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STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of the Rule Relating to Actuarial Opinion and Memorandum

STATEMENT OF NEED AND REASONABLENESS OF PROPOSED RULES

STATEMENT OF AUTHORITY

Minnesota Statutes Section 61A.25, subdivisions 2a(a), 2a(h) and 2b(b) permit the Commissioner of Commerce to adopt rules to carry out the provisions of Chapter 61A governing the Actuarial Opinion and Memorandum. These rules are proposed pursuant to that authority and authority granted the Commissioner under Minnesota Statutes Sections 61A.25 and 45.023.

FACTS ESTABLISHING NEED AND REASONABLENESS

Adoption of the proposed Actuarial Opinion and Memorandum Rules is one of the final stages of an upgrading of insurance regulation which began in Minnesota several years ago with the combined Department-Insurance Industry Task Force on Solvency ("Task Force"). The enhancement of insurance regulation has been pursued on a national level by the National Association of Insurance Commissioners (NAIC) through its accreditation process. In both instances, the concern about the solvency of life and health insurance companies resulted in recommendations to improve the regulatory structure as well as the statutory investment and

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operational requirements for life and health insurance companies. Similar requirements, at least in Minnesota, have also been pursued in regard to property and casualty companies.

In Minnesota, the Task Force produced a report which required a number of statutory and other changes. At the same time, the NAIC developed a number of model laws and regulations, as well as other standards and criteria, which each state was required to adopt in order to be accredited. The accreditation process of the NAIC is intended to set minimum standards for each state's insurance department. Achieving these standards results in the department being accredited. Without accreditation, the examinations and reports on the financial condition of insurers, primarily of domestic insurance companies, performed by the department need not be given full faith and credit by the other states in which these companies are doing business. Accordingly, those states can conduct their own examinations of Minnesota domestic insurers. As these examinations are rather expensive and time consuming, duplication would impose a severe financial burden on domestic insurers of a non-accredited state. The insurers must pay the department's examination expense. Consequently, the Minnesota domestic insurance industry has fully supported the accreditation process.

The accreditation process, as well as the work of the Task Force, has performed a significant public service, because increased

regulation and better standards reduce the likelihood of insolvency and loss to policyholders. The insurance industry benefits by not having to pay, through the guaranty associations and similar means, the cost of insurance failures. The state gains through increased confidence in the insurance products being sold in Minnesota. In addition, by preventing insolvencies that involve domestic insurers, Minnesota maintains jobs and income for its residents.

The NAIC accreditation process and the Task Force's work were combined and codified into the 1991 Solvency Bill (Chapter 325 of the 1991 Session Laws). Under this bill, the legislature adopted all of the NAIC model acts not previously enacted in Minnesota, and brought previously adopted model acts into conformity with the current NAIC versions of those acts. In addition, the 1991 Solvency Bill granted the Department of Commerce other powers recommended by the Task Force and all authority believed to be necessary for the Department to receive NAIC accreditation. It was a full and unqualified endorsement of the process. The 1991 Solvency Bill passed unanimously in both houses with very vocal support, particularly concerning those portions of the law that would ensure public protection from future insurer insolvencies. Specific references were made by legislators to major insolvencies that received so much press coverage in the last year.

One of the model laws previously adopted in Minnesota which needed to be amended to conform with the new NAIC models was the Standard

Valuation Law, codified as Minnesota Statutes Chapter 61A.25. The Standard Valuation Law prescribes the minimum standards for reserves for the insurance and related contract liabilities of a life insurance company. Reserves are balance sheet liabilities which are calculated in accordance with the methods, tables and interest rates defined in the Act, and are maintained in order to ensure that a company has made the correct provision for meeting its contractual obligations (i.e., payments which will need to be made sometime in the future according to contractual terms). The company must hold assets in the amount of these reserves to ensure that the company's obligations can be met.

A number of substantial changes to the law were made by the 1991 legislature, specifically related to the new NAIC model requirements for actuarial opinions and memoranda. An actuarial opinion is a statement by a qualified actuary that the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws.In the event a company is not exempted from doing so, the actuarial opinion must now contain a statement by the same qualified actuary that the assets which are held by the company to support the reserves and related actuarial items are of the appropriate amount, type and structure to permit the timely payment of the future obligations, without detrimental effect to the company. Where the company is

not exempted from doing so, an actuarial memorandum describing this asset adequacy analysis is to be prepared by the actuary to support the actuarial opinion. Such a memorandum will contain a detailed description of the methods, assumptions and results which were used by the actuary in rendering the opinion.

