

3. A final target¹ market conduct examination report was issued by examiner Joyce A. Meagher, of Huff, Thomas & Company entitled REPORT OF THE TARGET MARKET CONDUCT EXAMINATION FOR THE VERMONT DEPARTMENT OF BANKING, INSURANCE, SECURITIES & HEALTH CARE ADMINISTRATION OF GLENBROOK LIFE & ANNUITY COMPANY PHOENIX, ARIZONA AS OF AUGUST 31, 2002 (the "Report").

4. In accordance with the requirements of 8 V.S.A. § 3574(b), the Report was transmitted to the Company and the Company was afforded a reasonable period of time to submit a formal written response to the findings of Report. The Company submitted a formal response (the "Response") addressing the issues raised in the Report. Upon review of the Response, the Department has undertaken additional investigation concerning issues contained herein.

5. Pursuant to 8 V.S.A. § 3574(c), the undersigned Commissioner has fully considered the Report, the Response and additional information provided.

CONCLUSIONS OF LAW

6. To the extent comments made by the Company are not discussed below, such comments are expressly rejected by the undersigned. The examiner's Report, including recommendations, is adopted unless expressly noted below.

7. In the **PERTINENT FACTUAL FINDINGS - COMPLAINTS** section of the Report (pages 4-5), the examiner recommends that the Company add a "Refusal to Insure" code to its complaint handling system and implement procedures for filing a summary of its complaints record to the Department as required by Regulation 76-1 § 5.

¹ The market conduct examination focused primarily on compliance with Vermont's replacement and suitability regulations from January 1, 1999 to August 31, 2002. (Report at page 4.)

In its Response, the Company indicates it added the “Refusal to Insure” code to its complaint handling system and provided proof that has been accomplished.

(Response at page 1 and Exhibit A.) Similarly, the Company has implemented procedures for filing complaint records as required by Regulation 76-1 and provided such procedures to the Department for review. (Response at pages 2-3 and Exhibit B.)

Upon consideration, the undersigned finds that it appears the Company has addressed the problems discovered by the examiner. The undersigned adopts this portion of the Report and no additional action is necessary.

8. In the **PERTINENT FACTUAL FINDINGS – MARKETING AND SALES – *Market and Sales Standard #1*** section of the Report (page 5), the examiner notes that the Company’s appointed producers are employees of financial services firms with whom the Company has agreements to sell Company products. Although the Company has communicated the requirements of the replacement regulation to the financial services firms, the Company could not confirm that the individual appointed producers had been informed of the new regulations, nor had the Company reviewed the training materials utilized by the financial services firms to inform the appointed producers of the regulation’s requirements. As such, the examiner recommended the “Company develop guidelines and establish a monitoring system to assure that all producers are being informed of changes in Vermont statutes and regulations and have received adequate training to assure compliance with all requirements.” (Report at page 5; Recommendation No. 3, page 5.)

In its Response, the Company confirms that it “is in the practice” of communicating regulatory and legal requirements applicable to its products to the financial services firms contracted to sell its products. The Company asserts because

“producers are employees of the contracted financial services firms, any training they receive is prepared and provided by such firms.” (Response at page 2.) However, the Company indicates that it has recently implemented processes whereby notifications of new requirements that require action (such as new form or disclosure requirements) are communicated directly to the appropriate appointed producers. (Response at page 2.) Further, the Company has taken steps toward implementing processes to help monitor whether appropriate communications to appointed producers has occurred, including quality review and spot check results. Further, the Company indicates that it implemented a customer survey process in March of 2004 to assist in the detection of problem issues, in addition to other steps intended to identify trends that may reflect contracted financial services firms are not complying with Company policies and legal obligations. (Response at page 2.)

