2. If, in the opinion of the United States Trade Representative, a mutually acceptable resolution of this issue has been reached with the EEC, he shall so advise the President, together with a recommendation concerning the modification or termination of this action. A decision by the President to modify or terminate this action shall be published in the **Federal Register.**

3. This proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date which is 15 days after the date on which this proclamation is signed.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of June, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-15380
Filed 6-24-85; 10:49 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 50, No. 122
Tuesday, June 25, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 377

[Docket No. 50698-5098]

Exports of Crude Oil to Canada for Consumption or Use Therein

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: On June 14, 1985, President Reagan determined that crude oil exports to Canada are in the national interest and made the necessary findings under the Energy Policy and Conservation Act, the Mineral Lands Leasing Act, and the Outer Continental Shelf Lands Act to permit exports to Canada of crude oil subject to those statutory restrictions (50 FR 25189, June 18, 1985). To implement this determination, Part 377 of the Export Administration Regulations is being revised to permit crude oil exports to Canada for consumption or use therein, provided that it was not transported via the Trans-Alaska Pipeline and was not produced from Naval Petroleum Reserves.

EFFECTIVE DATE: June 25, 1985.

FOR FURTHER INFORMATION CONTACT: Rodney A. Joseph, Acting Manager, Short Supply Program, Room 3876, Office of Industrial Resource Administration, U.S. Department of Commerce, Washington, DC 20230, Telephone: 202/377-3984.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Since this rule pertains to a foreign affairs function of the United States, the proposed rulemaking procedures and the delay in effective date required under the Administrative Procedures Act are inapplicable.

2. This rule contains a collection of information requirement subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The collection of this information has been approved by the Office of Management and Budget (OMB control number 0625-0001).

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because a notice of proposed rulemaking is not required to be published. Accordingly, no initial or final Regulatory Flexibility Analysis has or will be prepared.

4. Since this rule pertains to a foreign affairs function, it is not a rule within the meaning of section 1(a) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 377

Exports.

PART 377—SHORT SUPPLY CONTROLS AND MONITORING

1. The authority citation for Part 377 is revised to read as follows:

Authority: Secs. 203, 206, Pub. L. 95-223, as amended (50 U.S.C. 1702, 1704); E.O. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Presidential Notice of March 28, 1985 (50 FR 12513, March 29, 1985); Sec. 103, Pub. L. 94-163, as amended, (42 U.S.C. 6212); Sec. 28, Pub. L. 93-153, (30 U.S.C. 185); Sec. 28, Pub. L. 95-372, (43 U.S.C. 1354); E.O. 11912 of April 3, 1976 (41 FR 15825, as amended); and Presidential Findings (50 FR 25189, June 18, 1985)

2. Accordingly, the Export Administration Regulations (15 CFR Part 368-399) are amended by adding § 377.6(d)(1)(viii) as follows:

§ 377.6 Petroleum and petroleum products.

* * * * *

(d) * * *

(1) * * *

(viii) *Exports to Canada for consumption or use therein.* The Group A commodity was not produced from the Naval Petroleum Reserves and was not and will not be transported by pipeline over rights-of-way granted pursuant to Sec. 203 of the Trans-Alaska Pipeline Authorization Act and is being exported to Canada for consumption or use therein.

* * * * *

Issued: June 20, 1985.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 85-15284 Filed 6-24-85; 8:45 am]

BILLING CODE 3510-25-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release Nos. 33-6588; IC-14575; File No. S7-1007]

Registration Forms for Insurance Company Separate Accounts That Offer Variable Annuity Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of forms, rule amendments, and publication of guidelines.

SUMMARY: The Commission is adopting: (1) Form N-3, a new registration form for certain separate accounts registered under the Investment Company Act of 1940 as management investment companies, and certain other separate accounts; (2) Form N-4, a registration form for certain separate accounts registered under the Investment Company Act of 1940 as unit investment trusts, and certain other separate accounts; and (3) related rule amendments. The Commission is also publishing staff guidelines for the preparation of Forms N-3 and N-4. The Commission is adopting the foregoing to integrate and codify disclosure requirements for insurance company separate accounts that offer variable annuity contracts and to shorten and simplify the prospectus provided to investors, while making more extensive information available for those who request it. Separate accounts will be permitted to use existing registration forms during a transition period of approximately one year.

DATE: The amended rules will be effective July 25, 1985. The new forms and guidelines will be available for registration of separate accounts and for filing of post-effective amendments by separate accounts July 25, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas E. Neal, Assistant Chief, (202) 272-2061, Brian M. Kaplowitz, Special Counsel, (202) 272-2061, or Jeffrey S. Puretz, Attorney, (202) 272-3010, Office of Insurance Products and Legal Compliance, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting the following:

(1) Form N-3, a registration form that will replace Form N-1 (17 CFR 239.15, 274.11) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the "1933 Act") and the Investment Company Act of 1940 (15 U.S.C. 80a-1, *et seq.*) (the "1940 Act"), for use by separate accounts that offer variable annuity contracts and that are organized as management investment companies under the 1940 Act, and Form S-1 under the 1933 Act for use by certain separate accounts that offer variable annuity contracts but which are not registered investment companies (collectively, "management accounts"). Form N-3 is in three parts: (i) Part A is the prospectus required by section 10(a) of the 1933 Act (15 U.S.C. 77j(a)), (ii) Part B is the "Statement of Additional Information", which contains additional information that must be provided upon request, and (iii) Part C contains other information that is required for the registration statement. The text of Form N-3 is Appendix A to this release.

(2) Form N-4, a registration form that will replace Form S-6 (17 CFR 239.16) under the 1933 Act and Form N-8B-2 (17 CFR 274.12) under the 1940 Act for use by separate accounts that offer variable annuity contracts and are organized as unit investment trusts under the 1940 Act, and Form S-1 under the 1933 Act for use by certain separate accounts that offer variable annuity contracts but which are not registered investment companies (collectively "trust accounts"). Form N-4 has the same three-part format as Form N-3. The text of Form N-4 is Appendix B to this release.

(3) Amendments to the following rules of Regulation C under the 1933 Act: rule 482 (17 CFR 230.482), 486 (17 CFR 230.486), 495 (17 CFR 230.495), 496 (17 CFR 230.496), and 497 (17 CFR 230.497). Rule 486 is amended to reflect the three-part format of Forms N-3 and N-4 and to permit all registrants that use Forms N-3 and N-4 to use the procedures provided in that rule. Rules 482, 495, 496, and 497 are amended to add Forms N-3 and N-4 to the registration forms specified in those rules.

(4) Amendments to the following rules under the 1940 Act: Rule 8b-11 (17 CFR 270.8b-11), 8b-12 (17 CFR 8b-12), and 30d-1 (17 CFR 270.30d-1). Rules 8b-11 and 8b-12 are amended to add Forms N-3 and N-4 to the registration forms specified in those rules, and rule 30d-1 is amended to add an item of Form N-3 to the items specified in that rule.

