

**STATE OF VERMONT  
DEPARTMENT OF BANKING, INSURANCE, SECURITIES  
AND HEALTH CARE ADMINISTRATION**

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	)	
IN RE: LIFE INSURANCE	)	DOCKET NO. 10-053-I
COMPANY OF THE	)	
SOUTHWEST	)	

**CONSENT ORDER**

**JURISDICTION**

1. Pursuant to the authority contained in 8 V.S.A. §§ 11, 12, 13, 15, 18, 3564-3574 and 4726 the Commissioner (“Commissioner”) of the Department of Banking, Insurance, Securities and Health Care Administration (“Department”) is charged with administering and enforcing the insurance laws of the State of Vermont and is authorized to conduct periodic examinations of insurers and licensees to determine whether they are in compliance with Vermont insurance laws and regulations.

2. The Life Insurance Company of the Southwest (“Respondent”) is a life insurance company with its principal place of business in Dallas, Texas. Respondent is a foreign insurer authorized to transact insurance business in Vermont.

**FACTS**

3. The Department has completed a market conduct examination of Respondent covering the period of January 1, 2003 through August 1, 2006 (the “Exam Period”). The exam addressed replacement procedures, sales and marketing, claims administration, Vermont complaints, supervision and control of producers, (agent investigation and

discipline of producers' activities), and Vermont Insurance Division Bulletin 110, *Indexed Annuities*.

4. A draft market conduct examination report was submitted by the examiners on January 2, 2009.

5. The draft market conduct examination report included conclusions that Respondent violated Vermont insurance laws.

6. Respondent disputes some of the findings of violations.

7. The Commissioner, pursuant to 8 V.S.A. § 3573(c), may terminate or suspend an examination in order to pursue other regulatory action. The Commissioner, as a result of the Respondent's cooperation with the Department to address the substantive findings of the examiners, elects to terminate the present market conduct examination of Respondent.

8. Respondent has agreed to resolve this matter by entering into this Consent Order with the Department on the terms and conditions hereinafter set forth in lieu of proceeding through the administrative process.

8. Notwithstanding paragraph 7 above, it is agreed that the Department retains any rights it has to respond to and address any consumer complaint that may be made during the term of this Consent Order with regard to a transaction in insurance, as defined in 8 V.S.A. § 3301a, that alleges a misrepresentation, an unsuitable sale or other violation of the Vermont Insurance Trade Practices Act (8 V.S.A. § 4721, et seq.) during the examination period. This includes the right to pursue any remedy authorized by law in response to such consumer complaint. Respondent retains the right to assert any factual

or legal defenses that it may have to any such complaint, or any claim or action asserted by the Department relating to such complaint.

9. Respondent has admitted the jurisdiction of the Commissioner and has knowingly, voluntarily and unconditionally executed a written consent to the entry of this Order, which Consent includes Respondent's agreement to comply with and to be subject to all terms, conditions and obligations of this Consent Order. In the Consent Order, Respondent has knowingly, voluntarily and unconditionally waived any rights to a hearing and appeal before the Commissioner or the Commissioner's designee, Respondent has knowingly, voluntarily and unconditionally waived all other procedures otherwise available under Vermont law with respect to the issuance of this Order, and Respondent has knowingly, voluntarily and unconditionally waived any rights to judicial review by any court by way of suit, appeal, or extraordinary remedy with respect to the issuance of this Consent Order. Respondent has knowingly, voluntarily and unconditionally waived compliance with the provisions of 3 V.S.A. Chapter 25 regarding contested cases.

### **ORDER**

#### **NOW, THEREFORE, IT IS HERBY ORDERED THAT:**

- A. Respondent shall pay an administrative penalty in the amount of Thirty Five Thousand Dollars (\$35,000.00) within ten (10) days of full execution of this order.
- B. Respondent shall pay the Department's reasonable costs and expenses associated with this Consent Order and the market conduct examination

pursuant to 8 V.S.A. § 18, totaling Eight Thousand One Hundred Twenty Seven Dollars (\$8,127.00), no later than 10 days after receipt of the Department's final invoice. The Department's reasonable costs and expenses do not include the cost of retaining the examiners, which has been borne by the Respondent pursuant to 8 V.S.A. § 3573.