As a result of the changes to Chapter 61A.25 in 1991, and to provide for the related model regulation, it became necessary to propose these Minnesota Rules Part 2711 to reflect the new requirements and, in some cases, the new terminology and styles of the amended Chapter 61A.25. Adoption of the proposed rules is necessary to complete the process of conformity with NAIC standards for accreditation. Failure to do so would jeopardize the accreditation of Minnesota and, as importantly, would leave Minnesota without regulations that are consistent with the current law. The purpose of the rules is to prescribe guidelines and standards to be followed by life insurance companies and fraternal benefit societies for statements of actuarial opinion and supporting memoranda submitted in accordance with Minnesota Statutes Section 61A.25, subdivisions 2a and 2b, and for the appointment of an appointed actuary. The proposed rules conform with national model regulations.

ANALYSIS

As more specifically stated in the following paragraphs, the proposed rules are necessary to provide guidelines and standards which are in compliance with recent changes in Minnesota Statutes Section 61A.25, and with the new NAIC model actuarial opinion and memorandum regulation. While some of the detail in the rules is covered in a very detailed fashion, such detail is crucial to clearly specify the requirements to comply with the standards of the American Academy of Actuaries, the national organization which is the single authority for all professional actuaries in matters relating to actuarial opinions.

PART 2711.0020 PURPOSE

This part identifies the purpose of the rules, namely, to prescribe instructions relative to the new provisions of the Standard Valuation Law covering actuarial opinions and memoranda, and appointed actuaries. The language is consistent with the NAIC model regulation in its application.

PART 2711.0030 APPLICATION AND SCOPE

Subpart 1. Generally. This subpart restates the statutory requirement that the rules apply to all life insurance companies and fraternal benefit societies doing business in the state, and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities, or accident

and health insurance business in the state. It also states in a summary fashion the general requirements for the filing of actuarial opinions and memoranda for companies which are not exempt from performing an asset adequacy analysis. Unless exempted by these rules, all companies must by statute include in their actuarial opinion a statement by a qualified actuary as to the required asset adequacy analysis.

Subpart 2. Opinions from exempt companies. This subpart discusses the Commissioner's authority to require an asset adequacy analysis from a company which would otherwise be exempt. This authority is provided only when, during the course of an examination, the examiner determines that the asset portfolio may not be adequate to satisfy the company's contractual obligations in accordance with the Standard Valuation Law, and advises the Commissioner that based upon the examiner's detailed financial analysis, an asset adequacy analysis is necessary. As will be discussed later, only small companies which exhibit convincing evidence of sound financial condition will be exempted from the asset adequacy analysis requirements of the Act.

PART 2711.0040 DEFINITIONS

Part 2711.0040 defines terms used in these rules. The definitions clarify the terms used in the body of the rules. All the definitions are identical to those in the NAIC model regulation.

PART 2711.0050 GENERAL REQUIREMENTS

Subpart 1. Submission of statement of actuarial opinion. The Act requires that an actuarial opinion be filed with the annual statement. As discussed in the "Facts Establishing Need and Reasonableness" section earlier in this Statement of Need and Reasonableness ("Statement"), the purpose of the actuarial opinion is to ensure that a qualified professional actuary has certified that the requirements of the Act have been carried out, namely, that there has been sound provision made by the company for meeting its contractual obligations.

Item A of this subpart specifies the requirements which must be complied with by companies filing opinions, based upon whether or not the company is exempt from providing an asset adequacy analysis.

Item B provides for a later filing date for companies which fail one of the exemption criteria, if that company had been exempt the prior year. Such relief is needed because of the time and expense involved in performing asset adequacy analyses for the first time. The later date is applicable only once, as companies are expected to develop or obtain the technology to perform asset adequacy analyses in a timely fashion, and thereby file the opinion with the annual statement. Because the company failing to meet the exemption criteria had been exempt in the prior year, there is little risk to the public from this delayed filing date. These

requirements are based upon the NAIC model regulation.

Item C restates the provisions of the Act which allow the Commissioner to accept the actuarial opinion of a foreign or alien company filed in another state if the Commissioner determines that the opinion meets the requirements applicable to domestic companies (in essence, this would apply if the other state had enacted both the changes to the model act and the new model regulation).

