD By-Laws to Adjust the Trading Activity Fee Rate and Add TRACE-Eligible and Municipal Securities as Covered Securities	SR-NASD-2003-201	12/29/2003	Same minimal sentence on competitive impact.	None
Technical Amendment to Rule 2130	SR-NASD-2003-200	12/29/2003	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
To Further Delay Implementation Date of Amendments to Article VIII (District Committees and District Nominating Committees) of the By-Laws of NASD Regulation, Inc.	SR-NASD-2003-197	12/24/2003	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Section 5 of Schedule A to the NASD By-Laws	SR-NASD-2003-194	12/24/2003	Same minimal sentence on competitive impact.	None
Amendments to Reduce Fee for Regulatory Element of Continuing Education Program	SR-NASD-2003-193	12/24/2003	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Section 4 of Schedule A to the NASD By-Laws	SR-NASD-2003-192	12/19/2003	Same minimal sentence on competitive impact.	None
Interpretations in a Forthcoming Notice to Members Describing Rule 2790	SR-NASD-2003-190	12/18/2003	Same minimal sentence on competitive impact.	None
Administration of Qualification Examinations on Security Futures	SR-NASD-2003-186	12/10/2003	Same minimal sentence on competitive impact.	None
Review and Update of Member Executive Representative Designation and Contact Information	SR-NASD-2003-184	12/8/2003	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rule 1120 Regarding Regulatory Element Contact Person	SR-NASD-2003-183	12/8/2003	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Amendments to "TRACE-Eligible Security" and An Exemption to Trade Reporting	SR-NASD-2003-182	12/5/2003	Same minimal sentence on competitive impact.	None
Proposed Rule Change To Expressly State NASD's Authority to Suspend Quotations of ADF Market Participants	SR-NASD-2003-181	12/4/2003	Same minimal sentence on competitive impact.	None
Technical Amendments to Interpretative Material 3130 (IM-3130)	SR-NASD-2003-177	12/1/2003	Same minimal sentence on competitive impact.	None
Chief Executive Officer and Chief Compliance Officer Certification Proposal	SR-NASD-2003-176	11/26/2003	Same minimal sentence on competitive impact.	None
Proposed Amendments to Repeal Rule 4613A(e)(1) Requiring Same-Priced Quotations on Multiple Markets	SR-NASD-2003-175	11/25/2003	Same minimal sentence on competitive impact.	None
Release of Information Through the Public Disclosure Program	SR-NASD-2003-168	11/20/2003	Same minimal sentence on competitive impact.	None
Amendments to Schedule B to the NASD By-Laws	SR-NASD-2003-166	11/11/2003	Same minimal sentence on competitive impact.	None
Three-Day Adjournment Rule	SR-NASD-2003-164	11/4/2003	Same minimal sentence on competitive impact.	None
Voluntary Direct Communication Between Parties and Arbitrators	SR-NASD-2003-163	10/31/2003	Same minimal sentence on competitive impact.	None
Reorganization and Revision of NASD Rules Relating to Customer Disputes	SR-NASD-2003-158	10/15/2003	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Permanent Approval of Fees for the Trade Reporting and Compliance Engine (TRACE)	SR-NASD-2003-157	10/14/2003	Same minimal sentence on competitive impact.	None
Amendment to Pilot Rule in IM-10100(f) of the NASD Code of Arbitration Procedure Regarding Waiver of California Arbitrator Disclosure Standards; Immediate Effectiveness Requested	SR-NASD-2003-153	10/6/2003	Same minimal sentence on competitive impact.	None
Amendment to NASD's Minor Rule Violation Plan and Late Fee Provision	SR-NASD-2003-148	10/3/2003	Same minimal sentence on competitive impact.	None
Amendment to the Delegation Plan to Remove NASDAQ Representation of NASD under the UTP Plan	SR-NASD-2003-147	10/2/2003	Same minimal sentence on competitive impact.	None
Proposed Rule Change To Give Authority to NASD's Market Regulation Committee To Review Alternative Display Facility System Outage and Denial of Excused Withdrawal Determinations	SR-NASD-2003-145	9/24/2003	Same minimal sentence on competitive impact.	None
Extension of Pilot Rule in IM-10100(f) of the NASD Code of Arbitration Procedure Regarding Waiver of California Arbitrator Disclosure Standards; Immediate Effectiveness Requested	SR-NASD-2003-144	9/24/2003	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Additional Mark-Up Policy for Transactions in Debt Securities	SR-NASD-2003-141	9/16/2003	Same minimal sentence on competitive impact.	None
Proposed Rule Governing Allocations and Distributions of Shares in Initial Public Offerings	SR-NASD-2003-140	9/15/2003	Same minimal sentence on competitive impact.	None
Technical Amendment to NASD Rule 2710	SR-NASD-2003-139	9/11/2003	Same minimal sentence on competitive impact.	None
Amendments to Schedule B to the NASD By-Laws				None
Amendments to Schedule B to the NASD By-Laws	SR-NASD-2003-138	9/3/2003	Same minimal sentence on competitive impact.	None
Amendments to NASD Rules 1013 and 1140	SR-NASD-2003-136	8/28/2003	Same minimal sentence on competitive impact.	None
National Do-Not-Call Registry	SR-NASD-2003-131	8/15/2003	Same minimal sentence on competitive impact.	None
Proposed Amendment to Expiration Date of Rules Relating to Bond Fund Volatility Ratings	SR-NASD-2003-126	8/7/2003	Same minimal sentence on competitive impact.	None
Proposal to Conduct Background Verification and Charge Application Fee for NASD Neutral Roster Applicants	SR-NASD-2003-122	8/4/2004	Same minimal sentence on competitive impact.	None
Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings	SR-NASD-2003-110	7/14/2003	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Section 4 of Schedule A to the NASD By-Laws	SR-NASD-2003-109	7/9/2003	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
To Delay Implementation Date of Amendments to Article VIII (District Committees and District Nominating Committees) of the By-Laws of NASD Regulation, Inc.	SR-NASD-2003-107	7/7/2003	Same minimal sentence on competitive impact.	None
Amendments to Pilot Rule in IM-10100(f) and (g) of the Code of Arbitration Procedure to Require Industry Parties in Arbitration to Waive Application of Contested California Arbitrator Disclosure Standards, upon the Request of Customers or Associated Persons; Immediate Effectiveness Requested	SR-NASD-2003-106	7/7/2003	Same minimal sentence on competitive impact.	None
Proposed New Uniform Definition of "Branch Office" under NASD Rule 3010(g)(2)	SR-NASD-2003-104	7/1/2003	Same minimal sentence on competitive impact.	None
Amendment to Rule 10304 of the NASD Code of Arbitration Procedure Governing Time Limits for Submission of Claims in Arbitration	SR-NASD-2003-101	6/19/2003	Same minimal sentence on competitive impact.	None
Proposed Amendment to Rule 6260 New Issue Notification Procedures	SR-NASD-2003-099	6/19/2003	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Extension on Pilot Basis of NASD Rule 7010(k) Relating to Fees for the Trade Reporting and Compliance Engine (TRACE)	SR-NASD-2003-097	6/17/2003	Same minimal sentence on competitive impact.	None
Amendments to Rule 10308 and 10312 of the NASD Code of Arbitration Procedure Governing Arbitrator Classification	SR-NASD-2003-095	6/12/2003	Same minimal sentence on competitive impact.	None
Technical Amendment to NASD Rule 2210	SR-NASD-2003-094	6/11/2003	Same minimal sentence on competitive impact.	None
Proposed Rule Change to By-Laws Regarding the Trading Activity Fee	SR-NASD-2003-093	6/10/2003	Same minimal sentence on competitive impact.	None
Borrowing From Or Lending To Customers	SR-NASD-2003-092	6/10/2003	Same minimal sentence on competitive impact.	None
Series 23 Examination Program	SR-NASD-2003-091	6/4/2003	Same minimal sentence on competitive impact.	None
To Establish Effective Dates For NASD Rule 2711, Research Analysts and Reports	SR-NASD-2003-079	5/5/2003	Same minimal sentence on competitive impact.	None
Proposed Amendment to Rule 6230 To Reduce Reporting Period	SR-NASD-2003-078	5/2/2003	Same minimal sentence on competitive impact.	None
Proposed Amendments Regarding Requests for Underwriting Activity Reports	SR-NASD-2003-075	4/28/2003	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change Regarding Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties	SR-NASD-2003-074	4/15/2003	Same minimal sentence on competitive impact.	None
Revisions to NASD By-Laws Extending Existing Pilot Program for the Regulatory Fee and the Trading Activity Fee	SR-NASD-2003-073	4/14/2003	Same minimal sentence on competitive impact.	None
Proposed Rule Change Regarding Failure to Pay Arbitration Awards	SR-NASD-2003-069	4/7/2003	Same minimal sentence on competitive impact.	None
Amendments to the Non-Cash Compensation Provisions of NASD Rule 2710 (Corporate Financing) and Rule 2810 (Direct Participation Programs)	SR-NASD-2003-068	4/4/2003	Same minimal sentence on competitive impact.	None
Proposed Rule Change To Extend Operation of NASD's Alternative Display Facility as a Temporary Pilot	SR-NASD-2003-067	4/7/2003	Same minimal sentence on competitive impact.	None
Revisions to NASD By-Laws Extending Existing Pilot Program for the Regulatory Fee and the Trading Activity Fee	SR-NASD-2003-065	3/31/2003	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Extension of Pilot Rule in IM-10100(f) and (g) of the Code of Arbitration Procedure to Require Industry Parties in Arbitration to Waive Application of Contested California Arbitrator Disclosure Standards, upon the Request of Customers or Associated Persons with Claims of Statutory Employment Discrimination; Immediate Effectiveness Requested	SR-NASD-2003-64	3/31/2003	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Revise Uniform Application for Securities Industry Registration or Transfer (Form U-4) and Uniform Termination Notice for Securities Industry Registration (Form U-5)	SR-NASD-2003-057	4/7/2003	Same minimal sentence on competitive impact.	None
