

(1) Grounds for the discipline or disqualification of producers shall include, in addition to other grounds specified in section 375.141, RSMo, failure to comply with or violation of the following professional standards of conduct:

(A) Producers, in the conduct of variable life, annuity, and long-term care insurance business, shall observe high standards of commercial honor and just and equitable principles of trade. Implicit in a producer's relationship with customers is the fundamental responsibility of fair dealing. Practices that violate this responsibility of fair dealing include, but are not limited to, the following:

1. Inducing an exchange or replacement of variable life, annuity, or long-term care insurance contract with [insignificant] no tangible net benefit to the consumer, but for the purpose of accumulating commissions by the producer; and

2. Causing the execution of transactions that are not authorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon; and

AUTHORITY: sections 374.040[,] and 375.013, RSMo 2000, and sections 374.045, 375.143, and 376.309.6, RSMo Supp. [2007] 2013. Emergency rule filed April 14, 2005, effective April 26, 2005, expired Jan. 1, 2006. Original rule filed Sept. 30, 2005, effective March 30, 2006. Amended: Filed Nov. 30, 2007, effective July 30, 2008. Amended: Filed Sept. 30, 2016.

PUBLIC COST: The proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: The proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Insurance, Financial Institutions and Professional Registration, Attention: Tamara W. Kopp, Receivership Counsel, Director's Office, PO Box 690, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

Division 700—Insurance Licensing Chapter 1—Insurance Producers

PROPOSED AMENDMENT

20 CSR 700-1.146 Recommendations of [Annuities or] Variable Life Insurance to Customers (Suitability). The division is amending the title, purpose, section (1), removing section (2), and renumbering thereafter.

PURPOSE: This amendment makes this rule only applicable to the offer, sale, or exchange of variable life contracts. The department is amending this rule by removing all language that relates to annuity recommendations. The department's proposed rule, 20 CSR 400-5.900 Suitability in Annuity Transactions, is replacing the language contained in this rule.

PURPOSE: This rule [implements the requirements] effectuates and aids in the interpretation of section[s] 375.141.1(8) [and 375.143], RSMo, with respect to the codification of professional standards of conduct in the recommendation of [annuities and] variable life insurance contracts. Failure to meet these standards [would] constitutes the demonstration of incompetence, untrustwor-

thiness, or financial irresponsibility of producers in the offer, sale, or exchange of [annuities and] variable life contracts.

(1) The standards of conduct codified in this rule reflect the professionalism of a licensed insurance producer. Grounds for the discipline or disqualification of producers shall include, in addition to other grounds specified in section 375.141, RSMo, failure to comply with or violation of the following professional standards of conduct:

[1A] Variable Annuities and Variable Life Insurance.]

[1.](A) In recommending to an individual customer the purchase, sale, or exchange of any variable life [or variable annuity] product, a producer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other investment holdings and as to his financial situation and needs.

[2.](B) Prior to the execution of a variable life [or variable annuity] transaction recommended to an individual customer, a producer shall make reasonable efforts to obtain information concerning—

[A.].1. The customer's financial status, including annual income, financial situation and needs, and existing assets;

[B.].2. The customer's tax status;

[C.].3. The customer's financial objectives, including investment objectives, reasonably anticipated income needs, and risk tolerance;

[D.].4. The customer's investment time horizon, liquid net worth, and current and reasonably anticipated needs for liquidity; and

[E.].5. Such other information used or considered to be reasonable by such producer in making recommendations to the customer.

[3. No producer shall recommend to any customer the purchase or exchange of any deferred variable annuity, unless the producer has a reasonable basis to believe:

A. That the transaction is suitable in accordance with this rule and, in particular, that there is a reasonable basis to believe that—

(I) The customer has been informed, in general terms, of various features of deferred variable annuities, such as the potential surrender period and surrender charge; potential tax penalty if the customer sells or redeems deferred variable annuities before reaching the age of fifty-nine and one half (59½); mortality and expense fees; investment advisory fees; potential charges for and features of riders; the benefit and investment components of deferred variable annuities; and market risk;

(II) The customer would benefit from certain features of deferred variable annuities, such as tax-deferred growth, annuitization, or a death or living benefit; and

(III) The particular deferred variable annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also is suitable) for the particular customer based on the information required by this rule; and

B. In the case of an exchange of a deferred variable annuity, the exchange also is consistent with the suitability determination required by subparagraph (1)(A)3.A. of this rule, taking into consideration whether—

(I) The customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees or charges (such as mortality and expense fees, investment advisory fees, or charges for riders and similar product enhancements);

(II) The customer would benefit from product enhancements and improvements; and

(III) *The customer's account has had another deferred annuity exchange within the preceding thirty-six (36) months.*

[4.](C) Interpretation of subsection (1)(A) of this rule shall be guided by judicial and administrative opinions and decisions construing substantially similar requirements of the Financial Industry Regulatory Authority (FINRA) or its predecessor or successor organizations.