It is important to note that all of these general requirements, and the parts which follow, are in accordance with the national model regulation, in order to ensure economies of effort and cost, and to promote consistency and meaningful communication between the states which will ultimately adopt the model regulation. Adopting the model regulation in this instance is the most effective means to ensure this uniformity and efficiency in communication.

Subpart 2. Qualified Actuary. This subpart defines the requirements for a qualified actuary.

Item A requires the actuary to be a member in good standing of the American Academy of Actuaries. The American Academy of Actuaries is the professional organization which is responsible for, among other things, the professional conduct, the standards of practice, and the expressions of professional actuarial opinions as they relate to its member actuaries.

Item B requires that the actuary be qualified, through experience and training, under the standards of the American Academy of Actuaries to sign statements of actuarial opinion for life and health insurance company annual statements.

Item C requires that the actuary be familiar with the valuation requirements applicable to life and health insurance companies, which includes the Standard Valuation Law provisions. This is important to distinguish the experience required of the actuary as specifically relating to life and health insurance areas.

Item D is required because even though an actuary may apparently satisfy the requirements in items A through C above, there may be evidence that the actuary has violated the law or has not met the standards established for sound and reliable actuarial practices. Item D sets forth specific areas that could cause an actuary to fail to meet the definition of "qualified actuary." These standards are identical to those required in the NAIC model regulation and are necessary to ensure the integrity of actuarial opinions required under the enabling statute. It is important to note that before the commissioner can use any of the criteria listed under Item D to find that an actuary is "unqualified," appropriate notices and hearings must have been provided to the actuary, as may be required under the Administrative Procedures Act or other areas of applicable law. This protects the actuary's right to due process.

Item E excludes from the definition of "qualified actuary" any actuary who fails to notify the Commissioner if the commissioner of any other state has taken action as stated in item D of this subpart to disqualify the actuary. An actuary who fails to comply with Minnesota law to provide such disclosure is a risk to the integrity of the actuarial opinion system. Accordingly, it is necessary to keep such actuaries from rendering actuarial opinions under these rules.

Subpart 3. Appointed Actuary. The individual who is designated as appointed actuary by the company is central to the entire process of rendering the actuarial opinion. This is the actuary that the company appoints to perform the professional work required to render the opinion. It is this individual who is responsible for the opinion and, if applicable, the supporting memorandum describing the asset adequacy analysis which was performed. The rules outline the procedures which the company must follow relative to this important appointment.

Subpart 4. Standards for asset adequacy analysis. This subpart makes it clear that the actuary must follow the standards set by the Actuarial Standards Board. The Actuarial Standards Board is an independent entity within the American Academy of Actuaries, which, among other things, is charged to direct, manage, and identify the need for the development of standards of practice in all areas of actuarial science, and to determine, publish, review, eliminate,

etc., such standards.

In this regard items A and B require that the asset adequacy analysis required by these rules conform to the standards of the Actuarial Standards Board, and to the methods of analysis contained in those standards which are appropriate for the purpose of asset adequacy analysis. The Actuarial Standards Board is the authority for standards setting relative to cash flow testing, which is also referred to as adequacy analysis.

Subpart 5. Liabilities to be covered.

Item A identifies the reserves which are to be opined upon and where they are found in the annual statements filed by the company.

Item B provides for the reporting of additional reserves, over and above those calculated according to specified Act provisions, which the actuary determines are required based upon the results of an asset adequacy analysis.

Because this is a new requirement for the industry as a whole, item C allows for a three year phase-in period which will end December 31, 1994. This phase-in period is provided for the company to gradually (i.e., 1/3 per year) establish the additional reserves the actuary determines are necessary. This is needed to temper the impact on a company's surplus, and is in accordance with the model regulation. In other words, each state which adopts the

model regulation will allow the same three year period for this purpose, beginning with the year the regulation is effective in that state.

Item D provides for the release of additional reserves which the actuary determines are no longer necessary, but requires the disclosure of the released reserves, with the details being covered in the actuarial opinion. The rules state that the release of such reserves is not to be considered an adoption of a lower standard of valuation.

PART 2711.0060 REQUIRED OPINIONS

Subpart 1. General. This subpart restates the requirement specified in the Act for every company doing business in the state to submit the opinion of an appointed actuary.

