ADVERTISING AND DISCLOSURE PRINCIPLES FOR FIXED ANNUITIES

One of the primary functions of NAFA is to educate all parties about fixed annuities. In furtherance of this mission, NAFA supports insurers, marketing organizations and producers in their development of effective advertising according to principles that will promote both consumer confidence and an efficient market. These principles should be the foundation of any procedures within the industry, as well as any regulatory framework. This paper will provide an overview of the function of advertising in the sales and marketing of fixed annuities, guidelines and principles for advertising fixed annuities, and specific examples of how these principles can be applied.

Background Discussion on Advertising & Disclosure and Its History

One of the most important elements in making consumers aware of a product is advertising. Advertising is used to sell nearly every product produced or service delivered in our society. The powerful effect that advertising can have on consumers, as well as the potential for misleading advertising to have significant financial consequences for consumers, has caused it to remain subject to increased scrutiny.

Misleading advertising can cause consumers to make decisions that are not in their best interests. Misleading insurance advertising can eventually tar the entire industry if consumers begin to feel that it cannot be relied upon as a source of accurate and reliable information. Even worse is the prospect that advertising could deceive or lure consumers into making harmful decisions. As a result, accurate, honest, understandable and informative advertising is an important goal for the fixed annuity industry.

Every state has enacted regulations for insurance advertising. Most are based upon the Advertisements of Life Insurance and Annuities Model Regulation (NAIC Model Law 570-1), which provides general principles for advertising and details some specific prohibitions. However, a balance must be achieved between highly prescriptive regulation and influential commercial speech. Mandating everything that can or cannot be said or exhibited in advertising is simply not possible. In addition, such an approach could stifle creativity, eradicate innovation and limit the ability to distinguish a company or product in attracting consumers. This could actually decrease consumer understanding and motivation to consider products that may meet their needs. An efficient marketplace contains companies that are competitive with price, services and benefits, and can inform consumers through creative, honest, accurate and compliant advertising.

To this end, NAFA supports the framework of state regulation of insurance advertising as set forth in the current NAIC Model Law 570-1. NAFA is supportive of the evolving nature of regulation and is a proponent of periodic review and updating of state advertising regulation to accommodate a dynamic marketplace filled with dynamic products and methods of distribution. Overarching both the existing regulation and its evolution, NAFA believes there are certain unchanging principles that have and should guide such regulation. The purpose of this paper is to explain these principles, show how current regulation is derived from them, and apply them to generate examples of an advertising compliance regimen which could be used by regulators, insurers and producers.

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1. What Is Advertising?

The NAIC model regulation on advertising defines advertising as any material designed to create public interest in life insurance or annuities, or in an insurer or an insurance producer, or to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy. Both marketing pieces and sales literature fit within the definition of advertising.

> Advertisements are pieces used to reach clients or prospects directed at the public at large or targeted to a segment or segments of the general public (e.g., social media, TV or radio commercials, billboards, websites, etc.). They also include sales literature, which refers to any piece designed for distribution to multiple clients or prospects in which there is a greater measure of control over who will receive or view it (e.g., consumer brochures, direct mail ads and letters, etc.).

If any piece does not fall within the strict definition of advertising but may be used to solicit the sale of financial products or interest in them, it still should be considered advertising. If it could reasonably end up in a prospect's hands so that a purchasing decision could be made, it should be considered advertising. Core principles are as follows:

> "If it could reasonably end up in a prospect's hands so that a purchasing decision could be made, it should be considered advertising."

- Any material that an insurer, marketing organization, producer, or representative intends to distribute to the public for use in connection with the sale or proposed sale of annuities, including general material that does not reference a specific product or company but is intended to create interest in fixed annuity products or ultimately result in the sale of an annuity, ***is*** advertising.
- Communications used purely for internal purposes and not intended for public dissemination or designed to create public interest in an insurer or its products, producers, and/or brokers ***is not*** deemed advertising. Internal communications are intended for a more sophisticated audience and are not intended to influence consumers or come into their possession.
- However, recruiting and training materials that are designed to attract producers to your firm and educate them on products, sales strategies and techniques — including those used in conjunction with the promotion, marketing and advertising of them — ***are*** generally deemed to be advertising. While a producer is clearly a more sophisticated recipient of insurance advertising than a consumer would be, such information could be seen by a client through public distribution or may become embedded in an eventual client presentation because of its influence on a producer.
- Any communication designed exclusively for providing customer service to contract holders that does not promote the insurer, product changes or new products ***is not*** advertising. It is not designed to solicit a sale.
- Materials used solely for the training and education of an insurer's producers typically ***are not*** advertising provided that they are neither product- nor sales-related training nor are they used to induce the public to purchase, increase or change an insurance policy. In addition, they should be clearly labeled "For Internal or Producer/Agent Use Only – Not for Use with the Public." Note that any product training materials or training that include language that could reasonably be used in a sales presentation or used to describe products and may be conveyed to the public ***should be*** considered advertising.

