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BULLETIN 98-17

TO: **Licensees, Insurers and Interested Parties**

FROM: **Commissioner Linda Ruthardt**

DATE: **October 9, 1998**

RE: **Individual Equity Indexed Products**

The Division of Insurance is currently reviewing a number of individual Equity Indexed products. This Bulletin sets forth guidelines to assist insurers with the filing of these forms.

All actuarial information and actuarial certifications relative to proposed reserving methods and investment strategies must be forwarded to the State Rating Bureau of the Division for review. Please note that not all related products are fixed products; some of them may be variable. If variable, the Division will treat such products in accordance with applicable laws concerning such variable products.

Actuarial Memorandum: The requisite actuarial memorandum, prepared and signed by a qualified actuary, must contain the following:

1. A description of the policy;
2. A description of the index used and the criteria for selecting a substitute index if the current index is no longer in existence or applicable;
3. A description of how index-based benefits are calculated, including formula definitions, descriptions of calculations of level, up and down index scenarios, and descriptions of the minimum cap and floor for all indexed products;
4. A description of reserving methods;
5. A description of asset adequacy testing methodologies used to address product features unique to the equity indexed product;
6. A statement by a qualified actuary that the reserve method should produce reserves that meet the minimum statutory requirements;
7. If the policy contains a provision allowing insureds to withdraw funds without a surrender charge, the actuarial memorandum should demonstrate that proposed reserves are at least equal to the accumulation value rather than the surrender value.

Hedging Policy: The hedging policy must clearly disclose and include the following matters:

1. A description of hedging instruments, if any, that are planned to be acquired to fund the obligations inherent in the policy;
2. A description of the methods used to determine the amount and type (including maturity and strike price) of hedging instruments, if any, used to hedge the risks associated with the indexed obligations;
3. A description of the methods used to determine the extent of rebalancing of the portfolio supporting the product and the frequency of rebalancing;
4. A description of the responsibilities within the company with regard to the individual(s) who determine(s) the hedging policy, approve the hedging policy and carry out the hedging policy;
5. A description of risk-handling associated with purchasing such hedging instruments, including liquidity, credit, market, pricing, legal and operational risks associated thereto;
6. Detailed support for any required reserve certifications relative to "reasonableness of assumptions;"
7. If the reserving method is based on attaining any "hedged as required" criteria, a description of how such criteria will be met.

Investment Plan: The filing must include a description of the investment plan used to fund the policy, if not addressed above.

Annual Statement: All filings must set forth an example of the annual statement provided to policyholders.

Certifications: The filing must include a certification by a duly authorized officer of the company that (1) the company will provide the State Rating Bureau any additional information relative to reserves that the Division may request at a later date; and (2) that any changes in investment strategies relative to the filing will be filed with the Division on an ongoing basis.

Disclosure Requirements:

1. Policy Application: The policy application must include a prominent acknowledgment disclosing that the applicant understands that he/she is applying for an equity indexed annuity. Such statement must also disclose that while the values of the policy may be affected by an external index, the policy does not directly participate in any stock or equity investments. It must include a statement of understanding that any values shown, other than guaranteed minimum values, are not guarantees, promises or warranties. This disclosure statement must be set forth (in at least 10 point type) immediately preceding the signature line.

2. Policy: At minimum, all policy forms must comply with the following requirements:

    a. Contain a prominent notice on the cover page accurately describing the contract's involvement with an external index. The notice should disclose that while values of the policy may be affected by an external index, the policy does not directly participate in any stock or equity investments.
    b. Define the death benefit provided by the policy and how the death of the policyholder affects the cash value and excess interest accumulation in the policy.
    c. Disclose all available indexed periods and the date of expiration of the elected period. Additionally, the contract form must clarify what happens upon expiration of an indexed period.
    d. If a policy is to be linked to an index for some specified period less than the time to the maturity date of the policy, then the expiration date of such period and any minimum guaranteed rates applied thereafter must be specified.
    e. Define the formula used to determine indexed credits and indexed value.
    f. Provide for and describe the use of a substitute index in the event that the named index is discontinued. Advance notification of a change in the index must be provided to the Division upon a change in the index. The filing of an endorsement naming the substitute index is required.
    g. If premiums may be allocated to different accounts applicable to different portions of the policy value, then the policy must contain a description of the allocation of interest credits.
    h. Disclose the minimum guaranteed rates that apply until the maturity date of the policy.
    i. Define the policy's value upon surrender during an indexed term, at the end of the term or at any time prior to maturity.
    j. Disclose the guaranteed participation rate at issue and during the first indexed period. If the participation rate may be redetermined at any time during an indexed period or at the end of an indexed period, the policy must clearly disclose the minimum participation rate for all periods and the factors which would lead to a change in any participation rate.
    k. If the policy contains a cap or floor for the indexed benefits, then the policy must clearly disclose any guaranteed cap or floor at issue and during the first indexed period. If the cap or floor may be redetermined during an indexed period or at the end of the guaranteed period, the policy must clearly describe the minimum cap or floor relative to the indexed benefits.
    l. Disclose that in the event of insolvency of the issuing insurer, policyholders look to the guaranty fund system in which the policyholder resides and caution policyholders to contact said in-state guaranty fund system for more information about the nature, existence and degree of coverage.

    Forms must <u>not</u>:

    a. Use investment terms such as investment performance, investment returns, maximizing returns, Wall Street or the stock market except <u>with extreme care and with appropriate caveats.</u>

b. Describe the equity indexing feature or formula as a means of participation in the stock market, the equity markets or the S & P 500 or other index, although indexing may be appropriately described as providing the potential for higher excess interest rates over the long term.
c. Provide a partial or complete list of the stocks or companies that constitute the index.
d. Stress similarities to variable products, mutual funds or other investment vehicles.

3. Advertising Materials: Filings must include all advertising materials, including any illustrations used in marketing the contract form. Please note that these materials, as always, will be subject to appropriate review. Language in marketing materials must be balanced and must disclose:
   a. that the policy does not directly participate in any stock or equity investments;
   b. that failure to maintain the policy to maturity may result in no participation in the equity index;
   c. the participation rate and its relation to the equity index, including an invitation to contract, the excess interest formula, any caps or floors on excess interest, surrender and other charges and the guaranteed minimum rate of interest payable;
   d. the death benefit provided by the policy and how the death of the policyholder affects cash value and excess interest accumulation in the policy.

Any questions about this Bulletin may be directed to Henry Lieberman, Supervisor of Policy Review for the State Rating Bureau at 617-521-7340.