The Commission is not amending Form N-1A (17 CFR 239.15A, 274.11A), the registration form for open-end investment companies, as it had proposed. Amendment to Form N-1A was proposed in connection with a requirement to disclose yield quotations by money market portfolio companies underlying trust accounts using Form N-4. The proposed yield disclosure for Form N-4 has not been adopted, and this change has obviated the need to amend Form N-1A. Further, the Commission is not rescinding rule 22d-2 under the 1940 Act (17 CFR 270.22d-2), which permits separate accounts offering variable annuity contracts to establish variations in their sales loads and administrative charges. When the Commission adopted rule 22d-1 in February of 1985, it requested comment on whether rule 22d-2 should be rescinded.

The Commission is also publishing staff guidelines for the preparation of Forms N-3 and N-4, which are Appendixes C and D to this release, respectively.

Background and Purpose

On December 23, 1983, the Commission proposed for comment two new forms for registration of insurance company separate accounts that offer variable annuity contracts ("separate accounts").[1] The Commission stated it wished to extend the use of a simplified prospectus, as first developed for mutual funds with the adoption of Form N-1A,[2] to the separate accounts.[3]

The Commission, in the proposing release, expressed the belief that Forms N-3 and N-4 would provide significant benefits for separate account registrants and investors, including integrating the reporting and disclosure requirements under both the 1933 Act and the 1940 Act into one form and codifying disclosure standards that the staff has developed for the separate accounts. By adopting the format of Form N-1A, the forms would also permit shorter and simpler prospectuses.

Commentators generally supported adoption of the proposed forms, although they suggested some changes and clarification. The Commission has made several changes in response to the comments, and the Commission is hereby adopting Forms N-3 and N-4 and certain related rule amendments, as well as publishing staff guidelines to both forms.

Forms N-3 and N-4—An Overview

Both Forms N-3 and N-4 contain three parts. The first part of each is a simplified prospectus that meets the requirements of section 10(a) under the 1933 Act and whose delivery satisfies the prospectus delivery requirements of section 5(b)(2) under the 1933 Act (15 U.S.C. 77e(b)(2)). The prospectus will contain a concise presentation of material information about the separate account and the variable annuity contracts. The second part is the Statement of Additional Information, which will be available to prospective purchasers upon request and without charge. The Statement of Additional Information will contain more detailed discussions of matters required to be in the prospectus, as well as other information that might interest some investors. The third part of each form consists of other information generally required only in the registration statement.[4]

Discussion of Comments

The Commission received seven comment letters on the proposing release.[5] All of the commentators

[1] Investment Company Act Release No. 13689 49 FR 614 (January 5, 1984). After publication of the release, the Commission twice extended the period for public comment in response to requests from an interested party. Investment Company Act Release Nos. 13800 (February 29, 1984) (49 FR 8626 (March 8, 1984)) and 13947 (May 17, 1984) 49 FR 21938 (May 24, 1984).

[2] The Commission adopted Form N-1A for use by open-end investment companies other than separate accounts of insurance companies. Investment Company Act Release No. 13436 (August 12, 1983) [48 FR 37928 (August 22, 1983)].

[3] Separate account is defined in section 2(a)(37) of the 1940 Act (15 U.S.C. 80a-2(a)(37)) to mean:

An account established and maintained by an insurance company . . . under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

[4] For a discussion of how this three-part format is designed to achieve the goal of prospectus simplification, see the adopting release of Form N-1A, *supra* note 2.

[5] Three of the commentators were law firms, two were insurance companies, one was a trade association representing insurance companies, and one was a consultant to insurance companies. Over 250 comments were included in the comment letters

supported the concept of providing a registration form specifically for separate accounts that offer variable annuities. Most stated that they support adoption of the concept of a simplified prospectus, as first developed in Form N-1A, for the separate accounts. The commentators offered a substantial number of specific comments and suggestions on the proposed forms and guidelines. In response to the comments, several changes have been made.

Many of the specific comments received are discussed below. The first section of the following discussion focuses on the major issues raised by the commentators. It is followed by a discussion of comments on specific items of Form N-3 and Form N-4. A final section presents the views of the Division of Investment Management on comments relating to the guidelines to the forms. Readers should see the proposing release for a more complete explanation of the proposed forms.

Financial Information

In its proposing release, the Commission requested comment on presentation of financial information in Forms N-3 and N-4. The Commission proposed that the prospectus for both management and trust accounts contain condensed financial information of the separate account and that the Statement of Additional Information contain other financial information including complete financial statements of the separate account. The Statement of Additional Information would also contain a two-year comparative balance sheet of the insurance company that sponsors the separate account. The remainder of the insurance company's financial statements could be placed in Part C, rather than in Part B, if they were made available to investors upon request and without charge.

Five commentators addressed the proposed presentation of the sponsoring insurance company's financial statements. These commentators approved the principle of placing these financial statements in the Statement of Additional Information and in Part C, rather than in the prospectus. However, one commentator asserted that the insurer's financial statements should not be required at all, arguing that they would diminish the significance of the separate account's financial information. Another commentator asserted that the purpose of the sponsor's financial statements is to show its long-term solvency, and that since the comparative balance sheets are sufficient for this purpose, the remainder of the financial statements, as proposed for Part C, need not be disclosed. The Commission is adopting the requirements on presentation of financial information as proposed. As stated in the proposing release, variable annuity contractowners or annuitants may not have the same interest in the sponsoring insurance company as they have in the separate account; however, they look to the sponsoring insurance company to assure annuity payments, and the insurance company's financial information should be available to them. Placement of the financial statements in the Statement of Additional Information and Part C of the registration forms ensures that they will be available to interested investors, while relieving registrants and insurance companies of a substantial disclosure cost.

One of the commentators objected to the proposal to make the insurance company's financial statements in Part C available to investors upon request, asserting that only information in the Statement of Additional Information should be available. The Commission proposed this information for Part C instead of the Statement of Additional Information to reduce the disclosure burden for insurance companies, and the Commission is retaining the format as proposed.[6] However, like the N-1A, the instructions for Forms N-3 and N-4 prescribe minimal requirements for each part,[7] and registrants are free to include additional information in the prospectus and the Statement of Additional Information, so long as it does not impede understanding of the required information. This principle is stated in the general instructions of each form as adopted. Accordingly, a registrant that does not wish to make any section of Part C available to investors may place the sponsoring insurance company's financial statements in the Statement of Additional Information.

The Commission requested comment on whether stock life insurance companies that prepare financial statements in accordance with generally accepted accounting principles ("GAAP") solely for inclusion in a separate account registration statement should instead be permitted to use financial statements prepared in accordance with applicable statutory accounting requirements.[8] Three commentators favored permitting the use of statutory financial statements, one of which advocated their use for all stock life insurance companies; one commentator favored GAAP for all financial statements. Two of the commentators favoring statutory financial statements said that they present a more conservative view of an insurance company's financial position and are more appropriate than GAAP financial statements to show solvency. In the forms as adopted, the Commission will permit the use of statutory financial statements by life insurance companies that would be required to prepare GAAP financial statements solely for inclusion in a separate account registration statement.[9]

In the proposing release, comment was requested on whether other information on the financial condition of the sponsoring insurance company should be included in the prospectus, such as ratings on the stability of insurance companies assigned by a private rating service. Two commentators opposed inclusion of this information, one asserting that these ratings serve a different function and provide different information than securities ratings. The Commission has determined not to require this other information.

Simplified Prospectus

Several commentators asserted that the proposed forms did not effectively simplify the prospectus in many respects, and offered many specific recommendations that information proposed for the prospectus instead be placed in the Statement of Additional Information. Some of these

[6] Under current requirements, separate account prospectuses must contain full financial statements of both the separate account and the sponsoring insurance company, and condensed financial information for a management account.

