Mr. Connor then emphasized that this potential was enhanced by the fact that the NAIC has supplied all the jurisdictions with an IBM personal computer which is configured to integrate with the NAIC data base in Kansas City. He noted that states now have the ability to purchase additional IBM personal computers through the NAIC for other network applications.

Upon further discussion, Nebraska and Virginia reported reluctance to share any information if it could not remain confidential. It was observed, however, that most states regarded the information as publicly accessible either under their Freedom of Information Act or otherwise. It was decided that the confidentiality issue would be addressed in greater depth at the subgroup's next meeting. However, it was recognized that even if individual states would not be able to share their data bases, the development of a uniform software program for utilization by the states would still be a very valuable tool.

Mr. Connor then reviewed other charges to the subgroup to "review the status of the market conduct examination process in all states." He noted that the state of Texas had requested that additional variables be added to the NAIC reporting form and these would be discussed and appropriate variables implemented at the group's next meeting. He also noted a request had been made by the state of Wisconsin regarding rules or guidelines to be established concerning the determination of which states have proper jurisdiction to handle certain types of complaints.

Having no further business the subgroup adjourned at 2 p.m.

****

ATTACHMENT TWO

STATEMENT ON BEHALF OF THE
AMERICAN COUNCIL OF LIFE INSURANCE
TO THE NAIC MARKET CONDUCT SURVEILLANCE (EX3) TASK FORCE
June 13, 1988

My name is Anthony T. Spano, actuary with the American Council of Life Insurance (ACLI). This statement is presented on behalf of the ACLI, whose 636 member companies account for close to 95% of the life insurance force in the United States.

At its December 1987 meeting, the NAIC adopted a set of amendments to the model life insurance advertising rules, one of which would require that all sales illustrations be based on the insurer's current scale. At the request of the ACLI, your Task Force agreed to give further consideration to this one provision at the June 1988 NAIC meeting. We thank you for responding to our request.

Since the December meeting, the ACLI committees have been discussing this issue extensively. At its June 1 meeting, the ACLI Board of Directors approved a proposal that we would now like to present to you for exposure, with the thought that final action could then be taken at your December 1988 meeting.

Our proposal involves a method known as the "range" approach. This approach would require that sales illustrations based on assumptions more favorable than the insurer's current scale be accompanied by illustrations based on correspondingly less favorable assumptions. Thus, a company crediting 8% interest and illustrating amounts based on 10% would also have to show illustrations based on 6%. Our proposal is in the form of an amendment to the NAIC model life insurance advertising rules, which is attached, and includes the following features:

1. The range approach would apply to both life insurance and annuity illustrations. This would be accomplished by amending Section 15, which applies to nonguaranteed policy elements generally, and Section 23, which contains special provisions for individual deferred annuity products and deposit funds.

2. Use of the approach would be elective, not compulsory. It would apply only where a company or agent wishes to illustrate amounts more favorable than those based on the company's current scale.

3. The approach would be available only with respect to interest rate assumptions. Mortality and expense assumptions more favorable than those based on the company's current scale would not be permitted.

4. Illustrated amounts may be based on interest rates up to two percentage points higher than the interest rates underlying the company's current scale. Any illustration based on such higher interest rates shall be accompanied by (i) a similar illustration based on the current scale and (ii) a similar illustration based on interest rates that are correspondingly lower than the current scale rates, except that in no event shall a company be required to illustrate amounts lower than the amounts based on the policy or contract guarantees. The different illustrations would have to be shown with equal prominence and in close proximity, and would have to be clearly labeled as to whether the amounts contained therein are greater than, equal to, or less than the corresponding amounts based on the company's current scale.

It will be noted from 3 and 4 above that our proposal would allow illustrations to exceed current scale illustrations only to the extent of permitting the use of an interest rate up to two percentage points higher than the company's current crediting rate, and then only if the company were also to present an illustration based on a correspondingly lower interest rate. The range approach would prohibit unreasonable projections, but at the same time would afford companies and agents some flexibility in preparing illustrations. This would help in attempting to maintain a level playing field between life insurance companies and other financial institutions, which are not burdened with restrictions in this regard. (For example, a range of different illustrations is required to be shown for variable life insurance products.) Let me now explain why we feel this flexibility will also serve to enhance the distribution of meaningful information to the life insurance consumer.

Use of the range approach would demonstrate to the insurance-buying public that illustrations are merely examples of how a product <u>may</u> perform rather than benchmarks of how it will perform. An undue focus on the company's current scale, which would result if illustrations were restricted to current scale, would be a disservice to the consumer in that it may create the impression that there is something magical or permanent about a company's current scale. This could lead the consumer to feel that current scale figures are tantamount to guarantees. In this connection, we would point out that the model advertising rules as amended last December prohibit not only illustrations more favorable than current scale, but also illustrations less favorable than current scale. The second sentence of Section 15(b) currently reads: "If nonguaranteed policy elements are illustrated, they must be based on the insurer's current scale…"

Availability of the range approach would encourage companies and agents to provide illustrations based on different assumptions. This would serve to demonstrate to the consumer the effect on future benefits of changes in assumptions. Also, illustrations based on other than the company's current scale can provide particularly useful and timely information if a change in experience is anticipated.

We would point out some additional advantages of the availability of the range approach as opposed to a limitation of illustrations to current scale:

- It is often difficult to define exactly what "current scale" is, since a company may, for example, have a different scale for current issued business as opposed to existing business.
- A current scale limitation would favor companies using a new-money interest crediting approach versus a portfolio approach when interest rates are rising; the opposite would be true when interest rates are declining.
- A current scale limitation would disadvantage companies that may be acting prudently by lowering current rates when interest rates decline.
- Current scale illustrations may not be realistic in certain situations, such as at the peak or trough of an interest rate cycle.
- Availability of the range approach might ease pressures on companies to produce aggressive current scale illustrations.

