

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R115-06

June 5, 2006

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-7, 679B.130.

A REGULATION relating to insurance; requiring insurers and producers of insurance to provide for the establishment and maintenance of a system for the supervision of recommendations to purchase or exchange annuities; and providing other matters properly relating thereto.

Section 1. Chapter 688A of NAC is hereby amended by adding thereto a new section to read as follows:

1. An insurer shall provide for a system to supervise recommendations which is reasonably designed to comply with the provisions of this section and sections 2, 3 and 4 of this regulation and which is established and maintained pursuant to subsections 3, 4 and 5. The system must include, without limitation, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this section and sections 2, 3 and 4 of this regulation.

2. A producer of insurance shall provide for a system to supervise recommendations which is reasonably designed to comply with the provisions of this section and sections 2, 3 and 4 of this regulation and which is established and maintained pursuant to subsections 3, 4 and 5. The system must include, without limitation, a process for maintaining written

procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this section and sections 2, 3 and 4 of this regulation.

3. An insurer may contract with a third party, including, without limitation, a producer of insurance, to establish and maintain a system to supervise recommendations pursuant to the provisions of subsection 1 with respect to insurance producers under contract with or employed by the third party.

4. An insurer shall make a reasonable inquiry to ensure that a third party with whom the insurer contracts pursuant to subsection 3 complies with the provisions of subsection 1 and shall take reasonable action to enforce the contractual obligation to comply with the provisions of subsection 1. An insurer may comply with its obligation to make a reasonable inquiry by:

(a) Obtaining a certification that the third party is complying with the provisions of subsection 1 from a senior manager of the third party who has responsibility for complying with the provisions of subsection 1; and

(b) Periodically reviewing the performance of the third party to determine whether the third party is complying with the provisions of subsection 1. The insurer shall use reasonable procedures in conducting the review.

5. The provisions of subsections 1 and 2 do not require an insurer or a producer of insurance to:

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

(b) Include in its system to supervise recommendations advice given to consumers by a producer of insurance concerning products other than the annuities offered by the insurer or producer of insurance.

6. A producer of insurance contracting with an insurer pursuant to subsection 3, when requested by an insurer pursuant to subsection 4, shall provide to the insurer a certification as described in subsection 4 or a clear statement that the producer of insurance is unable to meet the criteria for certification within 10 days after the producer of insurance receives the request from the insurer.

7. A person may not provide a certification pursuant to paragraph (a) of subsection 4 unless:

(a) The person is a senior manager with responsibility for complying with the provisions of subsection 1; and

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

8. Compliance with Conduct Rule 2310 of the National Association of Securities Dealers pertaining to suitability satisfies the requirements of this section for the recommendation of variable annuities.

Sec. 2. Section 9 of LCB File No. R076-05, which was adopted by the Commissioner of Insurance and was filed with the Secretary of State on February 23, 2006, is hereby amended to read as follows:

Sec. 9. “Nonguaranteed elements” means the elements under an annuity the values of which are not guaranteed at the time that the annuity is issued. ~~[A nonguaranteed element is calculated using at least one other nonguaranteed element.]~~

The term includes, without limitation, premiums, benefits, values, noninterest-based credits, credited interest rates, bonuses and charges.

Sec. 3. Section 11 of LCB File No. R076-05, which was adopted by the Commissioner of Insurance and was filed with the Secretary of State on February 23, 2006, is hereby amended to read as follows:

Sec. 11. “Recommendation” means advice provided by an insurer or a producer of insurance to a prospective purchaser of an annuity concerning the purchase or exchange of one or more annuities ~~[]~~ *that results in the purchase or exchange of an annuity in accordance with the advice provided by the insurer or producer of insurance.*

Sec. 4. Section 13 of LCB File No. R076-05, which was adopted by the Commissioner of Insurance and was filed with the Secretary of State on February 23, 2006, is hereby amended to read as follows:

Sec. 13. 1. Except as otherwise provided in subsection 2, before an insurer or a producer of insurance recommends to a person the purchase of an annuity, or the exchange of an annuity that results in ~~[any additional insurance transaction,]~~ *the purchase or exchange of an annuity in accordance with the recommendation,* the insurer or producer of insurance must make reasonable efforts to obtain:

- (a) The financial and tax status of the person;
- (b) The investment objectives of the person; and
- (c) Any other information that the insurer or producer of insurance determines would be useful in making such a recommendation.

2. Before an insurer or a producer of insurance recommends to a person the purchase of a variable annuity, or the exchange of a variable annuity that results in any additional insurance transaction, the insurer or producer of insurance must make reasonable efforts to obtain:

- (a) The information described in subsection 1; or
- (b) The information described in Conduct Rule 2310 of the National Association of Securities Dealers.

3. Except as otherwise provided in subsection 4, if an insured is harmed financially because *a managing general agent*, an insurer or a producer of insurance failed to comply with subsection 1 or 2, the Commissioner may require the insurer or producer of insurance to take corrective action.

4. An insurer or a producer of insurance is not responsible for any financial damages incurred by an insured relating to the purchase or exchange of an annuity that was recommended by the insurer or producer of insurance if the insured:

- (a) Refused to provide to the insurer or producer of insurance the information described in subsection 1 or 2;
- (b) Provided to the insurer or producer of insurance information that was incomplete or inaccurate; or
- (c) Entered into an insurance transaction that was not based on the recommendation of the insurer or producer of insurance.

Sec. 5. An insurer or provider of insurance is not required to comply with the provisions of this regulation until 90 days after the effective date of this regulation.