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COMMISSIONER OF INSURANCE

Bulletin 2004-04

TO: **Insurers Offering Annuity Products in Massachusetts**

FROM: **Julianne M. Bowler, Commissioner of Insurance** Julianne M Bowler

DATE: **March 26, 2004**

RE: **Amendment to Bulletin 2003-01 Regarding an Insurer's Right to Restrict Use of General Account Fixed Accounts Within Variable Annuity Contracts**

The Division of Insurance ("Division") issued Bulletin 2003-01 on February 27, 2003 to address non-forfeiture requirements within annuity products offered in Massachusetts. This bulletin is intended to amend the position taken in that bulletin that affected the insurer's right to restrict use of General Account fixed accounts ("fixed accounts") in variable annuity contracts.

As noted in Bulletin 2003-01, the standard non-forfeiture law ("SNFL"), found at M.G.L. c. 175, §144A provides for the determination of an annuity contract's required minimum cash values. In Bulletin 2003-01, the Division wrote, among other items, that carriers were prohibited from offering a fixed account option and then prohibiting the use of such option. This position is amended to permit restrictions and limitations on such options provided that carriers properly disclose all such restrictions and limitations in a manner that clearly explains such provisions.

This bulletin sets forth guidelines to assist insurers with the filing of these types of contracts and the disclosures needed to avoid any violation of the unfair and deceptive trade practice laws.

Submission Letter or Explanation of Variables. Any insurer intending to reserve the right to restrict payments into the fixed account or transfer of funds from the variable account into the fixed account, is to provide the following in the submission letter or explanation of variables that is sent to the Division: (1) an explanation stating that the discontinuance right would only be exercised when the anticipated yield on investments would not support the statutory minimum interest rate and (2) an assurance that the discontinuance would not be exercised in an unfairly discriminatory manner.

Contract. The annuity contract must disclose in specific and detailed contract provisions:

1. The existence of any restrictions on the contract holder's right to make payments into the fixed account or to transfer funds from the variable account into the fixed account. (Contracts issued without this provision cannot be amended to grant the insurer this right.)

2. Any reservation of the insurer's right to restrict future payments or transfers into the fixed account. If the insurer reserves this right, the contract provisions must provide that the insurer will give the contract holder (a) at least 30 days advance written notice when the insurer exercises this right and (b) written notice when the insurer lifts, in whole or part, any prior exercise of the right to restrict payments or transfers into the fixed account.

Disclosures. Prior to purchase of the contract, the insurer must provide an applicant with written disclosure of any restrictions or of the insurer's right to impose future restrictions on the contract holder's payments or transfers into the fixed account including, but not limited to (a) an explanation that the discontinuance right would be exercised only when the yield on investment would not support the statutory minimum interest rate and (b) an assurance that the discontinuance would not be exercised in an unfairly discriminatory manner. The insurer must keep a copy of a statement signed by the applicant that he or she has received, read and understood that the fixed account may not be available at some point during the life of the contract, including possibly when the contract is issued. This requirement may be satisfied by including the statement in bold print as part of the application." A detailed explanation for any future restrictions should be provided in the prospectus. It will be acceptable for the disclosures in the contract, the application and the sales material to be abbreviated and to point to the prospectus for details.

Notice of Discontinuance of General Account Fixed Account. When an insurer is notifying consumers about exercising the right to restrict future payments or transfers, an advance written notice similar to the following would be acceptable:

"The company will not be accepting new premiums or transfers to the fixed account with an effective date 30 days or more after the date of this letter. Therefore, we must receive your allocation or transfers instructions within the allowable time frame regarding which investment options other than the fixed account to which you may wish to allocate premiums and/or transfers. You will be notified in writing as soon as the company's restriction on such fixed account activity no longer exists."

Notice of Non-Availability of General Account Fixed Account Deposit or Transfer Options.

If the General Account Fixed Account is not available at the time of issue, the variable annuity contract forms must explicitly provide the fixed account is currently not available. Disclosure must be provided on the application form as well as the face and specification pages of any deferred annuity contract that is labeled as a fixed and variable

annuity. Insurers can develop a distinct application form (or use an endorsement stamp) when the fixed account is not available at issue. A face page provision similar to the following would be acceptable:

"The fixed account may not be available on the issue date. Please check the specification page to determine whether the fixed account is currently available."

No Separate Disclosures Are Necessary Under Certain Circumstances. Certain logical limitations to deposits and transfers should not be considered restrictions for the purpose of this bulletin, including, for example:

(1) a re-balancing provision that periodically shifts money among the investment options, which might not require transferring money into the fixed account;
(2) limiting transfers to the fixed account to days the stock market is open;
(3) limiting the number of free transfers among accounts, as well as paid-for transfers, including the fixed account.

Any questions regarding this bulletin should be addressed to Kevin Beagan, Director of the State Rating Bureau at (617) 521-7323.