

**1200 Life Insurance and Annuities**

**1201 Variable Contract Regulations [Formerly Regulation 1]**

**1.0 Authority**

Pursuant to authority given by 18 **Del.C.** §314, and §2932 as same appears in the Insurance Laws of the State of Delaware, the Insurance Commissioner, after due notice and publication and after affording interested persons an opportunity to present written data, views and arguments, does hereby make and promulgate the following rules and regulations to be applicable to insurance companies delivering or issuing for delivery in this state variable contracts pursuant to 18 **Del.C.** §2932.\*

**2.0 Definitions**

**"Agent"** when used in this Regulation, shall mean any individual, firm, or corporation, which under the laws of this State is licensed as a life insurance agent, or solicitor, general lines agent, or life insurance broker, as said terms are defined in 18 **Del.C.** Ch. 17.

**"Variable Contract"** when used in this Regulation, shall mean any policy or contract, whether on an individual or group basis, which provides for insurance or annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract, as provided for in 18 **Del.C.** §2932.

**"Variable Contract Agent"** when used in this Regulation, shall mean an agent who shall be licensed by this Department to sell or offer to sell any variable contract.

**3.0 Qualification of Insurance Companies to Issue Variable Contracts**

- 3.1 No company shall deliver or issue for delivery variable contracts within this State unless and until:
  - 3.1.1 it is licensed by this Department to engage in the life insurance or annuity business in this State, and
  - 3.1.2 in addition thereto, is licensed by this Department to engage in the business of issuing and delivering variable contracts in this State.
  - 3.1.3 Before a variable contract license shall be issued by this Department, the Commissioner shall be satisfied that the condition and method of operation of the company in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this State. In determining the qualifications of a company requesting a variable contract license, the Commissioner shall consider among other things:
    - 3.1.3.1 The history and financial condition of the company;
    - 3.1.3.2 The character, responsibility and general fitness of the officers and directors of the company; and
  - 3.1.4 In the case of a company other than a domestic insurer, whether the statute or regulations of the jurisdiction of its incorporation, as to the issuance of variable contracts, provide a degree of protection to the policyholders and the public substantially equal to that provided by the Insurance Laws of this State and the rules and regulations issued thereunder on the question of the operations of such a business in variable contracts.
- 3.2 If the company is a wholly owned subsidiary of an admitted life insurance company, or affiliated with such company by common management or ownership, it may be deemed by the Commissioner to have satisfied the provisions of section 3.1.2, if either it or such admitted life company satisfies the aforementioned provisions; provided, further, that companies licensed and having a satisfactory record of doing business in this State for a period of at least three (3) years may be deemed to have satisfied the Commissioner with respect to section 3.1.2 above. Any wholly owned subsidiary or company affiliated as aforesaid qualifying to issue variable contracts by virtue of this subsection may continue to issue such contracts only for so long as it continues to remain a wholly owned subsidiary of, or

affiliated as aforesaid with, the parent company, unless such subsidiary or affiliated company, subsequent to such qualification, has satisfied such requirements wholly on its own merits.

- 3.3 Before any company shall be licensed to deliver or issue for delivery variable contracts within this State it shall, in addition to complying with the applicable Insurance Laws of this State and the other provisions of this Regulation, file with the Commissioner the following material:

- 3.3.1 A certified copy of a resolution adopted by its board of directors establishing one or more separate accounts. Any amendments to this resolution or any resolution superseding the same shall immediately be filed with the Commissioner;
- 3.3.2 A copy of the Company's latest "Report of Examination" and "Annual Statement" if the company has not been previously admitted;
- 3.3.3 A general description of the kinds of variable contracts to be issued or in effect and, as to individual variable contracts, a statement of reserving procedures, investment objectives and two copies of any financial prospectus contained in a registration statement filed with the Securities and Exchange Commission;
- 3.3.4 A copy of any management or service contract entered into between the company and a third party or between any separate account and a third party, the terms of which contain provisions for the third party to provide managerial, investment or sales services to any separate account; any such contract entered into following the initial filing shall also be filed with the Commissioner;
- 3.3.5 Biographical statements concerning officers and directors of the insurance company or separate account and, if requested by the Commissioner, of the officers and directors of the management company; and
- 3.3.6 Such other information as may be required by the Commissioner.

#### **4.0 Separate Account or Separate Accounts**

- 4.1 A domestic company licensed to issue variable contracts in this State shall establish one or more separate accounts subject to the following provisions of this Article:
  - 4.1.1 Except as hereinafter provided, the amounts allocated to each separate account established by the insurer pursuant to 18 **Del.C.** §2932, together with any accumulations thereon, may be invested and reinvested in any class of investments which may be authorized in written contract or agreement without regard to any other requirements or limitations presented by 18 **Del.C.** Ch. 13; except that to the extent that the insurer's reserve liability with regard to (i) benefits guaranteed as to dollar amount and duration, and (ii) funds guaranteed as to principal amount or stated rate of interest, is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the applicable provisions of 18 **Del.C.** Ch. 13 governing the investments of life insurance companies. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to the investments of the insurer.
  - 4.1.2 With respect to 75% of the market value of the total assets in a separate account no company shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market, would exceed 10% of the market value of the assets of said separate account; provided, however, that the Commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this State.
  - 4.1.3 No company shall, whether for its separate accounts or otherwise, invest in the voting securities of a single issuer in an amount in excess of 10% of the total issued and outstanding voting securities of such issuer provided that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts.

