



**STATE OF NEW YORK  
INSURANCE DEPARTMENT  
160 WEST BROADWAY  
NEW YORK, NEW YORK 10013**

Circular Letter No. 2 (1994)  
January 31, 1994

**TO: All Insurers Licensed to Write Life Insurance or Annuities**  
**RE: Questionable Marketing and Sales Practices**

It has come to the Department's attention that certain sales materials and marketing techniques currently being used in connection with the marketing and/or sale of life insurance and annuity products in this State involve practices that are misleading to consumers. Such questionable practices may include one or more of the following: the use of advertisements that tend to mislead and deceive the public, failure to provide truthful and adequate disclosure of all material and relevant information in advertising, mislabeling of products and selling unapproved products. A number of these practices were originated and used by agents, demonstrating an inadequate control by the company over the content, form and method of distribution of its advertisements. It is the opinion of the Department that such practices are violations of Sections 2123, 2403, 3201, and 4226 of the New York Insurance Law and Regulation No. 34-A (11 NYCCR 219).

The Department is currently in the process of investigating several life insurance companies for such possible violations. Further, the Department is aware of instances where New York domiciled insurers and their agents are not complying with rules and regulations regarding the marketing of such products in other jurisdictions. In order to address the Department's concerns, all authorized insurers issuing life and annuity products are directed pursuant to Section 308 of the New York Insurance Law to take the following actions immediately and report their findings to this Department by March 31, 1994:

1. Review Company Advertising Files and Practices to Ascertain Compliance with Regulation No. 34-A (Rules Governing Advertisement of Life Insurance and Annuity Contracts). Special attention should be directed to determine whether the company's system of control over the content, form and method of dissemination of all advertisements is adequate. All advertising, regardless of its origin, is the responsibility of the insurer whose policies are so advertised. This includes materials used or issued by an agent, solicitor or organization sponsoring the insurance for presentation to its members. Insurers are reminded, as they were by Circular Letter No. 3 (1992), that Section 7718 of the New York Insurance Law prohibits the use of the Life Insurance Guaranty Corporation of New York for the purpose of selling life or accident and health insurance or annuities or soliciting or inducing the purchase of such insurance.

The company's system of control should include the establishment of clear lines of communication, control and responsibility over the dissemination of advertising and promotional materials and a procedure for centralizing the ultimate approval of all such advertising with company officials whose compensation is not linked to sales.

A review of advertising files should be made going back for a three year period. In reviewing advertising material, special scrutiny should be applied with respect to the use of terms such as investment, deposit, and guaranteed, which when used in a certain context may be especially misleading and deceptive. Advertisements that emphasize investment or tax features

and omit or minimize insurance features are prohibited. In conducting the review, company officials should ascertain whether an advertisement has the tendency or capacity to mislead or deceive based on the overall impression that the advertisement may reasonably be expected to create upon a person not knowledgeable in insurance matters.

2. Review Procedures for Completing Company Notice to Terminate an Agent (Termination Notice). Under Section 2112 of the New York Insurance Law it is the responsibility of every insurer and fraternal benefit society doing business in New York State and authorized to appoint agents to notify the Licensing Bureau of the Department upon termination of the appointment of each agent and to provide the full facts relative to such termination and the cause thereof.

If any aspect of the cause for terminating the appointment of an agent relates to the trustworthiness or competency of that licensee it is incumbent upon the insurer to provide that information to the Department in the Termination Notice regardless of whether the termination was by mutual consent.

Examples of information required to be reported to the Department include, but are not limited to the following: misrepresentation of the terms or cost of coverage; failure to disclose all aspects of a transaction to an insured; failure to remit premiums or other mishandling of premium funds; signing an insured's name to an application, a check or any other document; borrowing from an insured's policy without the knowledge and consent of the insured; failure to refund money due an insured; issuing checks which are dishonored by a bank; commingling premiums with other funds; failure to disclose all material underwriting information to the insurer or falsifying documents submitted; misleading advertising or any criminal, fraudulent or deceptive actions.

Should information relating to the trustworthiness or competency of a licensee be discovered subsequent to the termination of the appointment of that licensee by an insurer, it is incumbent upon that insurer to amend the Termination Notice to reflect the additional information.

Failure of an insurer to notify the Department of any aspect of the basis for terminating the appointment of an agent that would reflect adversely upon the trustworthiness or competency of the agent may subject that insurer to disciplinary action by the Department.

3. Examine Company Complaint Files to Determine Patterns of Abuse or Regionally Based Problems. A review of all complaint records for the last three years should be conducted with the purpose of identifying problems relating to the use of sales materials and solicitation practices by the company's sales force. The results of such review should determine a breakdown of complaints by product, type of complaint, agent or agency, and geographic area. A review should also be conducted to determine any unusual level of sales for a particular product among sales offices, agents, or other distribution channels that may indicate potential problems. Each company should provide to the Department a description of the methodology used to conduct its reviews.

A review should be made to determine whether the company has implemented the establishment of an internal consumer services department as requested by Circular Letter No. 11 (1978) and whether the staffing, authority, and reports generated by such department are adequate. In addition, a determination should be made as to whether department reports are made to an appropriate company official.

4. Review Internal Audit Procedures. Adequate procedures should be in place that provide for current evaluations of compliance with all statutes and regulations dealing with sales, advertising, product approvals and filing requirements in all jurisdictions where the company conducts business. If it is found that such procedures are not in place or are not being adequately enforced, detailed disclosure should be made to the Department. A reporting mechanism should be in place to insure that senior officers and board members are made aware of any significant findings of such internal audits. Periodic review of consumer complaint files should be conducted to identify business practices that may warrant specific action, and to identify any patterns of improper practices. Domestic life insurers are reminded that the scope and results of any internal audits are the responsibility of a committee of independent members of the board of directors.

If, after analyzing the results of the reports required hereunder and after evaluating any future action taken by the life insurance industry, it is determined by the Department that life insurers are not taking appropriate steps to remedy questionable marketing and sales practices, further action may be taken. Such action may include a finding by the Superintendent that certain advertising material or the use of certain terms therein is misleading and a requirement that particular insurers submit all their advertisements to the Department for approval prior to use.

The reports required by this Circular Letter shall contain an executed jurat in the form attached hereto. The reports and any questions relating to the content of this Circular Letter should be directed to:

Mr. Paul Boucher  
Supervising Examiner  
Life Insurance and Companies Bureau  
New York State Insurance Department  
160 West Broadway  
New York, New York 10013  
Telephone: (212-602-0309)

Very truly yours,

SALVATORE R. CURIALE  
SUPERINTENDENT OF INSURANCE

Attachment

State of \_\_\_\_\_ }

SS:

County of \_\_\_\_\_ }

\_\_\_\_\_, President, of the \_\_\_\_\_, being duly sworn, deposes and says that, to the best of his/her information, knowledge and belief, the above Report, together with all attachments thereto, constitutes as of the date below a fair and true statement of the status of compliance by the Company and its agents with all laws, regulations, internal controls and operating procedures governing the sale and marketing of life insurance and annuity contracts, as detailed in the Superintendent's Circular Letter No. 2, dated January 31, 1994.

\_\_\_\_\_  
President

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_ 1994