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Approved Juan A. Albors  
Secretary of State  
By María Suarez  
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Interim

Commonwealth of Puerto Rico  
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AMENDMENTS TO THE REGULATIONS OF THE PUERTO RICO INSURANCE CODE

Article I. By virtue of Sections 2.040 and 13.340 of the Puerto Rico Insurance Code, I am hereby notifying the insurance industry, the subscribing public, and the public in general of the approval of Rule 45 of the Regulations of the Puerto Rico Insurance Code which will be applicable to insurers that issue variable annuity contracts, and will read as follows:

**RULE 45**

Regulations for Variable Annuity Contracts

Authority: Sections 13.290 to 13.350

Section 1. Definitions.

(a) the term "variable annuity contract," hereinafter the "variable contract" for the purposes of this Rule shall mean any policy or contract that provides annuity benefits that vary according to the investment experience of one or more accounts held by an insurer for such policies or contracts, as provided in Sections 13.290 to 13.350 of the Puerto Rico Insurance Code.

(b) The term "agent", for the purposes of this Rule, means any agent or broker that is duly authorized to sell life insurance in Puerto Rico.

(e) The term "variable contracts agent," for the purposes of this Rule, means an agent that sells or solicits the sale of variable contracts.

Section 2. Requirements for issuing variable contracts.

(a) No insurer may deliver or issue for delivery in Puerto Rico any variable contract unless the insurer is authorized to transact life insurance in Puerto Rico, and the Commissioner is satisfied that the insurer's condition or method of operation regarding the issuance of such contracts and the maintenance of separate accounts is not

dangerous for the public or for policyholders in Puerto Rico.

In this regard, the Commissioner will take into consideration the following, among other things:

(i) The financial history and current condition of the insurer.

(ii) The character, responsibility, and competence of the officers and directors of the insurer, as well as that of its agents in Puerto Rico.

(iii) The law and regulations under which the insurer has been authorized in its state of domicile to issue variable contracts.

(b) Before an insurer may deliver variable contracts or issue such for delivery in Puerto Rico, the insurer must submit to the Commissioner a description of the kind of variable contracts the insurer intends to issue and any other information required by the Commissioner with regard to the provisions of paragraph (a) of this Section.

(e) If the insurer is a subsidiary of an insurer transacting life insurance in Puerto Rico, or is affiliated with such authorized insurer under common ownership or administration, the Commissioner may deem that the provisions regarding the condition or method of operations described in paragraph (a) of this Section have been complied with if either of the two insurers has complied with such provisions. The Commissioner may also deem that such provisions have been complied with if the insurer has been authorized and has a satisfactory record in transacting insurance in Puerto Rico for at least three years.

### Section 3. Separate accounts.

Domestic insurers that issue variable contracts will establish one or more separate accounts as provided in Sections 13.290 to 13.350 of the Puerto Rico Insurance Code, subject to the following provisions:

(a) Except as provided for reserves in paragraph (b) (i) of this section, the amounts placed in any separate account may be invested as provided in Section 13.300 of the Puerto Rico Insurance Code.

(b) Reserves for (i) guaranteed benefits in terms of

the amount and duration and (ii) guaranteed funds for the principal amount or stated interest rate may be kept in separate accounts if a portion of the assets of such accounts at least equal to such reserve is invested according to the provisions of the Puerto Rico Insurance Code that regulates the investments of life insurance companies. Such portion of assets will not be taken into consideration when applying the limitations to investment that are otherwise applicable to the insurer's investments.

(c) With regard to 75% of the market value of the total assets in a separate account, no insurer will buy or otherwise acquire securities, except those that are issued by or whose principal or interest are guaranteed by the United States or the Commonwealth of Puerto Rico, if immediately after such purchase or acquisition the market value of such investment, along with the market value of prior investments in such securities of the separate account, exceeds 10% of the market value of the total assets of such separate account. The Commissioner, however, may set aside this limitation if in the Commissioner's opinion this exemption will not affect the operation of the separate account in a manner that will constitute a danger for the public or the policyholders in Puerto Rico.

(d) Unless otherwise approved by the Commissioner, no insurer will buy or otherwise acquire for the separate accounts voting securities of any issuer, if as a consequence of such acquisition the insurer and its separate accounts together will hold more than 10% of the total outstanding voting securities of such issuer. It is further provided that the above will not be applicable to securities kept in separate accounts where the right to vote is exercised only according to the instructions of persons holding an interest in such accounts.

(e) The limitations established in paragraphs (c) and (d) of this section will not apply to the investments of a separate account in securities of an investment company registered under the Investment Company Act of 1940 provided that the investments

of such company comply substantially with the provisions of paragraphs (c) and (d) of this section.

