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**IDAPA 18
TITLE 01
CHAPTER 16**

18.01.16 - VARIABLE CONTRACTS

000. STATUTORY AUTHORITY.

Title 41, Chapter 19, Idaho Code.

(7-1-93)

001. PURPOSE.

The purpose of these rules is to provide a comprehensive plan: for the qualification and licensing of insurers to write policies or contracts on a variable basis; for establishment of separate accounts and the investment of assets contained therein; for the filing and approval of policy and contract forms; for reports to contract holders; for the qualification, examination and licensing of agents and other persons; providing for the establishment and preservation of certain records and the establishment of other standards pertaining to the offering and sale of such contracts.

(7-1-93)

002. -- 003. (RESERVED).

004. DEFINITIONS.

01. Variable Contracts. The term "Variable Contract" shall mean any policy or contract, whether on an individual or group basis, which provides for insurance or annuity benefits which vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract.

(7-1-93)

02. Agent. "Agent" when used in this rule, shall mean any person, corporation, partnership, or other legal entity which under the laws of this state is licensed as a life insurance agent.

(7-1-93)

03. Variable Contract Agent. "Variable Contract Agent," when used in this rule, shall mean an agent who shall sell or offer to sell any contract on a variable basis.

(7-1-93)

04. Satisfactory Alternative Examination. A "Satisfactory Alternative Examination" to Part I of the written examination called for by Subsection 017.03 shall include any securities examination which is declared by the Director to be an equivalent examination on the basis of content and administration. The following examinations are deemed to be a satisfactory alternative examination:

(7-1-93)

a. The National Association of Securities Dealers, Inc., Examination for Principals, or Examination for Qualification as a Registered Representative;

(7-1-93)

b. The various securities examinations required by the New York Stock Exchange, the American Stock Exchange, or the Pacific Coast Stock Exchange;

(7-1-93)

c. The Securities and Exchange Commission test given pursuant to Section 15(b)(8) of the Securities Exchange Act of 1934, as amended;

(7-1-93)

d. The examination recommended for the testing of variable contract agents by the National Association of Insurance Commissioners, when adopted by the Insurance Department of any State or Territory of the United States and approved for use by such Department by the Securities and Exchange Commission; and

(7-1-93)

e. Any State Securities Sales Examination accepted by the Securities and Exchange Commission.

(7-1-93)

005. -- 010. (RESERVED).

011. QUALIFICATIONS OF INSURANCE COMPANIES TO ISSUE VARIABLE CONTRACTS.

01. Insurer Requirements. No insurer shall deliver or issue for delivery in this state contracts authorized under Section 41-1936, Idaho Code, unless it is authorized or organized to do a life insurance or annuity business in this state, and the Director is satisfied that its condition or method of operation in connection with the

issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the Director shall consider among other things: (7-1-93)

- a. The history and financial condition of the insurer; (7-1-93)
- b. The character, responsibility and fitness of the officers and directors of the insurer; and (7-1-93)
- c. The law and regulation under which the insurer is authorized in the state of domicile to issue variable contracts. (7-1-93)

02. Parent or Affiliated Insurer. An insurer which issues variable contracts and which is a subsidiary of, or affiliated through common management or ownership with, another life insurer authorized to transact such insurance in this state shall be deemed to have met the provisions of this section if either it or the parent or affiliated insurer meets the requirements hereof. (7-1-93)

03. Title 41, Chapter 3, Idaho Code, Requirements. No insurer which does not satisfy the requirements of Title 41, Chapter 3 of the Idaho Insurance Code, nor which is not then possessed of such capital and surplus as is then required for a new life insurer under the Idaho Insurance Code or under the statutes of its state or place of incorporation, whichever is greater, shall be qualified to issue variable contracts. (7-1-93)

04. Delivery. Before any insurer shall deliver or issue for delivery variable contracts within this state, it shall submit to the Director: (7-1-93)

- a. A general description of the kinds of variable contracts it intends to issue; (7-1-93)
- b. If requested by the Director, a copy of the statutes and rules of its state of domicile under which it is authorized to issue variable contracts; and (7-1-93)
- c. If requested by the Director, biographical data with respect to officers and directors of the insurer on the biographical affidavit form currently prescribed for use by the Idaho Department of Insurance. (7-1-99)