C. Respondent devised a Suitability Program for Fixed Annuities, which it implemented in January of 2010. For purposes of this paragraph, “annuities” shall exclude any annuity sold through a broker-dealer who has contractually agreed that it (1) has established and maintains a system to supervise recommendations reasonably designed to meet the requirements of applicable laws and regulations regarding suitability; and (2) will cooperate with any periodic review by Respondent of its suitability system. Respondent has submitted its existing Suitability Program, which includes the processes and procedures described in attached Exhibit 1, to the Department. Because Respondent deems its Suitability processes and procedures proprietary, the Respondent has requested, and the Department has agreed, to file the procedures under seal. The Department has reviewed Respondent’s Suitability Program and determined that it satisfies the Department's interest in and concerns regarding suitable sales of fixed indexed annuities to Vermont consumers. Respondent shall continue to utilize its Suitability Program, as outlined in Exhibit 1.<sup>1</sup> Respondent shall preserve and retain its records

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<sup>1</sup>In the event that Respondent makes a revision to its Suitability Program, all revisions will comply with Vermont laws and regulations. In addition, Respondent will provide the Department with notice of any substantive revision within 30 days of its effective date.

associated with the Suitability Program, including the media used to maintain them for a period of three (3) years and shall make the records readily available upon request by the Commissioner or her/his designee.

- D. Respondent has completed an audit of life claims with respect to all policies and contracts executed in the State of Vermont since January 1, 2004 to ensure that the 6% interest rate required by 8 V.S.A §3665(c)(2) was paid to claimants under policies of life insurance from the date of death of the insured and to ensure that interest at the rate of 12% as required by 8 V.S.A.§3665(d) was paid on all uncontested claims beginning 30 days after a beneficiary filed a properly executed proof of loss. Respondent has provided data in the form of a spreadsheet to the Department showing the amounts paid, interest paid, and dates thereof for each such claim. The Department has approved the data provided and the payments made to the beneficiaries. Respondent shall submit a plan within 60 days of the signing of this order to the Department for approval setting forth the procedures it will use to assure that death benefits are paid in accordance with Vermont laws. The Commissioner may approve such plan, disapprove such plan, or approve such plan with imposed conditions. The Commissioner shall retain jurisdiction over the Respondent and the subject matter of the plan in the event that the plan submitted by the Respondent is disapproved or approved with conditions.
- E. Respondent shall submit a plan within 60 days of the signing of this order to the Department for approval describing how it will improve its procedure used to process replacements specifically to include how it will comply with

Regulation I-2001-3 §§3A, 3B, 3E, 4B, 4C, 4D, 4G, 5A(1), 5A(2), 6A and 6C and how it will ensure that the reason for replacement is filled in on the required *Notice of Replacement of Life Insurance or Annuities*. The plan shall also include ongoing training on replacement issues for staff and how Respondent will conduct periodic reviews or audits in order to determine the effectiveness of the process procedures. The Commissioner may approve such plan, disapprove such plan, or approve such plan with imposed conditions. The Commissioner shall retain jurisdiction over the Respondent and the subject matter of the plan in the event that the plan submitted by the Respondent is disapproved or approved with conditions.

- F. Respondent shall submit a plan within 60 days of the signing of this order to the Department for approval describing what procedure it will implement to follow up on outstanding requests for documents in cases in which documents are necessary to settle a death benefits claim. The Commissioner may approve such plan, disapprove such plan, or approve such plan with imposed conditions. The Commissioner shall retain jurisdiction over the Respondent and the subject matter of the plan in the event that the plan submitted by the Respondent is disapproved or approved with conditions.
- G. Respondent shall submit a plan within 60 days of the signing of this order to the Department for approval describing what procedure it will implement that will ensure that all written complaints expressing a grievance will be recorded in its complaint log. The Commissioner may approve such plan, disapprove such plan, or approve such plan with imposed conditions. The Commissioner

shall retain jurisdiction over the Respondent and the subject matter of the plan in the event that the plan submitted by the Respondent is disapproved or approved with conditions.