NAFA believes the following principles underlie most current advertising regulation and should be the foundation for future enhancements by regulators.

The principles underlying a regulatory framework form the foundation for developing and enforcing a rules-based structure. In applying specific regulations, it is critical to understand the fundamental principles. Additionally, using a principles-based regulatory model can be a more effective structure while providing a measure of freedom for those operating within those regulations.

Principles-based regulation means moving away from reliance solely on detailed, prescriptive rules and relying more on high-level principles to set the standards by which regulated persons or entities must conduct business. It is vital to give insurers, marketing organizations and producers the responsibility to decide how best to align their business objectives and processes with the regulatory outcomes desired. Current tools still rely on a large number of detailed rules and often very specific process requirements. While such detailed regulations are occasionally necessary, we see real benefits for insurers, marketing organizations, producers and consumers in tipping the balance toward a greater reliance on principles and high-level rules.

> "It is vital to give insurers, marketing organizations and producers the responsibility to decide how best to align their business objectives and processes with the regulatory outcomes desired."

It is important to note that due to the often-vague nature of advertising regulations, the determination as to whether a particular advertising piece is compliant will ultimately be decided by the respective regulator, who will assess its adherence to regulations as well the impression it may reasonably make on an average consumer. Due to the potentially subjective nature of advertising regulations, they may at times appear to be a moving target based on current marketplace trends and the evolving nature of the annuity industry. Applying the principles-based approach provides a valuable aid to help ensure consumers are well informed on key elements of annuities and how they are designed to work.

2. Accuracy and Truthfulness Principles

These first principles direct advertising toward information that will give a recipient a factual, comprehensible, "whole picture" basis for making a decision. Core principles are as follows:

- Accuracy — Statements should be accurate and not have the potential to mislead. Descriptions should not exaggerate benefits, interest rates, guarantees or other features. Products issued by insurers should be described as insurance contracts.
- Omission — Information important to the recipient should not be omitted. In general, important information includes all material information and facts that a consumer needs to make an informed purchasing decision.
- Understandability — Advertisements as a whole and in detail should be understandable. Terms should be defined if the average consumer would otherwise misunderstand them.
- Completeness — Information about specific products or insurers should be complete enough to be appropriate for the consumer's situation and position in the purchase process.
- Form — Physical presentation of the advertising should not obscure information or be misleading. Each piece of information should be prominent enough and proximate enough to other information so as not to mislead the average client.

A second set of Accuracy and Truthfulness principles arise from a consumer's need for fair, competitive and comparative information relative to other products, insurers, and producers. The insurance industry benefits from the public's trust in insurance protection and the ability of the industry to meet its promises for long time periods. Insurance products should not be advertised in such a manner as to confuse them with non-insurance products, and advertising should not damage confidence in insurers and their products.

- Non-disparagement — Statements should not be made that disparage insurers, producers, marketing organizations, products, regulators or marketing methods. This derives from the need for public trust in the industry's promises as a whole. Fair competition that does not destroy that trust is necessary for good consumer decisions.
- False urgency — Statements should not be designed to inflame or imply the need for urgency, which could encourage consumers to make unsound decisions against their interests. Introductory offers or specials should not imply limited availability or time periods for purchase unless that is a fact.
- Illustrations — Illustrations should accurately portray the mechanics in calculating the contract values of the product being represented. Illustrations should not use interest rates or values in excess of the rates on policies currently issued. The guaranteed minimum interest values should also be shown with equal prominence to non-guaranteed values and elements, and, if the product features a market value adjustment, the potential adverse effect on surrender values should be indicated.
- Testimonials — Testimonials and third-party endorsements should be genuine and represent the current opinion of the author. They must be based upon actual statements made for endorsement purposes and should be properly attributed to the subject(s) of the endorsement. If the person making the statement has any financial interest or relationship to the producer or has been compensated for the testimonial, it should be disclosed.