Proposed Amendments to Article VIII (District Committees and District Nominating Committees) of the By-Laws of NASD Regulation, Inc.	SR-NASD-2003-055	3/21/2003	Same minimal sentence on competitive impact.	None
Margin Rule for Security Futures Contracts	SR-NASD-2003-045	3/18/2003	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposal to Disseminate Up to Thirty Additional Corporate Bonds Under Trade Reporting and Compliance Engine Rules ("TRACE Rules")	SR-NASD-2003-041	3/17/2003	Same minimal sentence on competitive impact.	None
Amendments to NASD Rule 2340	SR-NASD-2003-036	3/11/2003	Same minimal sentence on competitive impact.	None
Margin Rule for Security Futures Contracts	SR-NASD-2003-031	3/5/2003	Same minimal sentence on competitive impact.	None
Revisions to NASD By-Laws Extending Existing Pilot Program for the Regulatory Fee and the Trading Activity Fee	SR-NASD-2003-026	2/28/2003	Same minimal sentence on competitive impact.	None
Proposed Temporary Fee Reductions and Extension on Pilot Basis of NASD Rule 7010(k) Relating to Fees for the Trade Reporting and Compliance Engine (TRACE)	SR-NASD-2003-25	2/27/2003	Same minimal sentence on competitive impact.	None
Proposed Amendments to the NASD Registration Rules	SR-NASD-2003-024	2/25/2003	Same minimal sentence on competitive impact.	None
Proposed Rule Change to NASD Interpretive Material 2260 (IM-2260)	SR-NASD-2003-019	2/12/2003	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Section 9 of Schedule A to the NASD By-Laws	SR-NASD-2003-018	2/11/2003	Same minimal sentence on competitive impact.	None
Proposed Interpretive Material Regarding the Use of Investment Analysis Tools	SR-NASD-2003-013	1/31/2003	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Fees Relating to the NASD Alternative Display Facility	SR-NASD-2003-009	1/30/2003	Same minimal sentence on competitive impact.	None
Proposed Amendments to Membership Application Rules	SR-NASD-2003-007	1/16/2003	Same minimal sentence on competitive impact.	None
Refund of Member Surcharges in Arbitration	SR-NASD-2003-001	1/2/2003	Same minimal sentence on competitive impact.	None
Revisions to NASD By-Laws Extending Existing Pilot Program for the Regulatory Fee and the Trading Activity Fee	SR-NASD-2002-182	12/24/2002	Same minimal sentence on competitive impact.	None
Proposed Rule Change Regarding Prohibition Against Guarantees and Sharing in Customer Accounts	SR-NASD-2002-180	12/17/2002	Same minimal sentence on competitive impact.	None
Proposed Rule Change and Renewal on Pilot Basis of NASD Rule 7010(k) Relating to Fees for the Trade Reporting and Compliance Engine (TRACE)	SR-NASD-2002-176	12/12/2002	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rule 6200 Series to Increase Dissemination	SR-NASD-2002-174	12/6/2002	Same minimal sentence on competitive impact.	None
Amendment to NASD's Minor Rule Violation Plan	SR-NASD-2002-171	11/26/2002	Same minimal sentence on competitive impact.	None
Proposed Rule 2130 Governing Expungement of Customer Dispute Information From the Central Registration Depository (CRD System)	SR-NASD-2002-168	11/18/2002	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Amendments to NASD Rule 7010(k) Relating to Fees for the Trade Reporting and Compliance Engine (TRACE)	SR-NASD-2002-167	11/15/2002	Same minimal sentence on competitive impact.	None
Margin Rule Amendments for Security Futures Contracts	SR-NASD-2002-166	11/14/2002	Same minimal sentence on competitive impact.	None
Proposed Supervisory Control Amendments	SR-NASD-2002-162	11/4/2002	Same minimal sentence on competitive impact.	None
To Establish Effective Dates For NASD Rule 2711, Research Analysts and Reports	SR-NASD-2002-161	11/4/2002	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rules Governing Research Analyst Conflicts of Interest	SR-NASD-2002-154	10/25/2002	Same minimal sentence on competitive impact.	None
Revisions to By-Laws Regarding the Regulatory Fee and the SEC Section 31 Transaction Fee	SR-NASD-2002-148	10/18/2002	Same minimal sentence on competitive impact.	None
Sunsetting Revisions to By-Laws Regarding the Regulatory Fee and the Trading Activity Fee Established in SR-NASD-2002-98	SR-NASD-2002-147	10/18/2002	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rule 3011 to Require Members to Identify an Anti-Money Laundering Compliance Person	SR-NASD-2002-146	10/21/2002	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to Option Position and Exercise Limits; NASD Rule 2860	SR-NASD-2002-134	10/1/2002	Same minimal sentence on competitive impact.	None
Security Futures Risk Disclosure Statement	SR-NASD-2002-128	9/25/2002	Same minimal sentence on competitive impact.	None
Pilot Amendment to IM-10100 Arbitration Code Procedure to Require Industry Parties in Arbitration to Waive Application of Contested California Arbitrator Disclosure Standards	SR-NASD-2002-126	9/20/2002	Same minimal sentence on competitive impact.	None
Proposed Amendment to Rule 2260 to Expand the Definition of "Designated Investment Adviser"	SR-NASD-2002-124	9/18/2002	Same minimal sentence on competitive impact.	None
Proposed Amendments to Rule 3070 Requiring Members To File Copies Of Criminal and Civil Complaints and Arbitration Claims with NASD	SR-NASD-2002-112	8/14/2002	Same minimal sentence on competitive impact.	None
Proposed Registration Category for Proctors of In-Firm Delivery of the Regulatory Element	SR-NASD-2002-110	8/8/2002	Same minimal sentence on competitive impact.	None
Business Continuity Plans and Emergency Contact Information	SR-NASD-2002-108	8/7/2002	Same minimal sentence on competitive impact.	None
Proposed Rule Change to NASD Interpretive Material 8310-2 (IM-8310-2)	SR-NASD-2002-103	7/30/2002	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to Section 4 of Schedule A to the NASD By-Laws	SR-NASD-2002-100	7/25/2002	Same minimal sentence on competitive impact.	None
Revisions to By-Laws Regarding Gross Income Assessments and Personnel Assessments	SR-NASD-2002-099	7/23/2002	Same minimal sentence on competitive impact.	None
Revisions to By-Laws Regarding the Regulatory Fee and the SEC Section 31 Transaction Fee	SR-NASD-2002-098	7/23/2002	Same minimal sentence on competitive impact.	None
Proposed Rule Change Relating to the Operation of NASDs Alternative Display Facility as a Temporary Pilot	SR-NASD-2002-097	7/22/2002	Same minimal sentence on competitive impact.	None
To Establish Effective Dates For NASD Rule 2711, Research Analysts and Reports	SR-NASD-2002-087	6/28/2002	Same minimal sentence on competitive impact.	None
Amendment to Correct Research Analyst Rule Language	SR-NASD-2002-074	6/4/2002	Same minimal sentence on competitive impact.	None
Proposed Amendments to NASD Rules Regarding Replacement Hearing Officers' Authority to Participate in Hearing Panel Decisions	SR-NASD-2002-070	5/30/2002	Same minimal sentence on competitive impact.	None
Posting of Margin Disclosure and Day-Trading Risk Disclosure Statements on Web Sites	SR-NASD-2002-069	5/29/2002	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Fees for the Trade Reporting and Compliance Engine ("TRACE") for Corporate Bonds	SR-NASD-2002-63	5/3/2002	Same minimal sentence on competitive impact.	None
Amending Code of Arbitration Procedure to Conform Rule 10314(b) to the Current Minimum Standard Applicable to Claims	SR-NASD-2002-062	5/9/2002	Same minimal sentence on competitive impact.	None
Revisions to Series 22 Examination Program	SR-NASD-2002-052	4/9/2002	Same minimal sentence on competitive impact.	None
Revisions to Series 55 Examination Program	SR-NASD-2002-051	4/9/2002	Same minimal sentence on competitive impact.	None
Revisions to Series 39 Examination Program	SR-NASD-2002-050	4/9/2002	Same minimal sentence on competitive impact.	None
Revisions to Series 82 Examination Program	SR-NASD-2002-049	4/9/2002	Same minimal sentence on competitive impact.	None
Revisions to Series 27 Examination Program	SR-NASD-2002-048	4/9/2002	Same minimal sentence on competitive impact.	None
Revisions to Series 28 Examination Program	SR-NASD-2002-047	4/9/2002	Same minimal sentence on competitive impact.	None
Amendments to Trade Reporting and Compliance Engine Rules (TRACE Rules)	SR-NASD-2002-046	4/2/2002	Same minimal sentence on competitive impact.	None
Security Futures Rules	SR-NASD-2002-040	3/21/2002	Same minimal sentence on competitive impact.	None
Replacement of Arbitrator Under Rule 10313 Upon Disqualification or Other Disability of an Arbitrator	SR-NASD-2002-038	3/22/2002	Same minimal sentence on competitive impact.	None
Fees Relating to the NASD Alternative Display Facility	SR-NASD-2002-28	2/20/2002	Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to NASD Rule 3070	SR-NASD-2002-027	2/20/2002	Same minimal sentence on competitive impact.	None
Anti-Money Laundering Compliance Programs	SR-NASD-2002-024	2/15/2002	Same minimal sentence on competitive impact.	None
Rule Regarding Research Analyst Conflicts of Interest	SR-NASD-2002-021	2/8/2002	Same minimal sentence on competitive impact.	None
Default Procedures for Claims against Terminated Members and Associated Persons	SR-NASD-2002-015	1/31/2002	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Subordination Agreement Requirements	SR-NASD-2002-012	1/17/2002	Same minimal sentence on competitive impact.	None
Amendments to Rule 2260 to Require Broker-Dealers to Forward Communications Regarding Debt Securities to Beneficial Owners	SR-NASD-2002-011	1/16/2002	Same minimal sentence on competitive impact.	None
Proposed Rule Change to Revise Uniform Application for Securities Industry Registration or Transfer (Form U-4) and Uniform Termination Notice for Securities Industry Registration (Form U-5)	SR-NASD-2002-005	1/8/2001	Same minimal sentence on competitive impact.	None
Amendments to the Taping Rule	SR-NASD-2002-004	1/4/2002	Same minimal sentence on competitive impact.	None
Amendment to Relieve Registered Representatives Serving in Armed Forces from Continuing Education Requirements	SR-NASD-2002-003		Same minimal sentence on competitive impact.	None

