

COMMONWEALTH OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE
Box 3508 - Old San Juan Station
San Juan, Puerto Rico 00904

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FECHA 20 de junio de 1995 10:15 A.M.
ROBADO JUAN A. ALBORS
Secretario de Estado
POR: Maria C. Acosta
Secretaria Auxiliar de Estado

AMENDMENTS TO THE REGULATION
OF THE INSURANCE CODE OF PUERTO RICO

Section 1. By virtue of the provisions of Sections 2.040 and 13.340 of the Insurance Code of Puerto Rico I hereby notify the insurance industry, the insurance buying public and the public in general, of the approval of Rule XLV of the Regulation of the Insurance Code of Puerto Rico which shall be applicable to those insurers that issue variable annuity contracts, and that shall read as follows:

RULE XLV

Variable Annuity Contract Regulation

Legal Authority: Sections 13.290 through 13.350

ARTICLE 1. DEFINITIONS

(a) The term "variable annuity contract" here and henceforth "variable contract" for purposes of this Regulation, means any policy or contract which provides for annuity benefits which vary according to the investment experience of one or more separate accounts maintained by an insurer as to such policies or contracts, as provided for in Sections 13.290 through 13.350 of the Insurance Code of Puerto Rico.

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

(c) The term "variable contract agent", for purposes of this Regulation, means an agent who sells or solicits the sale of variable contracts.

ARTICLE 2. REQUIREMENTS FOR THE ISSUANCE
OF VARIABLE CONTRACTS

(a) No insurer may deliver or issue for delivery variable contracts in Puerto Rico unless it is licensed to do a life insurance business in Puerto Rico, and the Commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts and the maintenance of the separate account will not constitute a danger to the public or its policyholders in Puerto Rico. In this connection, the Commissioner shall take into consideration, among other things:

- (i) The history and financial condition of the insurer.
- (ii) The character, responsibility and competence of the officers and directors of the insurer as well as its agents in Puerto Rico.
- (iii) The law and regulations under which the insurer is authorized in its state of domicile to issue variable contracts.

(b) Before any company may deliver or issue for delivery variable contracts in Puerto Rico it shall submit to the Commissioner a general description of the kinds of variable contracts it intends to issue and any other information requested by the Commissioner in connection with the provisions of paragraph (a) of this Article.

(c) If the insurer is a subsidiary of a life insurer authorized in Puerto Rico, or if it is affiliated with such authorized insurer by common management or ownership, the Commissioner may deem that it has complied with the provisions concerning the condition and method of operations described in paragraph (a) of this Article if either of the two insurers have complied with such provisions. The Commissioner may also deem that it has complied with such provisions if the insurer has been authorized and has a satisfactory record in the transaction of insurance in Puerto Rico for period of at least three years.

ARTICLE 3. SEPARATE ACCOUNTS

A domestic insurer issuing variable contracts shall establish one or more separate accounts pursuant to Sections 13.290 through 13.350 of the Insurance Code of Puerto Rico, subject to the following provisions:

(a) Except as may be provided with respect to reserves in paragraph (b) (i) of this Article, amounts allocated to any separate account may be invested as provided in Section 13.300 of the Insurance Code of Puerto Rico.

(b) Reserves for (i) benefits guaranteed as to amount and duration and (ii) funds guaranteed as to principal amount or stated rate of interest may be maintained in a separate account if a portion of the assets of such separate account at least equal to such reserve is invested in accordance with the provisions of the Insurance Code of Puerto Rico that regulate the investments of life insurance

companies. Such portion of the assets shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the insurer.

(c) With respect to 75% of the market value of the total assets in a separate account no insurer shall purchase or otherwise acquire securities, except those securities issued or guaranteed as to principal or interest by the United States or the Commonwealth of Puerto Rico, if immediately after such purchase or acquisition the market value of such investment, together with the market value of prior investments of such separate account in such security, would exceed 10% of the market value of the assets of said separate account. Nevertheless, the Commissioner may waive such limitation if, in his opinion, such waiver will not effect the operation of such separate account in such a manner as to constitute a danger to the public or the policyholders in Puerto Rico.