Upon consideration, the undersigned adopts this portion of the Report and the examiner’s recommendation. Although the Company’s Response appears to address the examiner’s concerns, additional explanation concerning the implemented monitoring processes is required. Such written explanation should be provided no later than September 1, 2005 and should expand upon the explanation provided in the Company’s Response. It must be noted that the Company is directly responsible for ensuring that its products are sold in compliance with Vermont law. Although the Company may contract with other entities to sell its products, it must also be sure to have adequate procedures in place to monitor such sales. The Company’s additional explanation should provide specifics on the occurrence of its quality reviews, as well as any actions taken in response to such reviews which indicate that problems are being discovered and corrected as

appropriate. Upon request, such discussion of results can be provided to the Department confidentially.

9. In the **PERTINENT FACTUAL FINDINGS – MARKETING AND SALES – *Marketing and Sales Standard #2*** section of the Report (pages 5 - 6), the examiner notes that Vermont law requires that the Company provide its producers with “a written statement of the company’s position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions * * *.” Although the Company provided the examiner with a statement and had incorporated the statement into its contracts with the financial services firms employing the producers selling Company products, the Company did not provide its appointed producers with the statement as required. The examiner recommends the Company establish a procedure and monitoring system to assure each appointed producer is provided a written statement of the Company’s position as to the acceptability of replacements and the appropriateness of such transactions as required by Regulation I-2000-03 § 4(A)(4). (Report at page 6; Recommendation No. 4, Report at page 8.)

In its Response (pages 2 - 3), the Company confirms that it primarily communicates regulatory and legal requirements to the financial services firms which employ its appointed producers and relies on those firms to communicate the necessary information. However, the Company notes that in order to enhance communication with its appointed producers, it has a web site available to producers which provides information regarding the appropriateness of replacement transactions.

Further, the Company indicates that it is in the process of more aggressively monitoring new business activity to ensure that producers have an understanding of the

Company's position and legal and regulatory requirements. These monitoring activities include customer surveys, analyses using "freelook" and complaint reports, and regular service center quality reviews and spot checks to help identify potential negative trends and ensure producer compliance with the Company's position on acceptable replacement activity. (Response at page 3.)

Upon consideration, the undersigned adopts this portion of the Report and the examiner's recommendation. From the Company's Response, it appears the Company is taking corrective action to address the examiner's concerns. It is important the Company understand that pursuant to Regulation I-2000-03 § 4, the Company must be able to show that its appointed producers are receiving the information required by the regulation. The Company shall provide, no later than September 1, 2005, written confirmation that the Company has implemented procedures allowing it to verify that its appointed producers are receiving the appropriate information. This may be by requiring appointed producers to sign a statement indicating that they have reviewed the Company web site containing the information required by I-2000-03 § 4 or by other means. The Company shall also provide a copy of the statement(s) required by I-2000-03 § 4(A)(2). Further, no later than September 1, 2005, the Company shall provide the Department with a discussion of the status of its monitoring efforts (some of which were just being implemented at the time of the Company's Response) and what, if any, corrective actions have been taken in response to discovered negative trends or other problems. This information concerning corrective action may be provided to the Department confidentially if requested.

10. In the **PERTINENT FACTUAL FINDINGS – MARKETING AND SALES – *Marketing and Sales Standard #3*** section of the Report (page 6), the examiner notes that

Regulation I-2000-03 § 4(A)(4) requires procedures to ensure producers are meeting the requirements of the regulation. The examiner notes that although the Company has provided its “New Business Team” (a unit within the Company that processes new applications for annuity contracts) with the requirements of the Replacement Regulation, the Company does not, in fact, have any procedures in place to ensure that the New Business Team is processing the applications consistent with Regulation I-2000-023. As such, the examiner recommends the Company establish and implement written procedures to ensure the New Business Team is complying with the regulation as required by I-2000-03 § 4(A)(4). (Report at page 6; Recommendation No. 5 at page 8.)

In its Response, the Company indicates that it has established written procedures for New Business Team business received via paper applications, and that it is in the process of developing such procedures for electronic applications. (Response at pages 3.)