NASD ACTION	FILE #	DATE	COMPETITION STATEMENT	SUBSTANTIVE EXPLANATION
Proposed Rule Change to Amend NASD Code of Procedure Rule 9522	SR-NASD-2002-002	1/3/2002	Same minimal sentence on competitive impact.	None

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Appendix F

LIFE INSURANCE LAW SURVEY

Free Look: Free Look/Right To Return Requirements

This *Life Insurance Law Survey* identifies statutes and regulations that require insurers to inform policyholders of their right to receive a refund of monies paid for an insurance policy or annuity. The compilation also lists the required location of the free look provision and specifies the time limitation for return of a contract by a policyholder after the contract is delivered. This revision also adds provisions governing the refund amount due to policyholders on return of the policy within the free look period. This survey does not address case law or unpublished positions of state insurance departments.

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AL	Ala. Stat. Ann. § 27-19-105(f)	Long-term care policies		Prominently printed on 1st page or attached thereto	30 days	Premium
	Ala. Admin. Code Reg. 70 § 7(C)(5) – Repealed 1-1-05 482-1-133, 482-1-133.02	Replacement of life insurance and annuities	Credit life insurance; Group life insurance or group annuities where no direct solicitation of individuals. Group life insurance and annuities used to fund prearranged funeral contracts; Policies or contracts used to fund pension plans; new coverage provided under a life insurance policy or contract and cost borne wholly by employer or association and existing non-convertible life insurance due to expire in five (5) years or less, also nonrenewable; and immediate annuities	In policy or in separate written notice delivered with policy	30 days	Premiums or considerations, including 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
	Ala. Admin. Code Reg. 482-1-113	Accelerated benefit provisions of individual and group life insurance policies	Any policy subject to long-term care insurance provisions	In a disclosure form provided when the policy is delivered	30 days	Premium
AK	Alaska Stat. § 21.53.050(a)	Long-term care policies		Prominently printed on 1st page or separately attached	30 days	Premium
	§ 21.57.055(7)	Credit life		In writing	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
AZ	Ariz. Rev. Stat. Ann. § 20-1233	Annuity contracts	Annuity contract supplemental to a settled annuity providing for payments in consideration of accumulations from the original contract and that is issued only to the original contract holders	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	All monies paid
	§ 20-1691.07	Long-term care policies		Prominently printed on or attached to 1st page	30 days	Premium
	§ 20-1241.05(E) [Ed. Note: see also Ariz. Admin. Code R20-6-215.]	Replacement of life insurance policies and annuity contracts		In a notice document. The notice may be included in the notice required under § 20-1241.03, subsections C and D	30 days	Premiums/ consideration, including policy fees, cash surrender value plus all fees and other charges deducted from the gross premiums or consideration
	Ariz. Admin. Code R20-6-501	Individual disability insurance issued on or after 10/1/61	One where no provision for renewal is made	Printed on 1st page or attached thereto or endorsed in a notice in a prominent style	10 days (or longer, at insurer's option)	Premium, policy fees and other charges paid

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
AR	Ark. Code Ann. § 23-79-112(f)	Individual life, annuity, and accident & health policies or contract filings	Variable life policies, variable annuities	Prominently printed on 1st page of policy or contract	At least 10 days unless policy or contract specifies a greater period	Premium
	§ 23-97-311	Long-term care policies		Prominently printed 1st page or attached thereto	30 days	Premium
	Ark. Rule and Regulation 33, art. IV, § 3(a)(5)	Variable life policy Variable annuity contracts		Captioned provision on the cover page or pages corresponding to the cover page	10 days	To the extent permitted by state law the refund equals the sum of (i) the difference between the premiums paid including policy fees or other charges and the amounts allocated to separate accounts and (ii) the value of the amounts allocated to separate accounts on the date the return policy is received by the insurer or its agent. Until state law authorizes this method, the amount of the refund shall be the total of all premium payments.
	Ark. Rule and Regulation 60, § 8(c)(b)	Accelerated benefit provisions in life insurance policies		In a disclosure form provided when the policy is delivered. In group policies, the disclosure is part of the certificate of coverage	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
CA	Cal. Ins. Code § 10127.7	Individual life policies with a face value less than \$10,000 issued on or after January 1, 1981, but prior to January 1, 1990, and any renewal thereof	Individual life policies issued in connection with credit transactions or under contractual policy change or conversion privilege provision	Printed on or attached to policy	Not less than 10 nor more than 30 days	Premium and policy fee
	Cal. Ins. Code § 10127.9	Individual life insurance issued after January 1, 1990	Individual life policies issued in connection with credit transactions or under contractual policy change or conversion privilege provision	Printed on or attached to notice	Not less than 10 nor more than 30 days	Premium and policy fee, but for variable annuities, variable life, and modified guaranteed contracts, the owner is entitled to a refund of account value and any policy fee paid.
	Cal. Ins. Code § 10127.10	Individual life insurance policies or annuity contracts issued or delivered on or after July 1, 2004 to senior citizen, 60 years or older	Individual life policies issued in connection with a credit transaction or under contractual policy change or conversion privilege provision, employer group annuity contracts and group term life insurance	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	Premium and policy fee for individual life, and variable contracts for which the owner did not direct the premium be invested in mutual funds. Account value refunded for variable annuities for which the owner directed the premium be invested in mutual funds.
	Cal. Ins. Code § 10232.7	Long-term care policies or certificates	Group long-term care policies	Prominently printed on 1st page of policy or certificate or attached to it	30 days	Premium and policy fee
	Cal. Ins. Code § 10509.6(d)	Replacement of life policies		In policy or separate written notice	30 days.	Premium and policy fee, but for variable annuities, variable life, and modified guaranteed contracts, the owner is entitled to a refund of account value and any policy fee paid.
	Cal. Code Regs. tit. 10, § 2522.8(a)(3)(G)	Individual investment annuities		Printed on application	10 days	All annuity purchase contributions

