# 02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

031 BUREAU OF INSURANCE

Chapter 310 VARIABLE ANNUITY RULE

Article I Purpose

The purpose of this rule is to provide uniform requirements respecting variable annuity contract sales on a regional basis, establish minimum standards respecting contract provisions, set qualifications for insurers seeking authority to market variable annuity contracts and to provide licensing conditions pursuant to which agents may be authorized to sell such contracts.

Article II. Authority

This rule is issued pursuant to the authority vested in the Superintendent of Insurance under Section 2537 and Section 1520.3 of the Maine Insurance Code (Title 24-A, M.R.S.A.).

Article III. Applicability and Scope

This rule shall apply to:

a. The qualifications of agents to be authorized to sell variable annuity contracts in this state;

b. the qualification of insurers to be authorized to issue such contacts;

c. the required contract form and provisions for issue of such coverage in this state;

d. the manner in which separate account assets are to be maintained and reported supporting such issued contracts; and

e. the conditions pursuant to which variable annuity contracts may be marketed in this state.

Article IV. Definitions

As used in this regulation, the following terms and phrases shall mean:

Section 1 Affiliate

"Affiliate" of a n insurer means any person, directly or indirectly, controlling, controlled by, or under common control with such insurer; any person who regularly furnishes investment advice to such insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of any such insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of such person.

Section 2 Bureau

"Bureau" means the Maine Bureau of Insurance.

Section 3 Control

"Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing more than ten (10) percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the Superintendent that control does not exist in fact. The Superintendent may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

Section 4 Expense

"Expense" as used herein may exclude some or all taxes, as stipulated in the contract.

Section 5 Net investment return

"Net investment return" means that rate of investment return to be credited to the variable annuity contract in accordance with the terms of the contract after deductions including but not limited to tax charges, if any, and asset charges.

Section 6 Person

"Person" means an individual, firm, corporation, partnership, association, society, trust, or fund.

Section 7 Separate account

"Separate account" means a separate account established pursuant to Section 2537 of the Maine Insurance Code (Title 24-A, M.R.S.A.) or pursuant to the corresponding Section of the Insurance Laws of the state of domicile of a foreign or alien insurer.

Section 8 Superintendent

"Superintendent" means the Insurance Superintendent of Maine.

Section 9 Variable annuity agent

"Variable Annuity Agent" means any person licensed by this state as a life insurance agent and authorized to sell variable annuity contracts.

Section 10 Variable annuity contract

"Variable annuity contract" means any policy or contract which provides for annuity benefits which vary according to the investment experience of any separate account or accounts maintained by the insurer as to such contract, as provided for in Section 2537 of the Maine Insurance Code (Title 24-A, M.R.S.A.) or pursuant to the corresponding Section of the Insurance Laws of the state of domicile of a foreign or alien insurer.

Article V. Authority of Insurer to Issue Variable Annuity Contracts

The following requirements are applicable to all insurers either seeking authority to issue variable annuities in this state or having authority to issue variable annuities in this state:

Section 1 Licensing and approval to do business in Maine

An insurer shall not deliver or issue for delivery in this state any variable annuity contract unless:

a. the insurer is licensed to do a life insurance business in Maine;

b. the insurer has filed the information required in Section 2 below; and

c. the insurer has obtained the written approval of the Superintendent for the issuance of variable annuity contracts in Maine. The Superintendent shall grant such approval only after he or she has found that:

(1) the plan of operation for the issuance of variable annuity contracts is not unsound;

(2) the general character, reputation, and experience of the management and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer are such as to reasonably assure competent operation of the variable annuity business of the insurer in this state; and

(3) the present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such contract is not likely to render its operation hazardous to the public or its policyholders in this state.