(d) Unless otherwise approved by the Commissioner, no insurer shall purchase or otherwise acquire for its separate accounts the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than 10% of the total issued and outstanding voting securities of such issuer; provided, that the foregoing shall not apply with respect to those securities maintained in separate accounts where the voting rights are exercisable only in accordance with instructions from persons having interests in such accounts.

(e) The limitations established in paragraphs (c) and (d) of this Article shall not apply to the investment 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 in substance with paragraphs (c) and (d) of this Article.

(f) Unless otherwise approved by the Commissioner, assets allocated to a separate account shall be valued on the basis of their market value on the date of valuation, or if there is no readily available market, the valuation shall be made in accordance with the terms of the contract, the rules or other written agreement applicable to such separate account; provided, that unless otherwise approved by the Commissioner, the portion, if any, of the assets

of such separate account equal to the insurer's reserve with regard to the benefits and funds referred to in paragraph (b) of this Article shall be valued in accordance with the rules otherwise applicable to the insurer's assets.

(g) To the extent provided under the applicable contracts, that portion of the assets of any separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

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

- (i) with respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust exercise voting rights in connection with any security of an investment company registered under the Investment Company Act of 1940 and maintained in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the insurer, or
- (ii) with respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, whose members may or may not be otherwise affiliated with such company and may be elected as members by the vote of persons having interests in such account ratably as determined by the insurer. Such committee, board or other body may have the power solely or jointly to manage such separate account and the investment of its assets.

A company, committee, board or other group may make provisions with respect to any such separate account as may be deemed appropriate to facilitate compliance with the requirements of any present or future federal or state law; provided that the Commissioner approves such provisions as not constituting a danger to the public or the policyholders in Puerto Rico.

(i) No insurer may sell, exchange or otherwise transfer assets between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; and unless such transfer, whether into or from a separate account, is made (a) by a transfer of assets, or (b) by a transfer of securities having a valuation which could be readily determined in the marketplace, provided that such transfer of securities is approved by the Commissioner. The Commissioner may authorize other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

(j) The insurer shall maintain in each of its separate accounts assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the Commissioner.

(k) The requirements that the Commissioner may demand of the officers and directors of insurers with respect to conflicts of interest shall also apply to members of any separate account's committee, board or other similar body. No officer or director of such insurer nor any member of the committee, board or other body of a separate account may receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account.

ARTICLE 4. FOREIGN INSURERS

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

If the law or regulation of the state or country of domicile of foreign insurers provide to the policyholders and to the public protection substantially equivalent to that provided by this Rule, the Commissioner, to the extent to which he believes appropriate, may consider the compliance with such law or regulation as compliance with this Rule.

ARTICLE 5. FILING OF CONTRACTS

The applicable requirements under the Insurance Code of Puerto Rico and its Regulation with respect to the filing of individual or group annuity contracts shall apply, to the extent appropriate, to variable contracts.

ARTICLE 6. REQUIREMENTS OF VARIABLE CONTRACTS

(a) Any variable contract delivered or issued for delivery in Puerto Rico shall contain a statement of the essential features of the procedures to be used by the insurer in determining the dollar amount of the variable benefit provided under such contract. Such contract, including a group contract and the certificates evidencing variable benefits issued thereunder, shall explain that such dollar amount will vary in accordance with the investment experience and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

(b) Illustrations of benefits payable under a variable contract shall not include projections of past investment experience into the future or predictions of future investment experience; provided that nothing contained herein prohibits the use of hypothetical assumed rates of return to illustrate possible levels of benefits provided that the fact that they are used is clearly stated.

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

(i) A provision to the effect that there shall be a period of grace of one month, but not less than 30 days, within which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis used to determine the date as of which the payment received during the period of grace shall be applied to produce the values under the contract arising therefrom.

(ii) A provision to the effect that at any time within one

year from the date of default in making periodic stipulated payments to the insurer during the life of the annuitant, unless the cash surrender value has been paid, the contract may be reinstated upon payment of all overdue payments and of all indebtedness to the insurer plus interest at a rate that shall be specified in the contract, but which shall not exceed six per cent per annum. The contract may include a statement of the basis that shall be used to determine the date as of which the amount to cover such overdue payments and indebtedness shall be applied to produce the values that arise from said payments arising therefrom.

