

11 NCAC 12 .0435 QUALIFICATION OF INSURER TO ISSUE VARIABLE LIFE INSURANCE

The following requirements are applicable to all insurers either seeking authority to issue variable life insurance in this state or which have authority to issue variable life insurance in this state:

- (1) Licensing and Approval to do Business in This State. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless:
 - (a) The insurer is licensed or organized to do a life insurance business in this state;
 - (b) Either:
 - (i) The state of domicile of such insurer requires that permissible investments be substantially the same as provided in .0438(c) of this Section and that changes in the investment policy of the variable life insurance separate account be regulated in a manner substantially similar to that required under .0438 of this Section for such separate accounts operated by insurers domiciled in this state; or
 - (ii) The insurer's investment policy, as described in the statement required to be filed under (2)(c) of this Rule conforms to .0438(c) of this Section, and the commissioner is satisfied that the procedures for changing the investment policy of a variable life insurance separate account, as described in the statement required to be filed under (2)(c) of this Rule, provide safeguards consistent with those provided under .0438(f) of this Section;
 - (c) The insurer has obtained the written approval of the commissioner for the issuance of variable life insurance policies in this state. The commissioner shall grant such written approval only after he has found that:
 - (i) The plan of operation for the issuance of variable life insurance policies is not unsound;
 - (ii) The general character, reputation, and experience of the management and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer are such as to reasonably assure competent operation of the variable life insurance business of the insurer in this state; and
 - (iii) The present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such policies is not likely to render its operation hazardous to the public or its policyholders in this state. The commissioner shall consider, among other things:
 - (A) the history of operation and financial condition of the insurer;
 - (B) the qualification, fitness, character, responsibility, reputation, and experience of the officers and directors and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer;
 - (C) the applicable law and regulations under which the insurer is authorized in its state of domicile to issue variable life insurance policies; The state of entry of an alien insurer shall be deemed its state of domicile for this purpose; and
 - (D) if the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meet these standards.
- (2) Filing for Approval to do Business in This State. Before any insurer shall deliver or issue for delivery any variable life insurance policy in this state, it must file with this department the following information for the consideration of the commissioner in making the determination required by (1)(c) of this Rule:
 - (a) copies of and a general description of the variable life insurance policies it intends to issue;
 - (b) a general description of the methods of operation of the variable life insurance business of the insurer, including the names of those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer;
 - (c) with respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the insurer intends to follow for the investment of the assets held in such separate account, and a statement of the procedures

- for changing such investment policy; The statement of investment policy shall include a description of the investment objective and orientation intended for the separate account;
 - (d) a description of any investment advisory services contemplated as required by .0438(10) of this Section;
 - (e) if requested by the commissioner, a copy of the statutes and regulations of the state of domicile of the insurer under which it is authorized to issue variable life insurance policies; and
 - (f) if requested by the commissioner, biographical data with respect to officers and directors of the insurer on the National Association of Insurance Commissioners Uniform Biographical Data Form.
- (3) Standards of Suitability. Every insurer seeking approval to enter into the variable life insurance business in this state shall adopt by formal action of its board of directors and file with the commissioner a written statement specifying the standards of suitability to be used by the insurer and applicable to its officers, directors, employees, affiliates, and agents with respect to the suitability of variable life insurance for the applicant. Such standards of suitability shall be binding on the insurer and those to whom it refers, and shall specify that no recommendation shall be made to an applicant to purchase a variable life insurance policy and that no variable life insurance policy shall be issued in the absence of reasonable grounds to believe that the purchase of such policy is not unsuitable for such applicant on the basis of information furnished after reasonable inquiry of such applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or to the agent making the recommendation. Lapse rates for variable life insurance within the first two policy years which are significantly higher than both those encountered by the insurer or an affiliate thereof for corresponding fixed benefit life insurance policies and lapse rates of other insurers issuing variable life insurance policies shall be considered by the commissioner in determining whether the guidelines adopted by the insurer are reasonable and also whether the insurer and its agents are engaging, as a general business practice, in the sale of variable life insurance to persons for whom it is unsuitable. For purposes of this Subsection, conversions from variable life insurance policies pursuant to this Regulation shall not be considered lapses.
- (4) Use of Sales Materials. An insurer authorized to transact variable life insurance business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable life insurance business in those states which is false, misleading, deceptive, or inaccurate.
- (5) Requirements Applicable to Contractual Services
 - (a) Any contract between an insurer and suppliers of consulting, investment, administrative, sales, marketing, custodial, or other services which are material with respect to variable life operations shall be in writing and provide that the supplier of such services shall furnish the commissioner with any information or reports in connection with such services which the commissioner may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with these regulations and any other applicable law or regulations.
 - (b) Such contract shall be fair and equitable to all parties and not endanger any policyholders of the insurer in this state.
 - (c) Such contract shall not relieve the insurer from any responsibilities or obligations imposed upon the operations of its variable life insurance business by this Regulation or any other law or regulation.
- (6) Reports to the Commissioner. Any insurer authorized to transact the business of variable life insurance in this state shall submit to the commissioner, in addition to any other materials which may be required by this Regulation or any other applicable laws or regulations:
 - (a) An annual statement of the business of its variable life insurance separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners; and
 - (b) Prior to the use in this state any information furnished to applicants as provided for in .0439 of this Section; and
 - (c) Prior to the use in this state the form of any of the reports to policyholders as provided for in .0441 of this Section; and

- (d) Such additional information concerning its variable life insurance separate accounts as the commissioner shall deem necessary;
 - (e) Any material submitted to the commissioner shall be disapproved if it is found to be false, misleading, deceptive, or inaccurate in any material respect and, if previously distributed, the commissioner shall require the distribution of an amended report.
- (7) Authority of Commissioner to Disapprove. Any material required to be filed with the commissioner, or approved by him, shall be subject to disapproval if at any time it is found by him not to comply with the standards established by this Regulation.

*History Note: Authority G.S. 58-2-40(1); 58-7-95;
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