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
CO	Colo. Rev. Stat. §§ 10-7-302(1)(g) and 10-7-307	Life insurance policies	Reinsurance, group insurance, pure endowments, annuities or reversionary annuity contracts, certain term policies	Prominently printed on 1st page or attached thereto	15 days	Premium, but for variable life insurance the owner is entitled to a refund of the account value plus any policy fee or charge deducted from the policy.
	§ 10-19-111	Long-term care policies and long-term care policies issued pursuant to direct response solicitation		Prominently printed on 1st page or attached thereto	30 days	Premium
	3 Colo. Code Regs. 4-1-4 § 7 A(4), § 3 B	Replacement of life policies or annuity contracts that use producers	Credit life insurance; group life insurance or group annuities; contracts issued in connection with ERISA-defined benefit plans; exercise of existing contractual right with same insurer; certain term policies; proposed life insurance meant to replace life insurance under a binding or conditional receipt	In the policy—such notice may be included in Appendix A or C.	30 days	Premium, but for variable or market value adjustment policy the owner is entitled to payment of the cash surrender value plus the fees and other charges deducted from the gross premiums.
CT	Conn. Gen. Stat. § 38a-436	Individual life policies		Printed on or attached to notice	10 days	Not specified. Policy shall be void <i>ab initio</i> .
	Conn. Agencies Regs. § 38a-457-5(c)(6)	Accelerated benefits policy with a rider providing for additional premium payments with an effective date subsequent to the effective date of the life insurance policy		Printed on or attached to policy	10 days	Not specified. Rider shall be void <i>ab initio</i> .
	§ 38a-501-11(g)	Individual long-term care insurance, including that issued pursuant to direct response solicitation		Prominently printed on 1st page or attached thereto	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
CT (cont.)	§ 38a-433-4(c)(1)(E)	Individual variable life insurance policies and individual guaranteed life insurance		Captioned provision	10 days	To the extent permitted by state law the refund equals the sum of (i) the difference between the premiums paid including policy fees or other charges and the amounts allocated to separate accounts and (ii) the value of the amounts allocated to separate accounts on the date the returned policy is received by the insurer or its agent. Until state law authorizes this method, the amount of the refund shall be the total of all premium payments.
DE	Del. Code Ann. tit. 18 § 7105(f)	Long-term care policies		Prominently printed on 1st page or attached thereto	30 days	Premium
	Del. Reg. 1204	Replacement of life insurance	Credit life insurance; group life insurance or group annuities; an application to the existing insurer and a contractual change or conversion privilege is being exercised; life insurance or annuity products issued in connection with a pension, profit-sharing, or other benefit plan qualifying for tax deductibility of premiums	In policy or separate written notice	20 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
DE (cont.)	Reg.1203 § 5.1	Any solicitation, negotiation, or procurement of life insurance	Annuities, credit life insurance, group life insurance, life insurance policies issued in conjunction with pension and welfare plans as defined by and subject to ERISA, variable life insurance under which death benefits and cash values vary in accordance with unit values of investments held in separate accounts	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.)	Not specified [Ed. Note: See policy provisions and/or Buyer's Guide furnished.]
DC	D.C. Mun. Regs. tit. 26, § 2712 (a)(5)	Variable life insurance		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	Premium
	D.C. Code Ann. § 31-3605(d)(2)	Long-term care policies		Prominently printed on first page or attached thereto	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
FL	Fla. Stat. Ann. § 626.99(4)(a)	Life insurance policies	Annuities, credit life insurance, group life insurance, life insurance policies issued in conjunction with pension and welfare plans subject to ERISA, variable life insurance under which death benefits and cash values vary in accordance with unit values of investments held in separate accounts	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.)	Not specified [Ed. Note: Provides for an unconditional refund. See policy provisions and/or Buyer's Guide furnished.]
	§ 626.99(4)(a)	Fixed annuities		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.)	Not specified [Ed. Note: Provides for an unconditional refund. See contract provisions and/or Buyer's Guide furnished.]
	§ 627.9407(8); Fla. Admin. Code Ann. r. 690-157 (formerly 018-157.018)	Individual long-term care policies, fraternal benefit society		Prominently printed on 1st page or attached thereto	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
FL <i>(cont.)</i>	r. 69B-157.114(2)(c) (formerly 4-157.114)	Group long-term care (out-of-state groups) issued on or after 3/1/03			30 days	Premium
GA	Ga. Code Ann. § 33- 25-8	Individual life policies issued on or after July 1, 1979	Individual life policies issued in connection with a credit transaction	Printed on or attached to contract	10 days	Premium
	§ 33-26-4	Industrial life policies		Printed on or attached to contract	10 days	Premium
	§ 33-28-6(a)	Annuities, reversionary annuities, pure endowment contracts	Group annuity contracts	Printed on or attached to contract	10 days	Premium
	§ 33-42-6(f)	Individual long-term care policies, including those issued pursuant to direct response solicitation		Prominently printed on 1st page or attached thereto	30 days	Premium
HI	Haw. Rev. Stat. Ann. § 431:10-214	Individual life policies, accident and health or sickness policies	Single premium nonrenewable policies or travel accident policies	Printed on or attached to policy in 10-point bold type	10 days	Premium, but if an individual life insurance policy is returned within the 10-day period, the insurer may be reimbursed for actual medical examination expenses incurred in processing the policy or contract, provided the notice includes a statement to this effect.
	§ 431:10H-111	Long-term care policies	Group long-term care policies issued to employer or labor organization	Prominently printed on 1st page or attached thereto	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
HI (cont.)	§§ 431:10D-501, 431:10D-505(a)(4)	Replacement of life insurance and annuities that use producers (direct response)	Credit life; group life insurance or group annuities; application to the existing insurer that issued the existing policy when a contractual change or a conversion privilege is exercised; when the existing policy replaced by the same insurer pursuant to a program filed with and approved by the commissioner; proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company; policies used to fund an employee pension or welfare benefit plan that is covered by the ERISA; a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization; a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor	In policy or contract owner notice	30 days	Premium/consideration, including policy fees/charges, cash surrender value plus all fees and charges deducted from the gross premiums or considerations; provided that such notice may be included in forms approved by the commissioner
ID	Idaho Code §§ 41-1901, 41-1927 (13), 41-1935(1)	Life insurance policies and annuity contracts	Group insurance, reinsurance, pure endowments, variable life insurance, certain term policies	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	Premium
	§ 41-4605(6)	Long-term care policies, including those issued pursuant to direct response solicitation		Prominently printed on 1st page or attached to it	30 days	Premium
	Idaho Admin. Code §§ 8.01.41.014, 18.01.41.015	Replacement of life and annuities; replacement life and annuities that use agents or brokers		In policy or in separate written notice	20 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
IL	215 Ill. Comp. Stat. Ann. 5/224(1)(n)	Individual life policies	Director may by rule exempt specific types of policies from these requirements	Provision or notice attached to policy	10 days	Premium and policy fees
	5/224(2)	Replacement of life insurance	Industrial and group insurance, annuities, and pure endowments with or without return of premiums or of premiums and interest; reinsurance	In policy or separate notice delivered with policy	At least 20 days	Premium
	5/229(1)(m)	Industrial life insurance	Director may by rule exempt specific types of policies from these requirements	Provision or notice attached to policy	10 days	Premium and policy fees
	5/351A-7	Long-term care policies, including those issued pursuant to direct response solicitation		Prominently printed on 1st page or attached to it	30 days	Premium
	5/226(1)(h)	Annuities and pure endowment contracts	Reversionary annuities, survivorship annuities, or annuities contracted by employer on behalf of his employees. The Director may by rule exempt specific types of contracts from the free look provision.	Provision or notice attached to contract	10 days	Premium, including contract fees or charges. For a variable annuity, a refund equal to the sum of (i) the difference between premiums paid including contract fees or other services and the amounts allocated to separate accounts and (ii) the cash value or, if the contract does not have a cash value, the reserve for the contract, on the date the return contract is received by the insurer or agent
	Ill. Admin. Code tit. 50, § 2018.110(e)	Long-term care policy		Prominently printed on 1st page of policy	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
IN	Ind. Code Ann. § 27-1-12-43	Individual life insurance and individual variable life insurance sold after June 30, 1994	Credit life insurance	Prominently printed on 1st page	10 days	All money paid by the policyholder
	§ 27-1-12.6-5	Annuity contracts	Contracts issued in connection with a pension, annuity, or qualifying profit-sharing plan, if participation is a condition of employment	Conspicuously placed on face page of the contract	10 days	Value of variable annuity account or the monies paid by the purchaser to a fixed account in connection with the issuance of the contract
	§ 27-8-12-12	Individual long-term care policy		Prominently printed on or attached to 1st page	30 days	Premium
	§ 27-8-12-13	Long-term care policy or certificate issued pursuant to direct response solicitation		Printed on or attached to 1st page	30 days	Premium
	Ind. Admin. Code tit. 760, r. 1-20-3(9)	Individual deferred annuities		Conspicuously placed on face page of the contract	10 days	All monies paid by the policyholder
	r. 1-16.1-4, r. 1-16.1-6(C)(5)	Replacement policies	Group life insurance and life insurance policies issued in connection with a pension, profit-sharing, or other benefit plan qualifying for tax deductibility of premiums, individual or group credit life insurance on existing life insurance policy in which a contractual change or conversion privilege is being exercised	In policy or separate written notice	20 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
IA	Iowa Code Ann. § 514G.7(6)	Individual long-term care policies		Prominently printed on or attached to 1st page	30 days.	Premium
	Iowa Admin. Code r. 191-15.9(507B)	Life insurance or annuity			10 days	Premium but if the transaction involved a variable product, the amount to be refunded shall be determined according to the policy language.
	r. 191-28.17(509)	Credit life insurance		Prominently printed on cover of policy, certificate or notice	15 days	Premium
	r. 191-16.26(1)d(507B)	Replacement life insurance and annuities that use producers		May be included in Appendix A or Appendix C.	30 days	Premium/consideration, including policy fees or charges or, in the case of a variable or market value adjustment policy, payment of the cash surrender value provided plus the fees and charges deducted from the gross premiums or considerations or imposed under such policy or contract