012. SEPARATE ACCOUNTS.

01. Domestic Life Insurer. A domestic life insurer issuing variable contracts shall establish one or more separate accounts pursuant to Sections 41-1936 and 41-734 of the Idaho Insurance Code subject to the following provisions of this Rule: (7-1-93)

a. Except as hereinafter provided, amounts allocated to any separate account and accumulation thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies; provided, that to the extent that the company's reserve liability with regard to: (a) benefits guaranteed as to dollar amount and duration, and (b) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be, except as the Director may otherwise approve, invested in accordance with the laws of this state governing the investments of life insurance companies. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the insurer. (7-1-93)

b. With respect to seventy-five percent (75%) of the market value of the total assets in a separate account no insurer shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market value, would exceed ten percent (10%) of the market value of the assets of said separate account; provided, however, that the Director may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state. (7-1-93)

c. Unless otherwise permitted by law or approved by the Director, no insurer shall purchase or otherwise acquire for its separate accounts the voting securities of any issuer if as a result of such acquisition the

insurance company and its separate accounts, in the aggregate, will own more than ten percent (10%) of the total issued and outstanding voting securities of such issuer; provided, that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts. (7-1-93)

d. The limitations provided in Subsections 012.01.b. and 012.01.c. above shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with Subsections 012.01.b. and 012.01.c. hereof. (7-1-93)

02. Valuation of Assets. Unless otherwise approved by the Director, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; except, that unless otherwise approved by the Director, a portion of the assets of such separate account equal to the company's reserve liability with regard to the benefits and funds referred to in Subsections 012.01.a. and 012.01.b. of this Section, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets. (7-1-93)

03. Chargeability of Assets with Liabilities. That portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the insurer may conduct. Notwithstanding any other provisions of law an insurer may: (7-1-93)

a. With respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust, exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the insurer, or (7-1-93)

b. With respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having interests in such account ratably as determined by the insurer. Such committee, board or other body may have the power, exercisable alone or in conjunction with others, to manage such separate account and the investment of its assets. An insurer, committee, board or other body, may make such other provisions in respect to any such separate account as may be deemed appropriate to facilitate compliance with requirements of any Federal or State law now or hereafter in effect; provided that the Director approves such provisions as not hazardous to the public or the company's policyholders in this state. (7-1-93)

04. Sale, Exchange, Transfer. No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (a) by a transfer of cash, or (b) by a transfer of securities having a valuation which could be readily determined in the marketplace, provided that such transfer of securities is approved by the Director. The Director may authorize other transfers among such accounts if, in his opinion, such transfers would not be inequitable. (7-1-93)

05. Assets Equal to Reserves and Liabilities. The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account. (7-1-93)

06. Officers and Directors. Rules under any provision of the Insurance Law of this state of any rule applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee, board or other similar body. No officer or director of such company nor any member of the committee, board or body of a separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account. (7-1-93)

013. FILING OF CONTRACTS.

The filing requirements applicable to variable contracts shall be those filing requirements otherwise applicable under existing statutes and rules of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate. In addition, each insurer shall file with the Director a copy of each prospectus adopted by it for use in conjunction with the sale of any contract offered for sale in this state. (7-1-93)

014. CONTRACTS PROVIDING FOR VARIABLE BENEFITS.

01. Benefits Payable in Variable Amounts. Any variable contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurer in determining the dollar amount of such variable benefits. Any such contract, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will vary to reflect investment experience and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis. (7-1-93)

02. Illustrations. Illustrations of benefits payable under any variable contract providing benefits payable in variable amounts shall not include projections of past investment experience into the future or attempted predictions of future investment experience; provided that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of annuity payments. (7-1-93)

03. Payment of Periodic Stipulated Payments. No individual variable annuity contract calling for the payment of periodic stipulated payments shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or provisions which in the opinion of the Director are more favorable to the holders of such contracts: (7-1-93)

a. A provision that there shall be a period of grace of one month, but not less than thirty (30) days, within which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any such payment received during the period of grace shall be applied to produce the values under the contract arising therefrom; (7-1-93)

b. A provision that, at any time within one (1) year from the date of default in making periodic stipulated payments to the insurer during the life of the annuitant, unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as required by the contract, and payment or reinstatement of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover such overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom; (7-1-93)

c. A provision specifying the options available in the event of default in a periodic stipulated payment. Such options may include an option to surrender the contract for a cash value as determined by the contract, and shall include an option to receive a paid-up annuity if the contract is not surrendered for cash, the amount of such paid-up annuity being determined by applying the value of the contract at the annuity commencement date in accordance with the terms of the contract. (7-1-93)