Subpart 2. Company categories. This subpart defines four categories of companies, denoted as categories A, B, C and D, based upon the amount of admitted assets. The first three are considered small companies and have admitted assets not greater than $500 million. These definitions are needed so that small companies may determine whether or not they satisfy the exemption tests discussed in the next subpart.

Subpart 3. Exemption eligibility tests.

Based upon satisfying the provisions contained in items A and B,

companies in size categories A (admitted assets that do not exceed $20 million) and B (admitted assets that exceed $20 million but do not exceed $100 million), respectively, could be exempted from submitting an actuarial opinion based upon an asset adequacy analysis. The criteria for exemption are described in item C.

Item C specifies that an exemption is available only if the company satisfies stringent ratio requirements for capital and surplus and non-investment grade bonds, both of which vary by company size, and for reserves and liabilities for annuities and deposits. There is also a check for the company not being an NAIC first or second priority examination company in the last two years. These exemption eligibility tests, including the stipulated ratios, are consistent with the model regulation and generally allow those small companies with strong ratios (i.e., apparent evidence of sound financial condition) to avoid the effort and expense involved in performing the asset adequacy analysis. Because the criteria are rigorous, and due to the fact that there are new methods of auditing within the Department, there is little risk to the public from the exemption from an asset adequacy analysis which is available to these smaller companies.

Item D requires that smaller companies in size categories A or B which fail to meet the exemption tests must submit an actuarial opinion including an asset adequacy analysis.

Item E allows small companies in the largest category ($100-500 million in admitted assets), which have submitted an actuarial opinion based upon an asset adequacy analysis, but which meet the exemption criteria, to file such an opinion only once every three years as long as the exemption tests continue to be met.

Item F merely directs the company preparing an actuarial opinion to comply with the appropriate part of the rules, depending on the company's exemption status.

Subpart 4. Large companies. In this subpart companies with over $500 million in admitted assets are directed to file an actuarial opinion based upon an asset adequacy analysis. This size limit was chosen because companies larger than $500 million in assets not only can afford to, but should be required to perform an asset adequacy analysis, in order for the qualified actuary to render an opinion in accordance with the professional standards of the Actuarial Standards Board. Large companies are more likely to be diverse enough in their product offerings and investment portfolio, that such an analysis would be important for the actuary to prove that the company can meet its contractual obligations. Once again, this is consistent with the NAIC model regulation.

PART 2711.0070 STATEMENT OF ACTUARIAL OPINION NOT INCLUDING AN ASSET ADEQUACY ANALYSIS

In the prior part, small companies meeting certain ratio and other

requirements could be exempted from filing an actuarial opinion based upon an asset adequacy analysis. In these cases, where the companies are small enough and evidence financial soundness based upon ratios and not being a first or second priority company as described therein, so as not to present a great risk to the public, the qualified actuary must still file an opinion in accordance with the provisions of the Act. This part specifies the type of actuarial opinion which needs to be submitted by companies which do not perform an asset adequacy analysis, because they have satisfied the exemption requirements specified in part 2711.0060.

Subpart 1. General description. This subpart describes the contents of an actuarial opinion not including an asset adequacy analysis, including the identification of the appointed actuary, a paragraph stating that the company is exempt from filing an opinion based upon an asset adequacy analysis and that this opinion is rendered in accordance with part 2711.0070, scope paragraphs covering the subjects upon which the opinion is to be expressed and the appointed actuary's work, and an opinion paragraph as required by subdivision 2a of the Act.

Subpart 2. Recommended language. Subpart 2 contains recommended language for the opinion expressed under this part 2711.0070. An actuary rendering an opinion must use the recommended language to comply with the both the standards of the American Academy of Actuaries and the Actuarial Standards Board. In addition, failure

to use the recommended language could leave some doubt as to whether the actuary has performed all of the evaluations that the Act requires, and could bring the validity the actuary's opinion into question.

Item A includes recommended opening paragraphs for company actuaries and consulting actuaries.

Item B is required to correctly document that the opinion is not based upon an asset adequacy analysis.

Item C is needed to provide instruction to the appointed actuary in identifying the reserves to which the appointed actuary is expressing an opinion.

Items D and E contain recommended language so that the appointed actuary can properly describe whether or not reliance has been placed upon others with respect to the examination of the underlying records. In the instance where reliance has been placed upon another, item E directs the actuary to obtain a certification in the form specified in item J.