Section 2 Filing for authority to do business in Maine

Before any insurer shall deliver or issue for delivery any variable annuity contract in this state, it shall file with the Bureau the following information:

a. copies of and a general description of the variable annuity contracts it intends to issue;

b. a general description of the methods of operation of the variable annuity business of the insurer, including methods of distribution of policies and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial or distribution services to the insurer;

c. with respect to any separate account maintained by an insurer for any variable annuity contract, a statement of the investment policy the insurer intends to follow for the investment of the assets held in such separate account, and a statement of procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objectives intended for the separate account;

d. a description of any investment advisory services contemplated as required by Section 10 of Article VIII;

e. a copy of the statutes and regulations of the state of domicile of the insurer under which it is authorized to issue variable annuity contracts;

f. biographical data with respect to officers and directors of the insurer;

g. a statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the contract;

h. a copy of any prospectus required pursuant to federal securities law regarding the marketing of variable annuity contracts, if available. If a draft of a registration statement which is pending before the Securities and Exchange Commission is submitted in lieu thereof, authority to effect variable annuity contracts in this state shall be conditioned upon receipt by the Superintendent of a prospectus in final effective form; and

i. an Annual Statement of the business of its separate account or accounts in the general form and content of the form of separate account annual statement as currently in general and customary use in the United States for the type of insurer and kind of insurance to be reported upon.

Section 3 Standards of suitability

Every insurer seeking authority to enter into the variable annuity business in this state shall establish and maintain a written statement specifying the Standards of Suitability to be used by the insurer. Such Standards of Suitability shall specify that no recommendations shall be made to an applicant to purchase a variable annuity contract and that no variable annuity contract shall be issued in the absence of reasonable grounds to believe that the purchase of such contract is not unsuitable for such applicant on the basis of information furnished after reasonable inquiry of such applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or to the agent making the recommendation.

Section 4 Use of sales materials

An insurer authorized to transact variable annuity business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable annuity business in this state which is false, misleading, deceptive, or inaccurate.

Section 5 Requirements applicable to contractual services

Any material contract between an insurer and suppliers of consulting, investment, administrative, sales, marketing, custodial, or other services with respect to variable annuity operations shall be in writing and provide that the supplier of such services shall furnish the Superintendent with any information or reports in connection with such services which the Superintendent may request in order to ascertain whether the variable annuity operations of the insurer are being conducted in a manner consistent with this rule and any other applicable law or regulations.

Section 6 Reports

Any insurer authorized to transact the business of variable annuities in this state shall submit to the Bureau, in addition to any other materials which may be required by this rule or any other applicable laws or regulations:

a. an Annual Statement of the business of its separate account or accounts in the general form and content of the form of separate account annual statement as currently in general and customary use in the United States for the type of insurer and kind of insurance to be reported upon; and

b. such additional information concerning its variable annuity operations or its separate accounts as the Superintendent shall deem necessary. If any material submitted to the Superintendent under this Section shall be found to be false, misleading, deceptive, or inaccurate in any material respect and, if such has been previously distributed to the contractholders, the Superintendent shall, among other indicated actions, require the distribution of amended material to contractholders.

Section 7 Authority of superintendent to disapprove

Any material required to be filed with the Superintendent which is subject to disapproval at the time of such filing shall be subject to disapproval if at any time it is found by him not to comply with the standards established by this rule.

Article VI. Variable Annuity Contract Requirements

Contract Qualification. The Superintendent shall not approve any variable annuity form filed pursuant to this regulation unless it conform to the requirements hereof.

Section 1 Filing of variable annuity contracts

All variable annuity contracts and all rider, endorsements, applications and other documents which are to be attached to and made a part of the contract and which relate to the variable nature of the contract, shall be filed with the Superintendent and approved by him prior to delivery or issuance for delivery in this state.

a. The procedures and requirements for such filing and approval shall be, to the extent appropriate and not inconsistent with this regulation, the same as those otherwise applicable to other annuity contracts.

b. Filings shall include a demonstration that the nonforfeiture provisions of the contract(s) comply with Section 3 of this Article.

c. The Superintendent may approve variable annuity contracts and related forms with provisions not less favorable to the contractholder and the beneficiary than those required by this rule.