For a more specific list of the application of Accuracy and Truthfulness Principles, see Appendix A.

3. Principles for Identification of Advertiser

In order for a consumer to make an educated decision about whether they want to do business with an insurer, they must know what entities are presenting and fulfilling the insurance promises and be able to access such information. Additionally, the generic, common terms for insurance features, functions, restrictions, etc. should be understood by the consumer. This enables a customer to find more information about and make judgments as to the suitability for their individual situation. Core principles are as follows:

- Insurer and producer — Identify the insurer's name and location and provide the same information for any producer involved.
- Product — If advertising references a product, clearly identify the product and the insurer. Don't obscure its true nature or attempt to confuse the recipient.
- Producer self-representations — No reference should be made about the producer that exaggerates the producer's qualifications or obscures the producer's role in the sales process.

For a more specific list of the Principles for Identification of Advertiser and Product, see Appendix B.

4. Principles for Use of Titles and Professional Designations by Producers

NAFA strongly supports all efforts to improve the education and training for those licensed to sell fixed annuities in any areas relating to insurance, insurance products, consumer financial needs and planning, taxation, and any other area impacting their function as a seller and servicer of insurance products. This may include financial professional designations earned through testing, professional continuing education or producer continuing education. In addition, insurance professionals must accurately disclose their capacity and the products they offer to consumers in a clear and concise manner. Any titles used should be specific to the license(s) held and not be exaggerated or outside the scope of the products and services the producer offers. Core principles are as follows:

- Designation(s) used in advertising should be current and verifiable.
- Designation(s) should represent some significant achievement of knowledge that could be relevant to the advertised insurance and which will benefit the recipient of the advertising.
- Designation(s) should be awarded by a reputable, accredited organization within the insurance and financial industry.
- Titles should clearly portray the fact that the producer offers insurance. Acceptable titles include agent, licensed insurance agent, insurance professional and licensed agent. Absent a securities or investment advisory registration, producers should not use titles such as financial advisor, planner, financial planner, retirement planner, consultant, counselor, investment advisor, investment planner, registered representative, investment broker, wealth manager, expert, retirement expert, social security expert, or any other titles that suggest or imply services beyond the sale of insurance and annuity products.

As a result of this principle, some designations and/or titles may be prohibited entirely by insurers or regulators because they are deemed of insufficient rigor, scope, or applicability to the sale of insurance or are deemed to have no significant benefit to the prospective client and may, therefore, be misleading.

For a more comprehensive look at this topic, access our **NAFA Principles for Use of Professional Designations** paper.

5. Disclosure Principles

> "The purpose of disclosures is to give a consumer specific information about which they may be unaware and which may be critical to making an informed decision about an insurance product."

The purpose of disclosures is to give a consumer specific information about which they may be unaware and which may be critical to making an informed decision about an insurance product. Such information may include exceptions or mitigating facts to ideas, concepts, or statements of general fact presented in the advertising. This prevents a consumer from proceeding too far with decision-making based upon generalizations or bad assumptions in areas where they may not be educated or informed. Core principles are as follows:

- Hypothetical values — If hypothetical values or any non-guaranteed values are displayed, factors affecting them should be disclosed, as well as the fact that they are not guaranteed. Values should not be selected to create a false impression of future contract values.
- Attribution — Statistics should be referenced using current, reputable sources. Trademarks and service marks should be attributed.

- Bank sales — Insurance products advertised in a bank venue or under their jurisdiction require a disclaimer distinguishing them from bank products and banking regulations.
- Taxes — If tax advantages are referenced in any way, they should be explained, and any restrictions, penalties, and mitigating circumstances should be disclosed. Tax advice should be disavowed or referred to the prospective client's counsel or tax advisor.

For a more specific list of recommendations regarding the use of Disclosures, see Appendix C.