In Forms N-3 and N-4, the only portion of Part C that must be made available to investors upon request is the insurance company's financial statements therein.

[7] *See* adopting release of Form N-1A, note 2, *supra*.

[8] Mutual life insurance companies and their wholly-owned stock insurance company subsidiaries are currently permitted to use financial statements prepared in accordance with statutory accounting requirements. Rule 7-02 of Reg. S-X (17 CFR 210.7-02).

[9] This use of statutory financials is being permitted solely to relieve the disclosure burden upon this group of registrants and their sponsoring insurance companies. The Commission staff has, upon request, permitted certain of the affected insurance companies to use statutory financials. To promote consistency in financial reporting, the Commission does not believe it is appropriate to permit a broader class of insurance companies to use statutory financials. Rule 7-02 permitted mutual life insurance companies to use statutory financials in 1981 because GAAP had not yet been developed for them. Accounting Series Release No. 301, (Release 33-6357) (October 21, 1981) (46 FR 54332 (November 2, 1981)). The Commission noted at that time the broad use of and acceptance of GAAP statements for investor reporting services.

The permitted use of statutory financials will be indicated by instruction to the appropriate item in each form. The Commission is not amending Rule 7-02 of Reg. S-X, *supra*.

recommendations have been adopted. For instance, a requirement to disclose information on computation of annuity payments has been removed from the prospectus and placed in the Statement of Additional Information. However, information on sales loads and insurance company charges against the separate account has been retained in the prospectus. Other specific recommendations are discussed in more detail in the discussion of the forms that follows.

Several commentators stated that the forms should not employ certain technical terms such as "sponsor," "depositor," "transfer agent," and "public offering price," for forms designed exclusively for insurance company products. As adopted, the forms contain more general terms, except that the word "depositor" has been retained in Form N–4 since it is a common term that has been used for many years to describe the creator of a unit investment trust.

The Commission is aware that since adoption of Form N–1A some investors have encountered problems obtaining the Statement of Additional Information. In particular, some investment companies have failed to deliver Statements of Additional Information upon request, and some have made it difficult for investors to request the document by requiring, for example, written requests. The Commission has fostered a movement toward a simplified prospectus for investment companies upon the premise that more detailed information would be available for investors who want it, and the Commission believes it is imperative that investors be able to obtain a Statement of Additional Information without first overcoming significant obstacles. Accordingly, the Commission is retaining, with some modification, undertakings that were proposed for Forms N–3 and N–4. As proposed, one undertaking required that any application to purchase an annuity contract include a space that an investor could check to obtain a copy of the Statement of Additional Information. The undertaking as adopted provides registrants with an option: the inclusion either of the space on the annuity application or a post card or mail in form affixed to or included in the prospectus that an investor may use to send for a Statement of Additional Information. Another undertaking, as proposed, required delivery of the Statement of Additional Information that was requested on a purchase application no later than delivery of the contract purchased. This undertaking has been amended to require delivery of the document (and any financial statements required to be made available) promptly upon written or oral request.

Several commentators objected to the proposed undertakings asserting that they might encourage frivolous requests and that they are unfair since they are not in Form N–1A. The Commission believes that the undertakings are warranted to ensure that separate accounts respond to valid requests for Statements of Additional Information. Furthermore, the Commission will consider adopting these requirements for investment companies using other registration forms, including Form N–1A.

The Commission is adding an item in Forms N–3 and N–4 that will require registrants to provide in the prospectus a table of contents for the Statement of Additional Information. This item will help investors know what information is available in the Statement of Additional Information. It should not encourage frivolous requests for the document, and indeed may discourage them since investors will be able to see plainly the type of additional information available to them and would be less likely to request the document merely to ascertain its contents. The table of contents should be quite short for most registrants so it will not unduly lengthen the prospectus. A requirement has been added that the cover page of both forms indicate where in the prospectus the table of contents of the Statement of Additional Information appears.

Even though the table of contents was not specifically proposed, it was within the scope of the proposing release, which indicated the Commission's intent to provide investors with an opportunity to obtain information in the Statement of Additional Information that may be of interest to them. Separate publication of the table for notice and comment is therefore unnecessary.

Forms N–3 and N–4

The following portion of this release discusses the more significant comments on the individual items and instructions of Forms N–3 and N–4. Since the two forms are similar and reponses to the comments are often the same for both, the forms are generally discussed together. This discussion follows the order of Form N–3, but it relates to both forms unless otherwise indicated by the paragraph headings. Discussion that is unique to Form N–4 follows the joint discussion of both forms. The item numbers in the following portion of this release refer to the forms as adopted; in certain instances, they may differ from the item numbers in the forms as proposed.

General Instructions to Forms N–3 and N–4

1. Use of the Forms. Forms N–3 and N–4

As proposed, Forms N–3 and N–4 would be used for all separate accounts offering variable annuity contracts which are registered under the 1940 Act as management investment companies or unit investment trusts, and for insurance companies offering variable annuity contracts funded by separate accounts that are excepted from the 1940 Act by section 3(c)(11) (15 U.S.C. 80a–3(c)(11)).[10] One commentator, while agreeing that the new forms are more appropriate for the latter group of issuers than the S–1, upon which they must currently register, suggested that rule 486 under the 1933 Act (17 CFR 230.486) should be amended to provide for automatic effectiveness of post-effective amendments of this class of issuers. The Commission has adopted this suggestion, and is adding paragraph (f) to rule 486 to accommodate all issuers that can use Forms N–3 and N–4.[11]

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[10] Section 3(c)(11) provides that the following are excepted from investment company status under the Act:

Any employee's stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954 or which holds only assets of governmental plans . . .; or any collective trust fund maintained by a bank consisting solely of assets of such trusts; or any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans . . . (B) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 5 of the Securities Act of 1933 by section 3(a)(2)(C) of such Act, and (C) advances made by an insurance company in connection with the operation of such separate account.

[11] Rule 486 provides procedures for the automatic effectiveness of post-effective amendments to registration statements for offerings by registered separate accounts. The separate accounts excepted from the 1940 Act by section 3(c)(11) will not be registered separate accounts, and therefore, in the absence of the amendment adopted herein, would not be permitted to use the procedures in the rule.

Although this amendment to rule 486 was not specifically proposed, the proposing release indicated that rule 486 would be amended to provide its automatic effectiveness procedures for registered separate accounts using Forms N–3 and N–4. The proposing release also indicated that Forms N–3 and N–4 would be available for use by non-registered separate accounts. In addition, the comment, mentioned above, to amend rule 486 to permit its use by non-registered separate accounts indicates that the amendment was within the scope of the proposing release.

A commentator also advocated use of the new forms for separate accounts that offer variable life insurance or insurance products in the nature of annuities (such as funding agreements for discrete projects) that use separate accounts for accumulations or payments. The Commission is not extending use of Forms N-3 or N-4 to other issuers at this time. The forms would be inappropriate for variable life insurance or funding agreements since they were designed specifically for variable annuity contracts.