In concluding, we thank you again for agreeing to keep the dialogue open on this important issue. We respectfully ask your favorable consideration of our proposal and stand ready to work with your task force in any way that might be helpful.

****

PROPOSED AMENDMENT TO NAIC MODEL ADVERTISING RULES
(Lined out material to be deleted; underscored material to be added.)

15. <u>Nonguaranteed Policy Elements</u>

(a) An advertisement shall not utilize or describe nonguaranteed policy elements in a manner which is misleading or has the capacity or tendency to mislead.

(b) An advertisement shall not state or imply that the payment or amount of nonguaranteed policy elements is guaranteed. ~~If nonguaranteed policy elements are illustrated, they must be based on the insurer's current scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of amounts to be paid in the future.~~

(c) <u>If an</u> ~~An~~ advertisement ~~that~~ contains any illustrations based upon nonguaranteed policy elements<u>:</u>

<u>(1) The advertisement</u> shall set forth<u>,</u> with equal prominence <u>and in close proximity thereto,</u> comparable illustrations or statements containing or based upon the guaranteed elements.

<u>(2) Any illustrations containing or based upon nonguaranteed elements must contain a statement to the effect that they are not to be construed as guarantees or estimates of amounts to be paid in the future.</u>

<u>(3) Except as provided in (4) below, illustrations containing or based upon nonguaranteed elements shall not display amounts more favorable than those based on the insurer's current scale for nonguaranteed elements. The insurer's current scale shall be the scale that is in effect for the policy or contract being advertised, or which has been publicly declared by the insurer with an effective date for the policy or contract not more than three months subsequent to the date of declaration.</u>

<u>(4) Illustrated amounts may be based on interest rates up to two percentage points higher than the interest rates underlying the insurer's current scale. Any illustration based on such higher interest rates shall be</u>

accompanied, with equal prominence and in close proximity thereto, by (i) a similar illustration based on the insurer's current scale, and (ii) a similar illustration based on interest rates that are correspondingly lower than the interest rates underlying the insurer's current scale, except that in no event shall an insurer be required to illustrate amounts lower than amounts based on the policy or contract guarantees. (For example, if the interest rate underlying the insurer's current scale is 8 percent, the insurer may illustrate amounts based on an interest rate not exceeding 10 percent. A 10 percent illustration must be accompanied by an illustration based on the 8 percent current interest rate and by an illustration based on 6 percent, which is correspondingly lower than the 8 percent current rate as the 10 percent rate is higher than the 8 percent current rate.) All illustrations must be clearly labeled as to whether the amounts contained therein are greater than, equal to, or less than the corresponding amounts based on the insurer's current scale.

(d) If an advertisement refers to any nonguaranteed policy element, it shall indicate that the insurer reserves the right to change any such element at any time and for any reason. However, if an insurer has agreed to limit this right in any way, such as, for example, if it has agreed to change these elements only at certain intervals or only if there is a change in the insurer's current or anticipated experience, the advertisement may indicate any such limitation on the insurer's right.

(e) An advertisement shall not refer to dividends as "tax free" or use words of similar import, unless the tax treatment of dividends is fully explained and the nature of the dividend as a return of premium is indicated clearly.

23. For individual deferred annuity products or deposit funds, the following shall apply:

A. ~~Any illustrations or statements containing or based upon interest rates higher than the guaranteed accumulation interest rates shall likewise set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed accumulation interest rates. Such higher interest rates shall not be greater than those currently being credited by the company unless such higher rates have been publicly declared by the company with an effective date for new issues not more than three months subsequent to the date of declaration;~~ If an advertisement includes any illustrations or statements containing or based upon nonguaranteed elements:

(1) The advertisement shall set forth, with equal prominence and in close proximity thereto, comparable illustrations or statements containing or based upon the guaranteed elements.

(2) Any illustrations containing or based upon nonguaranteed elements must contain a statement to the effect that they are not to be construed as guarantees or estimates of amounts to be paid in the future.

(3) Except as provided in (4) below, illustrations containing or based upon nonguaranteed elements shall not display amounts more favorable than those based on the insurer's current scale for nonguaranteed elements. The insurer's current scale shall be the scale that is in effect for the policy or contract being advertised, or which has been publicly declared by the insurer with an effective date for the policy or contract not more than three months subsequent to the date of declaration.

(4) Illustrated amounts may be based on interest rates up to two percentage points higher than the interest rates underlying the insurer's current scale. Any illustration based on such higher interest rates shall be accompanied, with equal prominence and in close proximity thereto, by (i) a similar illustration based on the insurer's current scale, and (ii) a similar illustration based on interest rates that are correspondingly lower than the interest rates underlying the insurer's current scale, except that in no event shall an insurer be required to illustrate amounts lower than amounts based on the policy or contract guarantees. (For example, if the interest rate underlying the insurer's current scale is 8 percent, the insurer may illustrate amounts based on an interest rate not exceeding 10 percent. A 10 percent illustration must be accompanied by an illustration based on the 8 percent current interest rate and by an illustration based on 6 percent, which is correspondingly lower than the 8 percent current rate as the 10 percent rate is higher than the 8 percent current rate.) All illustrations must be clearly labeled as to whether the amounts contained therein are greater than, equal to, or less than the corresponding amounts based on the insurer's current scale.

B. If an advertisement states the net premium accumulation interest rate, whether guaranteed or not, it shall also disclose in close proximity thereto and with equal prominence, the actual relationship between the gross and the net premiums~~;~~.

C. If any contract does not provide a cash surrender benefit prior to commencement of payment of any annuity benefits, any illustrations or statements concerning such contract shall prominently state that cash surrender benefits are not provided.

****