6. Fixed Indexed Annuity-Specific Principles

NAFA is a strong proponent of fixed indexed annuities as a beneficial and suitable product for many consumers. They are an evolution of the traditional fixed annuity, generally offering to policyowners:

- An alternative index-linked interest crediting method;
- The protection of a minimum interest rate guarantee (often zero); and
- A secondary guaranteed value complying with state standard non-forfeiture laws.

As such, some specific principles of advertising for fixed indexed annuities are worth noting. The alternative crediting method calls for several additional disclosure principles, which result in an informed customer who is not misled about the nature of these insurance products. Core principles are as follows:

- Guaranteed versus potential interest — Since fixed annuities and life insurance are not securities products, guarantees should be emphasized more than potential indexed interest credits, just as in non-indexed fixed annuities. Emphasis on the minimum guarantees of indexed products is even more important than for non-indexed annuities to ensure there is no confusion between indexed products and securities.
- Definitions and boundaries of indexed interest — If indexed interest is highlighted, it should be described as potential interest (where not guaranteed) and with reference to method, any components (such as caps, spreads and participation rates) which may be changed by the company, and in what range the company may make changes. References to indices and rates should indicate whether dividends are included. Avoid overemphasis on the performance of the index, as indexed annuities are never invested in the index or the market itself. The index is merely a benchmark for the purposes of calculating fixed indexed annuity interest. Consumers should not be left with the impression that the annuity is directly tied to or invested in the market/index itself.
- Investment terminology — References should be avoided that position fixed indexed annuities as securities products or investments. For example, terms such as market participation, gains, returns, yield, etc., should be avoided.
- Comparisons of annuities or other financial/investment products — While it is theoretically possible to compare fixed indexed annuities to other products or investments, it is generally wise to avoid doing so in advertising as it is quite difficult to sufficiently contrast them in a way that is complete and balanced enough to avoid a misleading association with a securities or bank product. Each product is designed to help meet specific financial goals, and comparisons between them are complex and nuanced.
- Trademarks — Index service marks and registered trademarks should be included in the advertising.

For a more specific list of recommendations regarding the application of Fixed Indexed Annuity-Specific Advertising Principles, see Appendix D.

7. Prohibited Statements and Words & Phrases

The following are statements and terms that do not meet these advertising and disclosure principles. Some words and statements may be deemed so fraught with potential for misunderstanding that no context or additional explanation can reasonably undo the misimpression for a significant number of consumers. NAFA recommends following these additional guidelines concerning the marketing and advertising of insurance products, and companies or regulators may wish to prohibit and remove them entirely from advertising. Core principles are as follows:

- Don't use statements that create the impression an insurer's specific financial strength is irrelevant because of government guarantees. Avoid terms that suggest the insurer's strength is absolute, certain or infallible.
- Don't use adjectives that imply premiums will disappear unless absolutely guaranteed to do so.
- Don't use terms so closely associated with bank products, securities, retirement plans, or other non- annuity or non-insurance products that their use implies the annuity is that type of product. Examples to avoid include deposits, contributions, a plan, retirement plan, personal or private pension, a CD-replacement, a 401(k) alternative, an investment and more.
- Don't use statements that imply some benefit is not available to other people of the same class or that they are unique to an individual.
- Don't in any way state, suggest or imply that the producer, contract or insurer is affiliated with a government entity or other organization, such as Medicare, the Social Security Administration, a school district or educational organization, and more.

For a more specific list of recommendations regarding the application of Prohibited Statements and Words Principles, see Appendix E.

8. Advertising Regimen and Procedures

As insurance carriers, marketing organizations, and producers seek to promote and enforce good advertising practices, it becomes necessary to develop processes and procedures. Insurers are required by state regulations to maintain a system of control over all advertising that pertains to the insurer itself or its products. As a result, insurers require that any such advertising be submitted to them for pre-approval of all carrier-specific advertising materials. This requirement should be reflected in advertising procedures. Non-carrier specific advertising, while not necessarily required to be approved by the respective insurer, must still comply with all applicable advertising regulations, placing the onus on the individuals/entities who create and/or distribute the materials.

"Non-carrier specific advertising, while not necessarily required to be approved by the respective insurer, must still comply with all applicable advertising regulations, placing the onus on the individuals/entities who create and/or distribute the materials."