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
KS	Kan. Admin. Regs. § 40-2-15	Individual life policies and annuity contracts		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	Premium, but for annuities, a refund of (i) the difference between the premiums paid, including policy fees or other charges and the amounts allocated to separate accounts; and (ii) the value of the amounts allocated to separate accounts on the date the returned policy is received by the insurer or its agent.
	§ 40-4-37f(b)	Long-term care policies or certificate		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	Premium refunded within 10 business days following receipt of the returned policy by the insurer or its agent
	§ 40-2-12(f)(4)(A)	Replacement of life insurance and annuities	Application to existing insurer and contractual policy change or conversion privilege is being exercised; group life insurance; certain term life policies; direct mail policies; policies issued in connection with pension, profit-sharing individual retirement account, or other benefit plan qualifying for income tax deduction of premiums	In policy or separate written notice	20 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
KY	Ky. Rev. Stat. Ann. §§ 304.15-010, 304.15-050(2)	Life insurance and annuity contracts	Reinsurance, group life insurance, group annuities	In policy	Not less than 10 days	Premium
	§ 304.12-030	Replacement of life insurance	Annuities; credit life insurance; group life insurance and life insurance policies issued in connection with a pension, profit-sharing, or other benefit plan qualifying for tax deductibility of premiums; variable life insurance; exercise of conversion privilege or a privilege of policy change granted by the existing insurer; nonconvertible term life insurance policy that will expire in 5 years or less and cannot be renewed; proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company	Replacing insurer must agree in writing with insured	30 days	Premium
	§ 304.14-615(6)	Long-term care policies	Certificates issued pursuant to group long-term care policies	Prominently printed on 1st page or attached thereto	30 days	Premium
	806 Ky. Admin. Regs. 15:030 § 3(3)(a)(5)	Variable life insurance		Captioned provision	10 days	To the extent permitted by state law, the refund equals the sum of (i) the difference between premiums paid including policy fees or other charges and the amounts allocated to separate accounts; and (ii) the value of the amounts allocated to separate accounts, on the date the returned policy is received by the insurer or its agent. Until state law authorizes this method, the amount of the refund is the premium.

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
LA	La. Rev. Stat. Ann. § 22:170 A(10)	Individual life policies	Trip travel insurance policies which by their terms are not renewable, industrial life policies, group life policies, service insurance	Prominently printed on or attached to life policies	10 days	Premium
	§ 22:173 A(8)	Annuity or pure endowment contracts	Survivorship annuities, or group annuity contracts	Prominently printed on or attached thereto	10 days	Premium
	§ 22:1736 F(1)	Individual long-term care policies		Prominently printed on 1st page or attached thereto	30 days	Premium
	§ 22:1736 F(2)	Long-term care policies issued pursuant to direct response solicitation		Prominently printed on 1st page or attached thereto	30 days	Premium
	La Admin. Code tit. 37, pt. XIII § 8305 A(3)(e)	Variable life insurance		Captioned provision	10 days	To the extent permitted by state law, the refund equals the sum of (i) the difference between premiums paid including policy fees or other charges and the amounts allocated to separate accounts; and (ii) the value of the amounts allocated to separate accounts, on the date the returned policy is received by the insurer or its agent. Until state law authorizes this method, the amount of the refund is the premium.

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
LA <i>(cont.)</i>	§ 8911 A(5)	Replacement of life insurance and annuities that use producers		May be included in Appendix A or Appendix C	30 days	Premiums or considerations, including policy fees or charges, or for variable or market adjustment policy a payment of: (i) the cash surrender value; and (ii) the fees and charges deducted from the gross premiums or considerations or imposed under the policy.
ME	Me. Rev. Stat. Ann. tit. 24-A, §§ 2501, 2515-A, 2503	Individual life issued or delivered after December 31, 1976	Reinsurance, group life insurance, annuity contracts, life insurance policies or contracts relating to disability benefits in event of death by accident or accidental means	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	Premium
	tit. 24-A, § 5075 (4)	Long-term care policies		Prominently printed on 1st page or attached thereto	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
MD	Md. Code Ann. Ins. §§ 16-101, 16-105(b)	Life insurance policies and annuity contracts	Reinsurance, group life insurance, group annuities, contracts issued to an employee in connection with the funding of a pension annuity or profit-sharing plan if participation is a condition of employment	Attached to or prominently printed on face of policy or contract	10 days	Pro rata premium for the unexpired term of the policy or annuity contract
	§ 18-119	Long-term care policies	Employer-employee group policies	In policy	30 days	All moneys within 30 business days after receipt of notice of surrender
	Md. Admin. Code § 31.09.05.06(A)(5)	Replacement of life insurance and annuities		In policy or in separate written notice	30 days	Premiums or considerations, including policy fees or charges, but for variable life insurance policy or variable annuity contract, a payment of: (i) the cash surrender value; and (ii) the fees and charges deducted from the gross premiums or considerations or imposed under the variable life insurance policy or variable annuity contract, including surrender charges.
	§ 31.14.01.04(J)	Long-term care	Employer-employee group policies	Prominently printed on 1st page of policy	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
MD <i>(cont.)</i>	§ 31.09.05.06(A)(5)	Replacement of life insurance and annuities using producers		Not specified	30 days	Premiums or considerations, including policy fees or charges, but for variable life insurance policy or variable annuity contract, a payment of: (i) the cash surrender value; and (ii) the fees and charges deducted from the gross premiums or considerations or imposed under the variable life insurance policy or variable annuity contract, including surrender charges.
MA	Mass. Ann. Laws ch. 175 § 187H	Individual life policies with face amount less than \$25,000		Printed on or attached to policy	10 days	Premium
	Mass. Regs. Code tit. 211, § 34.06(1)(d)	Replacement of life insurance and annuities		In policy or in separate written notice	20 days	Premium
	§ 95.08(1)(g)	Variable life policies		Captioned	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
MI	Mich. Comp. Laws Ann. §§ 500.4000, 500.4015	Individual life	Group insurance, reinsurance, industrial life policies, group annuities	Contained in policy on front page, printed or stamped and made a permanent part of policy	Not less than 10 days	Premium, including policy fees or charges
	§ 500.4073	Annuity contracts	Policies or contracts issued to an employee in connection with the funding of a pension, annuity, or qualified profit-sharing plan if participation is condition of employment	Contained in policy on front page, printed or stamped and made a permanent part of policy	Not less than 10 days	Premium, including policy fees or charges
	§ 500.3409(1)	Disability insurance	Group and blanket	Contained in policy on front page, printed or stamped and made a permanent part of policy	10 days	Premium, including policy fees or charges, but if cancelled after the 10-day period, a pro rata share of the premium is refunded.
	§ 500.3409(2)	Disability insurance for people eligible for Medicare		Printed or stamped on front page and made a permanent part of policy	30 days	Premium, including policy fees or charges, but if cancelled after the 30-day period, a pro rata share of the premium is refunded.
	§ 500.3943	Long-term care insurance, including policies issued after direct response solicitation		Prominently printed on 1st page and in summary of coverage	30 days	Premium
	Mich. Admin. Code r. 500.850(a)(iv)	Variable life insurance		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	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
MN	Minn. Stat. Ann. §§ 60A.06, 72A.51 (Subdivision 3), 72A.52	Life and endowment insurance		Stated clearly and conspicuously in minimum 10-point bold face type in contract	10 days	Premium, but for variable annuity, a refund equal to the sum of (i) the difference between the premiums including contract fees or other charges and the amounts allocated to separate accounts and (ii) the cash value, or, if no cash value, the reserve for the contract, on the date the returned contract is received by the insurer or its agent.
	§ 61A.57(d)	Replacement of life insurance		In policy or contract or in a separate written notice	20 days	Premium
	§ 62A.50 (Subdivision 2)	Long-term care policies on non-group basis, including those issued pursuant to direct response solicitation		Prominently printed on 1st page	30 days	Premium
	Minn. R. 2750.1300(A)(5)	Variable life insurance.		Captioned provision.	10 days.	Refund as required by state law [See § 72A.51.]