[(B) Indexed Annuities.

1. In recommending to an individual customer the purchase, sale, or exchange of a indexed annuity, a producer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his or her insurance and investment holdings and as to his or her current and reasonably anticipated financial situation and needs.

2. Prior to the execution of an indexed annuity transaction recommended to an individual customer, a producer shall make reasonable efforts to obtain information concerning—

A. The customer's financial status, including annual income, financial situation and needs, and existing assets;

B. The customer's tax status;

C. The customer's financial objectives, including investment objectives, reasonably anticipated income needs, and risk tolerance;

D. The customer's investment time horizon, liquid net worth, and current and reasonably anticipated needs for liquidity; and

E. Such other information used or considered to be reasonable by such producer in making recommendations to the customer.

3. No producer shall recommend to any customer the purchase or exchange of a deferred indexed annuity unless the producer has a reasonable basis to believe:

A. That the transaction is suitable in accordance with this rule and, in particular, that there is a reasonable basis to believe that—

(I) *The customer has been informed, in general terms, of various features of deferred indexed annuities, such as the potential surrender period and surrender charge; potential tax penalty if a customer sells or redeems deferred indexed annuities before reaching the age of fifty-nine and one half (59½); mortality and expense fees; potential charges for and features of riders; the benefit and accumulation components of deferred indexed annuities; and market risk;*

(II) *The particular deferred indexed annuity as a whole, the underlying accumulation provisions and riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also is suitable) for the particular customer based on the information required by this rule; and*

B. In the case of an exchange of a deferred indexed annuity, the exchange also is consistent with the suitability determination required by subparagraph (1)(B)3.A. of this rule, taking into consideration whether—

(I) *The customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees or charges (such as mortality and expense fees, investment advisory fees, or charges for riders and similar product enhancements);*

(II) *The customer would benefit from product enhancements and improvements; and*

(III) *The customer's account has had another*

deferred indexed annuity exchange within the preceding thirty-six (36) months.

(C) Fixed Annuities.

1. In recommending to an individual customer the purchase, sale, or exchange of a fixed annuity, a producer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his or her insurance and investment holdings and as to his or her current and reasonably anticipated financial situation and needs.

2. Prior to the execution of a fixed annuity transaction recommended to an individual customer, a producer shall make reasonable efforts to obtain information concerning—

A. The customer's financial status, including annual income, financial situation and needs, and existing assets;

B. The customer's tax status;

C. The customer's financial objectives, including investment objectives, reasonably anticipated income needs, and risk tolerance;

D. The customer's investment time horizon, liquid net worth, and current and reasonably anticipated needs for liquidity; and

E. Such other information used or considered to be reasonable by such producer in making recommendations to the customer.

(2) The standards of conduct in this rule shall not apply to the following:

(A) Unless a producer is making a recommendation to an individual plan participant, any annuity used to fund—

1. An employee pension or welfare benefit plan that is covered by The Employee and Retirement Income Security Act (ERISA);

2. Any tax-qualified, employer sponsored retirement or benefit plan that meets the requirements of Internal Revenue Code, Sections 401(a), 401(k), 403(b), 408(k), or 408(p);

3. Any government or church plan that meets the requirements of Internal Revenue Code, Section 414;

4. Any government or church welfare benefit plan, or any deferred compensation plan of a state or local government or tax exempt organization, that meets the requirements of Internal Revenue Code, Section 457; or

5. Any nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor; or

(B) Any annuity transaction used to fund settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.]

[(3)](2) Record Keeping. The determinations required by this rule shall be documented by the producer recommending the transaction.

[(4)](3) No person shall materially aid any other person in any violation or failure to comply with any standard set forth in this rule.

AUTHORITY: [sections 374.040, 374.045, and 375.013, RSMo 2000 and sections 375.143 and 376.309.6, RSMo Supp. 2007] sections 374.045, 375.141, and 375.143, RSMo Supp. 2013, and section 375.013, RSMo 2000. Original rule filed July 5, 2005, effective Jan. 30, 2006. Amended: Filed Nov. 30, 2007, effective July 30, 2008. Amended: Filed Sept. 30, 2016.

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**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 700—Insurance Licensing
Chapter 1—Insurance Producers**

PROPOSED AMENDMENT

20 CSR 700-1.147 Reasonable Supervision in Variable Life [and Variable Annuity] Sales. The department is amending the title, purpose, and sections (1) and (3).

