VARIABLE LIFE INSURANCE MODEL REGULATION

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Section 1. Authority

The following regulations applicable to variable life insurance policies are promulgated under the authority of Section [insert applicable section] of the Insurance Laws of [insert state], and are effective [insert date].

Section 2. Definitions

As used in this regulation:

A. "Affiliate" of an insurer means a person, directly or indirectly, controlling, controlled by, or under common control with the insurer; a person who regularly furnishes investment advice to the insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner or employee of the insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of such person.

B. "Agent" means a person, corporation, partnership or other legal entity that is licensed by this state as a life insurance agent.

C. "Assumed investment rate" means the rate of investment return that would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

D. "Benefit base" means the amount to which the net investment return is applied.

E. "Commissioner" means the insurance commissioner of this state.

Editor's Note: Insert the title of the chief insurance regulatory official whenever the term "commissioner" appears.

F. "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or csr of an nee722.34 Tm()sr0.8 (e)-43

(iv) 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, meets these standards.

B. Filing for Approval to do Business in This State. The commissioner may, at his discretion, require that an insurer, before it delivers or issues for delivery any variable life insurance policy in this state, file with the department the following information for the consideration of the commfa (i)3.3 (s)-1.ppo24i-1.6 (e)0.5 (f)-1. (h)-c8 (w)1o tstnf1.9 (hina1.7 45 (c)2.2 (r)-0(is)-2.4 (s (be)0.7 (f)-1

D. Use of Sales Materials. An insurer authorized to transact variable life insurance business in this
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(b) For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay such charges in accordance with the terms of the policy. The grace period shall end on a date not less than sixty-one (61) days after the mailing date of the Report to Policyholders required by Section 9C.

(c) The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three (3) times the charges that were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day.

(3) For scheduled premium policies, a provision that the policy will be reinstated at any time within two (2) years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

(a) All overdue premiums with interest at a rate not exceeding [insert number]y fa

(10) Amounts paid to the policyholders upon the exercise of any policy loan provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the amounts for policy loanept

B. Reserve Liabilities for the Guaranteed Minimum Death Benefit. Reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall not be less than the greater of the following minimum reserves:

(1) The aggregate total of the term costs, if any, covering a period of one full year from the valuation date or, if less, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account, on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets in the separate account followed by a net investment return equal to the assumed investment rate; or

(2) The aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue," as described in Subparagraph (a) below, of the prior year's "attained age level" reserve on the contract, with any such "residue," increased or decreased by a payment computed on an attained age basis as described in Subparagraph (b) below.

(a) The "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to the prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of a guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

(b) The payment referred to in this paragraph shall be computed so that the present value of a level payment of that amount each year over the future period for which charges for this risk will be collected under the contract, is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in Subparagraph (a), of the prior year's "attained age level" reserve on such variable life insurance contract. If no future charges for this risk will be collected under the contract, the payment shall equal (A) minus (B) minus (C). The amounts of the future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate or the valuation interest but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

(3) The valuation interest rate and mortality table used in computing the two minimum reserves described in Paragraph (1) and (2) of this subsection shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserves, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

C. Incidental Insurance Benefit. Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits shallbe maintained in the general account and reserve liabilities for all variable aspects of the variable incidental insurance benefits shall be maintained in a separate account, in amounts determined in accordance with

B. Amounts in the Separate Account. The insurer shall maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for these policies.

C. Investments by the Separate Account.

(1) No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(a) In case of transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the policies with respect to the separate account to which the transfer is made; and

(b) The transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the commissioner in advance.

(2) The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account.

D. Limitations on Ownership.

(1) A separate account shall not purchase or otherwise acquire the securities of an issuer,

E. Valuation of Separate Account Assets. Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

F. Separate Account Investment Policy. The investment policy of a separate account operated by a domestic insurer filed under Section 3B(3) shall not be changed without first filing the change with the insurance commissioner.

(1) Any change filed pursuant to this section shall be effective sixty (60) days after the date it was filed with the commissioner, unless the commissioner notifies the insurer before the end of the sixty-day period of his or her disapproval of the proposed change. At any time the commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this section.

(2) The commissioner may disapprove the change if he or she determines that the change would be detrimental to the interests of the policyholders participating in the separate accounts.