(f) Unless otherwise provided by the Commissioner, assets placed in a separate account shall be appraised at their market value on the date of appraisal, or if no market value is available at the time, the appraisal will be done according to the terms of the contract, the rules or other written agreement applicable to such separate account. It is further provided that, unless otherwise approved by the Commissioner, the portion, if any, of the assets of such separate account equal the reserve of the insurer with regard to the benefits and funds mentioned in paragraph (b) of this section shall be appraised according to the rules as may be otherwise applicable to the assets of the insurer.

(g) To the extent provided under applicable contracts, the portion of assets of any separate account equal to the reserves and other contractual obligations with regard to such account will not be charged with liabilities that may arise from any other business of the insurer.

(h) Notwithstanding any other provision of law an insurer may:

(i) With regard to any separate account registered under the Federal Securities and Exchange Commission as a unit investment trust, exercise voting rights with regard to any of the securities of an investment company registered under the Investment Company Act of 1940 and maintained in such separate account according to the instructions of persons who have a proportional interest in such accounts as determined by the insurer, or

(ii) with regard to any separate account registered with the Securities and Exchange Commission as a management investment company, may establish for such account a committee, board or any other body whose members may or not be otherwise affiliated with such insurer and may be elected as members by the votes of persons who have a proportional interest in such account, as determined by the insurer. Such committee, board or other body may have the

sole power to manage or jointly manage such separate account and the investment of its assets.

A company, committee, board or other group may formulate provisions with regard to any separate account as it may deem advisable to comply with the requirements of any existing or future federal or state law. It is further provided that the Commissioner deems that such provisions do not constitute a danger for the public or the policyholders of Puerto Rico.

(i) No insurer may sell, exchange or otherwise transfer assets between any of its separate accounts or between any other investments account and one or more of its separate accounts, unless, in the case of a transfer to a separate account, such transfer is being made solely to establish the account or to support the operation of contracts with regard to the separate account to which the transfer is made; and unless such transfer, whether to or from a separate account, is done (a) by transfer of assets, or (b) by transfer of securities whose market value may be easily determined, provided that such transfer of securities is approved by the Commissioner. The Commissioner may authorize other transfers between such accounts if in the opinion of the Commissioner such transfers are equitable.

(j) The insurer will keep in each of its separate accounts assets with a value at least equal to the reserves and other contractual obligations with regard to such account, except as may be otherwise approved by the Commissioner.

(k) The requirements that the Commissioner may make of the officers and directors of insurers with regard to conflicts of interest will also be applicable to the members of the committee, board or other similar body of the separate accounts. No officer or director of such insurer or any member of the committee, board or other body of a separate account may receive, whether directly or indirectly any commission or any other compensation with regard to the purchase or sale of assets for such separate account.

#### Section 4. Foreign Insurers.

The separate accounts of foreign insurers that issue variable contracts in Puerto Rico in their state or country of domicile shall be subject to provisions that are similar to those required of domestic insurers.

If the law or regulations of the state or country of domicile of the foreign insurer afford policyholders and the public protection that is substantially equivalent to the protection afforded by this Rule, to the extent that may be deemed appropriate, the Commissioner may consider that compliance with such law or regulations to be compliance with this Rule.

#### Section 5. Submission of Contracts.

The applicable requirements under the Puerto Rico Insurance Code and its Regulations regarding submitting policy forms for individual or group annuities will be applicable, insofar as possible, to variable contracts .

#### Section 6. Requirements for variable contracts.

(a) All variable contracts delivered or issued for delivery in Puerto Rico shall contain a statement of the material characteristics of the procedure to be used by the insurer in determining the dollar amount of the variable benefit provided under such contract. Such contracts, including group contracts and the certificates that evidence the variable benefits provided under such, shall clearly specify that such dollar amounts will vary according to the investment experience, and shall include on the first page a statement to the effect that the benefits under the contract are provided on a variable basis.

(b) Illustrations of benefits that are payable under a variable contract will not include projections of future experience based on past investments or predictions of the experience of future investments. It is further provided that no provision of this section prohibits the use of hypothetical rates of return to illustrate possible benefit levels, provided that the fact that they are such is clearly reported.

(c) No individual variable contract that requires periodic payments will be delivered or issued for delivery in Puerto Rico unless it contains substantially the following provisions, or provisions that in the opinion of the Commissioner are more favorable to the holders of such contracts:

(i) A provision to the effect that there will be a grace period of at least one month, but no less than 39 days, within which any stipulated payment may be made to

the insurer after the first payment, during which period the contract will continue to be in effect. The contract may include a description of how the determination will be made of the date from which the payment received during the grace period will be applied to produce the values of such payment under the contract.