Upon consideration, the undersigned adopts this portion of the Report and the examiner’s recommendation. The undersigned notes that this portion of the Company’s Response fails to adequately address the examiner’s concerns. The Regulation obligates the Company to have written procedures in place to confirm that the replacement regulation is being followed. The Company’s response only states that written procedures exist for some of the business processed by the New Business Team. The Company shall provide to the Department for review and approval, no later than September 1, 2005, written procedures intended to ensure that the New Business Team meets the requirements of Regulation I-2000-03, as required by I-2000-03 § 4(A)(4), for *all* business processed. The undersigned notes that the examiner was concerned with the Company’s apparent lack of procedures to ensure the New Business Team was

complying with the regulation. As such, the Company is instructed to ensure the procedures include a method for monitoring compliance. The undersigned further finds this failure to comply with the regulation warrants the imposition of a \$2,000 penalty.

11. In the **PERTINENT FACTUAL FINDINGS – MARKETING AND SALES – *Marketing and Sales Standard #4*** section of the Report (pages 6), the examiner notes that I-2000-03 § 4(A)(5) requires the Company to maintain a system of supervision and control that allows the Company to detect unreported replacement transactions. Upon inquiry from the examiner, the Company indicated it did not have a process to track unreported replacements. The examiner recommends the Company develop a process that will allow it to track any unreported replacements. (Report at page 6; Recommendation No. 6 at page 8.)

In its Response, the Company indicates it is developing a process to allow the tracking of any unreported replacements. The Company indicates this process will utilize customer surveys which will specifically ask if the transaction was the result of replacement activity.

Upon consideration, the undersigned adopts this portion of the Report and the examiner's recommendation. The Company shall confirm in writing to the Department, no later than September 1, 2005, that it has, in fact, implemented a procedure to allow it to detect unreported replacement transactions. Further, the undersigned finds this violation of the regulation appropriate for the imposition of a \$1,000 administrative penalty.

12. In the **PERTINENT FACTUAL FINDINGS – MARKETING AND SALES – *Marketing and Sales Standard #5*** section of the Report (pages 6-7), the examiner explains that

Regulation I-88-3, Article III, § 3 requires that each insurer have and maintain written suitability standards for the sale of variable life insurance policies and that such standards shall indicate that no variable life insurance policies shall be sold unless such policy is suitable for the applicant. The examiner notes that although the Company has written suitability standards incorporated into its contracts with the financial services firms, it did not have a monitoring system in place to ensure its appointed producers are complying with those standards. The examiner recommends the Company establish suitability guidelines and procedures for all financial services firms employing the Company's appointed producers and establish a monitoring system to assure all appointed producers are following such guidelines. (Report at page 7; Recommendation No. 7 at page 8.)

In its Response, the Company indicates all financial services firms with which the Company has selling agreements are legally and contractually obligated to the Company to supervise registered representatives in compliance with applicable NASD and SEC requirements, including suitability requirements. The Company asserts "it is not legally required to establish a monitoring system", but nonetheless, "plans to leverage some new processes being implemented from which valuable information can be obtained to help monitor the acceptability of sales." (Response at page 4.) The Company again notes the customer survey procedure implemented in March 2004 and additional methods the Company intends to employ to examine whether the contracted financial services firms are following compliance requirements.

Upon consideration, the undersigned adopts this portion of the Report and the examiner's recommendation. The Company disputes that it has any obligation to ensure that its policies subject to I-88-3 are sold in compliance with the law. The Company is

mistaken. Although the Company may contract with other entities to sell its products, the Company is still directly responsible for ensuring that its products are sold in compliance with applicable statutes and regulations. Regulation I-88-3 requires that the Company establish and maintain suitability standards for its variable products. Without any monitoring system, it is impossible for the Company to ensure that it is maintaining those standards. Further, the Company's appointed producers, despite employment with the financial services firms, are considered the Company's agents and, as such, the Company is responsible for any violations committed by the appointed producers in the sale of Company products. However, it does appear that the Company is taking proactive steps to monitor that its products are being sold only when suitable. No later than September 1, 2005, the Company shall provide the Department with its suitability standards and an expanded explanation of what steps it has taken to verify that variable products are being sold in compliance with the Company's suitability standards, even when sales occur through a financial services firm.