G. Charges Against Separate Account. The insurer shall disclose in writing, prior to or

I. Conflicts of Interest. Rules under any provision of the insurance laws of this state or any regulation 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 or other similar body.

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Section 11. Qualifications Of Agents For The Sale Of Variable Life Insurance

A. Qualification to Sell Variable Life Insurance

(1) A person shall not sell or offer for sale in this state any variable life insurance policy unless the person is an agent and has filed with the commissioner, in a form satisfactory to the commissioner, evidence that the person holds a license or authorization that may be required for the solicitation or sale of variable life insurance.

(2) An examination administered by the Department for the purpose of determining the eligibility of a person for licensing as an agent shall, after the effective date of this regulation, include questions concerning the history, purpose, regulation and sale of variable life insurance as the commissioner deems appropriate.

B. Reports of Disciplinary Actions. A person qualified in this state under this Act to sell or offer to sell variable life insurance shall immediately report to the commissioner:

(1) Any suspension or revocation of the agent's license in any other state or territory of the United States;

(2) The imposition of any disciplinary sanction, including suspension or expulsion from membership, suspension or revocation of or denial of registration, imposed upon him or her by any national securities exchange, or national securities association, or any federal, state or territorial agency with jurisdiction over securities or variable life insurance; and

(3) Any judgment or injunction entered against him or her on the basis of conduct deemed to have involved fraud, deceit, misrepresentation or violation of any insurance or securities law or regulation.

C. Refusal to Qualify Agent to Sell Variable Life Insurance: Suspension, Revocation, or Nonrenewal of Qualification. The commissioner may reject an application or suspend or revoke or refuse to renew an agent's qualification under this Act to sell or offer to sell variable life insurance upon any ground that would bar the applicant or agent from being licensed to sell other life insurance contracts in this state. The rules governing a proceeding relating to the suspension or revocation of an agent's license shall also govern a proceeding for suspension or revocation of an agent's qualification to sell or offer to sell variable life insurance.

Subsection M. Person

Source: NAIC Model Holding Company Act Section IF 1969 *Proceedings of the NAIC* II 740.

Comment: This section was intended to include all forms of business enterprise no matter what their organization. It includes affiliates, and if applicable, governmental entities. An insurer's separate account by itself could not be a person (see comment to Section 2A).

Subsection N. Policy Processing Day

Comment: The definition of policy processing day was added by the 1983 amendments. As explained more fully in the discussion of Sections 4 and 9, the policy processing day plays a central role in triggering the grace period for flexible premium variable life insurance policies and in measuring the length of the grace period once it is so activated (see Section 4D(2)(b) and Section 9C).

Subsection O. Scheduled Premium Policy

The definition of a scheduled premium policy was added by the 1983 amendments to the model regulation. It is intended to establish the perimeters of contemporary traditional variable life insurance policies. Specifically, a variable life insurance policy is classified as a scheduled premium policy if the insurer has established (or fixed) both the amount of required premium payments and the times at which they are to be paid. Typically, under a scheduled premium policy, if a premium is not paid in accordance with the schedule that has been fixed by the insurer, and if the non-payment of premium is not remedied within the applicable grace period, the policy lapses, triggering the operation of nonforfeiture options.

It should be noted that a policy would not necessarily be classified as a scheduled premium policy simply because the specifications page might set forth a planned premium (a concept characteristic of current universal life insurance policies). This is because the planned premium, in most cases, is set by the insured, not the insurer.

Subsection P. Separate Account

Comment: See comments to Section 2G. The blank space in this section should be completed with the section of the Variable Contract Law authorizing separate accounts. The reference to the law of the promulgating state authorizing the establishment of a separate account should be interpreted as including the equivalent in the insurer's state of domicile. Prior to the 1983 amendments, this definition limited separate accounts to those established for variable life insurance. In 1983, the limiting phrase for variable life insurance was deleted to dispel the inference, present by implication in the prior definition, that a separate account may be established solely for variable life insurance, and to afford insurers the flexibility to utilize the same separate account to fund a variety of products, e.g., both variable life insurance and variable annuities. T 0.07 Tw f th tble feenet.9 (c)-2(s)