- 4.1.4 The limitations provided in sections 4.1.1 and 4.1.2 shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with sections 4.1.1 and 4.1.2.
- 4.2 Assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; except, that the portion of the assets of such separate account at least equal to the insurers' reserve liability with regard to the guaranteed benefits and funds referred to in section 4.1.1, and 18 **Del.C.** §1322, if any, shall be valued in accordance with the rules otherwise applicable to the insurers' assets.
- 4.3 The income, if any, and gains and losses, realized or unrealized, on each such account, shall be credited to or charged against the amounts allocated to the account in accordance with the agreement, without regard to the other income, gains or losses of the insurer.
- 4.4 Notwithstanding any other provisions of law a company may:
  - 4.4.1 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
  - 4.4.2 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.
  - 4.4.3 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 Commissioner approves such provisions as not hazardous to the public or the Company's policyholders in this State.
- 4.5 No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, 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 account or contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (a) by a transfer of cash, or (b) by a transfer of securities having a valuation which could be readily determined in the marketplace, provided that such transfer of securities is approved by the Commissioner. The Commissioner may authorize other transfers among such accounts if, in his opinion, such transfers would not be inequitable.
- 4.6 The insurer shall maintain in each such separate account assets with a value at least equal to the insurer's reserve liability with regard to (i) benefits guaranteed as to dollar amount and duration and (ii) funds guaranteed as to principal amount or stated rate of interest, which assets shall be invested and valued pursuant to the exception clauses of sections 4.1.1 and 4.2 above, and which assets shall not be chargeable with liabilities arising out of any other business the insurer may conduct.
- 4.7 Rules under any provision of the Insurance Law of this State 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, board or other similar body. No officer or director of such company nor any member of the committee, board or body of a separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account.

## **5.0 Filing of Contracts**

The filing requirements applicable to variable contracts shall be those filing requirements otherwise applicable under existing statutes and regulations of this State with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate.

#### **6.0 Contracts Providing for Variable Benefits**

- 6.1 Any variable contract providing benefits payable in variable amounts 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 amounts of such variable benefits. Any such contract or agreement, including a group contract and any certificate issued thereunder, shall state that such dollar amounts will vary to reflect investment experience of the separate account and shall contain on its first page or on the front cover of any certificate evidencing variable benefits issued pursuant to any variable contract on a group basis, in a prominent position, a clear statement to the effect that the benefits thereunder are on a variable basis.
- 6.2 Illustrations of benefits payable under any contract providing benefits payable in variable amounts shall not include projections of past investment experience into the future nor shall they attempt predictions of future investment experience; provided that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return clearly designated as such, to illustrate possible levels of annuity payments.
- 6.3 No individual variable contract calling for the payment of periodic stipulated payments or premiums shall be delivered or issued for delivery in this State unless it contains in substance the following provisions, or provisions which in the opinion of the Commissioner are more favorable to the holders of such contracts:
  - 6.3.1 a provision that there shall be a period of grace of 30 days or of one month, within which any stipulated payment or premium 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.
  - 6.3.2 a provision that, at any time, within no less than one year from the date of default in making periodic stipulated payments or premiums 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 the contract, and of all indebtedness to the insurer on the contract, including interest. The contract shall also include a statement of the basis for determining the date as of which the amount to cover such overdue payment and indebtedness shall be applied to produce the values under the contract arising therefrom;
  - 6.3.3 a provision specifying the options available in the event of default in a periodic stipulated payment, which options may include an option to surrender the contract for a cash value as determined by the contract, and shall include an option to receive a paid-up annuity if the contract is not surrendered for cash, the amount of such paid-up annuity being determined by applying the value of the contract at the annuity commencement date in accordance with the terms of the contract.
  - 6.3.4 Any individual variable contract delivered or issued for delivery in this State shall stipulate the expense, mortality and investment increment factors to be used in computing the dollar amount of variable benefits or other contractual payments or values thereunder. "Expense," as used in this subsection may exclude some or all taxes, if so stipulated in the contract or agreement.
- 6.4 In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable contract:
  - 6.4.1 The annual net investment increment assumption shall not exceed 5%, except with the approval of the Commissioner; and
  - 6.4.2 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 for 1949, Ultimate, or any modification of that table not having a higher mortality rate at any age, or, if approved by the Commissioner, from another table.

- 6.5 The reserve liability for variable contracts shall be established pursuant to the requirements of the standard valuation law as set forth in 18 **Del.C.** Ch. 13, in accordance with actuarial procedures that recognize the variable nature of the benefits provided.
- 6.6 In the sale of an individual variable contract, made in conjunction with the sale of either a life insurance policy or a fixed annuity contract, there shall be a disclosure to the prospective purchaser which shows the consideration to be paid for the variable contract separately from the other charges. If any benefits or non-forfeiture values which may accrue prior to the death of the insured are involved in the presentation of such a sale, the value of such life insurance policy or such fixed annuity must be shown separately from any other values.
- 6.7 Individual annuity contracts which provide for both fixed and variable dollar benefits (which are specified at the time of the sale of such contracts) shall show, separately, the consideration to be paid for the fixed dollar benefits and for the variable dollar benefits or the proportion of such consideration to be paid for each such benefit.