PURPOSE: *This amendment makes this rule only applicable to the offer, sale, or exchange of variable life products. This rule implements the requirements of sections 375.141.1(8) and 375.143, RSMo, with respect to the demonstration of incompetence, untrustworthiness, or financial irresponsibility by producers in the offer, sale, or exchange of variable life products. The department is amending this rule by removing all language that relates to annuity recommendations. The department's proposed rule, 20 CSR 400-5.900 Suitability in Annuity Transactions, is replacing the language contained in this rule.*

PURPOSE: *This rule [implements the requirements] effectuates and aids in the interpretation of section[s] 375.141.1(8) [and 375.143], RSMo, with respect to the demonstration of incompetence, untrustworthiness, or financial irresponsibility by producers in the offer, sale, or exchange of variable life [and variable annuity] products.*

(1) Grounds for the discipline or disqualification of producers shall include, in addition to other grounds specified in section 375.141, RSMo, failure to comply with or violation of the following professional standards of conduct:

(A) Individual Producers. Each individual producer licensed to sell variable life [and variable annuity] products shall be supervised by a member of the Financial Industry Regulatory Authority (FINRA), which member shall also be licensed as a business entity producer with the director (supervising member)./;

(B) Supervising Members.

1. Supervisory system.

A. Each supervising member shall establish and maintain a system to supervise the activities of each individual producer that is reasonably designed to achieve compliance with applicable state insurance laws and regulations, federal securities laws and regulations, and with applicable FINRA rules. Final responsibility for proper supervision shall rest with the supervising member. A supervising member's supervisory system shall provide, at a minimum, for the following:

(I) The establishment and maintenance of written procedures as required by paragraphs (1)(B)2. and 3. of this rule;

(II) The designation, where applicable, of an appropriately qualified and registered FINRA principal(s) with authority to carry out the supervisory responsibilities of the supervising member for variable life [and variable annuity products] producers;

(III) The designation of an office of supervisory jurisdiction (OSJ) of each location that meets the definition contained in FINRA Rule [3010(g)(2), effective January 31, 2005] 3110(f),

effective July 31, 2015. The supervising member shall also designate such other OSJs as it determines to be necessary in order to supervise its producers and employees in accordance with the standards set forth in this rule, taking into consideration the following factors:

(a) Whether the individual producers or employees engage in retail sales or other activities involving regular conduct with public customers;

(b) Whether a substantial number of individual producers conduct sales activities at, or are otherwise supervised from, such location;

(c) Whether the location is geographically distant from another OSJ of the supervising member;

(d) Whether the individual producers are geographically dispersed; and

(e) Whether the investment or insurance activities at such location are diverse and/or complex;

(IV) The designation of one (1) or more appropriately qualified and registered FINRA principal(s) in each OSJ, including the main office, and one (1) or more appropriately FINRA qualified and licensed producers in each non-OSJ branch office (as defined in FINRA Rule [3010(g)(1), effective January 31, 2005] 3110(f), effective July 31, 2015) with authority to carry out the supervisory responsibilities assigned to that office by the supervising member;

(V) The assignment of each individual producer to an appropriately FINRA qualified and licensed producer who shall be responsible for supervising that person's activities;

(VI) Reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities;

(VII) The participation of each producer, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the supervising member at which compliance matters relevant to the activities of the individual producer(s) are discussed. Such interview or meeting may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the individual producer's place of business.

2. Written procedures.

A. Each supervising member shall establish, maintain, and enforce written procedures to supervise the variable life [and variable annuity] business in which it engages and to supervise the activities of individual producers that are reasonably designed to achieve compliance with applicable state insurance laws and regulations, federal securities laws and regulations, and with applicable FINRA rules.

B. The supervising member's written supervisory procedures shall set forth the supervisory system established by the supervising member pursuant to subparagraph (1)(B)1.A. above, and shall include the titles, registration/licensure status and locations of the required supervisory personnel and the responsibilities of each supervisory person as these relate to the types of business engaged in, applicable insurance laws and regulations, applicable federal securities laws and regulations, and applicable FINRA rules. The supervising member shall maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective. Such record shall be preserved by the supervising member for a period of not less than three (3) years, the first two (2) years in an easily accessible place.

C. A copy of a supervising member's written supervisory procedures, or the relevant portions thereof, shall be kept and maintained in each OSJ and at each location where supervisory activities are conducted on behalf of the supervising member. Each supervising member shall amend its written supervisory procedures as appropriate within a reasonable time after changes occur in applicable state insurance laws and regulations, applicable federal securities laws and regulations, and applicable FINRA rules, and as changes