i. **Capital and surplus requirements.** All states presently have capital and surplus requirements for admission of foreign life insurers. The Subcommittee found no persuasive reason why higher capital and surplus requirements should be necessary for authority to write variable life insurance so long as the present standards adequately measure the stability of the company. Of course, the insurer, regardless of minimum capital and surplus requirements, must still demonstrate to the commissioner's satisfaction that its plan of operation is not unsound (see Section 3A(2)(a)). The Subcommittee also recommended that each state reexamine its capital and surplus requirements to assure their adequacy for variable life insurance operations. Until more experience is obtained, it appears advisable that each company either has a minimum earned surplus, or, in the alternative, is willing to submit to close monitoring by the insurance department as to premiums written, investments and operating costs. To some extent, the earned surplus requirement may discourage entry of new firms into the variable life market. However, the monitoring approach offers an alternative. Any special reporting requirements might be lifted once the department is confident of its regulatory system as it relates to variable life and the condition of a particular company indicates that such a move is responsible.

ii. **Repeated violation of insurance laws**. There are many insurance laws and department regulations covering life insurance marketing. These laws and regulations, to the extent they are applicable and not inconsistent with the model variable life insurance regulation, will, of course, apply to variable life insurance. It can be anticipated that of the regulatory problems with i

There is no uniform consensus on what constitutes a plan of operation. A presentation to the commissioner pursuant to this section, however, should include a comprehensive examination of the reasonably expected impact of the insurer's proposed variable life insurance operations on the insurer, its policyholders within the state, and the general public. At a minimum it would seem to require a description of expected policy designs, the financial impact (including the impact on surplus), the insurer's proposed standards of sui policyholders of the insurer and not just variable life insurance policyholders.

Paragraph (2)(c)(i) is self-explanatory and relates to the previous discussion concerning seasoning, chronic insurance law violation, capital and surplus requirements and the willingness of the insurer to be subject to close insurance department monitoring.

While Paragraph (2)(c)(ii) may appear to repeat requirements contained in Paragraph (2)(b) of th (n)-0.6496 (2 ())-4 .5

New York Stock Exchange Rule 405 and American Stock Exchange Rule 411 place suitability limitations upon the members of those exchanges. The SEC has adopted Rule 15b 10-

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It should be noted that Section 8C requires that variable life insurance applications contain questions designed to elicit suitability information from applicants.

Subsection D. Use of Sales Materials

Comment: This subsection requires that the insurer may not use false, misleading, deceptive or inaccurate sales materials, advertising materials or descriptive literature.

The primary purpose of the section is to prevent the use of sales materials that will intentionally or unintentionally mislead the public as to what they are purchasing and how much it is costing them. It is within this context that the determination of what is "false, misleading, deceptive, or inaccurate" must be made. The section was intended to reach any material that is designed for ultimate presentation to a prospective purchaser in attempting to convince him to purchase variable life insurance. The comments to this section prior to the 1983 amendments indicate that the NAIC was concerned with reconciling SEC and NAIC policies with regard to advertising and sales materials. Therefore, this section required that all variable life insurance advertising and agent training materials be submitted to the commissioner. This was considered an interim measure only and was not intended to modify the commissioner's authority to regulate the dissemination of sales materials in the state.

At the time of the 1983 amendments, it was determined that mandatory filing of sales materials imposed an unnecessary burden on insurance departments. There was concern that approval of sales materials might be implied if materials were filed and the commissioner failed to act to prevent their use. Also, insurance departments wished to avoid the unnecessary cost and inconvenience of retention and storage of filed sales material.

Because the commissioner has the authority under state law to obtain all sales materials upon request (see, e.g., NAIC Rules Governing the Advertising of Life Insurance), it was determined that incorporation of that authority into this regulation would be adequate to permit the insurance department to police variable life insurance advertising.

The use of false or misleading sales material could give rise to the full extent of powers at the disposal of the commissioner. These would range from license revocations (for both the insurer and agents), fines and cease and desist orders, to informal disciplinary sanctions.

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The word material was inserted so that functions that were not relevant to the welfare of the policyholders or the public were not required to be covered by this subsection. Naturally, the question of materiality must ultimately be answered by the commissioner. However, the contracts referred to in this subsection were not intended to include traditional agency compensation agreements and normal reinsurance treaties.

