

**Vermont Market Conduct Examination**  
**Period January 1, 2002 through June 1, 2005.**

**(I) REPLACEMENTS**

**(A) 2001-3 § 4 A. (1) & (4)**

The Company acknowledges it failed to incorporate the requirements of Regulation I-2001-3 into all relevant producer training manuals in violation of 2001-3 § 4 A. (1) and subsequently the Company acknowledges it failed to implement procedures to confirm the requirements of the regulation were met in violation of 2001-3 § 4 A. (4).

**(B) 2001-3 § 4 C.**

The Company acknowledges a signed statement by both the applicant and the producer as to whether the applicant had existing policies or contracts was not part of the application. However, it should be noted that the current application was approved by the Vermont Department of Insurance on April 16, 2003 which does contain the correct statement which reads: "Does the applicant own existing, in force policies, or contracts on the same insured."

**(C) 2001-3 § 5 A. (4)**

The Company acknowledges it failed to provide notice of the right to return the policy or contract within the thirty (30) days of the delivery and receive an unconditional full refund of all premiums or considerations paid.

Please note: The Company does (and during the period of examination, always did) provide the policy/contract holder thirty (30) days from the date of delivery to return a policy/contract and receive an unconditional full refund.

On February 15, 2006, the Company responded that it would provide the thirty (30) day right to return notice to the applicant at time of application. However, the Company no longer accepts replacement business, as of March 1, 2006, prior to implementing notice.

**(D) 2001-3 § 3 E. & 2001-3 § 5 C. (1)**

The Company acknowledges it failed to provide a statement identifying any preprinted or electronically presented Company approved sales material or a statement that the producer used only Company approved sales materials. Please note: the Company allows the use of only Company approved sales materials.

**(E) 2001-3 § 5 A. (1)**

The Company acknowledges it failed to verify that the required forms are received and are in compliance with the regulation pursuant to Regulation 2001-3 § 5 A. (1). Please note: the Company no longer accepts replacement business, as of March 1, 2006.

**(F) 2001-3 § 4 B.**

The Company acknowledges the delay in providing the requested records regarding monitoring the listed producers' replacements. The Company trusts that the Department will acknowledge that 2006 has been the busiest Market Conduct period in some time. The Company's subsidiaries were involved with multiple on site examinations in addition to the off site Vermont examination.

**(1) Agent No. 57538**

Upon receipt, the Company reviewed the notice of suspension of agent (Vermont License # 57538) and determined the agent freely and voluntarily entered into the stipulation as noted by the Department that whereas the agent reviewed the investigation report and disputed some but not all of the findings and asserts that to the extent he violated the law, did so in order to benefit his clients and that the Department acknowledged the agent's cooperation during the investigation.

Agent (Vermont License #57538) wrote a total of 13 American Progressive annuities during the exam period. In 2003, 9 annuities were written, 3 were replacements, representing 33% of annuities written. In 2004, 4 annuities were written, 1 was a replacement representing 25% of annuities written. With respect to policy 0S5059989 the Company acknowledges that the notice was not completed and furnished to the applicant.

**(G) 2001-3 § 4 D. & 2001-3 § 3 B.**

The Company acknowledges the notice regarding replacements was not in the form prescribed by 2001-3 § 4 D. As of March 2005, form PR-LRPL-MDL, "Important Notice: Replacement of Life Insurance or Annuities" replaced the inappropriate "Notice" and is in the form prescribed by the Regulation (2001-3-Appendix A).

To avoid any future confusion regarding the replacement form having been read aloud or that the applicant does not wish the notice to be read aloud, the Company respectfully requests the Vermont Department to consider revising 2001-3 Appendix A to include the statement provided by the examiners that reads: "By signing this application, both the applicant and agent certify that the Replacement Notice has been read aloud by the agent, or that the applicant did not wish to have the notice read aloud. A copy of the Notice has been left with the applicant". The addition of the above statement to Appendix A would satisfy the requirement of both 2001-3 § 4 D. & 2001-3 § 3 B.

**(H) 2001-3 § 5 A. (2)**

The Company acknowledges eight (8) cases out of 15 where it does not have a record of notifying the existing insurer within the required five (5) days of a possible replacement. Enclosed are printed copies of our electronic files showing the date the application was received and the date the notice was mailed to the existing insurer. (Exhibit A)

Should the Company begin accepting replacement business in the state of Vermont, our existing procedure to notify the existing insurer within five (5) business days will be distributed/reviewed with all appropriate personnel.

**(I) 2001-3 § 4 B. (5)**

The Company acknowledges it failed in five (5) cases to properly record the replacement in its replacement register. Should the Company begin accepting replacement business in the state of Vermont, all replacement business will automatically be recorded in its replacement register at the same time the existing insurer is notified – see H above.

**(J) 2001-3 § 6 A. & B.**

**Reference: 0S5073250**

The Company acknowledges it inadvertently failed to provide a copy of the only replacement notice received from another company during the examination period.

The Company acknowledges that its conservation letter failed to specifically inform the contract owner of the right to receive information regarding the existing policy or contract values, including an in-force illustration of policy summary.

**(K) 2001-3 § 8 A. (2)**

The Company acknowledges the replacement question on the application was not answered. Please note: the agent's replacement question was answered on all five (5) of the applications and where applicable a replacement form was completed as provided under 2001-3 § 8 A. (2) and 2001-3 § A. (2) (b).