By using a well-planned advertising regimen, the standards and principles discussed in this document can be uniformly applied within an organization. One of the key elements of implementing an advertising regimen is the process which is used to maintain and enforce its application.

Periodic testing of the processes put in place should be performed to ensure they are consistently followed and effective. Core principles are as follows:

- Accountability — Individuals should be trained on the applicability of advertising standards in their areas of responsibility and held accountable for adhering to established standards.
- Consistency — The regimen should be applied consistently to all advertising whether originated by the insurer or not. Consider the use of a checklist through which all advertising is submitted and reviewed.
- Prevalence — Advertising standards and practices should be widely understood and practiced throughout an organization.
- Applicability — Standards and practices should be applied to all materials that fall within the definition of advertising.
- Adaptability — Advertising procedures should be flexible and capable of being adapted to changing regulations and concerns.
- Recordkeeping — Recordkeeping should be done at both the insurer and distributor level. An easily understandable, clear and consistent system should be used, and records should be retained for the life of the product or service advertised or for a reasonably designated period of time.
- Document tracking, version control and updating — Ad numbers are assigned by most companies to approved pieces, and one of the most effective accountability and chain-of-responsibility methods is to place such numbers on all drafts and versions, as well as on the final ad itself.

CONCLUSION

One of NAFA's primary functions is to educate those within the insurance and financial industry on issues concerning fixed annuities. As the fixed annuity industry grows and the regulatory environment evolves, the importance of ensuring accurate, honest, understandable and appropriately informative advertising increases. As products become more sophisticated and complicated and our volume of advertising increases, the need to help consumers make educated and informed decisions increases. NAFA hopes the principles set forth in this document will serve as a guide and standard for those within the industry. By creating a greater awareness of good advertising and disclosure principles and educating industry members on these standards, we can better serve the interests of both the industry and consumers.

"As the fixed annuity industry grows and the regulatory environment evolves, the importance of ensuring accurate, honest, understandable and appropriately informative advertising increases."

Appendix A

The following is just one example of how NAFA's Accuracy and Truthfulness Principles might be expressed in more specific do's and don'ts and supporting statements.

- Don't misrepresent. Written or oral statements should not misrepresent or inaccurately compare the terms, conditions, or benefits contained within a contract or policy for any reason, including for the purpose of inducing or attempting to induce the owner to lapse, forfeit, surrender, retain, exchange, or convert an insurance or annuity contract.

- Don’t mislead. Do not create, publish, circulate, or place before the public an advertisement or statement containing any untrue, deceptive, or misleading statement with respect to any insurer or other producers in the conduct of its business.
- Don’t omit information. Do not omit information in the advertisement, the absence of which might create a false or misleading perception. The primary features and benefits of the product must be presented with its limitations, costs and restrictions prominently.
- Do present fair and balanced information. Advertisements should be fair and balanced and include limitations or negative features. Limitations and material information should be presented in equal prominence, and not automatically relegated to a footnote. Footnotes themselves should be prominent and easy to find by the eye, not minimized by size, color, font type or placement.
- Do clearly define limitations of the product. Limitations of the product should be clearly defined and should not be worded positively to imply a benefit. These include, for example, caps, spreads, participation rates on indexed products; conditions and waiting periods for full realization of benefits such as income streams, bonus features, persistency bonuses; and more.
- Do clearly identify products as insurance. Products issued by insurers should be described as life insurance policies or annuity contracts, and no alternative references to such products should be made that would tend to obscure the true nature of those products. Blind or vague descriptions of products are not permitted. Consumers should understand that the product being promoted is an insurance or annuity product. Also, products and their features should be described using commonly accepted industry terms; producers should not create their own proprietary terms or names for them in advertising.
- Do promote only approved products. If a product is being advertised or referenced, it should have been approved in the state(s) in which the advertisement will be used, or there should be a clear indication that the product may not be approved in all states.
- Any advertisement, when examined as a whole, should not be constructed in such a way as to lead a person to any false conclusions that they might reasonably rely upon. Any conclusion likely to be drawn should be based on the literal meaning of the words, impressions from nonverbal portions of the advertisement (e.g., pictures, charts, or diagrams), and the overall impression that the material is likely to have on an average consumer in the demographic that the product is primarily designed for. Materials must be able to stand on their own and not rely upon information from materials and descriptions omitted from the advertisement.
- Advertisements shall not utilize or describe non-guaranteed policy elements in a misleading manner. There should be no indication that non-guaranteed elements and/or values are guaranteed. All illustrations of and references to non-guaranteed elements should contain a statement that they are not guarantees or estimates of amounts to be paid in the future and are subject to change. If a consumer advertisement contains illustrations or statements containing or based upon non-guaranteed policy elements, it shall set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed elements.
- If interest rates higher than those guaranteed are referred to or illustrated, they should not be higher than those currently credited. Non-guaranteed elements and values should be clearly identified as such.
- Consider the intended audience and take particular care in developing communications for senior consumers and first-time purchasers to ensure that material facts are explained in a way they can understand. Define terms which the average recipient may not understand.