04. Investment Increment Factor. Any individual variable annuity contract delivered or issued for delivery in this state shall stipulate the investment increment factor to be used in computing the dollar amount of variable benefits or other contractual payments or values thereunder, and may guarantee that expense and/or mortality results shall not adversely affect such dollar amounts. If not guaranteed, the expense and mortality factors shall also be stipulated in the contract. In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable contract: (7-1-93)

a. The annual net investment increment assumption shall not exceed five percent (5%), except with the approval of the Director. (7-1-93)

b. To the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, Ultimate, or any modification of that table not

having a higher mortality rate at any age, or, if approved by the Director, from another table. (7-1-93)

- c. "Expense," as used in this subsection, may exclude some or all taxes, as stipulated in the contract. (7-1-93)

05. Payment on Death. Variable annuity contracts may include as an incidental benefit provision for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at time of death. Any such provision shall not be subject to the provisions of the insurance law governing life insurance contracts. A provision for any other benefit on death during the deferred period shall be subject to such insurance law provisions. (7-1-93)

06. Reserve Liability. The reserve liability for variable contracts shall be established pursuant to the requirements of the standard valuation law in accordance with actuarial procedures that recognize the variable nature of the benefits provided, and any mortality guarantees. (7-1-93)

015. REQUIRED REPORTS.

01. Statement Reporting the Investments. Any insurer issuing individual variable contracts providing benefits in variable amounts shall mail to the contract holder at least once in each contract year after the first at his last address known to the company, a statement or statements reporting the investments held in the separate account and, in the case of contracts under which payments have not yet commenced, a statement reporting as of a date not more than four (4) months previous to the date of mailing, (a) the number of accumulation units credited to such contracts and the dollar value of a unit, or (b) the value of the contract holder's account. (7-1-93)

02. Statement of Business to Director. The insurer shall submit annually to the Insurance Director a statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners. (7-1-93)

016. FOREIGN INSURERS.

If the law or rule in the place of domicile of a foreign insurer provides a degree of protection to the policyholders and the public which is substantially equal to that provided by these rules, the Director, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or rule as compliance with these rules. (7-1-93)

017. EXAMINATIONS OF AGENTS AND OTHER PERSONS.

01. Variable Contract Agent License. No agent shall be eligible to sell or offer for sale a variable contract unless prior to making any solicitation or sale of such a contract, he also be licensed as a variable contract agent. Any agent who participates only in the sale or offering for sale of variable contracts that are not registered under the Federal Securities Act of 1933 need not be licensed as a variable contract agent. (7-1-93)

02. Application. Any agent applying for a license as a variable contract agent shall do so by filing with this Department an application in such form as the Director shall prescribe. (7-1-93)

03. Examination Requests. The licensing as a variable contract agent of any agent complying with Subsection 017.02 shall not become effective until such agent shall have satisfactorily passed a written examination upon securities and variable contracts. Such examination shall be divided into two parts. Part I shall be on securities generally. Part II shall deal with variable contracts, and shall be composed of at least fifteen (15) questions, but not more than fifty (50) questions, concerning the history, purpose, rule, and sale of contracts on a variable basis. Each part of the examination will be graded separately and a grade of seventy percent (70%) on each will be considered passing for applicants who are officers, general agents, branch managers, or other supervisory personnel. As a basis for any exemption claimed by the applicant from the Part I examination requirement, the company will submit to the Director a photocopy of the results of the examination completed. As a basis for any exemption claimed by the applicant from the Part II examination requirement, the applicant will submit to the Director a letter of clearance and/or certification from his domiciliary state stating that he has successfully completed the National Association of Insurance Commissioners Part II examination, the grade attained, and his classification. These items must be attached to the application for license as a variable contract agent. (7-1-93)

04. Date and Place of Examination. The examination will be given in such places and at such times as the Director shall from time to time designate. Upon application for license as a variable contract agent, the applicant shall be notified of the date of the next examination. (7-1-93)

05. NAIC Examination. The examination recommended for the testing of variable contract agents by the National Association of Insurance Commissioners (NAIC) is hereby adopted for use in this state in its present form, or as it may be amended, and it shall be used in all tests given pursuant to this rule. (7-1-93)