Service company operations are a significant part of the insurer's plan of operation (Section 6A(2)(a)). Therefore, the insurer is under an obligation to notify the commissioner of any change. The commissioner was felt to possess the inherent power to terminate a service contract which he or she felt to be hazardous to the public or the insurer's policyholders.

It is impossible to speculate in the absence of actual facts as to what particular circumstances might give rise to control of an insurer by a service company. The Subcommittee intended that the commissioner should have flexibility in making this decision.

The performance of services in the absence of stock ownership would not by itself seem to constitute control, since this would not appear to give rise to the ability to direct the management of the insurer. That is, if a service

Depending on separate account investment experience, less frequent death benefit valuation can be advantageous or disadvantageous. Certainly benefits will not achieve a high level of dollar cost averaging. However, there is a possible advantage which might arise out of the certainty that for the next full valuation period (up to one year for death benefits) the entire risk of either adverse or favorable separate account performance is shifted to the insurer and benefits will be as stated on the last determination date. There may be a number of counterbalancing reasons why persons might not wish to purchase a policy in which death benefits were valued annually. The Committee, however, decided that prospective purchasers of variable life insurance should not be precluded from purchasing such policies as a matter of law.

Comment: Subsection C(6) requires cash values (nonforfeiture benefits) to be determined at least monthly.

Either the policy or a statement filed with the commissioner of the state in which the policy is to be delivered must describe the method of computation of such values. The method of computation is required to be in accordance with actuarial procedures that recognize the variable nature of the policy. It is expected that insurers will make every effort to describe the process in as simple a mannec(p)2.4 (2 (a)-5.)TjEM[0.001 Tp5 (m)40.6 le0.001 Tc 0.00

6G so that the specifically enumerated categories no longer limit permissible charges, but merely illustrate charges which must be disclosed in writing prior to or contemporaneously with delivery of the variable life insurance policy. Because Section 4 provisions were obsolete in view of the restructuring of Section 6, the Committee has deleted it.

Subsection D. Mandatory Policy Provisions

Source: Portions of Paragraph (1) are derived from the original Model Variable Contracts Regulation.

Comment: The primary purpose of this subsection is disclosure in order to assure that the policyholder is aware of the risks that both he and the insurer are assuming. This subsection requires that the mandated statements be prominently displayed on the cover page of the policy (see also Section 8).

Paragraphs (1)(a) and (1)(b) require that the cover page of the policy contain a prominent statement highlighting the variable nature of death benefits and cash values respectively. These paragraphs were revised in 1983 by deleting the requirement that these statements by set forth in type at least four points larger than the typesize used in the text of any provision on the page. The statements required by these paragraphs will be adequately distinguishable from the surrounding text since they must in any event be set forth either in contrasting color or boldface type.

The 1983 amendments also made several changes of an editorial nature in Subsection D(1). New matter was added in Paragraphs (1)(a) and (1)(c) to conform those paragraphs, respectively, to the amended definition of "variable life insurance policy" (Section 2S) and to the bifurcated approach to the minimum death benefit guarantee for scheduled premium and flexible premium policies (Section 4C(2) and Section 4D(2)(b)).

The "free look" provision incorporated in Paragraph (1)(e) was amended in two significant respects.

First, Paragraph (1)(e) as amended provides that the free-look right may be exercised only during the ten-day period following the policyholder's receipt of the policy; the 1983 amendment deleted the language in the model that provided, alternatively, that the policyholder could return the policy either within the foregoing 10-day period or within 45 days of the date of the execution of the application, whichever was later.

Second, the 1983 amendments changed the calculation of the amount that the insurer must refund upon return of the policy within the specified period. Specifically, to the extent permitted by state insurance law, the insurer is permitted to utilize a refund calculation similar to the method prevalent in computing free-look refunds for variable annuities. Thus, it is contemplated, in essence, that the amount to be refunded upon return of a variable life insurance policy during the prescribed 10-day period will equal the sum (determined as of the date on which the returned policy is received by the insurer or its agent) of (1) the amount designated as loading, plus (2) "value of the amounts allocated to any separate accounts under the policy," i.e., the cash value corresponding to the policy.