Section 2 Mandatory contract liability and design requirements

a. Any variable annuity contract delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurer in determining the dollar amount of such variable benefits. Any such contract, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall contain on its first page a clear statement to the effect that the benefits thereunder are on a variable basis.

b. Illustrations of benefits payable under any variable annuity contract shall not include projections of past investment experience into the future or attempted predictions of future investment experience; provided, that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of benefits.

c. No individual variable annuity contract calling for the payment of periodic stipulated payments shall be delivered or issued for delivery in this State unless it contains in substance the following provisions:

(1) A provision that there shall be a period of grace of 30 days or of one month, within which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any such payment received during the period of grace shall be applied to produce the values under the contract arising therefrom; and

(2) A provision that, at any time within one year from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as required by contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover such overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom;

d. Any variable annuity contract delivered or issued for delivery in this state shall stipulate the investment increment factors to be used in computing the dollar amount of variable benefits or other variable contractual payments of values thereunder, and any guarantee that expense and/or mortality results shall not adversely affect such dollar amounts. In the case of an individual variable annuity contract under which the expense and mortality results may adversely affect the dollar amount of benefits, the assumed expense and mortality factors shall be stipulated in the contract.

In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:

(1) The annual net investment increment assumption shall not exceed 6 percent except with the approval of the Superintendent.

(2) To the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from the Annuity Mortality Table(s) mandated for the valuation of individual annuities contained in the Standard Valuation Law of Maine.

"Expense" may exclude some or all taxes, as stipulated in the contract.

Section 3 Nonforfeiture benefits

a. In the case of a contract issued on or after January 1, 1985, no variable annuity contract, except as stated in sub-sections b and c infra, shall be delivered in this state unless it contains in substance the following provisions:

(1) That upon cessation of payment of considerations under a contract, the insurer will grant a paid-up annuity benefit on a plan described in the contract that complies with sub-section f infra. Such description will include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments;

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit as described in the contract that complies with sub-section g. The contract may provide that the insurer reserves the rights, at its option, to defer the determination and payment of any cash surrender benefit for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such determination and payment impractical; and

(3) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract or any prior withdrawals from or partial surrenders of the contract.

b. Provisions of this section shall not apply to any (i) reinsurance, (ii) group annuity contract purchased in connection with one or more retirement plans or plans of deferred compensation established or maintained by or for one or more employers (including partnerships or sole proprietorships), employee organizations, or any combination thereof, other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, (iii) premium deposit fund, (iv) investment annuity, (v) immediate annuity, (vi) deferred annuity contract after annuity payments have commenced, (vii) reversionary annuity, or to any (viii) contract which is to be delivered outside this state through an agent or other representative of the company issuing the contract.

c. To the extent that any variable annuity contract provides benefits which do not vary in accordance with the investment performance of a separate account before the annuity commencement date, such contract shall contain provisions which satisfy the requirements of Section 2541 et. seq. of the Maine Insurance Code (Title 24-A, M.R.S.A.) and shall not otherwise be subject to this section.

d. The minimum values as specified in this Section of any paid-up annuity, cash surrender or death benefits available under a variable annuity contract shall be based upon nonforfeiture amounts meeting the requirements of this paragraph.

The minimum nonforfeiture amount on any date prior to the annuity commencement date shall be an amount equal to the percentages of net considerations (as specified in subsection e infra) increased or decreased by the net investment return defined in Article IV allocated to the percentages of net considerations, which amount shall be reduced to reflect the effect of:

(1) any partial withdrawals from or partial surrenders of the contract;

(2) the amount of any indebtedness on the contract, including interest due and accrued;

(3) an annual contract charge not less than zero and equal to (a) the lesser of thirty dollars ($30.00) and 2 percent of the end of year contract value less (b) the amount of any annual contract charge deducted from any gross considerations credited to the contract during such contract year; and

(4) a transaction charge of ten dollars ($10.00) for each transfer to another separate account or to another investment division within the same separate account.