06. NAIC Examination Part I. Any applicant for license as a variable contract agent shall not be required to take Part I of the National Association of Insurance Commissioners examination if, at the time of application, evidence is presented that the applicant (a) has previously passed a satisfactory alternative examination as defined in Subsection 004.04 of these rules, or (b) is currently registered with the Federal Securities and Exchange Commission as a broker-dealer, or is currently associated with a broker-dealer and has met qualification requirements with respect to such association. (7-1-93)

07. NAIC Examination Part II. Every applicant applying for a license as a variable contract agent shall satisfactorily complete Part II of the examination required by Subsection 017.03 or shall present evidence of successful completion of a variable contract examination given under the supervision of an insurance department of any state or territory of the United States which has adopted Part II of the examination recommended for the testing of variable contract agents by the National Association of Insurance Commissioners. (7-1-93)

08. Failure. Any applicant who fails to pass Part I or II of the examination required by Subsection 017.03 may not take Part I or Part II of the examination again until thirty (30) days after initially taking it. After a second such failure, such applicant may not take the examination again until one hundred eighty (180) days after taking the second examination. (7-1-93)

09. Fee. Every application for a license as a variable contract agent shall be accompanied by an application fee of twenty dollars (\$20). A fee of twenty dollars (\$20) will be charged for each re-examination administered to an applicant. (7-1-93)

10. Results. Report of the results of any examination given pursuant to this rule shall be made by the Department. (7-1-93)

11. Applicability of Life Insurance Agent License. Except as modified by these rules the rules of this Department governing the licensing of life insurance agents including examinations therefor shall apply hereto. (7-1-93)

12. Examination of Others. Part I of the written examination provided for in Subsection 017.03 shall also be administered to other persons who are not required to be licensed to sell life insurance in this state upon their submission of the proper application and payment of the application fee. (7-1-93)

13. Results Reported to SEC. Results of the examination administered pursuant to Subsection 017.03 will be reported by this Department to the Securities and Exchange Commission (SEC) (as to Part I). In addition, examination results will be reported by this Department to any other State Insurance Department requesting confirmation of the examination grade, either upon request of such Department or upon request of the applicant or the insurer represented by him. (7-1-93)

14. Retention of Grades. Records of the examination grade of each applicant upon an examination administered by this Department, or upon an examination deemed to be a satisfactory alternative examination and administered by another agency or authority and reported to this Department, will be retained in the file pertaining to said applicant. (7-1-93)

15. Grounds for Revocation of License. Any person licensed in this state as a variable contract agent shall immediately report to the Director (a) any suspension or revocation of his variable contract agent's license or life insurance agent's license in any other state or territory of the United States; (b) the imposition of any disciplinary sanction (including suspension or expulsion from membership, suspension or revocation of or denial of registration) imposed upon him by any national securities exchange, or national securities association, of any Federal, or state or

territorial agency with jurisdiction over securities or contracts on a variable basis; (c) any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or rule. Failure to so report any such action within ten (10) days of the date thereof shall constitute adequate grounds for revocation of the license issued hereunder. (7-1-93)

16. Rejection of New Application, Suspensions, Revocation, Refusal to Renew License. The Director may reject any application or suspend or revoke or refuse to renew any variable contract agent's license upon any ground that would bar such applicant or such agent from being licensed to sell life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of a life insurance agent's license shall also govern any proceeding for suspension or revocation of a variable contract agent's license. (7-1-93)

17. License Renewal. A variable contract agent's license shall continue in force in the same manner as other agents' licenses and be subject to the same appointment requirements. (7-1-93)

018. SALES PRACTICES.

01. Sales Practice Requirements. Except as modified by these rules all variable contract agents shall be subject to the same requirements of law and subject to the same rules with respect to sales practices as life insurance agents. (7-1-93)

02. Ascertainment of Facts. In connection with the sale of variable contracts to individuals (as distinguished from group policies) each insurer shall require its agents to make a reasonable effort to ascertain facts from each individual prospect concerning the prospect's age, family responsibilities, estimated income, estimated worth, and such other facts as are relevant to demonstrate the suitability of a variable contract as an investment by the individual concerned. In the event that any part of the purchase price of the variable contract is to be financed directly or indirectly through surrender for cash value or borrowing against loan values of any existing insurance policy, this fact shall be reported in accordance with existing rules of the Department. (7-1-93)

019. SEVERABILITY. If any provision of this Rule shall be held invalid, the remainder of the Rule shall not be affected thereby. (7-1-93)

020. -- 999. (RESERVED).

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