The 1983 amendments recognized that state insurance law may have to be amended to permit insurers to utilize the foregoing refund approach. Accordingly, Paragraph (1)(e) preserves the status quo—requiring the insurer to refund "the total of all premium payments for such policy"—until any necessary statutory amendments have been enacted.

The premise underlying the 1983 amendments to Paragraph (1)(e) was that the requirements of the former model were inequitable to insurers because their effect was to impose the entire investment risk on the insurer during the free-look period. By correlating the required refund to the value of the amounts allocated to the separate account, the 1983 amendments permit an insured to benefit from favorable investment performance during the free-look period. Conversely, the amount to be refunded will reflect the results of adverse investment performance during the prescribed period.

As already noted in discussing the minimum death benefit provisions, the 1983 amendments to the model regulation differentiate between the minimum death benefit that must be offered under scheduled premium and flexible premium policies. The required minimum death benefit for flexible premium variable life insurance is, in turn, closely intertwined with the grace period that must be afforded by such products. Paragraph (2) was accordingly amended in 1983 to achieve dual objectives: it demarcates the different grace periods and establishes the scope of the required minimum de

Subparagraph (a) is derived from the original Model Variable Contracts Regulation, Article IV, Section 2. It has the effect of insulating the assets underlying separate account liabilities.

Prior to 1983, Paragraph (b) required that a variable life insurance policy contain a provision stating that "the policy and any papers attached thereto by the insurer, including the application if attached" comprised the proper amounts payable under a policy will be difficult during periods when the stock exchanges are closed.

The phrase "except when used to pay premiums" is intended to apply to the payment of premiums under an automatic premium loan provision as permitted in Section 4F(4) and not to any other situation.

Prior to 1983, Paragraph (15) required that every variable life insurance policy contain settlement options that shall be provided on a fixed basis only. The 1983 amendments provide that at least one settlement option must be provided on a fixed basis, but permit the insurer to provide variable settlement options.

A review of the commentary accompanying the prior version of Paragraph (15) reveals that the restriction to fixed basis settlement options was intended to ensure that no one would attempt to impose dual regulation as a result of variable settlement options. The federal role in the regulation of variable life insurance has, however, eliminated the justification for this limitation. In this connection, it should be noted that, in a memorandum dated September 9, 1976, the NAIC Counsel specifically noted that "[c]ontinuance of this provision in the event of dual SEC-state regulation would be unnecessary, and in that event its deletion is recommended." "Proposed Changes to the NAIC Model Variable Life Insurance Regulation" (September 9, 1976)osw6 (l)--8.2 ()5-3.1 (e)2 (o)-3 (ST0.l)--

In 1983, the Committee added an exclusion for term insurance policies and pure endowment policies to the introductory language to Subsection E to make it clear that a policy loan provision is mandatory for all policy designs except term insurance and pure endowment policies. In addition, because of the unscheduled nature of premium payments characteristic of flexible premium products, it was felt that the previous introductory language which tied the availability of policy loans to payment of a specified number of full years' premiums was inapplicable. Accordingly, in 1983 this language was amended to provide that policy loans would be available after the policy has been in

Totally aside from the model regulation, any matter which might pertain to the insurer's ability to perform its obligations within a particular state is always subject to the scrutiny and regulation of the commissioner of that state. Thus, the commissioner of any state can always change his or her regulations or bar an insurer from doing

The term "material" as it is used in this subsection is designed to cover a person who is employed in a position which would enable misappropriation of funds. It was the Subcommittee's understanding at the time the model regulation was drafted that to consent to an injunction would be an acknowledgment of a violation and, therefore, approval would be required under this subsection. The prohibition of this subsection would not define a narrower class of persons that is covered under the Investment Company Act.

As previously discussed, since the operations of the separate account would generally be regulated only by the state of domicile, approval under this subsection would not necessarily have to be obtained in every jurisdiction in which a company proposed to sell variable life insurance. However, the provisions of Section 3A(2) would still be applicable.

Paragraph (3) refers to bonding requirements for persons with access to separate account assets. Since bonding is not uncommon in state insurance regulation, the Subcommittee determined to leave the particular amount to each particular state.

Paragraph (4) should be read in conjunction with Section 4C(5) and (6) as well as Section 4D(5)(b).