The net investment return to be credited to a contract shall be determined at least monthly. The annual contract charge of thirty dollars ($30.00) and the transaction charge of ten dollars ($10.00) referenced will be adjusted to reflect changes in the Consumer Price Index in accordance with subsection e infra.

e. The percentages of net considerations used to define the minimum nonforfeiture amount in subsection d supra shall meet the requirements of this paragraph.

(1) With respect to contracts providing for periodic considerations, the net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars ($30.00) and less a collection charge of one dollar and twenty-five cents ($1.25) per consideration credited to the contract during that contract year and less any charges for premium taxes. The percentages of net considerations shall be sixty-five percent (65%) for the first contract year and eighty-seven and one-half percent (87 1/2%) for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sums of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent (65%).

(2) With respect to contracts providing for a single consideration, the net consideration used to define the minimum nonforfeiture amount shall be the gross consideration less a contract charge of seventy-five dollars ($75.00) and less any charge for premium taxes. The percentage of the net consideration shall be ninety percent (90%). The annual contract charge of thirty dollars ($30.00), the collection charge of one dollar and twenty-five cents ($1.25) per collection, and the single consideration contract charge of seventy-five dollars ($75.00) referred to above, will be adjusted to reflect changes in the Consumer Price Index in accordance with Paragraph (3) herein.

(3) For contracts subsequent to December 31, 1980, the above contract charges shall be multiplied by the ratio of (a) the Consumer Price Index for June of the calendar year preceding the date of filing, to (b) the Consumer Price Index for June 1979.

As used herein, the Consumer Price Index means such Index for all urban consumers for all items as published by the Bureau of Labor Statistics of the United States Department of Labor or any successor agency. If publication of the Consumer Price Index ceases, or if such Index otherwise becomes unavailable or is altered in such a way as to be unusable, the Superintendent will substitute an index he deems to be suitable.

f. Any paid-up annuity benefit available under a variable annuity contract shall be such that its present value on the annuity commencement date is at least equal to the minimum nonforfeiture amount on the date. Such present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.

g. For variable annuity contracts which provide cash surrender benefits, the cash surrender benefit at any time prior to the annuity commencement date shall not be less than the minimum nonforfeiture amount next computed after the request for surrender is received by the company. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

h. Any variable annuity contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the annuity commencement date shall include a statement in a prominent place in the contract that such benefits are not provided.

i. Notwithstanding the requirements of this Section, a variable annuity contract may provide under the situations specified in (1) or (2) below that the insurer, at its option, may cancel the annuity and pay the contractholder its accumulated value and by such payment be released of any further obligation under such contract:

(1) if at the time the annuity becomes payable the accumulated value is less than $2,000, or would provide an income the initial amount of which is less than $20 per month; or

(2) if prior to the time the annuity becomes payable under a periodic payment variable annuity contract no considerations have been received under the contract for a period of two (2) full years and both (a) the total considerations paid prior to such period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and (b) the accumulated value, amount to less than $2,000.

j. For any variable annuity contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of sub-section d supra, additional benefits payable (i) in the event of total and permanent disability, (ii) as reversionary annuity or deferred reversionary annuity benefits, or (iii) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this Section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

Article VII. Reserve Liabilities for Variable Annuities

Reserve liabilities for variable annuity contracts shall be established under the Standard Valuation Law in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

Article VIII. Separate Accounts

The following requirements apply to the establishment and administration of variable annuity separate accounts by any domestic insurer:

Section 1 Establishment and administration of separate accounts

Any domestic insurer issuing variable annuities shall establish one or more separate accounts pursuant to Section 2537 of the Maine Insurance Code (Title 24-A, M.R.S.A.).

a. If no law or other regulation provides for the custody of separate account assets and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets shall be in writing and the Superintendent shall have authority to review and approve the terms of any such contract and the proposed custodian prior to the transfer of custody.

b. Such insurer shall not without the prior written approval of the Superintendent employ in any material connection with the handling of separate account assets any person who:

(1) within the last ten years has been convicted of any felony or a misdemeanor arising out of such person's conduct involving embezzlement, fraudulent conversion, or misappropriation of funds or securities or involving violation of Sections 1341, 1342, or 1343 of Title 18, United States Code; or