One commentator suggested that a registrant that no longer offers or solicits the purchase of variable annuity contracts funded through a separate account should be permitted to use an existing registration form, the N-1 for management accounts and the S-6 for trust accounts, for the annual update of its registration statement. Where a registrant is required to maintain a current prospectus for variable annuity contracts that it no longer offers, the Commission has no objection to the continued use of Forms N-1 or S-6 for the registrant's annual update. However, the Commission strongly encourages registrants in this situation to convert to Forms N-3 or N-4, as applicable. The Commission believes that the simplified format is beneficial to existing contractowners as well as prospective investors. Moreover, the savings in printing costs for the shorter prospectus may offset a registrant's cost of conversion.

The commentator further observed that several registrants that have ceased offering any contracts, or have ceased offering some contracts funded by a separate account while continuing others, no longer maintain current prospectuses with respect to the discontinued contracts.[12] The commentator cited no-action letters that permit several trust accounts to refrain from maintaining and delivering a current prospectus, subject to certain conditions. The commentator suggested that the Commission codify those conditions in a rule.[13] The Commission believes that issuers of variable annuity contracts that are periodic payment plans are under a duty to maintain a current prospectus for so long as payments may be accepted from contractowners.[14] The Commission staff will continue to consider this type of request from registrants, but the Commission believes these requests should be evaluated on a case-by-case basis and is not currently considering a rule on this matter.

2. Registration Fees, Forms N-3 and N-4

One commentator inquired whether the transition from the current forms to the N-3 and N-4 would entail the payment of additional registration fees under the 1933 Act or the 1940 Act. An existing registrant that converts from Form N-1 or Forms S-6 and N-8B-2 may do so by means of a post-effective amendment. No fees need be paid for filing a post-effective amendment, unless, of course, the registrant is also increasing the number or amount of securities registered or registering an indefinite number of securities, in which case fees are payable pursuant to rules 24e-2 and 24f-2 under the 1940 Act (17 CFR 270.24e-2 and 270.24f-2).

3. Special Terms, Forms N-3 and N-4

One commentator suggested some minor changes to the definition of the term "variable annuity contract" to distinguish between the accumulation and payout phases of a contract and to accommodate the funding agreements, described above, which are funded by separate accounts and are similar to annuities. The minor changes recommended by the commentator were adopted, but only to clarify the definition of the term.

4. Documents Comprising Registration Statement or Amendment, Forms N-3 and N-4

One commentator noted that some insurance products are funded by more than one registered separate account, but are sold by means of a "combined prospectus," which includes a description of each registrant in a single prospectus. The commentator stated that registrants should be permitted to include the combined prospectus in the registration statement of only one separate account and to incorporate the prospectus by reference in registration statements for the other separate accounts, asserting that this practice would be less burdensome and would be consistent with industry practice. The Commission is not adopting this recommendation because it would be inconsistent with Rule 411 under the 1933 Act (17 CFR 230.411).[15] Any person should be able to retrieve from the Commission's filing system a registration statement that includes a prospectus, and the recommended procedure would defeat this goal. Further, contrary to the commentator's assertion, the recommended procedure is not industry practice for either initial filings or post-effective amendments of registration statements.

5. Preparation of the Registration Statement or Amendment, Forms N-3 and N-4

A statement in this section of the General Instructions said that responses to items that use the terms "list" or "identify" should include only a short explanation or description. In response to a comment, this instruction is being deleted, and the words "list" and "identify" should be given their plain meaning.

One commentator objected to the instruction on preparation of the Statement of Additional Information which said that it and the prospectus are independent documents, asserting that the Statement of Additional Information can never be truly independent. While the reference to an independent document has been deleted, the Statement of Additional Information should be understandable by itself, and the instruction so states.

A new paragraph has been added to the instructions that reduces the number

[12] The requirement to maintain a current prospectus is from section 10(a)(3) of the 1933 Act (15 U.S.C. 77j(a)(3)), which requires that a prospectus used more than nine months after the effective date of the registration statement shall not contain information more than 16 months old.

[13] *See, e.g.*, Letter to Educators Life Insurance Company of America Separate Account A, Ref. No. 77-IP-55 (pub. avail. August 1, 1977); Letter to Washington National Insurance Company Variable Funds A & B, Ref. No. 77-IP-55 (pub. avail. May 17, 1978) (discontinued individual contracts, but continued selling group contracts); Letter to Investors Life Insurance Company of North America, INA/Putnam Separate Account, Ref. No. 82-56-IP (pub. avail. October 12, 1982). One of the conditions in the letters was that contractowners receive a current prospectus, periodic reports, and apy proxy materials from the underlying portfolio companies in which the trust accounts invested. *See also* Fidelity Fund Accumulation Plan, et. al., Ref. No. 79-199-CC (pub. avail. July 27, 1979) (contractual plans not funded by a separate account).

[14] Section 2(a)(27) of the 1940 Act (15 U.S.C. 80a-2(a)(27)) defines "periodic payment plan certificate" as

(A) any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments and (B) any security the issuer of which is also issuing securities of the character described in clause (A) and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in clause (A) have upon completing the periodic payments for which such securities provide.

[15] Rule 411 describes circumstances under which information may be incorporated by reference in a prospectus, and it does not extend to permitting incorporation by reference of an entire prospectus. Further, the rule prohibits incorporation by reference where it would render a statement incomplete, unclear, or confusing.

of copies of registration statements and amendments that must be filed with the Commission. Forms N–3 and N–4 will requite seven additional copies of a registration statement instead of the ten additional copies required by rule 402(b) under the 1933 Act (17 CFR 230.402(b)). The forms will require three additional copies (including two marked) of amendments instead of the eight copies required by rule 472(a) under the 1933 Act (17 CFR 230.472(a)).

Information Required in a Prospectus

6. Item 1 of Forms N–3 and N–4—Cover Page

In response to a comment from several commentators, neither form will require that its cover page contain information on the types of qualified plans with which the variable annuity contracts may be used. Instead, the Commission has adopted the suggestion of a commentator and included a request for information on limitations on the types of purchasers to whom the contracts will be offered.

Forms N–3 and N–4 were proposed with the requirement, modeled after Form N–1A, that the cover page of the prospectus contain the date of the prospectus and the date of the Statement of Additional Information. Similarly, the Statement of Additional Information required that the cover page contain its date and the date of its related prospectus. Several commentators asserted that these requirements are burdensome, particularly since the prospectus must be updated every time the Statement of Additional Information is amended. However, in the staff's experience, it is quite rare that a registrant amends the text of its Statement of Additional Information but not its prospectus (for other than the date) in filings other than its annual post-effective amendment. The Commission is retaining the cross-dating requirement upon the belief that the importance to investors of knowing which documents complement each other outweighs any burden to registrants. Further, the cover page will require a statement that the Statement of Additional Information be made available upon written or oral request.

7. Item 2 of Forms N–3 and N–4—Definitions

Proposed Forms N–3 and N–4 required a glossary to define special terms used in the prospectus. In response to several comments, the Commission has modified this requirement to permit, in lieu of the glossary, the use of an index that refers to the pages upon which special terms are defined in text.

8. Item 3 of Forms N–3 and N–4—Synopsis or Highlights

The Commission is retaining the provision in Forms N–3 and N–4 that requests a synopsis that describes certain key features of the offering where the prospectus is longer than 12 pages. Several commentators noted that this threshold was borrowed from Form N–1A, and suggested a higher one since Forms N–3 and N–4 would require disclosure on the insurance aspects of variable annuity contracts, and the prospectus would be longer. However, the reason for a threshold is that over a certain length, readers would be assisted by a summary; the complication of the product does not alter the premise that after 12 pages, readers would be assisted by a synopsis.