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
MS	Miss. Code Ann. § 83-7-51	Individual life insurance issued on or after July 1, 1989		Printed on or attached to policy	10 days	Premium
	Miss. Ins. Reg. 84-101 § 4(c)(1)(v)	Variable life insurance		Captioned provision	10 days	To the extent permitted by state law, the refund equals the sum of (i) the difference between premiums paid including policy fees or other charges and the amounts allocated to separate accounts; and (ii) the value of the amounts allocated to separate accounts, on the date the returned policy is received by the insurer or its agent. Until state law authorizes this method, the amount of the refund is the premium.
	Reg. 90-102 § 6 D	Long-term care		Prominently printed on 1st page or attached thereto	30 days	Premium
	Reg. 99-2 §§ 1, 5A(4)	Replacement of life insurance and annuities that use producers, including those issued pursuant to direct response solicitation	Credit life, group life or group annuities where there is no direct solicitation of individuals by an insurance producer, group life insurance and annuities used to fund prearranged funeral contracts, and an application to existing insurer that issued the existing policy or contract when a contractual change or a conversion, policies or contracts used to fund an employee pension or welfare benefit plan that is covered by ERISA	May be included in Appendix A or Appendix C.	30 days	Premium/consideration, 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 plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
MO	Mo. Ann. Stat. §§ 376.706, 376.702	Life insurance	Annuities, credit life insurance, group life insurance policies issued in connection with pension and welfare plans as defined by and subject to ERISA, variable life insurance where death benefits and cash values vary in accordance with unit values of investments held in a separate account	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.)	Premium
	§§ 376.1106, 376.1109 (11)	Long-term care policies delivered in the state on or after 8/28/02	Group long-term care policies	Prominently printed on 1st page or attached thereto	30 days	Premium
	Mo. Code Regs. tit. 20, § 400-1.010(1)(D)	Individual life insurance and annuities	Group policies; life policies issued to college students; single premium, short duration coverage; certain graded benefit life policies	In policy	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
MO (cont.)	§ 400-1.030(3)(C)(1)(E)	Variable life insurance		Captioned	10 days	To the extent permitted by state law, the refund equals the sum of (i) the difference between premiums paid including policy fees or other charges and the amounts allocated to separate accounts; and (ii) the value of the amounts allocated to separate accounts, on the date the returned policy is received by the insurer or its agent. Until state law authorizes this method, the amount of the refund is the premium.
	§ 400-5.400(4), (7)(D)	Replacement of life insurance or annuities that use producers	Credit life; group life or group annuities; exercise of conversion privilege or a privilege of policy change granted by existing insurer; proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company; transactions where replacing insurer and existing insurer are the same; policies issued in connection with a pension, profit-sharing, or other benefit plan qualifying for tax deductibility of premiums	In policy or in separate written notice	20 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
MT	Mont. Code Ann. § 33-15-415	Individual life or disability policies issued after January 1, 1996	Single premium nonrenewable policies	In policy	At least 10 days	Premium
	§ 33-22-1119	Individual long-term care policies, including those issued pursuant to direct response solicitation		Prominently printed on 1st page or attached thereto	30 days	Premium
	Mont. Admin. R. 6.6.304, 306(1)(d)	Replacement of life insurance policies issued pursuant to direct response solicitation	Credit life insurance; group life and annuities with no direct response; application to existing insurer and contractual change or conversion privilege is being exercised; insurance policies issued in connection with pension, profit-sharing; or other benefit plan qualifying for tax deductibility of premiums; proposed life to replace life insurance under receipt issued by same company; certain term life policies	May be included in Appendix A or Appendix C.	30 days	Premium/consideration, including 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 or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract
	R. 6.6.805(1)(b)	Annuities when a buyer's guide and disclosure document are not provided at or before the time of application			15 days	Policyholder may return the annuity contract without penalty.
NE	Neb. Rev. Stat. § 44-502.05	Individual life insurance and annuities	Credit life policies	In policy or printed on face	10 days	Premium
	§ 44-4515	Individual long-term care policies		Prominently printed on 1st page or attached to it	30 days	Premium
	Neb. Admin. R. & Regs. tit. 210, ch. 19 008.04	Replacement of life insurance and annuities that use agents or brokers		In policy or in separate written notice delivered with policy	20 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
NV	Nev. Rev. Stat. Ann. §§ 688A.010, 688A.165	Life insurance, endowment and annuities	Reinsurance, group life insurance, group annuities, and industrial life insurance	In policy or notice attached to policy	10 days	Premium, including policy fees or charges
	Nev. Admin. Code § 687B.060	Individual long-term care policy		Prominently printed on 1st page or attached thereto	30 days	Premium
	§ 687B.065	Long-term care policy issued pursuant to a direct response solicitation		Prominently printed on 1st page or attached thereto.	30 days	Premium
NH	N.H. Rev. Stat. Ann. § 415-D:7	Individual long-term care policies or group certificates		Prominently printed on or attached to 1st page of policy	30 days	Premium
	N.H. Code Admin. R. Ins. § 401.01(b)(1)(o)	Individual life policies and individual annuity contracts		In conspicuous place on face page of policy	10 days	Premium
	§ 302.06(a)(4)	Replacement of life insurance and annuities that use producers		May be included in Appendix A or Appendix C.	30 days	Premium/consideration, including 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 or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
NJ	N.J. Stat. Ann. § 17B:25-2.1	Individual life policies	Group insurance	In policy or notice attached to policy	10 days	Premium, including policy fees or charges
	N.J. Admin. Code tit. 11, § 11:4-21.3(h)	Limited death benefit policies		In policy	30 days	Premium
	§§ 11:4-2.1, 11:4-2.4, 11:4-2.5(a)3(vi)	Replacement policies of life and annuities	Credit life, group life insurance or group annuities where there is no direct solicitation or used to fund prearranged funeral contracts	In policy or in separate written notice	30 days	Premium, including policy fees or charges
	§ 11:4-34.6(d)	Individual long-term care policies, including those issued pursuant to direct response solicitation		Prominently printed on 1st page or attached thereto	30 days	Premium
NM	N.M. Stat. Ann. § 59A-23A-6(E)	Long-term care policies, certificates, or riders	Employer group policies, certificates or riders	Prominently printed on or attached to 1st page	30 days	Premium
	N.M. Admin. Code tit. 13, § 13.9.6.10(A)(4)	Replacement of life insurance or annuities that use agents or brokers	Credit life, group life or annuities where there is no direct solicitation	In policy or in a separate written notice	30 days	Premium/consideration, including 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 or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract
	tit. 13, § 13.9.12.8(c)	Annuities when a buyer's guide and disclosure document are not provided at or before the time of application			15 days	Policyholder may return the annuity contract without penalty.

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
NY	N.Y. Ins. Law § 3203(a)(11)	Individual life insurance policies	Group life or annuities policies	In policy or notice attached to policy	Not less than 10 days nor more than 30 days	Either (i) premium, including policy fees or other charges or (ii) if the policy provides for the adjustment of the cash surrender benefit in accordance with a market-value adjustment formula and if the policy or a notice attached to it so provides, the amount of the cash surrender benefit as adjusted assuming no surrender charge plus the amount of fees and other charges deducted premium paid or from policy value; provided that a policy sold by mail must contain a provision permitting the policy owner a 30-day period for surrender
	§ 3203(a)(11)	Life insurance policies sold by mail order	Group life policies	In policy or notice attached to policy	30 days	[Ed. Note: see above.]
	§§ 3209(a), 3209(d)(7)	Any solicitation, negotiation procurement of life insurance, annuities, or funding agreements. Any issuer of life insurance or annuity contracts or funding agreements, including fraternal benefit societies and the life insurance department of a savings and insurance bank.	Credit life insurance; group life insurance; life insurance policies, annuity contracts and funding agreements issued in connection with pension and welfare plans as defined by and to extent covered by ERISA, funding agreements issued to other than individuals subject to § 3222(b); any group annuity unless at least one certificate is subject to § 4223(b)(2)	When policy is issued, applicant is to be advised about free look period and given complete summary	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
NY (cont.)	§ 3209(b)(1)	If sold by mail, without involvement of agent	Group annuity	In policy	At least 30 days (if no unconditional refund provision, the insurer must include in each initial solicitation a Buyer's Guide).	Premium
	§ 3219(a)(9)	Annuities and pure endowments		In contract or certificate or attached thereto	Not less than 10 nor more than 30 days	Either (i) consideration, including fees or other charges or, if the contract or certificate, or notice attached so provides, and the contract or certificate is subject to the provisions of section 4223 and provides for determination of cash surrender benefits in accordance with a market-value adjustment formula, (ii) the cash surrender benefits provided plus the fees and other charges deducted from gross considerations or imposed under the contract or certificate
	§ 3219(a)(9)	Annuities and pure endowments if sold by mail		In contract or certificate or attached to it	30 days	[Ed. Note: see above.]
	N.Y. Comp. Codes R. & Regs. tit. 11, § 54.6(b)(1)(v)	Variable life policies		Captioned provision on cover page of policy or pages corresponding to the cover page	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
NY <i>(cont.)</i>	§ 51.6(d)	Replacement of life insurance policies and annuity contracts		In policy	60 days	Premium/consideration, or in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender benefits plus the amount of fees and other charges deducted from gross considerations or imposed under the policy or contract
NC	N.C. Gen. Stat. § 58-55-30(g)	Individual long-term care or long-term care policies issued pursuant to direct response solicitation	Annuities, credit life insurance, group life insurance policies issued in connection with pension and welfare plans as defined by and subject to ERISA, variable life insurance where death benefits and cash values vary in accordance with unit values of investments held in a separate account	Prominently printed on 1st page or attached	30 days	Premium
	§ 58-60-15	Life insurance		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.)	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
NC (cont.)	N.C. Admin. Code, tit. 11, r. 12.0447	Individual life insurance or annuity, also applies to any group life or annuity policy that contains free look provision		Sticker or printed on face of policy	10 days	Premium
	r. 12.0436(1)(c), (3)(v)	Variable life insurance	Variable policies issued in connection with qualifying pension, profit-sharing, and retirement plans	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	Premium
	r. 12.0604, 12.0612(a)(4)	Replacement of existing life insurance and annuity by insurer	Credit life insurance; group life and annuities with no direct response; application to existing insurer and contractual change or conversion privilege is being exercised; insurance policies issued in connection with pension, profit-sharing; or other benefit plan qualifying for tax deductibility of premiums; proposed life to replace life insurance under receipt issued by same company; certain term life policies	May be included in the notice required by 12.0611	30 days	Premium/consideration, or in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender benefits plus the amount of fees and other charges deducted from gross considerations or imposed under the policy or contract