(2) within the last ten years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit, or knowing misrepresentation; or

(3) within the last ten years has been found by a federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state securities laws involving fraud, deceit, or knowing misrepresentation.

c. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in the amount of not less than a value indexed to the National Association of Insurance Commissioners fidelity bonding recommendations regarding personnel handling general account assets.

d. The assets of such separate accounts shall be valued at least as often as variable benefits are determined but in any event not less frequently than monthly.

e. Notwithstanding any other provisions of law an insurer may

(1) with respect to any separate account registered with the Securities and Exchange Commission, as a unit investment trust exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the company; or

(2) with respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having interests in such account ratably as determined by the company. Such committee, board or other body may have the power, exercisable alone or in conjunction with others to manage such separate account and the investment of its assets. A company, committee, board, or other body may make such other provisions in respect to any such separate account as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect; provided that the Superintendent determines such provisions are not hazardous to the public or the insurer's policyholders in this state.

Section 2 Amounts in the separate account

The insurer shall maintain in each separate account assets with a market or other value comporting to standards set out in Section 2537 of the Maine Insurance Code (Title 24-A, M.R.S.A.) at least equal to the valuation reserves of the variable annuities and other contract liabilities respecting such account.

Section 3 Investments by separate account

a. No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(1) in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; and

(2) such transfer, whether into or from a separate account, is made by a transfer of cash; however, other assets may be transferred if approved in advance by the Superintendent if such transfers would not be inequitable.

b. The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under contracts funded by the account.

Section 4 Limitations on ownership

a. A separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by these regulation, would exceed 10 percent of the value of the assets of the separate account. The Superintendent may waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

b. No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than 10 percent of the total issued and outstanding voting securities of such issuer.

c. The percentage limitation specified in subsection a of this Section shall not be construed to preclude the investment of the assets of separate accounts in shares of investments companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of such investment companies or asset pools comply substantially with the provisions of subsections a and b supra and other applicable portions of this rule.

Section 5 Valuation of separate account assets

Investments of the separate account shall, on the date of valuation, be valued at their market value or at amortized cost if such approximates market value and the term of any underlying investment does not exceed 180 days from date of acquisition by the separate account, or pursuant to standards contained in Section 2537 of the Maine Insurance Code (Title 24-A, M.R.S.A.).

Section 6 Separate account investment policy

The investment policy of a separate account operated by a domestic insurer filed under Section 2c of Article V shall not be changed without first filing such proposed change with the Superintendent.

a. Any change filed pursuant to this section shall be effective sixty days after the date it was filed with the Bureau, unless the Superintendent notifies the insurer before the end of such sixty-day period of his disapproval of the proposed change. At any time the Superintendent may, after notice and public hearing, disapprove any change that has become effective pursuant to this section.

b. The Superintendent may disapprove the change if he or she determines that the change would be detrimental to the interests of the contractholders participating in such separate account.

Section 7 Charges against separate account(s)

The insurer must disclose in writing, prior to or contemporaneously with delivery of the policy, charges that may be made against the separate account, including, but not limited to, the following:

a. taxes or reserves for taxes attributable to investment gains and income of the separate account;

b. actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets;

c. costs of coverage and the release of separate account liabilities;

d. charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account;

e. a charge for any mortality or expense guarantees;

f. any amounts in excess of those required to be held in the separate accounts; and

g. charges for incidental insurance benefits.

Every insurer seeking approval to enter into the variable annuity business in this state shall adopt by formal action of its Board of Directors a written statement specifying the Standards of Conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. Such Standards of Conduct shall be binding on the insurer and those to whom it refers. A code or codes of ethics meeting the requirements of Section 17(j) under the Investment Company Act of 1940 and applicable rules and regulations thereunder shall satisfy the provisions of this Section.

Rules under any provision of the Insurance Code of Maine or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee or other similar body.

