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Suitability in Annuity Transactions

Sec. 38a-432a-1. Purpose

The purpose of sections 38a-432a-1 to 38a-432a-7, inclusive of the Regulations of Connecticut State Agencies is to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuities so that the insurance needs and financial objectives of consumers known at the time of the recommendation are appropriately addressed.

(Adopted effective August 4, 2005; amended November 10, 2008)

Sec. 38a-432a-2. Scope

Sections 38a-432a-1 to 38a-432a-7, inclusive of the Regulations of Connecticut State Agencies 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.

(Adopted effective August 4, 2005; amended November 10, 2008)

Sec. 38a-432a-3. Exemptions

Unless otherwise specifically included, sections 38a-432a-1 to 38a-432a-7, inclusive of the Regulations of Connecticut State Agencies shall not apply to recommendations involving:

- (1) direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to section 38a-432a-1 to 38a-432a-7, inclusive of the Regulations of Connecticut State Agencies, or
- (2) contracts used to fund:
 - (A) an employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act (ERISA), Public Law 93-406;
 - (B) a plan described by the following sections of the federal Internal Revenue Code: 26 USC 401(a), 26 USC 401(k), 26 USC 403(b), 26 USC 408(k), or 26 USC 408(p), if established or maintained by an employer;
 - (C) a governmental or church plan defined in 26 USC 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 USC 457;
 - (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.

(Adopted effective August 4, 2005; amended November 10, 2008)

Sec. 38a-432a-4. Definitions

- (1) "Agency" means a person that employs one or more insurance producers;
- (2) "Annuity" means "annuities" as defined in section 38a-1 of the Connecticut General Statutes;
- (3) "Commissioner" means the Insurance Commissioner.
- (4) "Insurance producer" means "insurance producer" as defined in section 38a-702a of the Connecticut General Statutes;
- (5) "Insurer" means "insurer" as defined in section 38a-1 of the Connecticut General Statutes;
- (6) "Person" means "person" as defined in section 38a-702a of the Connecticut General Statutes; and

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

(Adopted effective August 4, 2005; amended November 10, 2008)

Sec. 38a-432a-5. Duties of insurers, agencies and insurance producers

(a) 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 insurance 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.

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

- (1) the consumer's financial status;
- (2) the consumer's tax status;
- (3) the consumer's investment objectives; and

(4) such other information used or considered to be reasonable by the insurance producer, or the insurer where no insurance producer is involved, in making recommendations to the consumer.

(c) (1) Except as provided under subdivision (2) of this subsection, neither an insurance producer, nor an insurer where no insurance producer is involved, shall have any obligation to a consumer under subsection (a) of this section related to any recommendation if a consumer:

(A) refuses to provide relevant information requested by the insurer or insurance producer;

(B) decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(C) fails to provide complete or accurate information.

(2) An insurer or insurance producer's recommendation subject to subdivision (1) of this subsection shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

(d) (1) An insurer either shall ensure that a system to supervise recommendations that is reasonably designed to achieve compliance with sections 38a-432a-1 to 38a-432a-7, inclusive, of the Regulations of Connecticut State Agencies is established and maintained by complying with subdivisions (3) to (5), inclusive, of this subsection, or shall establish and maintain such a system, including, but not limited to:

(A) maintaining written procedures; and

(B) conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of sections 38a-432a-1 to 38a-432a-7, inclusive, of the Regulations of Connecticut State Agencies.

(2) An 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 sections 38a-432a-1 to 38a-432a-7, inclusive, of the Regulations of Connecticut State Agencies, or shall establish and maintain such a system, including, but not limited to:

(A) maintaining written procedures; and

(B) conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of sections 38a-819-70 to 38a-819-76, inclusive, of the Regulations of Connecticut State Agencies.

(3) An insurer may contract with a person, including an insurance producer or agency, to establish and maintain a system of supervision as required by subdivision (1) of this subsection, with respect to insurance producers under contract with or employed by the person.

(4) An insurer shall make reasonable inquiry to ensure that the person contracting under subdivision (3) of this subsection is performing the functions required under subdivision (1) 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:

(A) the insurer annually obtains a certification from the person that an individual who has responsibility for the delegated functions has a reasonable basis to represent, and does represent, that the person is performing the required functions; and

(B) the insurer, based on reasonable selection criteria, periodically selects persons contracted under subdivision (3) of this subsection for a review to determine whether the persons are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

(5) An insurer that contracts with a person pursuant to subdivision (3) of this subsection and that complies with the requirements to supervise in subdivision (4) of this subsection shall have fulfilled its responsibilities under subdivision (1) of this subsection.

(6) An insurer or agency is not required by subdivisions (1) or (2) of this subsection to:

(A) review, or provide for review of, all insurance producer solicited transactions; or

(B) include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer or agency.

(7) An agency or agent contracting with an insurer pursuant to subdivision (3) of this subsection shall promptly, when requested by the insurer pursuant to subdivision (4) of this subsection, give a certification as described in subdivision (4) of this subsection or give a clear statement that it is unable to meet the certification criteria.

(8) No individual may provide a certification under subdivision (4)(A) of this subsection unless:

(A) the individual is a senior manager with responsibility for the delegated functions; and

(B) the individual has a reasonable basis for making the certification.

(e) 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. Nothing in this subsection shall limit the commissioner's ability to enforce the provisions of sections 38a-432a-1 to 38a-432a-7, inclusive, of the Regulations of Connecticut State Agencies.

(Adopted effective August 4, 2005; amended November 10, 2008)

Sec. 38a-432a-6. Mitigation of responsibility

(a) The commissioner may order:

(1) an insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of sections 38a-432a-1 to 38a-432a-7, inclusive, of the Regulations of Connecticut State Agencies;

(2) an insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of sections 38a-432a-1 to 38a-432a-7, inclusive, of the Regulations of Connecticut State Agencies; and

(3) an agency 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 sections 38a-432a-1 to 38a-432a-7, inclusive, of the Regulations of Connecticut State Agencies.

(b) Any applicable penalty of the Connecticut General Statutes for a violation of subsections (a), (b), and (c)(2) of section 38a-432a-5 of the Regulation of the Connecticut State Agencies may be reduced or eliminated at the discretion of the commissioner, if corrective action for the consumer was taken promptly after a violation was discovered. Nothing contained in this section shall be construed to limit the commissioner's authority to terminate or suspend a producer or insurer's license or to pursue other legal or regulatory action pursuant to the insurance laws of the state of Connecticut.

(Adopted effective August 4, 2005; amended November 10, 2008)

Sec. 38a-432a-7. Record keeping

(a) Insurers, agencies and insurance producers shall maintain or be able to make available to the 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 seven 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.

(b) Records required to be maintained by 38a-432a-1 to 38a-432a-7, inclusive of the Regulations of Connecticut State Agencies may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

(Adopted effective August 4, 2005; amended November 10, 2008)