Several comments were received about the requirement that any prospectus not containing a synopsis highlight information on the following characteristics: a sales load imposed upon annuitization or redemption, a possible tax penalty on premature withdrawals, or a revocation right such as a "ten-day free look" provision. Commentators questioned the importance and relevance of this disclosure and its consistency with Form N–1A. All of this information relates to withdrawing assets under variable annuity contracts, an event that may trigger serious consequences, including certain costs, for a contractowner. In the context of a variable annuity, the Commission believes this information is sufficiently important to a prospective investor to warrant highlighting.

9. Item 4 of Forms N–3 and N–4—Condensed Financial Information[16]

Item 4 of proposed Forms N–3 and N–4 required condensed financial information for each class of accumulation units of a registrant. Several commentators raised issues concerning the classes for which information must be provided. One commentator noted that many registrants have discontinued offering particular contracts funded by a separate account while continuing others, and questioned whether condensed financial information must be shown for the discontinued contracts. Another commentator noted that a single separate account may fund a wide variety of contracts, each of which has distinct classes of accumulation units. Further, one commentator stated that some separate account registrants use more than one prospectus to offer different contracts.

The Commission has considered these comments and recognizes that the issue is difficult because a wide variety of methods have been used to register variable annuity contracts. However, the starting point for determining appropriate presentation of financial information is the registration statement, and a registrant must disclose condensed financial information for the securities covered by its registration statement. This includes information relating to all contracts offered by means of the prospectus in a registration statement.[17] It also includes information relating to discontinued contracts that are no longer offered for sale by means of the prospectus, but for which the registrant may continue to accept payments.[18] To achieve this disclosure, an instruction has been added to each form to state that condensed financial information must be disclosed (1) for each class of accumulation units derived from contracts offered by means of the registrant's prospectus, and (2) for each class derived from contracts no longer offered for sale but for which the registrant may continue to accept payments. Further, for a registrant that includes more than one prospectus in a registration statement (*e.g.* a different prospectus for each type of contract being offered), the instruction provides that condensed financial information for a class of accumulation units (*e.g.* for each contract) need only be presented in the prospectus by which the class (contract) is offered. It need not be included in every prospectus used by that registrant.[19] To relieve the

[16] A discussion of the aspects of Item 4 that relate only to Form N–3 follows this discussion. *See* paragraph 10, *infra*.

[17] Where a prospectus offers a variety of contracts that are represented by different classes of accumulation units, registrants often must exercise their judgment, subject to the requirements of the forms and appropriate disclosure standards, on how to disclose condensed financial information fully while making it understandable for readers. However, many registrants have been successfully presenting this type of disclosure for years on Form N–1. Adoption of the new forms does not, in itself, introduce this issue (except for trust accounts, for which the condensed financial information requirements are abbreviated).

Two commentators requested guidance on appropriate organization of the table presenting condensed financial information for particular characteristics of certain registrants. These specific types of issues must be addressed on a case-by-case basis and are not appropriate for inclusion in this discussion or in the forms.

[18] Of course, these disclosure requirements do not apply to registrants that need not maintain a current registration or deliver a current prospectus for discontinued contracts in reliance upon no-action letters such as those cited in note 13, *supra*.

[19] Indeed, some registrants that have been selling a contract for years have added a new contract by means of a post-effective amendment.

confusion in this area, the Commission recommends that in the future, registrants use a separate registration under the 1933 Act for distinct contracts, even where they are issued by the same registered separate account.[20]

In proposed Forms N-3 and N-4, the Commission required that the prospectus for a management or a trust account contain a yield quotation for any separate account having a money market component. The Commission noted in its proposing release that under current forms yield quotations for trust accounts are disclosed only by the underlying money market fund and not by the trust account. The proposed requirement was intended to show money market yield for trust accounts net of charges at the trust account level, and to permit investors to compare performance of the money market components of separate accounts, whether organized as trust accounts or management accounts. Several commentators objected to mandatory disclosure of yield quotations. They asserted that these requirements were intended to conform separate account disclosure to that required for mutual funds which, unlike variable annuities, are purchased and sold on the basis of short-term yields. One commentator stated that yield quotations were included in Form N-1A for mutual funds that wanted to advertise on the basis of yield.[21] The Commission has deleted the yield requirement since it is inappropriate to single out return of money market portfolios for disclosure to the exclusion of other types of portfolios.[22] However, the forms will require disclosure of yield for money market accounts or sub-accounts that advertise on the basis of current yield to assure compliance with advertising rules for investment companies.

10. Item 4 of Form N-3—Condensed Financial Information

Proposed Form N-3 required information on the registrant's portfolio turnover rate in its presentation of condensed financial information. The proposed formula for determining the portfolio turnover rate has been amended to require that a registrant include long-term United States government securities as long-term debt securities in the calculation. The instructions to this formula have been modified to clarify the treatment of put or call options for purposes of the rate calculation.[23]

11. Item 5 of Form N-3—General Description of Registrant and Insurance Company, and Item 5 of Form N-4—General Description of Registrant, Depositor, and Portfolio Companies

The required description of the registrant in both Forms N-3 and N-4 has been amended to, among other things, clarify disclosure of the treatment of the income, gains, and losses of the registrant vis-a-vis its sponsoring insurance company and of the description of obligations arising under the variable annuity contracts.

12. Item 6 of Form N-3—Management

As proposed in Form N-3, this item required a description of the responsibilities of a registrant's board of managers under the applicable laws of the sponsor's jurisdiction. In response to a comment that much of a board of managers' responsibilities are derived from the 1940 Act, the item has been simplified to request a description of the board's responsibilities.

13. Item 7 of Form N-3 and Item 6 of Form N-4—Deductions and Expenses

In these items, the Commission required a brief description of all deductions from purchase payments, contractowner accounts, or assets of the registrant. One commentator argued that disclosure of details on how various deductions are computed should go in the Statement of Additional Information. The Commission is not adopting this suggestion. The items call for only a brief description and the Commission believes that disclosure of deductions is appropriate for the prospectus. In particular, disclosure of computation of a sales load, whether a front-end load or deferred load, is material and should go in the prospectus.

A new requirement has been added to this item to describe any variations in the sales load or administration charges established pursuant to an exemptive rule or order under section 22(d) of the 1940 Act.[24] In February of 1985, in connection with the adoption of rule 22d-1 under the 1940 Act,[25] the Commission requested comment on whether rule 22d-2 should be rescinded.[26] Rule 22d-2, first adopted in August of 1975 (and formerly numbered rule 22d-3), permits registered separate accounts issuing variable annuity contracts to establish variations in their sales load, administrative charges, or other deductions from purchase payments, subject to certain conditions. Several commentators asserted that since its adoption rule 22d-2 has worked effectively for separate accounts and the Commission has determined not to rescind the rule.[27] In both Forms N-3 and N-4, the new disclosure requirement seeks disclosure of special purchase plans or methods that reflect variations or elimination of the sales load, administrative charges, or other deductions from purchase payments.