## **7.0 Required Reports**

- 7.1 Each insurer issuing variable contracts 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 applicable to said contractholder and, in the case of contracts under which payments have not yet commenced, a statement reporting as of a date not more than four months previous to the date of mailing, (a) the number of accumulation units credited to such contracts and the dollar value of a unit, or (b) the value of the contractholder's account. The reporting date, once fixed, shall remain constant each year, unless the Commissioner shall approve the use of a different reporting date or dates.
- 7.2 Each insurer licensed by this Department to issue variable contracts shall annually file with the Commissioner, on or before 1 March (or within a reasonable extension of time therefor which the Commissioner for good cause may have granted), a full and true statement of its financial condition, transactions and affairs as of 31 December next preceding. Such statements shall be in such form as may be prescribed by the Commissioner pursuant to the authority of 18 **Del.C.** §526(a), and, inter alia, shall include details as to all of the income, disbursements, assets and liability items associated with any separate account. Such statements shall be verified as provided for by 18 **Del.C.** §526(a) and (b), and the provisions of 18 **Del.C.** §526(c) shall apply for failure to file such statements when due, and the provisions of 18 **Del.C.** §526(d) shall apply as to the fees due upon filing such statements. In addition to such annual statements, the Commissioner, from time to time, may require of an insurer such other statements concerning the business of its separate accounts as he in his discretion may deem necessary.

## **8.0 Foreign Companies**

If and when the laws or regulations in the place of domicile of a foreign or alien insurer prevent compliance with any specific provision of this regulation, such insurer shall so advise the Commissioner in writing, setting forth the specific conflicts, and if the Commissioner, in his discretion, shall consider such conflicts of sufficient importance he may refuse to license such foreign company or upon due notice and hearing, may revoke a license issued prior to such conflict being brought to his attention. If on the other hand, said foreign or alien laws or regulations provide a degree of protection to the policyholders and public, which in the opinion of the Commissioner is substantially equal to that provided by these regulations, the Commissioner to the extent deemed appropriate by him in his discretion, may consider compliance with such law or regulation as compliance with these regulations. With regard to investments in separate accounts, foreign companies will be expected to adhere to standards substantially similar to those hereinabove set forth in section 4.0 for domestic companies, and if the laws and regulations of the domicile of any foreign company shall fail to provide for substantially similar safeguards to those hereinabove required in the case of domestic companies, the Commissioner in his discretion may refuse to license such foreign company or, upon due notice and hearing, may revoke a license issued prior to such situation being brought to his attention, unless such

foreign company, in a manner not otherwise forbidden by the laws and regulations of its domicile, shall enter into an agreement with the Department to adhere to standards for separate accounts identical to or substantially similar to those set forth in section 4.0 above.

#### **9.0 Examination of Agents and Other Persons**

- 9.1 No agent shall be eligible to sell or offer for sale in this State any variable contract unless prior to making any solicitation or sale of such a contract, he also be licensed by this Department as a variable contract agent per the authority and subject to the provisions of 18 Del.C. §1714(d) and these regulations.
- 9.2 The Commissioner shall issue the variable annuity authority to agents who have successfully completed the life agent's examination or have otherwise qualified for an agent's license for the line of life insurance and who present evidence of a valid NASD license (Series 6 or 7).  
Amendments to Article IX effective July 1, 1983: Article IX was amended by deleting sections 2 through 12 in their entirety and by substituting a new section 2 in lieu thereof, effective July 1, 1983. See Item III, Decision. of the Regulatory Hearing proceedings preceding the text of Regulation No. 44.
- 9.3 The Commissioner may reject any application or suspend or revoke or refuse to renew any variable contract agent's license upon any ground that would bar such applicant or such agent from being licensed to sell life insurance contracts in this State. The Insurance Laws of this State and any regulations issued thereunder governing any proceeding relating to the suspension or revocation of a life insurance agent's license shall also govern any proceeding for suspension or revocation of a variable contract agent's license.
- 9.4 Renewal of a variable contract agent's license shall follow the same procedure established for renewal of an agent's license to sell life insurance contracts in this State.

#### **10.0 Severability**

If any provision or clause of this Regulation or the application hereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the Regulation which can be given effect without the invalid provision or application and to this end the provisions of this Regulation are declared to be severable.

#### **11.0 Grace Period**

In order to allow applicants to regularly comply with the provisions of this Regulation without suffering unnecessary impairment or curtailment of their then current operations, Insurers, Agents or Brokers issuing or selling variable contracts in this State at the date of the promulgation of these Regulations shall be permitted to continue under criteria heretofore applicable until June 2, 1969. Insurers, Agents and Brokers must comply with the requirements of this Regulation, not previously met, in order to be authorized for sale of variable contracts subsequent to the aforesaid date.