ORDER

13. The Report is adopted in its entirety without modification unless expressly stated to the contrary herein.

14. As discussed more fully in Paragraph 7 above, the undersigned adopts the **PERTINENT FACTUAL FINDINGS – COMPLAINTS** section of the Report. It appears the Company has adequately addressed the examiner's concerns and no additional action is necessary.

15. As more fully discussed in Paragraph 8 above, no later than September 1, 2005, the Company shall provide the Department with an expanded explanation of the methods

it has implemented and is presently using to monitor that its appointed producers, employed by financial services firms or otherwise, are being informed of current Vermont law applicable to the sale of Company products and are being adequately trained in the meaning and applicability of such laws.

16. As more fully discussed in Paragraph 9 above, the Company shall provide to the Department for review and approval, no later than September 1, 2005, a written explanation of how it is ensuring that its appointed producers are receiving the information required by Regulation I-2000-03 § 4(A), as well as a copy of the statement(s) required by I-2000-03 § 4(A)(2).

17. As more fully discussed in Paragraph 10 above, the Company shall provide to the Department, for review and approval, the written procedures applicable to the New Business Team as required by I-2000-03 § 4(A)(4).

18. As more fully discussed in Paragraph 10 above, the Company's failure to comply with Regulation I-2000-03 § 4, as applied to its New Business Team, warrants the imposition of a \$2,000 administrative penalty.

19. As discussed in Paragraph 11 above, addressing the **PERTINENT FACTUAL FINDINGS – MARKETING AND SALES - *Marketing and Sales Standard #4*** section of the Report, the undersigned adopts this portion of the Report and the examiner's recommendation. The Company shall confirm in writing to the Department, no later than September 1, 2005, that it has, in fact, implemented a procedure to allow it to detect unreported replacement transactions.

20. As noted in Paragraph 11 above, the undersigned finds the Company's violation of I-2000-03 § 4(A)(5) warrants the imposition of a \$1,000 administrative penalty.

21. As discussed above in Paragraph 12, discussing the **PERTINENT FACTUAL FINDINGS – MARKETING AND SALES – *Marketing and Sales Standard #5***, no later than September 1, 2005, the Company shall provide the Department with its suitability standards and an expanded explanation of what steps it has taken to verify that variable products are being sold in compliance with the Company’s suitability standards, even when sales occur through a financial services firm.

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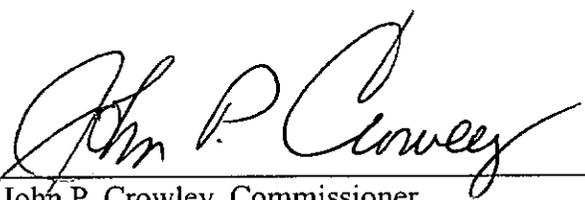
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22. All penalties described above shall be paid to the Department no later than ten days after the expiration of the appeal deadline of this Order, or other administrative or judicial order as appropriate.

PURSUANT TO 8 V.S.A. § 3574(c), THIS ORDER AND REMEDIAL ACTION SET FORTH HEREIN MAY BE APPEALED TO THE COMMISSIONER BY FILING AN ADMINISTRATIVE APPEAL WITHIN THIRTY (30) DAYS OF THE DATE SET FORTH BELOW. FURTHER REMEDIAL ACTIONS AND PENALTIES ORDERED UPON RECEIPT OF INFORMATION ORDERED HEREIN MAY BE APPEALED WITHIN THIRTY (30) DAYS OF SUBSEQUENT DECISIONS BY THE UNDERSIGNED.

Dated at Montpelier, Vermont this 15th day of April, 2005.

Department of Banking, Insurance,
Securities and Health Care Administration

By: 

John P. Crowley, Commissioner
Department of Banking, Insurance, Securities and
Health Care Administration