WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

2007 MAY 30 PM 4: 12

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY WV Code §§33-2-10 & 33-11-6

AMENDMENT TO AN EXISTING RULE: YES____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ____

TITLE OF RULE BEING AMENDED: ____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 11B

TITLE OF RULE BEING PROPOSED: Suitability In Annuity Transactions

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON 7/2/07 AT 12 noon. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Timothy R. Murphy, Associate Counsel
Offices of the Insurance Commissioner
P.O. Box 50540
Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

James Robert Alsop
Cabinet Secretary
West Virginia Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Insurance Commissioner
Legislative Rule
Title 114, Series 11B

SUITABILITY IN ANNUITY TRANSACTIONS

TITLE 114, SERIES 11B

BRIEF SUMMARY OF RULE

The rule is an adaptation of the National Association of Insurance Commissioners ("NAIC") Model Regulation 275, which sets forth standards and procedures with respect to recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. It is similar to the proposed rule, 114 CSR 11A, that deals with life insurance sales.

Insurance Commissioner
Legislative Rule
Title 114, Series 11B

SUITABILITY IN ANNUITY TRANSACTIONS

TITLE 114, SERIES 11B

STATEMENT OF CIRCUMSTANCES

This rule is one of a series of rules -- series 11, 11A, 11B, 11C and 8 - all of which are based on NAIC models dealing with various aspects of the sale of life insurance and/or annuities. The purpose of this rule is to set forth standards and procedures for recommendations to consumers regarding transactions involving annuity products so that the insurance needs and financial objectives of consumers are appropriately addressed. The rule is based on the National Association of Insurance Commissioners ("NAIC") 2006 revisions to Model Regulation 275.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Suitability In Annuity Transactions (Ttile 114 - Series 11B)

Type of Rule: X Legislative ____ Interpretive ____ Procedural ____ Emergency

Agency: Insurance Commissioner

Address: Post Office Box 50540

1124 Smith Street, Greenbrooke Building

Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: _____

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule will have no additional fiscal impact upon state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	None	None	None
Personal Services	None	None	None
Current Expenses	None	None	None
Repairs & Alterations	None	None	None
Assets	None	None	None
Other	None	None	None
2. Estimated Total Revenues	None	None	None

Rule Title: Suitability In Annuity Transactions (Ttile 114 - Series 11B)

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: _____

Signature of Agency Head or Authorized Representative

_____

Jane L. Cline, Insurance Commissioner

TITLE 114
LEGISLATIVE RULES
OFFICES OF THE INSURANCE COMMISSIONER

SERIES 11B
SUITABILITY IN ANNUITY TTRANSACTIONS

Section

114-11B-1. General.

114-11B-2. Scope.

114-11B-3. Exemptions.

114-11B-4. Definitions.

114-11B-5. Duties of Insurers and Insurance Producers.

114-11B-6. Mitigation of Responsibility.

114-11B-7. Optional Recordkeeping.

FILED
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 114
LEGISLATIVE RULES
OFFICES OF THE INSURANCE COMMISSIONER

SERIES 11B
SUITABILITY IN ANNUITY TTRANSACTIONS

§114-11B-1. General.

1.1. The purpose of this rule is to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

1.2. Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

1.3. Authority. -- W. Va. Code §§33-2-10 and 33-11-6.

1.4. Filing Date. --

1.5. Effective Date. --

§114-11B-2. Scope.

This rule shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

§114-11B-3. Exemptions.

Unless otherwise specifically included, this rule shall not apply to recommendations involving:

3.1. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this rule;

3.2. Contracts used to fund:

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

b. A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

c. A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

f. Formal prepaid funeral contracts.

§114-11B-4. Definitions.

4.1. "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

4.2. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

4.3. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

4.4. "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

§114-11B-5. Duties of Insurers and Insurance Producers.

5.1. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

5.2. Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

a. The consumer's financial status;

b. The consumer's tax status;

c. The consumer's investment objectives; and

d. Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

5.3. a. Except as provided under subdivision b of this subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under subsection 5.1 related to any recommendation if a consumer:

1. Refuses to provide relevant information requested by the insurer or insurance producer;

2. Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

3. Fails to provide complete or accurate information.

b. An insurer or insurance producer's recommendation subject to subdivision a of this subsection shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

5.4 a. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this rule is established and maintained by complying with subdivisions c to e of this subsection, or shall establish and maintain such a system, including, but not limited to:

1. Maintaining written procedures; and

2. Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this rule.

b. A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this rule, or shall establish and maintain such a system, including, but not limited to:

1. Maintaining written procedures; and

2. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this rule.

c. An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subdivision a of this subsection with respect to insurance producers under contract with or employed by the third party.

d. An insurer shall make reasonable inquiry to assure that the third party contracting under subdivision c of this subsection is performing the functions required under subdivision a of this subsection and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

1. The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

2. The insurer, based on reasonable selection criteria, periodically selects third parties contracting under subdivision c of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

e. An insurer that contracts with a third party pursuant to subdivision c of this subsection and that complies with the requirements to supervise in subdivision d of this subsection shall have fulfilled its responsibilities under subdivision a of this subsection.

f. An insurer, general agent or independent agency is not required by subdivision a or b of this subsection to:

1. Review, or provide for review of, all insurance producer solicited transactions; or

2. Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

g. A general agent or independent agency contracting with an insurer pursuant to subdivision c of this subsection shall promptly, when requested by the insurer pursuant to subdivision d of this subsection, give a certification as described in subdivision d of this subsection or give a clear statement that it is unable to meet the certification criteria.

h. No person may provide a certification under paragraph 1, subdivision d of this subsection unless:

1. The person is a senior manager with responsibility for the delegated functions; and

2. The person has a reasonable basis for making the certification.

5.5. Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce the provisions of this rule.

§114-11B-6. Mitigation of Responsibility.

6.1. The commissioner may order:

a. An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this rule;

b. An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this rule; and

c. An insurance agency producer that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this rule.

6.2. Any applicable penalty under W. Va. Code §33-12-24 for a violation of subsection 5.1, 5.2, or subdivision b of subsection 5.3 of this rule may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

§114-11B-7. Optional Recordkeeping.

7.1. Insurers, insurance agencies and insurance producers shall maintain or be able to make available to the insurance commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for

insurance transactions for ten (10) years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

7.2. Records required to be maintained by this rule may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.