Item F contains the specific language which the appointed actuary should include in the opinion paragraph. While this language is in accordance with both the model regulation and the standards of the American Academy of Actuaries, it is also needed in these rules

to be certain the appointed actuary is in compliance with Minnesota Statutes Section 61A.25.

Item G provides recommended language to the appointed actuary who is rendering an opinion which is not based upon an asset adequacy analysis. Included is the language and the calculations which need to be complied with to document that the company is indeed exempt from submitting an actuarial opinion based upon an asset adequacy analysis. This is where the actuary must show that the ratios described in part 2711.0060 meet the exemption requirements, and also certify that, to the actuary's knowledge, the company is not a first or second priority company as described in the rule.

Item H specifies for the appointed actuary what language is to be included in the opinion, if there has been a change in the actuarial assumptions from those previously employed.

Item I describes what has to be done if the appointed actuary is unable to form an opinion, or if the opinion is adverse or qualified.

PART 2711.0080 STATEMENT OF ACTUARIAL OPINION BASED ON AN ASSET ADEQUACY ANALYSIS

Subpart 1. General description. This subpart contains the components of a statement of actuarial opinion which is based upon

an asset adequacy analysis. Many of the same required components are identified in the lettered items as for an opinion which is not so based, as described in part 2711.0070 above; however, there are important differences pertaining to the asset adequacy analysis with which the appointed actuary needs to comply. These include a delineation of the reserves and related items which have been analyzed for asset adequacy and the method of analysis, as well as those reserves and items which have not been so analyzed. Most importantly, the opinion will require the appointed actuary to render an opinion with respect to the adequacy of the supporting assets to mature the liabilities (i.e., meet the contractual obligations, as was described in the "Facts Establishing Need and Reasonableness" section of this Statement).

In item E the appointed actuary is also directed to add paragraphs if the opinion is qualified; if reserves of different products or lines have been aggregated for asset adequacy analysis; if there has been reliance upon other statement reserves such as the asset valuation reserve or the interest maintenance reserve; if there has been an inconsistency in the method of analysis or the basis of asset allocation; if additional reserves held as a result of a prior asset adequacy analysis are to be released; or if the appointed actuary chooses to add a description of the assumptions which form the basis of the opinion. Such a description would be added by the actuary if, in the actuary's professional opinion, it would be required for the opinion to be in full compliance with the

standards of the Actuarial Standards Board.

Subpart 2. Recommended language. This subpart expands upon the outline of the prior subpart, and describes for the appointed actuary the detailed requirements for an opinion covered by this part 2711.0080. Without this, the actuary would be uncertain of accurate compliance with the provisions of the Act relating to statements of actuarial opinion based upon an asset adequacy analysis.

Item A provides recommended opening paragraphs covering the appointed actuary's relationship to the company and qualifications to sign the opinion.

Item B contains recommended scope language, as well as a table format to detail all the reserves and liabilities which have been subjected to asset adequacy analysis, any additional reserves which are determined by the appointed actuary to be required as a result of such analysis, and other statement reserves which might have been relied upon.

Item C provides the required language for the appointed actuary to identify other experts which have been relied upon, with subpart 5 including the language which is to be followed by the expert in making the appropriate statement to be included in the opinion.

Items D and E cover the language requirements for the appointed actuary relative to the examination of the underlying asset and liability records. If the appointed actuary has relied upon the work of a third person or entity, the rules provide the form to indicate this, and prescribe that subpart 5 shall be complied with to make the appropriate statement to be included in the opinion.

Item F contains the specific language which is to be included in the opinion paragraph. While the language is in accordance with both the model regulation and the standards of the American Academy of Actuaries, it is needed in these rules to be certain the appointed actuary is in compliance with Minnesota Statutes Section 61A.25.

Subpart 3. Assumptions for new issues. When performing an asset adequacy analysis, the actuary is called upon to use professional judgment in making assumptions in accordance with the standards as prescribed by the Actuarial Standards Board. This subpart allows the appointed actuary to adopt different actuarial assumptions for new issues, claims or liabilities, without such adoption being termed a change in actuarial assumptions within the meaning of part 2711.0080. This is important because the recommended opinion language in this part includes statements as to the consistency of assumptions with those employed the prior year end, and requires disclosure of any inconsistencies. The use of different assumptions pursuant to this subpart is not considered a change

requiring disclosure.