An instruction in the proposed forms stated that any deduction other than sales load used for distribution expenses should be identified. In response to several comments that this instruction is vague, it has been revised to require disclosure in the event that proceeds derived from, among other things, mortality and expense risk charges may be used for distribution.[28]

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[20] The Commission recognizes that the provisions of some variable annuity contracts may vary slightly depending upon how the contracts are used and is not suggesting that every contract variation warrants separate registration under the 1933 Act. For instance, many annuity contracts are designed to finance different types of deferred compensation plans, and they may vary depending on the type of plan and the requirements of the Internal Revenue Code. However, other differences between contracts, such as single premium vs. flexible premium or group vs. individual contracts, are more distinct and may warrant separate registration. Clearly, where different prospectuses are used to sell distinct contracts, the contracts should be registered separately under the 1933 Act.

[21] These advertisements are permitted pursuant to rule 482 under the 1933 Act (17 CFR 230.482). Such advertisements are technically "omitting prospectuses" under section 10(b) of that Act (15 U.S.C. 77j(b)).

[22] The Commission continues to believe that both trust accounts and management accounts should be subject to the same requirements on disclosure of investment return to permit comparison of performance, and proposals toward this end may be forthcoming in the future. As suggested by a commentator, an instruction has been added to indicate that disclosure of the method of calculating yield may be placed in the Statement of Additional Information.

[23] These changes conform with the portfolio turnover rate as recently prescribed in Form N-SAR (17 CFR 274.101), the semi-annual reporting form for registered investment companies, and recently proposed for comment for Forms N-1A and N-2. *See* Investment Company Act Release No. 14299 (January 4, 1985) (50 FR 1442 (January 11, 1985)) (adopting release for Form N-SAR); Investment Company Act Release No. 14080 (August 6, 1984) (49 FR 32370 (August 14, 1984)) (proposing release for Form N-SAR); Investment Company Act Release No. 14300 (January 4, 1985) (50 FR 1542 (January 11, 1985)) (proposing release for amendments of portfolio turnover rate calculation for Forms N-1A and N-2).

[24] Section 22(d) (15 U.S.C. 80a-22(d)) requires that redeemable securities of registered investment companies be sold to the public only at a current public offering price described in the prospectus.

[25] Rule 22d-1 permits registered investment companies that issue redeemable securities to establish scheduled variations in their sales loads.

[26] Investment Company Act Release No. 14390 (February 22, 1985). (50 FR 7909 (February 27, 1985)).

[27] Separate accounts that are registered investment companies may rely upon both rule 22d-1 and 22d-2 for exemptions from section 22(d).

[28] Separate accounts that fund variable annuity contracts generally deduct a fee for incurring the risk that mortality experience and administrative

Continued

This revision is consistent with current staff disclosure standards for mortality and expense risk charges. Further, consistent with Form N-1A, Form N-3 has been revised to require disclosure where any distribution expenses are paid from separate account assets pursuant to a plan under rule 12b-1 under the 1940 Act (17 CFR 270.12b-1).[29]

Proposed Forms N-3 and N-4 required disclosure of sales load as a percentage of the public offering price of variable annuity contracts. Several commentators questioned the application of the term "public offering price" to variable annuity contracts, which are generally periodic payment plans and are frequently sold with a deferred sales load. As suggested by one commentator, the adopted forms request disclosure of sales load as a percentage of a purchase payment or, for a deferred sales load, of an amount withdrawn or surrendered.[30]

Several commentators objected to a requirement in proposed Form N-3 that a registrant provide a statement of expenses consisting, for registrants that have been in existence for over a full year, of the ratio of total expenses as a percentage of average net assets for the past year. The commentators asserted that the same information is required in the condensed financial information table and would be redundant. The Commission proposed to consolidate all expense information in the same item in Farm N-3 so inventors would be able to find all of the expenses associated with a contract in one section of the prospectus, and the Commission in retaining the requirement.[31] Further, the Commission is adding the requirement to Form N-4 so investors in trust accounts will be provided with expense disclosure analogous to that of management accounts.[32]

14. Item 8 of Form N-3 and Item 7 of Form N-4—General Description of Variable Annuity Contracts

Proposed Forms N-3 and N-4 required registrants to identify persons who have rights under the variable annuity contracts and to describe the nature of those rights. Proposed Form N-3 specifically stated that the rights described should include voting rights. One commentator asserted that it is impossible to describe rights deriving from the large number of relationships that can exist between annuitants, contractowners, and beneficiaries under a variable annuity contract. In response to this comment, the item is being amended to require only the description of material rights in both forms, except that Form N-3 will continue to require that all voting rights must be described. Further, an instruction is being added to both forms advising registrants not to describe rights that are described elsewhere in the prospectus. Accordingly, in Form N-4 voting rights need not be described in this item since disclosure of voting rights is solicited in Item 5(e).

15. Item 9 Form N-3 and Item 8 in Form N-4—Annuity Period

These items have been substantially rewritten in response to a substantial amount of comment on the proposed forms. Both proposed forms would have required disclosure of the operation of the registrant during a contract's annuity period and how first and subsequent annuity payments are determined. Commentators stated that the proposed items were overly technical and stressed the mechanics of computation of annuity payments. As revised, the item in both forms is organized to give registrants greater flexibility in describing annuity options. It requests a brief description of material factors that affect benefits under annuity options, of possible annuity commencement dates, frequency of payments, the effect of assumed investment return, and rights to change annuity options.

As suggested by one of the commentators, an item is being added to the Statement of Additional Information, Item 26 in Form N-3 and Item 22 in Form N-4, requiring disclosure of the mechanics of determining the amount of annuity payments in that document.

16. Item 10 of Form N-3 and Item 9 of Form N-4—Death Benefit

The proposed forms contained a requirement to describe briefly the death benefit available under a variable annuity contract. One commentator suggested that this item be incorporated in the Statement of Additional Information in an item describing determination of annuity payments. The commentator also objected to a requirement that the registrant disclose the forms that a death benefit may take,[33] asserting that this disclosure is not required for mutual funds on Form N-1A and that the written contract for a variable annuity will describe the forms of the death benefits. The Commission has retained the death benefit disclosure in the prospectus as proposed since it is a significant feature of many variable annuity contracts and one that many investors might find important. While it is true that the forms of the death benefit will be described in a contract, the prospectus is the document by which securities are offered, and all material aspects of the security must be described in the prospectus.

17. Item 11 of Form N-3 and Item 10 of Form N-4—Purchases and Contract Value

These items have been revised in part. In the proposed forms, the items required disclosure, among other things, of the way in which the public offering price is determined and that it is based on the value of an accumulation unit. The adopted version, as suggested by a commentator, seeks an explanation of how purchase payments are credited to a contract, not of public offering price. It also requires an explanation of how accumulation unit value is determined.

18. Item 12 of Form N-3 and Item 11 of Form N-3—Redemptions

The forms as adopted incorporate one change that was recommended by a

expenses may change over time. If proceeds from this charge go to an insurance company's general account, they may be used, *inter alia*, for distribution expenses of the registrant that are paid from the general account. *See* Investment Company Act Release No. 14190 (October 11, 1984) (49 FR 40879 (October 18, 1984)) (proposing rule 26a-3 under the 1940 Act and describing these risks and charges).

[29] Rule 12b-1 authorizes open-end investment companies to adopt plans pursuant to which fund assets may be used to pay for distribution expenses.