The model regulation allows annual death benefit determination and monthly cash value determination. However, each can be determined much more frequently (daily is a common variation). Allowing cash value determination which was less frequent than monthly combined with "backward" valuation (see comment to

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prospectus distributed prior to or at the same time as the policy. All charges must be disclosed in one document or the other. Consequently, a company may not selectively disclose a portion of the charges in the policy with the remainder appearing in the prospectus. A complete listing of all separate account charges must be disclosed in the policy or in the prospectus. It was determined that permissible charges against the separate account should not be limited to those specifically enumerated in order that future product design would not be unreasonably limited.

Paragraph (1) pertains to deductions from the separate account for taxes or reserves for taxes attributable to investment gains or income attributable to the separate account. This paragraph would require disclosure of such taxes or reserves.

Paragraph (2) requires disclosure of the actual cost of brokerage fees. The conflict of interest provisions of Article VI, Section 9, of Section 17 of the Investment Company Act of 1940 and the standards of conduct in Section 6H would be relevant to prevent the insurer or its affiliates from being unfairly benefited at the expense of the variable life insurance policyholders.

Paragraph (4) requires disclosure of charges against the separate account for administrative expenses and investment management expenses. It is important to note that the term “management” is much broader than the term “advisory” services which was intentionally not utilized. The expenses for investment management

It should be noted that a separate account is not a "person" and cannot contract with an investment adviser. Consistent with this philosophy, this subsection has no application to an insurer's internal investment management. Naturally, the remainder of the regulation including the standards of conduct and conflicts of interest provisions are applicable in the internal management situation (see also comment to Section 6G).

An investment advisory contract must be in writing. The adviser must be either a registered investment adviser under the Investment Advisers Act of 1940, or the insurer must file a statement in compliance with Paragraph (1)(c) of this subsection annually. This report, in effect, requires the adviser to adopt standards of conduct that are sufficient to satisfy Sc -0.002p8[(.)-0.8 ( )]TJ 3i12(u)0.5 (f)-1.1 (f)-1 (ic)2.3 (il(t)-4.703.536 0 Td[(Thi)-1.6 (s)-3.4 ( )-5.2 (r(i)-1

These required disclosures were originally included in the regulation as part of the effort to assure that variable life insurance would be considered to be insurance not involving an investment company subject to SEC regulation. Because the insurance and securities aspects of products are now determined on the basis of the characteristics of each product, it was determined to delete these paragraphs. The first required statement is self-evident and the second statement may not be accurate in the context of certain policy designs.

Section 8. Applications

Comment: Subsections A and B should be read with reference to the comments to Section 4D(1)(a) and (b). Subsection C is referred to in the comment to Section 3C.

Section 9. Report to Policyholders

Comment: The paramount objective of Section 9 is to provide a policyholder with thorough disclosure concerning the operation of his or her variable life insurance policy and with current, reliable information concerning the status of insurance coverage. In accordance with this objective, the 1983 amendments to Section 9 expanded the information that must be included in an annual report in the case of flexible premium policies (Subsection A) and, in Section C, required insurers to provide policyholders of flexible premium policies with notice of impending expiration coverage. These amendments were both designed to alert the policyholder to the possible insufficiency of the amounts available under the policy to keep the policy in force and the corresponding need to make additional premium payments.

Subsection A. Long-range Warning Notice

Comment: In 1983, Subsection A was amended to provide the policyholder of a flexible premium variable life insurance policy with a long-range warning that his or her policy may terminate without value if additional premiums are not paid-notice requirement to scheduled premium policies. Concern was expressed that future scheduled premium policy designs might be such that similar problems with the sufficiency of funds available to keep a policy in effect might result. Ultimately, Subsection C was not extended to scheduled premium policies because an insufficiency of funds resulting from a policy loan under a scheduled premium policy would trigger the 31-day notice provision of Section 4E(5). Only a scheduled premium policy that is actuarially unsound from the outset could otherwise prese(r)-1.7 (e (es)-3.4 (e(r)-1.3)-4.8 ( )]TJ-0.g)-1n 9 (s)-3.5 (r)-1.8 (e)-5.7 (o01 Tw 21.557 014.317On)-0.6 bed