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
ND	N.D. Cent. Code §§ 26.1-33-02.1, 26.1-34-01.1	Life insurance and annuity policies and certificates		Prominently printed on or attached to 1st page of policy or certificate	20 days	Premium, but for variable annuities, the refund is the value of the annuity plus expense charges.
	§ 26.1-45-09 (1)	Long-term care policies		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	Premium
	N.D. Admin. Code § 45-04-04-03(3)(a)(5)	Variable life insurance policies		Captioned provision on cover page of policy or pages corresponding to the cover pages	10 days	To the extent permitted by state law, the refund equals the sum of (i) the difference between premiums paid including policy fees or other charges and the amounts allocated to separate accounts; and (ii) the value of the amounts allocated to separate accounts, on the date the returned policy is received by the insurer or its agent. Until state law authorizes this method, the amount of the refund is the premium.

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
OH	Ohio Rev. Code Ann. § 3923.44(H)	Long-term care policies		Printed prominently on 1st page of policy or attached to it	30 days	Premium
	Ohio Admin. Code § 3901-6-05(F)(4)	Replacement of life insurance and annuities	Credit life insurance, group life insurance and life insurance policies issued in connection with a pension profit-sharing or other benefit plan qualifying for tax deductibility of premiums, an application to the insurer that issued the existing life insurance where a contractual change or a conversion privilege is exercised, proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company; and registered contracts shall be exempt	In policy or in separate written notice delivered with policy	20 days	Premium
	§ 3901-6-08(E)(3)(a)(v)	Variable life insurance		Captioned provision on cover page or pages corresponding to the cover page of each policy	10 days	To the extent permitted by state law, the refund equals the sum of (i) the difference between premiums paid including policy fees or other charges and the amounts allocated to separate accounts; and (ii) the value of the amounts allocated to separate accounts, on the date the returned policy is received by the insurer or its agent. Until state law authorizes this method, the amount of the refund is the premium.

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
OK	Okla. Stat. Ann. tit. 36, § 4003.1	Individual life insurance or annuities	Life insurance policies issued in connection with credit transaction or issued under contractual policy change or conversion privilege contained in policy	Printed on or attached to policy	10 days	Premium or monies paid
	§ 4034(G)	Replacement of insurance		Prominent written notice attached to or as part of 1st page of policy	20 days	Premium
	§ 4426(E)	Long-term care policies		Prominently printed on 1st page or attached	30 days	Premium
OR	Or. Rev. Stat. § 743.655(5)(a)	Individual long-term care policies		Prominently printed on 1st page or attached thereto	30 days.	Premium
	§ 743.655(5)(b)	Group long-term care policies		Prominently printed in 10-point type on 1st page or attached thereto	30 days	Premium
	Or. Admin. R. 836-080-0001(4), 836-080-0029(1)(d)	Replacement of life insurance and annuities that use agents, policies used to fund pension plans	Credit life, group life or group annuities when there is no direct solicitation of individuals by an agent	May be included in Appendix A or Appendix C.	30 days	Premium/consideration, including 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 or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
PA	Penn. Stat. Ann. tit. 40 § 510c(a)(1)	Individual fixed dollar life insurance or endowment policies		Prominently printed on 1st page or attached thereto	10 days	Premium
	tit. 40 §§ 510c(a)(2), 510c(b)(2)	Individual variable life insurance policies, individual fixed dollar life insurance or endowment policies offered as replacements for existing life insurance policy or annuity contracts with the same insurer or insurer group		Prominently printed on the first page of such policy or attached thereto	At least 45 days	Premium, but for variable life, an amount equal to any of the following: (i) the stipulated payment/premium; (ii) the difference between: (A) premiums, including policy fees or other charges and the amounts allocated to separate accounts; and (B) the cash value or, if the policy does not have a cash value, the reserve on the date of surrender attributable to the amounts so allocated; or (iii) the greater of subparagraph (i) or (ii)
	tit. 40 §§ 510c(a)(3), 510c(b)(3)	Individual variable life insurance policies, individual fixed dollar life insurance or endowment insurance policies offered as replacements for existing life insurance policy or annuity contract with an insurer or insurer group other than the one which issued the original policy or contract		Prominently printed on the first page of such policy or attached thereto	At least 20 days	An amount equal to any of the following: (i) the stipulated payment/premium; (ii) the difference between: (A) premiums, including policy fees or other charges and the amounts allocated to separate accounts; and (B) the cash value or, if the policy does not have a cash value, the reserve on the date of surrender attributable to the amounts so allocated; or (iii) the greater of subparagraph (i) or (ii)

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
PA (cont.)	tit. 40 § 510c(b)(1)	Individual variable life policies		Prominently printed on the first page of such policy or attached thereto	At least 10 days	An amount equal to any of the following: (i) the stipulated payment/premium; (ii) the difference between: (A) premiums, including policy fees or other charges and the amounts allocated to separate accounts; and (B) the cash value or, if the policy does not have a cash value, the reserve on the date of surrender attributable to the amounts so allocated; or (iii) the greater of subparagraph (i) or (ii)
	tit. 40 § 510d(a)(1)	Individual fixed dollar annuities or pure endowment contracts, individual variable annuities		Prominently printed on 1st page or attached thereto	10 days	Stipulated payment or premium
	tit. 40 § 510d(a)(2)	Replacement of individual fixed dollar annuities and life insurance policies with the same insurer or insurer group		Prominently printed on the first page of such policy or attached thereto	45 days	Premium
	tit. 40 § 576	Industrial life or industrial endowment insurance issued after January 1, 1982		Prominently printed on 1st page or attached thereto	10 days	Premium
	31 Pa. Code § 81.6(d)	Replacement of life policies or annuities that use agents or brokers		Prominently printed on 1st page or attached thereto	20 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
PA (cont.)	31 Pa. Code § 82.24(1)(v)	Variable life policies		Caption provision prominently printed on 1st page	At least 10 days	Premium
RI	R.I. Gen. Laws § 27-4-6.1	Individual life policies issued after July 1, 1978, and individual annuities issued after January 1, 1995	Annuities, individual credit life, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account	Contained in policy or stamped or printed conspicuously on 1st page	A minimum of 10 days	Premium
	§ 27-34.2-6(g)	Long-term care policies		Prominently printed on 1st page or attached thereto	30 days	Premium
	R.I. Code R. 29 §§ 5 and 7.C.	Replacement life insurance (But see § 7.C for other requirements of replacing insurer if free look is not provided.)		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	Premium
SC	S.C. Code Ann. § 38-63-220(b)	Individual life policies		Clear, understandable, and conspicuous on 1st page of policy	Not less than 10 days	Premium
	§ 38-63-220(b)	Replacement of individual life policies		Clear, understandable, and conspicuous on 1st page	20 days	Premium
	§ 38-63-220(b)	Policy solicited by direct response insurer		Clear, understandable, and conspicuous on 1st page of policy	31 days	Premium
	§ 38-69-120(2)	Fixed dollar annuities; pure endowment contracts; reversionary annuities; and variable annuities	Group annuities	Clear, understandable, and conspicuous on 1st page of policy	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
SC (cont.)	§ 38-69-120(2)	Replacement of annuity contracts	Group annuities	Clear, understandable, and conspicuous on 1st page	20 days	Premium
	§ 38-69-120(2)	Policy solicited by direct response insurer	Group annuities	Clear, understandable, and conspicuous on 1st page	31 days	Premium
	§ 38-72-60(E)	Individual long-term care policy		Prominently printed on 1st page or attached thereto	30 days	Premium
	S.C. Code Ann. Regs. 69-12.1, § 7(D)	Replacement of life insurance and annuities that use agents or brokers		In policy or separate notice	20 days	Premium
	69-12 Part B, art. IV, § 3(a)(5)	Variable life policy		Captioned provision on the cover page or pages corresponding to the cover page	10 days	To the extent permitted by state law, the refund equals the sum of (i) the difference between premiums paid including policy fees or other charges and the amounts allocated to separate accounts; and (ii) the value of the amounts allocated to separate accounts, on the date the returned policy is received by the insurer or its agent. Until state law authorizes this method, the amount of the refund is the premium.