- H. Respondent shall submit a plan within 60 days of the signing of this order to the Department for approval describing how it will revise its procedures regarding the marketing of its indexed annuities in those cases where the owner of the contract and the annuitant are separate entities, by requiring that both the owner and the annuitant are afforded an opportunity to review and sign the Buyer's Guide acknowledging an understanding of its disclosures and receipt of the same in accordance with Insurance Bulletin 110. The Commissioner may approve such plan, disapprove such plan, or approve such plan with imposed conditions. The Commissioner shall retain jurisdiction over the Respondent and the subject matter of the plan in the event that the plan submitted by the Respondent is disapproved or approved with conditions.
- I. Failure to adhere to, or comply with, any of the terms of this Order, or any provision of any approved plan submitted pursuant to this Order or any condition/s imposed upon any approved plan submitted pursuant to this Order shall constitute a violation of a lawful order of the Commissioner and shall be a separate violation of the insurance laws of the State of Vermont and shall subject Respondent to administrative action or sanctions as the Commissioner deems appropriate. The Department shall retain jurisdiction over this matter for the purpose of enabling the Department to enforce such order.
- J. Nothing in this Consent Order shall be construed to prevent the Department

from examining or investigating Respondent regarding any issue, other than with respect to matters identified in this Consent Order. Nothing contained in this Consent Order shall restrain or limit the Department in responding to and addressing any complaint involving the Respondent that is filed with the Department, and nothing contained in this Consent Order shall preclude the Department from pursuing any violation of law.

- M. All costs and expenses associated with and arising out of the remediation plans ordered in this Consent Order shall be paid by Respondent.

Dated at Montpelier, Vermont this 24<sup>th</sup> day of December, 2010.

**VERMONT DEPARTMENT OF  
BANKING, INSURANCE,  
SECURITIES, AND HEALTH CARE  
ADMINISTRATION**

  
Michael S. Bertrand, Commissioner

**RESPONDENT'S CONSENT**

1. Life Insurance Company of the Southwest ("Respondent") hereby admits the jurisdiction of the Vermont Commissioner of Banking, Insurance, Securities and Health Care Administration ("Commissioner") over the subject matter of the Consent Order, Docket No. -I ("Consent Order"), and that the Commissioner retains jurisdiction over this matter for the purpose of enforcing this order, including the approving, disapproving or

approving with conditions, of any plan that the order requires the Respondent to submit to the Department.

2. Respondent knowingly, voluntarily and unconditionally waives any and all rights to a hearing before the Commissioner or the Commissioner's designee and all other procedures otherwise available under Vermont law with respect to the entry of the Consent Order. Respondent also knowingly, voluntarily and unconditionally waives compliance with the provisions of 3 V.S.A. Chapter 25 regarding contested cases. Respondent acknowledges that, upon execution by the Commissioner, the Consent Order constitutes a valid order duly rendered by the Commissioner.

3. Respondent knowingly, voluntarily and unconditionally waives any right it may have to judicial or administrative review by way of suit, appeal, or extraordinary remedy resulting from the issuance of the Consent Order.

4. Respondent acknowledges and agrees that it consents to the entry of the Consent Order knowingly, voluntarily and unconditionally and that no promise was made, nor was any coercion used, to induce Respondent to give such consent.

5. Without admitting or denying any of the stated facts or conclusions of law stated in the Consent Order (other than as to the jurisdiction of the Commissioner over the Respondent and over the subject matter of such Consent Order and the retention of jurisdiction for the purpose of enforcing this order), Respondent acknowledges its understanding of and agrees to all terms, conditions, and obligations contained in the Consent Order.

6. The undersigned representative of Respondent affirms that he or she has taken

all necessary steps to obtain the authority to bind Respondent to the obligations stated herein and has the authority to bind Respondent to the obligations stated herein.

**LIFE INSURANCE COMPANY OF THE SOUTHWEST**

By: *Donna M. Mason* Date: December 28, 2010  
Title: 2<sup>nd</sup> Vice President Market Conduct and Compliance

STATE OF *Vermont*  
COUNTY OF *Washington*

On the *28<sup>th</sup>* day of *December* 2010, personally appeared *Donna M. Mason*, as authorized representative of Life Insurance Company of the Southwest, who states that the execution of the foregoing Consent is his/her free act and deed and the free act and deed of Life Insurance Company of the Southwest.

Before me, *Angela L. Briggs*  
Notary Public  
My commission expires *2/10/2011*