

MEMO# 3478

January 28, 1992

NASAA COMMITTEE ISSUES REVISED PROPOSED GUIDELINES FOR COMMENT

January 28, 1992 TO: CONTRACTUAL PLANS COMMITTEE NO. 2-92 RE: NASAA COMMITTEE
ISSUES REVISED PROPOSED GUIDELINES FOR COMMENT

As we previously advised you, the NASAA Investment Company Registration/Trading Practices Committee ("Committee") issued proposed guidelines with respect to state regulation of contractual plans last month. (See Memorandum to Contractual Plans Committee No. 21-91, dated December 31, 1991.) The Committee recently issued revised proposed guidelines for comment. The revisions were made by the NASAA Committee as a result of reviewing comment letters from the contractual plan sponsors and various state administrators and after meetings with representatives from both industry and the NASAA Board of Directors. The revised proposed guidelines differ from the initial proposed guidelines as follows: 1. Definitions. The definition for "persistency rate" has been amended to provide that "[i]nvestors in the Plan shall include only those investors whose Plan was purchased at least forty-five (45) days prior to the Persistency Rate calculation and who are less than twelve (12) months in arrears in their payments." The definition also offers two alternatives with respect to calculating persistency. 2. Suitability Standards. An additional factor, the likelihood that investing in a contractual plan will be more beneficial to an investor than investing in a conventional mutual fund, has been included in determining an investor's suitability. In addition, the revised proposals state that contractual plans shall be considered inappropriate for certain retirement plans. 3. Limitations on Commissions. The refund period has been extended from the federally mandated 18 month period to 28 months. If an investor decides to withdraw from the plan within 28 months, all charges and commissions (including sales or redemption fees) in excess of 15% of the gross payments made by the investor must be refunded. In addition, a notice must be provided to each investor which sets forth his or her cancellation rights. The notice must be sent not less than 30 days nor more than 60 days prior to the expiration of the investor's cancellation rights. During this 60 day time period, the plan sponsor (or agent) is prohibited from initiating contact with the investor regarding the investor's cancellation rights. 4. Persistency Rates and Reports. The revised proposals offer two alternatives with respect to submitting persistency rates to the states. Alternative 1 would require a report disclosing the persistency for all sales originating in a particular jurisdiction during the preceding five year period. Alternative 2 would require a report disclosing persistency within a particular state as of the last day of the plan's fiscal year end. Both alternatives require the report to be submitted to all states in which the plan is registered or filed within 60 days of the plan's fiscal year end. If an issuer fails to maintain persistency of a certain percentage within a particular state, the issuer must furnish the administrator of that state a letter explaining the reason for such low persistency. The

proposed guidelines do not identify the percentage that must be maintained prior to this requirement being applicable to a plan sponsor. 5. Investment Objective. The revised proposals require that a plan's investment objective be a fundamental policy and that such objective be "consistent with the principles of long-term capital growth." The initial proposals required that the investment objective of the underlying fund be "long term growth of principal." A copy of the Committee's revised proposals is attached. Comments on the revised proposals are due Thursday, February 13, 1992 and should be submitted to each NASAA Committee member. The Institute has scheduled a conference call to discuss the Committee's revised proposals for Monday, February 3, 1992 at 4:00 p.m. (EST). Please contact my secretary, Jennifer Thissen, at (202) 955-8430 no later than 12:00 noon on Friday, January 31st if you are unable to participate in the conference call. Patricia Louie Assistant General Counsel Attachment cc: Joel H. Goldberg Shereff, Friedman, Hoffman & Goodman

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