Expense disclosure for Forms N-3 and N-4 may in the future be modified to add a tabular presentation showing the amount of expenses and expenses as a percentage of net assets, among other things. This was recently proposed for Form N-1A. Investment Company Act Release No. 14230 (November 9, 1984) (49 FR 45172 (November 15, 1984)).

[30] Of course, where a deferred sales load is based upon the amount withdrawn or surrendered, the sales load may not exceed 9 percent of the purchase payments made, and this limitation should also be disclosed. *See* rule 6c-8 under the 1940 Act (17 CFR 270.6c-8).

[31] This disclosure is consistent with the recent proposal to amend Form N-1A to consolidate all expense related information and add a tabular presentation setting forth expenses, which would include a caption on expenses as a percentage of net assets. *See* Investment Company Act Release No. 14230 (November 9, 1984) (49 FR 45172 (November 15, 1984)).

[32] The Commission is adopting this expense disclosure requirement for Form N-4 and is also adding to Form N-4 a requirement to disclose whether, and, if so, how, a registrant's organizational expenses will be paid out of its assets. While these requirements on expense disclosure were not specifically proposed for Form N-4, they were specifically proposed for Form N-3 and were within the general scope of the proposal for which public comment was solicited. Further, while the proposing release suggested that disclosure by management and trust accounts need not be entirely identical, it clearly indicated the Commission's intent to adopt forms that would be essentially comparable.

[33] This refers to a beneficiary's options for receiving proceeds, such as a lump sum distribution or, as many registrants offer, the annuity payment options that were available to the annuitant under a contract.

commentator. The proposed items required a description of restrictions on redemption that apply to contracts offered in connection with the Texas Optional Retirement Program. An instruction has been added that the item may be satisfied by describing the restrictions on a supplement attached to prospectuses delivered to participants in the program.

19. Item 13 of Form N-3 and Item 12 of Form N-4—Taxes

The proposed forms required a registrant to describe briefly the tax consequences of investing in the variable annuity contracts being offered. In response to a comment, an instruction has been added to state that a registrant need not include detailed description of applicable law. However, an instruction that called for disclosure of methods by which taxable income may be received under the contract has been retained upon the belief that this information would be important for many investors, and is appropriate for prospectus disclosure. This is particularly true because many purchases of annuity contracts are motivated by tax considerations.

This item has been modified in both forms to require identification, rather than a brief description, of the types of tax-qualified plans for which the contracts will be used.

The proposed forms required disclosure of the impact of taxation on the registrant, and an instruction required a statement that a registrant's operations will not be taxed separately from those of its sponsor. This instruction has been deleted to conform with tax law changes made in the Deficit Reduction Act of 1984.[34] The modified forms do, however, require a brief description of the impact, if any, of taxation upon the determination of account and subaccount values.

One commentator stated that it wished to include information in prospectuses to comply with disclosure requirements imposed by the Internal Revenue Code and ERISA in connection with individual retirement annuities and other products, but that the requirement in the forms to "briefly describe" tax consequences might not accommodate this more detailed disclosure. The commentator requested that the Commission facilitate coordinating these disclosure requirements.

Registrants may include tax and ERISA disclosure if it meets the requirements of the forms. The instructions to Forms N-3 and N-4 state that registrants may include additional information in the prospectus or the Statement of Additional Information so long as it does not obscure or impede understanding of required information. However, the additional disclosure could be quite lengthy. One of the purposes of the N-3 and N-4 is to provide a simplified prospectus that can be readily understood by investors, and the Commission discourages registrants from including detailed information that would lengthen or complicate the prospectus.

Part B—Information Required in a Statement of Additional Information

20. Item 16 in Form N-3 and Item 15 in Form N-4—Cover Page

The Commission is retaining the requirement, as proposed in Forms N-3 and N-4, that the Statement of Additional Information state the date of this related prospectus on its cover page. Several commentators were opposed to this requirement.[35]

21. Item 18 of Form N-3 and Item 17 of Form N-4—General Information

The proposed forms required disclosure of any suspensions by any state of sales of contracts offered by a registrant or its sponsoring insurance company. Two commentators stated that this requirement was too broad in that it included products other than life insurance and annuities and it was not limited in time. The item has been amended to limit disclosure of the insurance company's suspensions to the past five-year period; however, it does include suspensions of any type of insurance contract. Disclosure will also be required of sales of contracts of the registrant that have been suspended at any time at the request of a state.

A requirement to identify the jurisdictions in which the sponsoring insurance company is authorized to do business has been deleted in response to comments that this information is not useful and would require a change each time a new jurisdiction is added. A requirement has been added to identify each level of control where the insurance company is subject to more than one level of control.

22. Item 21 of From N-3—Investment Advisory and Other Services

A new disclosure requirement has been added to this item to require a summary of the significant aspects of any plan under rule 12b-1 of the 1940 Act, under which a registrant could incur expenses for the distribution of its securities.[36] This will conform disclosure for separate accounts that have adopted plans under rule 12b-1 to that of mutual funds on Form N-1A.[37]

23. Item 22 of Form N-3—Brokerage Allocation

A paragraph has been added to this item that seeks disclosure of acquisitions by a management account of securities issued by its regular brokers or dealers.[38] The purpose of this requirement is to permit management accounts to acquire the securities of these issuers under disclosure standards developed by the Commission in connection with adoption of rule 12d3-1 under the 1940 Act (17 CFR 270.12d3-1), which permits investment companies to acquire securities issued by brokers, dealers, and other securities businesses.[39]

24. Item 23 of Form N-3—Purchase and Pricing of Securities Being Offered

Paragraph (a) of this item in proposed Form N-3 required disclosure of the method that will be used to determine the total offering price at which annuity contracts may be offered to the public. Because commentators had questioned the use of the term total offering price,[40]

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[34] The Deficit Reduction Act, Pub. L. 98-369, 98 STAT 494, provided that an insurance company's basis in the assets underlying all variable contracts will be adjusted for appreciation or depreciation, thereby eliminating corporate level capital gains tax for the insurance company attributable to the segregated asset account.

[35] *See* paragraph 6, *supra*, the discussion of the cover page of the prospectus for Forms N-3 and N-4.

[36] See note 29, *supra*.

[37] Other changes have been made to this item to replace the term transfer agent with a more generalized description, and to clarify disclosure of changes in contract with parties that provide management-related services.

[38] A regular broker or dealer is defined in rule 10b-1 under the 1940 Act (17 CFR 270.10b-1), essentially, as one of the ten brokers or dealers that received in the past year, the greatest amount of an investment company's brokerage commissions or portfolio transactions as principal, or that sold the largest amount of the investment company's securities. *See* Investment Company Act Release No. 14193 (October 12, 1984) (49 FR 40569 (October 17, 1984)) (adopting release).

[39] In its adopting release for rule 12d3-1, the Commission stated that it would require this disclosure in Forms N-3 and N-4 upon adoption. Investment Company Act Release No. 14036 (July 13, 1984) (49 FR 29362 (July 20, 1984)). *See also* Investment Company Act Release No. 13725 (January 17, 1984) (49 FR 2912 (January 24, 1984)) (proposing release, in which the Commission requested comment on proposed disclosure requirements for all types of investment companies).