An insurer shall not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable annuity contracts unless:

a. the person providing such advice is registered as an investment adviser under the Investment Advisers Act of 1940; or

b. the person providing such advice is an investment manager under the Employee Retirement Income Security Act of 1974 with respect to the assets of each employee benefit plan allocated to the separate account; or

c. the insurer has filed with the Superintendent and continues to file annually the following information and statements concerning the proposed adviser:

(1) the name and form of organization, state of organization, and its principal place of business;

(2) the names and addresses of its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual;

(3) a written Standard of Conduct complying in substance with the requirements of Section 8 of this Article which has been adopted by the investment adviser and is applicable to the investment adviser, its officers, directors, and affiliates;

(4) a statement provided by the proposed adviser as to whether the adviser or any person associated therewith:

(A) has been convicted within ten years of any felony or misdemeanor arising out of such person's conduct as an employee, salesman, officer or director of an insurance company, a banker, an insurance agent, a securities broker, or an investment adviser involving embezzlement, fraudulent conversion, or misappropriation of funds or securities, or involving the violation of Section 1341, 1342, or 1343 of Title 18 of United States Code;

(B) has been permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or as an employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity;

(C) has been found by a federal or state regulatory authority to have willfully violated or have acknowledged willful violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under any such laws; or

(D) has been censured, denied an investment adviser registration, had a registration as an investment advisor revoked or suspended, or been barred or suspended from being associated with an investment adviser by order of federal or state regulatory authorities; and

d. such investment advisory contract shall be in writing and provide that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than sixty days' written notice to the investment adviser. The Superintendent may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if he or she deems continued operation thereunder to be hazardous to the public or the insurer's policyholders.

Article IX. Reports to Policyholders

Section 1 Report of investments held in separate accounts

Any insurer issuing individual variable annuity contracts in this state shall mail to the contractholder at least once in each contract year after the first at his last address known to the company, a statement or statements reporting the investments held in the separate account.

Section 2 Report of contractholder's accumulation units credited to such contracts

Any insurer issuing individual variable annuity contracts in this state shall mail to the contractholder in the case of an annuity contract under which annuity payments have not yet commenced, a statement reporting the number of accumulation units credited to such contract, the dollar value of a unit, and the value of the contractholder's account; a similar report shall be given to persisting contractholders at least once in each contract year after the first at his last address known to the insurer. Those reports to persisting contractholders shall reflect values not less current in time than four months previous to the date of mailing.

Article X. Foreign Companies

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially similar to that provided by these regulations, the Superintendent to the extent deemed appropriate by him or her may consider compliance with such law or regulation as compliance with this rule.

Article XI. Authorization of Agents for the Sale of Variable Annuities

Section 1 Qualification to sell variable annuities

No person may sell or offer for sale in this state any variable annuity contract unless such person is a variable annuity agent and has filed with the Superintendent, in a form satisfactory to the Superintendent, evidence that such person holds appropriate license or authorization which may be required for the solicitation or sale of variable annuity contracts.

Section 2 Reports of disciplinary actions

Any person authorized in this state under applicable law to sell or offer to sell variable annuities shall immediately report to the Bureau:

a. any suspension or revocation of his or her agent's license in any other state or territory of the United States;

b. the imposition of any disciplinary sanction, including suspension or expulsion from membership, suspension, or revocation of or denial of registration, imposed upon him by any national securities exchange, or national securities association, or any federal, state, or territorial agency with jurisdiction over securities or variable annuities; and

c. any judgment or injunction entered against him or her on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

Section 3 Refusal to qualify agent to sell variable annuities or suspension, revocation, or nonrenewal of authority

The Superintendent may reject any application or refuse to renew or initiate proceedings to suspend or revoke any agent's authority to sell or offer to sell variable annuities for cause including that which would bar such applicant or such agent from being licensed to sell other such insurance contracts in this state.

Article XII. Separability

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

History. -- Effective. 2-6-84.

History. -- Statutory Authority.--24-A M.R.S.A.

§§ 1520.3 and 2537.

EFFECTIVE DATE (ELECTRONIC CONVERSION): January 14, 1997

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 18, 2025