

**Vermont Department of Banking, Insurance, Securities & Health Care
Administration**

INSURANCE BULLETIN 129

Suitability Requirements for Variable Insurance Products

Insurance agents are reminded that variable annuities and variable life insurance are hybrid products that contain both an insurance and an investment component. Because of this, agents who sell variable annuities in Vermont must also be licensed with the state Securities Division and must observe the suitability and ethical sales practices requirements applicable to registered securities representatives under the Vermont Securities Act (Chapter 131 of Title 9).

The National Association of Securities Dealers (NASD) has established guidelines outlining the factors that should be considered in determining whether a particular variable product is appropriate for a customer's needs. These guidelines are contained in NASD Notice to Members 00-44, 99-35 and 96-86, all of which are available from a registered representative's broker-dealer or on the NASD website (www.nasd.com). While there is no bright line test for determining suitability, some of the factors that should be considered in recommending a variable product are the customer's age, tax status, financial objectives, need for immediate liquidity or retirement income, and investment sophistication. Because of the possibility of surrender charges and adverse tax consequences, replacements of existing annuities may not be in the best interests of the customer.

In addition to complying with the applicable securities laws, agents selling variable products are also expected to observe the suitability and sales practice requirements imposed by Vermont's insurance laws. In particular, the Insurance Trade Practices Act prohibits agents from making false or misleading sales presentations for the purpose of inducing an exchange of insurance policies (8 V.S.A. ' 4724(1)(F)) and from selling policies that the agent knows or has reason to know are unsuitable for the purchaser (8 V.S.A. ' 4724(15)). In determining whether the sale of a particular variable product was suitable under Section 4724(15), the Insurance Division would be guided by the same factors set forth in the NASD member notices discussed above. The Department strongly advises insurance agents to be familiar with these suitability guidelines and with their obligation to apply them.

Inquiries concerning this bulletin should be referred to Phil Keller, the Insurance Division's Enforcement Attorney, at (802) 828-2921 or to Phillip Hofling, Enforcement Attorney for the Securities Division, at (802) 828-4858. Information about becoming a registered representative may be obtained from the Securities Division at (802) 828-3420.

Dated: January 19, 2001

Elizabeth R. Costle, Commissioner