**(L) INCOMPLETE/INCORRECT APPLICATIONS**

**0A5074934**

The Company acknowledges the agent's replacement question was answered "No", indicating that the sale was not a replacement when in fact it was. Please note: the agent completed the information regarding the Company being replaced as well as a replacement notice. It appears the agent simply missed completing the question.

**0A5081508**

The Company acknowledges the agent's replacement question was answered "Yes" when the sale was not a replacement of an existing like insurance policy or annuity contract. It appears the agent inadvertently checked the wrong box on the application.

**0A5073250**

The Company acknowledges questions 1 and 2 on the replacement notice were left unanswered and the space specifying the reason for replacement was left blank. It appears the questions and information not completed was an oversight.

**0S5090349, 0S5090364 & 0S5090365**

The Company acknowledges the agent's replacement question was not answered. Please note: the applicant's replacement question was answered "No" on all three (3) applications.

**0A5074934**

Please note this policy is referenced above.

**(M) CERTIFICATE OF ACCEPTANCE  
Supplement to Application MS-APP-APR (2/02) VT**

The Company acknowledges the Supplement to Application form did not contain a signed statement by both the applicant and the producer as to whether the applicant has existing policies. This form was approved by the Department on July 5, 2002. A copy of the approval notice is attached. (Exhibit B)

Additionally, effective March 1, 2006, the Company no longer accepts replacements on Life and Annuity business in the state of Vermont.

The Supplement to Application form and Certificate of Acceptance have been revised to include the appropriate question with respect to existing policies or contracts.

The Supplement to Application was filed with the Department on December 8, 2006 as part of the MS-APP-APR (1.06) VT rev filing.

The Certificate of Acceptance (form number COA (11/06) VT) was re-filed with the Department on January 15, 2007 with the appropriate question with respect to existing policies or contracts. Please note: the Certificate of Acceptance is issued by the Company and there is no producer involvement. The Certificate of Acceptance will not contain a signature line for the producer.

## **(N) SUMMARY AND RECOMMENDATIONS**

Again, please note that effective March 1, 2006, the Company no longer accepts Vermont replacement business. In the event the Company reverts to accepting replacement business:

- The Company will inform its producers of the requirements of Vermont's Regulation 2001-3 and incorporate the requirements of the regulation into all relevant producer manuals/materials.
- The Company will ensure that an existing company is notified within the required five (5) business days in accordance with Regulation 2001-3 § 5 A.
- The Company's procedures will be reviewed and distributed to the appropriate departments to ensure all replacements are properly and accurately recorded in the Company's replacement register.

Additionally:

It is the Company's position that the "Important Notice" that was used prior to March 2005 is substantially the same as the notice regarding replacements in the form as described in Appendix A.

The Company acknowledges it did not provide notice of the right to return the policy or contract within thirty (30) days of delivery and receive an unconditional full refund of all premiums or considerations paid. Please note: The Company provides thirty (30) days from the date of delivery to return a policy/contract and receive an unconditional full refund.

The Company reviewed our files and did not identify any complaint inquiries relating to any replacement or the right to return the policy/contract for a full refund.

We appreciate the Departments recommendations; however, given the above, we feel that furnishing notification to the policy/contract holders that their rights under Vermont's replacement regulation may not have been provided would result in confusing the policy/contract holders rather than clarifying the issue.

The Company will review its procedures to ensure all applications are reviewed for completeness.

## **(II) TRADE PRACTICES**

### **(A) SUITABILITY**

The Company stopped accepting Life and Annuity replacement business effective March 1, 2006. Effective September 30, 2006 the Company stopped accepting all Annuity business.

In the event the Company resumes accepting Annuity business in the future, it will ensure that suitability worksheets are completed for every Annuity submitted.

#### **(B) MISLEADING ADVERTISEMENT**

In the event the Company resumes accepting Annuity business, it will ensure that all brochures contain proper statements and illustrations.

#### **(C) IMPROPER HIV QUESTION**

The Company has revised its Instant Senior Security Interview (Telephonic Interview Report) form to read:

“...been diagnosed as having or been treated by a member of the medical profession for Acquired Immune Deficiency Syndrome (AIDS) or AIDS related complex?” A copy of the page containing the question is enclosed. (Exhibit C)

### **(III) COMPLAINTS**

#### **(A) MAINTENCE OF COMPLAINT RECORDS**

The Company has added the required annual reports (on the prescribed form) to its list of annual reporting requirements.

#### **(B) UNTIMELY RESPONSE TO THE DEPARTMENT**

The Company acknowledges the delay in providing its response to a request for information. The Company trusts that the Department will acknowledge that 2006 has been the busiest Market Conduct period in some time. The Company's subsidiaries were involved with multiple on site examinations in addition to the off site Vermont examination.

#### **(C) NUMBERS OF COMPLAINTS RECEIVED**

The Company tracks complaints according to the nature of the complaint. Complaints regarding refund delays can be attributed to a variety of reasons, such as timing (premium payment must clear the bank); the date the written complaint is received, required documentation of duplicate coverage, etc. In reviewing the complaints regarding refund delays, no pattern emerged that would indicate a problem within the Company's operations.

### **(IV) REPORTS OF LEGAL ACTIONS INVOLVING OTHER INSURANCE DEPARTMENTS**

The Company has documented its files to include the required Bulletin 30 annual filing.

**(V) FINES AND PENALTIES**

The Company acknowledges the Department included the fines and penalties imposed on the Company during the exam period.

**SUMMARY OF RECOMMENDATIONS**

The Company has addressed the summary of Recommendation issues individually in items (I) through (IV).