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
SD	S.D. Codified Laws § 58-15-8.1	Individual life policies issued after July 1, 1982		Printed on or attached to the face page of policy	10 days	Premium
	§ 58-15-59.1	Individual annuity contracts issued on or after July 1, 1978	Variable annuity contract	Printed on or attached to the annuity contract	10 days	Premium
	§ 58-17B-9	Long-term care policies		Prominently printed on or attached to 1st page of policy	30 days	Premium
	§ 58-28-24.1	Individual variable annuity contracts issued on or after July 1, 1978		In contract or notice attached thereto	10 days	The refund equals the sum of (i) the difference between the premiums paid and the amounts, if any, allocated to any separate accounts under the contract and (ii) the cash value of the contract on the date of surrender attributable to the amounts so allocated.
TN	Tenn. Code Ann. § 56-7-702(a)(17)	Industrial life policies		Clear, understandable, and conspicuous provision is required.	10 days	Premium
	§ 56-42-105(f)(1)	Individual long-term care policies		Prominently printed on 1st page or attached thereto	30 days	Premium
	§ 56-42-105(f)(2)	Long-term care policies issued pursuant to direct response solicitation		Prominently printed on 1st page or attached thereto	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
TN (cont.)	Tenn. Comp. R. & Regs. 0780-1-24-.04, 0780-1-24-.07(4)	Replacement of life policies that use agents	Credit life insurance, group life insurance, group annuities, proposed insurance that is to replace insurance applied for under a binding or conditional receipt issued by the same company, proposed insurance to be provided by the insurer that issued existing insurance where a contractual change or conversion privilege is being exercised, and proposed insurance offered on a direct response basis to a class or classes of existing policyholders by the same insurer, for the principal purpose	In policy or in separate written notice	20 days	Premium
	0780-1-40-.04, 0780-1-40-.02	Solicitation, negotiation or procurement of life insurance	Annuities, credit life, group life issued in connection with pension and welfare plans as defined by and subject to ERISA; variable life where death benefits and cash values vary in accordance with unit values of investments held in a separate account	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.)	Unconditional refund

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
TX	Tex. Rev. Civ. Stat. § 1651.054	Long-term care policies		Prominently printed on 1st page or attached thereto	30 days	Premium
	Texas Admin. Code tit. 28, § 3.804(3)(A)(v)	Variable life contract		Captioned provision on cover page or pages corresponding to cover page	10 days	Premium
	§ 3.3829(a)(5)	Long-term care insurance		Captioned provision printed on 1st page or attached thereto	30 days	Premium
UT	Utah Code Ann. § 31A-22-423	Life insurance and annuities	Group term life insurance issued under Section 31A-22-502; group master policy; noncontributory certificate; credit life insurance certificate; and other classes of life insurance policies that the commissioner specifies by rule	Prominently printed on or attached to cover or front page	10 days; 20 days if replacement policy or certificate	Premium
	Utah Admin. R590-93-2, R590-93-7(C)(5)	Replacement of life insurance and annuities that use agents	Credit life; group life or group annuities where there is no direct solicitation; group life or group annuities used to fund prearranged funeral contracts; proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company; issued in connection with pension and welfare plans as defined by and subject to ERISA; structured settlements		20 days	Premium
	R590-93-2, R590-93-8(C)(5)	Replacement of life insurance and annuities issued pursuant to direct response solicitation	[Ed. Note: See above]		20 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
VT	§ 8089; Vermont Code R. 91-1	Individual long-term care policy, including policy issued pursuant to direct response solicitation		Prominently printed on 1st page	30 days	Premium
	Vermont Code R. 1-2001-03 §§ 1.B, 5(A)(4)	Replacement of life policies and annuities using producers.	Credit life; group life or group annuities where there is no direct solicitation; group life or group annuities used to fund prearranged funeral contracts; proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company; issued in connection with pension and welfare plans as defined by and subject to ERISA; structured settlements	May be included in Appendix A or Appendix C.	30 days	Premium/consideration, including 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 or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract
	77-2 §§ 3(B), 5(a)	Solicitation, negotiation or procurement of individual life insurance	Annuities; credit life; group life issued in connection with pension and welfare plans as defined by and subject to ERISA; variable life where death benefits and cash values vary in accordance with unit values of investments held in separate account	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.)	Unconditional refund
	I-88-3 Art. IV. § 3(a)(5)	Variable life insurance		Captioned provision on cover page or pages corresponding to the cover page	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
VA	Va. Code Ann. §§ 38.2-3300, 38.2-3301	Individual life insurance policies	Reinsurance; policies issued or granted in exchange for lapsed or surrendered policies	Printed on policy	10 days	Premium
	§ 38.2-5208	Long-term care insurance policies		Prominently printed on 1st page or attached	30 days	Premium
	§ 38.2-3342	Industrial life policies		Printed on policy	10 days	Premium
	§ 38.2-3724(D)(7)	Credit life insurance		Printed on policy or certificate	At least 10 days	Premium
	Va. Admin. Code tit. 14 § 5-80-300(1)	Variable life insurance		Printed on policy	10 days	Not specified [Ed. Note: must comply with free look provision in § 38.2-3301.]
WA	Wash. Rev. Code Ann. § 48.23.380	Individual life insurance issued after September 1, 1977	Individual life policies issued in connection with credit transactions or under a contractual change or conversion privilege provision	Printed on face of policy or attached thereto	10 days	Premium
	§ 48.20.013	Individual disability policy issued after January 1, 1968	Single premium nonrenewable policies	Printed on its face or attached thereto	10 days	Premium
	§ 48.18A.035	Individual variable contracts		Prominently displayed on 1st page	10 days	Market value of the assets purchased by its premium, less taxes and investment brokerage commissions
	§ 48.84.050	Long-term care insurance		Prominently displayed on 1st page	30 days	Premium
	§ 48.84.050	Long-term care policies solicited and sold by mail		Prominently displayed on 1st page	60 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
WA <i>(cont.)</i>	Wash. Admin. Code §§ 284-23-455(4), 284-23-430	Replacement of life insurance and annuity that use agents or brokers	Credit life insurance; group life insurance or annuities; application to existing insurer or exercise of contractual change or conversion privilege	In policy or in separate written notice delivered with policy	20 days	Premium
WV	W. Va. Code § 33-6-11b	Life, sickness, and accident insurance policies, certificates, or contracts	Group annuity policies, contracts, or certificates issued in connection with qualified or exempt pension or profit-sharing plan	Prominently printed on 1st page	10 days	Premium
	§ 33-15A-6(f)(1)	Individual long-term care policies		Prominently printed on 1st page or attached thereto	30 days	Premium
	W. Va. Regs. §§ 114-32-5(5.1), 114-32-5(5.1.1)	Individual or group long-term care policies sold by direct solicitation or as replacement policies		Prominently printed on 1st page or attached thereto	30 days	Premium
	§ 114-32-5(5.1.2)	Any other individual or group long-term care policies not described in § 114-32-5.1.1		Prominently printed on 1st page	10 days	Premium
	§§ 114-8-3, 114-8-6	Replacement life insurance	Annuities; individual credit life; group life; group credit life; variable life and life insurance policies issued in connection with a pension, profit-sharing or other benefit plan; an application to the existing insurer that issued the existing life insurance where a contractual change or conversion privilege is exercised; existing life insurance that is a nonconvertible term life insurance policy which will expire in five years or less and cannot be renewed; proposed life insurance that is to replace life insurance	In policy or in separate written notice delivered with policy	30 days	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

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
WI	Wis. Sta. Ann. § 632.73(1), (3)	Individual or franchise disability	Single premium nonrenewable policies issued for terms not greater than six months and other policies exempted by rule of commissioner, or to Medicare supplement policies, Medicare replacement policies or long-term care insurance policies subject to (2m).	Conspicuously printed on 1st page or attached hereto	10 days	All payments made
	§ 632.73(2m)	Long-term care insurance	Single premium nonrenewable policies issued for terms not greater than 6 months and other policies exempted by rule of commissioner	Prominently printed on 1st page of policy or certificate or attached thereto	30 days	Premium
	Wis. Admin. Code Ins. § 2.07(5)(4)(d)	Replacement of life policies or annuity contracts		Written notice attached to or part of 1st page	20 days	Premium
	§§ 2.14(2)(b), (4)(c)	Solicitation, negotiation, or procurement of life insurance	Annuities, credit life, group life, life insurance issued in connection with pension and welfare plans as defined by and subject to ERISA, variable life where death benefits and cash values vary in accordance with unit values of investments held in separate accounts	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).	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
WY	Wyo. Stat. Ann. § 26-38-105(j)	Long-term care insurance		Prominently printed on 1st page or attached thereto	30 days	Premium
	Admin. Rules & Regs. of Wyo. Ins., ch. 12, §§ 4, 7(d), 8(c)(iv)	Replacement life insurance and annuities that use agents or brokers, replacement life insurance and annuities issued pursuant to direct response sales	Credit life insurance; group life insurance or group annuities; application to existing insurer and exercise of contractual change or conversion privilege	In policy or separate written notice delivered with policy	20 days	Premium