

## **Bulletin 93-2 (Revised)**

### **SDCL 58-28-31 — Variable contracts**

January 1, 1994

Pursuant to SDCL 58-28-31, the following information shall be filed with the Division of Securities, 118 W. Capitol Avenue, Pierre, SD 57501-2017 (605) 773-4823, in accordance with 47-31A-402(c), beginning January 1, 1994:

1. A cover letter identifying the funds underlying variable annuity and variable life insurance products separate accounts. If those underlying funds are already registered with the South Dakota Division of Securities, the company should list, next to the name of each fund, the Division of Securities registration number.
2. Included with the cover letter will be a copy of a prospectus for each underlying fund or series fund of the variable annuity or variable life separate account organized as a unity investment trust. In the case of a variable annuity or variable life insurance separate account organized as a management investment company, a copy of the variable product prospectus should be filed. If the underlying fund is already registered with the Division of Securities, no prospectus need be filed with the Division of Securities. However, as noted in #1 above, the registration number should be included on the cover page.
3. Prospectuses describing new underlying funds (series or otherwise) should be filed simultaneously with the Divisions of Insurance and Securities. The Division of Securities will review the prospectuses filed and any comments or questions will be sent to the company contact and the Division of Insurance. Pursuant to SDCL 58-28-31, the Division of Insurance will make the final determination about whether the product will be sold in South Dakota.
4. Issuers of variable annuity or variable life insurance contracts that are already being sold in South Dakota or which have already been approved by the Division of Insurance will have 60 days (after January 1, 1994) in which to file with the Division of Securities, prospectuses for funds underlying (series or otherwise) the variable annuity or variable life insurance separate account, or in the case of variable annuity of variable life insurance separate accounts organized as management investment companies, the product prospectus should be filed. Under these circumstances, follow the same filing procedures as outlined above.
5. Pursuant to SDCL 47-31A-406(i)(3) a \$50 filing fee must accompany each submission.

January 9, 1995

On December 17, 1993 the Division of Insurance issued Revised Bulletin 93-2 with regard to the filing and review of variable life/variable annuity contracts. At that time both the Division of Insurance and Division of Securities were concerned with the development of variable products and their sale within South

Dakota. The product is a hybrid of insurance and securities products and the Division of Securities was concerned that the securities nature of the product was not thoroughly reviewed.

As a result, the Division of Insurance worked with the Division of Securities to develop a cooperative review process for these products, including simultaneous filings with the Divisions of Insurance and Securities for a review of the product. Over the past year, the Division of Securities has reviewed the products for compliance with specific securities requirements. For the most part, the Division of Securities has found that the products meet its requirements and that nothing out of the ordinary is disclosed in the filings.

In an attempt to conserve regulatory resources, the Division of Securities will no longer review variable products. The Division will continue to assert its jurisdiction over the variable agents, requiring registration as it always has, and will enforce the anti-fraud provisions of the law against violators. As the area has grown, so has the sales practices and other securities violations.

Nothing in this memorandum reduces company compliance with the statutory and rule provisions administered by the Division of Insurance. This memorandum only covers filing requirements with the Division of Securities.

Beginning immediately, no insurance companies will be required to make product filings with the Division of Securities. As of February 1, 1995, any filing of this nature will be returned to sender without opening. We appreciate the efforts that the companies have made to comply with Revised Bulletin 93-2.

Darla L. Lyon  
Director of Insurance