Subpart 4. Adverse opinions. This subpart describes what has to be done if the appointed actuary is unable to form an opinion, or if the opinion is adverse or qualified. This would occur if, based upon the asset adequacy analysis, the actuary was unable to properly certify that the assets supporting the reserve were sufficient to mature the future contractual obligations of the company.

Subpart 5. Reliance on data furnished by other persons. This subpart specifies that the appointed actuary is to obtain a reliance statement in the form described in the subpart, if the actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of the policies in force, and/or asset-oriented information.

PART 2711.0090 DESCRIPTION OF ACTUARIAL MEMORANDUM INCLUDING AN ASSET ADEQUACY ANALYSIS

As described earlier in this Statement, an actuarial memorandum is prepared by the appointed actuary in support of an actuarial opinion based upon an asset adequacy analysis. Such a memorandum will contain the details of the methods, assumptions and results used by the actuary in rendering the opinion. As stated earlier the opinion is the actuary's certification as to the adequacy of

the assets supporting reserves to mature the future contractual obligations of the company (i.e., provide assurance that the company will be able to make future policyholder payments as they come due). Such a memorandum must be prepared in order for the actuary to be in compliance with the provisions of these rules and the professional standards of the Actuarial Standards Board.

Subpart 1. General. In accordance with the Act, item A of this subpart requires the appointed actuary to prepare a memorandum in support of an opinion rendered under part 2711.0080. It specifically allows the Commissioner to examine the memorandum, but not to retain it or consider it a record of the Department of Commerce, or to require its automatic filing. Once again pursuant to the model regulation, these provisions facilitate maintenance of the confidential, and proprietary nature of the company's memorandum. It is important to note that the rule is not creating a new confidentiality provision, but rather is present to encourage cooperation by companies for full disclosure, which will ultimately contribute to greater public protection.

Item B permits the appointed actuary to rely on other actuaries who prepare their own memoranda, as long as they are qualified according to part 2711.0050, subpart 2. This provision eliminates duplication of effort and may reduce costs to parties involved.

Item C permits the Commissioner to designate a qualified actuary to

review the opinion and prepare a supporting memorandum, if no memorandum exists, or if the Commissioner determines that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of these rules.

Item D is needed to specify the status and independence of the reviewing actuary and the disposition of the actuary's work papers, with specific attention to the confidentiality of the work papers.

Subpart 2. Details of the memorandum section documenting asset adequacy analysis. In order to demonstrate that the asset adequacy analysis has been performed in accordance with the standards of the Actuarial Standards Board referred to in part 2711.0050, subpart 4, and any additional standards under these rules, the memorandum must contain specific information. This subpart contains the components which the appointed actuary must include in the actuarial memorandum to be certain of compliance with these rules and the requirements of the Act. These components include detailed information on the reserves and assets; specifics on the basis of the analysis; how rigorous the analysis was for different blocks of business; what the criteria were for determining asset adequacy; the effects of certain factors such as taxes; and the summary of results and conclusions.

Subpart 3. Conformity to standards of practice. This subpart includes specific language with regard to the standards of practice as promulgated by the Actuarial Standards Board, which must be included in the memorandum. The statement described is required so that the actuary certifies that the appropriate standards have been followed.

PART 2711.0100 ADDITIONAL CONSIDERATIONS FOR ANALYSIS

Subpart 1. Aggregation. This subpart describes for the appointed actuary the asset aggregation alternatives which may be utilized in performing the asset adequacy analysis. Without the specified alternatives, the appointed actuary would be unable to most efficiently perform the analysis. This is because products or lines of business often have complementary characteristics which can lead to asset inadequacies in one area being offset by asset redundancies in another. Without this aggregation capability (and the choices allowed in the rules), the appointed actuary may be required to render an adverse opinion when in fact no asset inadequacy exists.

Subpart 2. Selection of assets for analysis. This subpart instructs the appointed actuary specifically with respect to the assets which can be analyzed. It requires that assets or portions of assets cannot be used for the analysis of more than one group of reserves, although it allows allocations of assets for that purpose. Except where assets supporting the interest maintenance

reserve and the asset valuation reserve are used as described in subpart 3, it requires that the annual statement value of the assets held in support of reserves be no greater than the annual statement value of the reserves which are subjected to the analysis. If the method of allocation of assets is not consistent from year to year, this subpart requires the appointed actuary to describe such inconsistency.