- Materials should not disparage other insurers, producers, services or methods of marketing. This includes blanket statements that criticize other types of financial professionals or marketplaces.

Appendix B

The following provides a more detailed expression of Identification of Advertiser and Product.

- An advertisement shall not use as the name or title of a life insurance policy or annuity contract any phrase that does not include the words "life insurance" or "annuity" unless accompanied by other language clearly indicating it is life insurance or an annuity.
- An advertisement shall prominently describe the name and type of annuity advertised. If specific to a carrier's annuity, clearly disclose the full annuity name and insurer name. "Blind" promotions of products are not permitted.
- Do not create or use your own names or phrases for annuity products in an attempt to "brand" them. Advertisements must use industry standard terms and titles, including the names given to them by the issuing insurer.

Appendix C

The following illustrates a more detailed expression of Disclosure Principles.

- All advertising material that references projected values of annuity products should clearly indicate any element that may affect such values, including, but not limited to, surrender charges, index cap rates, participation rates, market value adjustments, etc. Such disclosures should be prominently displayed, easily found by the reader, and in a font size and type sufficient to be easily readable.
- All hypothetical and/or hypothetical historical illustrations of performance should reflect at least 10 years' worth of data. Actual performance charts should reflect at least 10 years' worth of data, or since inception, whichever is longer, and if they are personalized to the consumer and reflect non-guaranteed values, shall abide by the state illustration regulations. Time frames illustrated must also be relevant — for example, time frames longer than 20 years are often misleading as they represent a longer time frame than many consumers will realistically hold the product being promoted, and therefore the overall average performance figures are not reasonable. Dates of any historical or hypothetical historical data included should be clearly disclosed and current, and may not appear to be chosen specifically to emphasize a certain viewpoint in an unfair or biased manner (e.g., do not "cherry pick" time frames in attempt to show the result you want).
- Any advertising material that references guaranteed elements of features should indicate whether the guarantee is subject to any requirements and conditions and disclose those requirements and conditions.
- Disclose how the participation rates are determined and set by the insurer in relation to the index. Some fixed indexed annuities use an index spread, margin, or asset fee in addition to, or instead of, a participation rate. They will be subtracted from any gain in the index linked to the annuity and should be explained with the sales materials.
- Most fixed indexed annuities put an index cap or upper limit on credited interest. This cap rate is generally stated as a percentage. This is the maximum rate of interest the annuity will earn and should be explained verbally and within sales material and be accompanied by the contractually guaranteed cap. References to "uncapped" index crediting options must clearly disclose other limits, such as spreads and/or participation rates. Advertising may not suggest or imply that the potential growth of an indexed product is unlimited.