(ii) A provision to the effect that at any time during one year after the date on which the stipulated periodic payments to the insurer ceased to be made during the lifetime of the annuitant, unless the cash surrender value has been paid, the contract may be reinstated by paying all past due installments and any amount owed to the insurer, plus interest at the rate specified in the contract, but not to exceed six percent per annum. The contract may include a description of the method to be used to determine the date from which the amount to cover past due installments and any other amount owed will be applied to calculate the values arising from such payments.

(d) All variable contracts delivered or issued for delivery in Puerto Rico shall stipulate the investment increment factors to be used in computing the dollar amount of the variable benefits or other contractual payments or values thereunder, and may guarantee that expense and/or mortality results shall not adversely affect such dollar amounts. In the case of an individual variable annuity contract under which the expense and mortality results may adversely affect the dollar amount of benefits, the expense and mortality factors shall be stipulated in the contract.

In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract the following will be complied with:

(i) The annual net investment increment assumption shall not exceed 5%, except with the approval of the Commissioner;

(ii) To the extent that the level of benefits may be affected by future mortality results,, the mortality factor will be determined using the Annuity Mortality Table for 1949, Ultimate or any modification of such

table not having a lower life-expectancy at any age, or, or any other table the Commissioner may approve.

The term "expense" as used in this section may exclude any or all taxes, as stipulated in the contract.

(e) The reserve for the variable contracts will be established according to the standards for valuation of policies provided in the Puerto Rico Insurance Code using actuarial procedures that recognize the variable nature of the benefits and any guarantee related to mortality.

(f) The following information shall be provided to applicants for variable contracts before the application is made:

(i) a description in simple terms of the principal characteristics of the variable nature of the contract and of the manner in which the variable benefits reflect the experience of investment of a separate account,

(ii) a brief description of the investment policy used for such contract in the separate account,

(iii) a summarized financial statement of the insurer and the separate account based on the most recent annual report filed with the Commissioner; except that for the four-month period after the filing of the annual report, such statement may be based on the report prior to the most recently filed report,

(iv) any other information the insurer may deem pertinent.

A copy of the notice containing the above information shall be submitted to the Commissioner for approval.

#### Section 7. Required Reports.

1. All insurers that issue individual variable contracts shall mail the contract holder, after the first year and at least annually, a statement of the investments related to the separate account. The insurer will file an annual statement with the Commissioner regarding the transactions of the separate account on the forms provided by the National Association of Insurance Commissioners.

2. All insurers that issue individual variable contracts under which payments have not yet begun shall mail the contract holder after the first year and at least once a year a statement



as of a particular date, which shall be at least four months prior to the date of mailing, showing (i) the number of accrued units credited to such contract and the value in dollars of each unit or (ii) the value of the account of the holder of the contract.

Section 8. Agent's License.

(a) No agent may sell or offer for sale a variable contract unless the agent holds variable contract agent's license and provides the Commissioner with satisfactory evidence of being authorized for the sale of this kind of contract under the Puerto Rico Uniform Securities Act.

(b) The authorization of a variable contract agent will not enter into effect until the agent has satisfactorily passed an examination on variable contracts administered under the direction of the Commissioner as proof of the person's qualifications and competence.

(c) Applicants for a variable contract agent's license will not be required to take the examination provided for in paragraph (b) of this section if on the date of the application evidence is provided of having satisfactorily passed any examination that the Commissioner deems to be a satisfactory alternate examination.

(d) Except as modified by this rule, the regulations and the examination that govern the licensing of life insurance agents in Puerto Rico will also be applicable to this section.

(e) Any person who is authorized as a variable contract agent in Puerto Rico will immediately inform the Commissioner (i) of the suspension or revocation of the agent's variable contract license or life insurance agent license in any other jurisdiction, (ii) the imposition of any disciplinary sanction by a national securities exchange or any other association or federal or state agency with jurisdiction over securities or variable contracts, (iii) any judgment or injunction against the agent due to conduct involving fraud, deceit, misrepresentation or violation of any insurance or securities law and its respective regulations.

(f) The Commissioner may deny, suspend, revoke or refuse to renew a variable contract agent's license on the same grounds as provided in Section 9.460 of the Puerto Rico Insurance Code.

The procedure for suspending, renewal or denying a variable

contract agent's license shall be the procedure provided for in Section 9.470 of the Code.

(g) The renewal of a variable contract agent's license shall be the procedure provided for in Section 9.420 of the Puerto Rico Insurance Code.

Article II. This new Rule will enter into effect when notice of approval of the Rule has been published in a newspaper of general circulation in Puerto Rico.

Approved on February 27, 1975.

CARLOS R. RIOS  
COMMISSIONER OF INSURANCE