Subpart 3. Use of assets supporting interest maintenance reserve and asset valuation reserve. This subpart instructs the appointed actuary in the use of the assets supporting these reserves in the asset adequacy analysis. It provides for the mandatory use of the interest maintenance reserve assets, and the elective use of the assets supporting the asset valuation reserve if, in the professional opinion of the actuary, such utilization is appropriate. The actuary is required to disclose the amount and selection process for the assets so utilized, and this subpart describes how the actuary is to do so. As has been stated previously these rules conform to the model regulation.

Subpart 4. Required interest scenarios. This subpart requires the appointed actuary to follow the standards of the Actuarial Standards Board relative to performing an asset adequacy analysis. This subpart also specifies for the appointed actuary seven interest rate scenarios which must be used in the actuary's asset adequacy analysis. Specific instruction is provided for the

actuary with regard to low interest rates (to avoid the possibility of unduly small or even negative rates when decreasing interest rate scenarios are used), and how to determine the beginning yield curve of interest rates.

Subpart 5. Documentation. This subpart specifies a seven year retention period for the documentation of the appointed actuary's analysis. This retention period is in compliance with the NAIC model regulation.

SMALL BUSINESS CONSIDERATIONS

The Actuarial Opinion and Memorandum Rules are applicable only to life insurance companies and fraternal benefit societies authorized to do business or doing business in Minnesota. Given the solvency and capital requirements for such companies to do business in Minnesota, the Department does not believe that there is any way that the rules would be applicable to a small business as defined under Minnesota Statutes Section 14.115.

Accordingly, in considering matters raised under Minnesota Statutes Section 14.115 subd. 2, we determined that there was no need to establish less stringent compliance or reporting requirements for small businesses under item (a) as no small businesses would be subject to the rules. Even if they were, since the purpose of the rules is to protect the policyholders and the solvency of the

companies involved, less stringent compliance and reporting requirements would be at odds with the purposes and intent of the rules and enabling legislation.

As to item (b), there is no need to establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses, since no small businesses would be subject to the rules. Even if small businesses do exist that would be subject to the rules, relaxed deadlines would conflict with the overall purpose of the rules and the enabling statute to protect policyholders and the solvency of insurance companies.

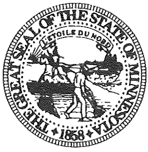
Item (c) concerning the consolidation or simplification of compliance or reporting requirements would not apply to the proposed rules since there would be no small businesses subject to the rules. Consolidation or simplification of the compliance and reporting standards, even if small businesses were subject to the rules, would critically impair the effectiveness of the rules to protect the public and require regulated entities to justify their financial positions via actuarial analysis and opinion.

As to item (d), since no small businesses would be subject to the rules, we need not establish performance standards specifically for small businesses to replace operational standards required by the rules. Uniform performance standards, as required by the rules, would be necessary even for small businesses to maintain protection

for policyholders and consumers from insolvent insurers.

Item (e) requires a consideration as to whether small businesses should be exempt from any or all requirements of the rules. Although we need not address this issue (because no small businesses will be affected by the rules), it is once again important to note that the purpose of the rules and the enabling statute would be thwarted if small businesses were exempt from these rules. Protection of the solvency of regulated entities through regulations such as the rules proposed here promotes public confidence and reduces the likelihood of policyholders losing coverage.

Finally, comment was solicited as part of the Notice of Intent to Adopt the Rules Without a Public Hearing regarding the impact the rules would have on small businesses. The Department received no comments on this issue.



'FFICE OF THE COMMISSIONER

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

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October 29, 1992

Legislative Commission to Review Administrative Rules
55 State Office Building
100 Constitution Avenue
St. Paul, MN 55155
ATTN: Michelle

Re: Proposed Rules Relating to Actuarial Opinion and Memorandum

Dear Michelle:

Pursuant to Minnesota Statutes Section §14.23 we enclosed a copy of the Statement of Need and Reasonableness for the proposed rules relating to Actuarial Opinion and Memorandum.

Should you have any questions about these rules, please call me at 297-1118.

Sincerely,

BERT J. McKASY
Commissioner of Commerce

By:

Donna M. Watz

Donna M. Watz
Staff Attorney

DMW:joc