- Disclose whether the insurer is allowed to change participation rates, index cap rates or index spread/margin fees at any time.
- Disclose the indexing method used to calculate the amount of interest to be credited to the contract based on a change in the index.
- Any statistics should be recent and relevant, and the source and date of statistics should be disclosed. Sources should be generally no more than 2-3 years old, available to the public (at no cost or requirement to subscribe to a service/website to view the information). A URL that takes readers directly to the source of the information should be included whenever possible.
- References to any index should be consistent with its proper disclosures. For example, appropriate S&P 500® Index abbreviations include: Standard & Poor's, S&P, S&P 500, Standard & Poor's 500 and the S&P 500 Index. Also, follow the advertising and disclosure requirements of all applicable indices as they require.
- All pieces designed for producer use should clearly describe the audience the material is intended for, as well as the audience the material is not intended for (i.e., For Producer/Agent Use Only. Not to be used with consumers.). ***Any materials not marked as such are typically considered consumer-facing materials by state insurance regulators and subject to all requirements for consumer-facing advertising.***
- If an agency or producer is located in a bank or other financial institution, or advertising materials include reference bank products, the following or similar disclosure should be included: *Annuities and life insurance products are issued by life insurance and annuity companies, and their guarantees are backed by the financial strength and claims-paying ability of the issuing company. They are not deposits in, obligations of, or guaranteed by the bank. They are not insured by the FDIC.*
- Any advertising material that discusses or references the tax aspects of life insurance or annuity products should (1) explain, or cite the authority for, such tax treatment, (2) contain a clear statement that the reference to tax treatment does not constitute tax, legal or accounting advice, and (3) contain a clear statement that consumers should consult their own legal or tax counsel to confirm how the tax treatment may apply to them.
- Any advertisements promoting the specific benefits of tax deferral vs. taxable vehicles must also include the value of the tax-deferred vehicle assuming taxes deducted at the end of the period reflected in the advertisement, applying the same tax rate as the taxable vehicle.
- Describe the potential cash value accumulation of deferred annuities as "tax-deferred," not as "tax-free."
- Ads that discuss withdrawals or income features or riders should include the following statement: *Annuity distributions are subject to ordinary income taxes. A 10% federal tax penalty may apply to certain distributions if taken before the owner's age 59½.*

Appendix D

The following provides a more detailed expression of Fixed Indexed Annuity-Specific Advertising Principles.

- Emphasize the guarantees, including protection of premium and the guaranteed interest rates, assuming the basis for these guarantees are clearly disclosed.
- Emphasize the principal protection feature, and do not describe the product as similar to a bond or certificate of deposit (CD), or to a variable annuity with a guaranteed floor or principal protection.
- Advertising for fixed indexed annuities should not place undue emphasis on the index, particularly at the expense of a comprehensive and balanced discussion of the annuity as a fixed insurance product.

- Avoid references to annuities being "free" or "no fees"; while it is not required to outline all specific fees and charges, annuities do involve a number of costs to market, issue and administer, most of which are built into the annuity's pricing. It may be acceptable to state that annuities have no annual AUM (assets under management) costs, but advertising should not imply that they are free or available at no cost.
- Avoid terms such as "investment performance," "trading day," "investment returns," "maximizing returns," "Wall Street" or the "stock market."
- Advertising for fixed indexed annuities should not describe the product's indexing feature or formula as a means of "participation" in the "stock markets" or the "equity markets," although indexing may be appropriately described as providing the potential for competitive growth and/or interest credits over the long term.
- Do not list the stocks or the companies that comprise the index, as such a list might suggest that the owner is indirectly investing in those stocks.
- Do not promote or highlight the performance of the underlying index without the application of the annuity's current and guaranteed caps, spreads, and/or participation rates.
- Avoid emphasizing the similarities of fixed indexed annuities in advertising to bonds, CDs, variable annuities, mutual funds or other investment vehicles.
- Refer to the applicable index only as a factor that in part determines the interest to be credited at the end of an index period and not as a vehicle for participation in stock market gains or returns.
- Fixed indexed annuity advertising should clearly indicate the index does not contain dividends if that is the case.
- Emphasize that the insurer credits interest; don't refer to "market gains" or "market growth."
- Clearly state that the product is not an investment in the "market" or in the applicable index.
- State that positive index adjustments may be limited to a monthly maximum or a participation rate, cap or spread, meaning only a portion of the gain is credited to the contract as interest.
- Indicate that the participation rate, cap rate, and/or any other non-guaranteed components of the indexing formula may change and may be different in the future.
- Be clear that the insurer is the entity backing the guarantees provided by the product.
- Disclose that the index interest could be less than with a traditional product and could be zero (if applicable).
- Include the index service mark or registered trademark as applicable, along with index name disclosure for any listed index. "Blind" promotions of products are not permitted. The product being promoted or described, if specific to one particular product, must be identified by product name and carrier and is subject to the carrier's review and approval requirements.

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