(d) Any variable contract delivered or issued for delivery in Puerto Rico shall stipulate the investment increment factors to be used in determining the dollar amount of variable benefits or other payments or variable values thereunder; said contract may guarantee that expense and/or mortality results shall not adversely effect such amounts. The expense and mortality factors shall be stipulated in the contract in the case of an individual variable contract under which said results may adversely effect the dollar amount of benefits.

In determining the dollar amount of variable benefits or of any other contractual payment or value under an individual variable contract one must comply with the following:

- (i) the net investment increment factor 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 shall be determined by using the Annuity Mortality Table for 1949, Ultimate, or any modification of said table not having a lower life expectancy at any age, or any other table approved by the Commissioner.

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

(e) The reserve for variable contracts shall be established in accordance with the standard valuation of policies of the Insurance Code of Puerto Rico utilizing actuarial procedures that recognize the variable nature of the benefits and any mortality guarantees.

(f) The following information shall be furnished to an applicant for a variable contract prior to execution of the application:

- (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 investment experience of a separate account,
- (ii) a brief description of the investment policy for the separate account used for such contract,
- (iii) a summary financial statement of the insurer and the separate account based upon the last annual statement filed with the Commissioner, except that for a period of four months after the filing of an annual statement said summary statement may be based upon the last previous annual statement filed,
- (iv) any other information that the insurer deems appropriate.

A copy of the statement containing the foregoing information shall be filed with the Commissioner for his approval.

ARTICLE 7. REQUIRED REPORTS

1. Any insurer issuing individual variable contracts shall mail to the contractholder, after the first year and at least annually, a statement of the pertinent investments in the separate account. The insurer shall submit annually to the Commissioner a statement of the business of its separate account in the forms prescribed by the National Association of Insurance Commissioners.

2. Any insurer issuing individual variable contracts shall mail to the contractholder after the first year and at least once annually a statement reporting as of a date not more than four months previous to the date of mailing in the case of an annuity contract under which payments have not yet commenced, (i) the number of accumulation units credited to such contract and the dollar value of each unit, or (ii) the value of the contractholder's account.

ARTICLE 8. AGENT'S LICENSE

(a) No agent may sell or offer for sale a variable contract unless he possesses a license as variable contract agent and shows evidence satisfactory to the Commissioner that he is authorized to sell this type of contract under the Uniform Securities Law of Puerto Rico.

(b) The authorization of a variable contract agent shall not be effective until such agent satisfactorily passes an examination on variable contracts given under the direction of the Commissioner as proof of his qualifications and competence.

(c) The applicants for a license as variable contract agent do not have to take the examination required in paragraph (b) of this article if on the date of the application they present evidence that they have satisfactorily passed an examination that the Commissioner deems is a satisfactory alternative examination.

(d) Except as modified by this Regulation, the Regulation and the examination governing the licensing of life insurance agents shall also apply to this Article.

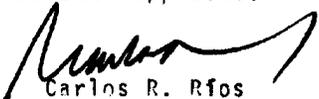
(e) Any person licensed in Puerto Rico as a variable contract agent shall immediately report to the Commissioner (i) suspension or revocation of his variable contract agent's license or life insurance agent's license in any other jurisdiction, (ii) the imposition of any disciplinary sanction imposed upon him by any national securities exchange or any other federal or state association or agency with jurisdiction over securities or variable contracts, (iii) any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

(f) The Commissioner may deny, suspend, revoke or refuse to renew any variable contract agent's license upon the grounds established in Section 9.460 of the Insurance Code of Puerto Rico. The procedure for suspension, revocation or denial of a variable contract agent's license shall be the same as that stipulated in Section 9.470 of said Code.

(g) The renewal of a variable contract agent's license shall follow the same procedure of Section 9.420 of the Insurance Code of Puerto Rico.

Section II. This new rule shall be in force five days after an announcement in a newspaper of general circulation in Puerto Rico that makes clear that such rule has been approved.

Approved February 27, 1975.


Carlos R. Rios
Commissioner of Insurance