[40] *See* the text of the discussion on the "Simplified Prospectus," *supra*.

the item has been revised to seek a description of the method that will be used to determine the sales load on a contract, particularly any differences in sales load charged to different types of purchasers.

A new paragraph has been added to this item, modeled on Item 19(a) of Form N-1A, requiring a description of the manner in which a registrant's securities are offered to the public, including any special purchase plans and exchange privileges not described in the prospectus.

As proposed and adopted, this item also requires a registrant to describe the valuation method used to value its assets. A proposed instruction to this item stated that a registrant must describe the effect of an exemptive order or rule that permits it to use amortized cost valuation or penny-rounding pricing.[41] One commentator questioned this instruction, asserting that debt securities of less than 60 days maturity may be valued at amortized cost in the absence of an exemption from the Commission.[42] This instruction has been amended to seek disclosure of the effect of any conditions where the amortized cost or penny-rounding methods are used pursuant to an exemption.

25. Item 24 of Form N-3 and Item 20 of Form N-4—Underwriters

This item was proposed only for Form N-3. In proposed Form N-4, disclosure of essentially the same information on underwriters was sought in different items.[43] It has been adopted in both forms as a distinct item, essentially in the fashion proposed in Form N-3.

Several technical changes have been made to this item to clarify the disclosure being sought. In response to a comment, the item will require disclosure of whether the sponsoring insurance company or an affiliate thereof is the registrant's principal underwriter; as proposed, the item related only to the insurance company. In a paragraph soliciting information on unusual payments to unaffiliated underwriters or dealers, changes were made to clarify the use of the term "current offering price" and to delete an instruction addressing payments for legal and auditing services.

26. Item 27 of Form N-3 and Item 23 of Form N-4—Financial Statements

Among the financial statements required for Forms N-3 and N-4, the proposal included a two-year comparative balance sheet of a registrant's sponsoring insurance company. One commentator stated that a one-year balance sheet should be sufficient. Rule 3-01 of Regulation S-X (17 CFR 210.3-01) requires audited balance sheets for the two most recent fiscal years, and the Commission believes it would be inappropriate to lessen this requirement for insurance company sponsors of separate accounts.

As proposed, both forms required the sponsoring insurance company's balance sheets to be placed in the Statement of Additional Information. The instruction in both forms has been clarified to state that any notes accompanying the balance sheets must also be placed in the Statement of Additional Information.

Part C—Other Information

27. Item 28 of Form N-3 and Item 24 of Form N-4—Financial Statements and Exhibits

Several of the commentators discussed the exhibits required by these items. Both proposed forms required an exhibit containing a copy of any contract of reinsurance, and several commentators argued that this requirement was too broad. It has been changed to require only copies of contracts of reinsurance in connection with the annuity contracts offered by the registrant. The requirement that the exhibits contain the form of each variable annuity contract has been retained, even though one commentator argued one specimen contract would be sufficient.

The proposed forms required an opinion of counsel that the securities being registered will be legally issued, fully paid and non-assessable. Several commentators pointed out that the latter two representations have not been required by the staff in registrations for variable annuity contracts,[44] and the item has been modified to require the opinion to state whether the securities will be legally issued and will represent binding obligations of the insurance company sponsoring the separate account.

28. Item 29 of Form N-3—Directors and Officers of the Insurance Company, and Item 25 of Form N-4—Directors and Officers of the Depositor

As proposed in both forms, this item required the name, position with the insurance company, and position with the registrant of each director and officer of the sponsoring insurance company. Several commentators stated that many insurance companies have a large number of officers and directors, many of whom perform duties unrelated to variable annuity contracts. Accordingly, an instruction to the item has been added stating that the required information need only be provided for certain designated executive officers and for officers and directors engaged in activities relating to the registrant or its variable annuity contracts.[45]

In Form N-4, this item has been amended so that no disclosure of the offices held with the registrant need be disclosed since unit investment trusts do not have officers or directors.

29. Item 30 of Form N-3—Persons Controlled by or Under Common Control with the Insurance Company or Registrant, and Item 26 of Form N-4—Persons Controlled by or Under Common Control with the Depositor or Registrant.

As proposed, this item required a list of all persons directly or indirectly controlled by or under common control with the sponsoring insurance company or registrant. Though several commentators stated that this requirement is burdensome because the list may be lengthy, the Commission is retaining it. The item will provide

[41] Rule 2a-7 under the 1940 Act permits investment companies, subject to enumerated conditions, to value portfolio securities by use of the amortized cost valuation method or to compute current price per share by rounding the net asset value per share to the nearest one cent. *See* Investment Company Act Release No. 13380 (July 11, 1983) (48 FR 32555 (July 18, 1983)) the adopting release of rule 2a-7, for a description of these methods and a description of the rule. Prior to adoption of the rule, many investment companies obtained individual exemptive orders permitting amortized cost valuation or penny rounding.

[42] *See* Investment Company Act Release No. 9786 (May 31, 1977) (42 FR 28999 (June 7, 1977)), in which the Commission stated it will not object if certain investment companies value debt securities with remaining maturities of less than 60 days at amortized cost, if done in good faith and unless particular circumstances dictate otherwise. *But see* Letter to Benchmark Tax-Exempt Fund (pub. avail. July 28, 1983) (asserting, in substance, that an investment company may not rely upon Release 9786 if it relies upon an exemption to use amortized cost or penny rounding).

[43] *See* Items 16(c), 26(c) and 26(e) of proposed Form N-4, *supra* note 1. Consolidating the disclosure in one item for Form N-4 places some information that was proposed for Part C in the Statement of Additional Information. *See also*, Form N-1A (information on underwriters required in the Statement of Additional Information).

[44] This was indicated in Guide 40 of the proposed guidelines for Form N-3 and in Guide 15 of the proposed guidelines for Form N-4. *See* the proposing release, *supra* note 1.

[45] This instruction is modeled after Exchange Act Release No. 8389 (August 29, 1968), which set forth the officers and directors that must be listed by an insurance company to register as a broker-dealer on Form B-D. A similar limitation on the persons for whom information need be given has been incorporated in Item 33, Business and Other Connections of the Investment Adviser, and Item 34, Principal Underwriters, of Form N-3 and in the parallel items of Form N-4.

information on affiliated persons of the registrant that may be important for identification of affiliated transactions regulated under section 17 of the 1940 Act.

30. Item 31 in Form N-3 and Item 27 in Form N-4—Number of Contractowners

Both proposed forms requested information on the number of contractowners of contracts offered by the registrant. Two commentators questioned whether the Commission was seeking the number of participants or of contractowners. The Commission believes the item is clear as proposed and is adopting it to require the number of contractowners.

31. Item 37 of Form N-3 and Item 32 of Form N-4—Undertakings

In proposed Form N-3 and N-4, the Commission required in any initial registration statement an undertaking to file an amendment with certified financial statements showing the initial capital received before accepting subscriptions from over 25 persons if the registrant proposed to raise its initial capital pursuant to section 14(a)(3) of the 1940 Act (15 U.S.C. 80a-14(a)(3)). One commentator asserted that this undertaking should be deleted since an exemption from this section is available to separate accounts in rule 14a-2 under the Act (17 CFR 170.14a-2). In response to this comment, and in light of the fact that separate accounts generally do not offer annuity contracts by first soliciting subscriptions, this undertaking is being deleted from both forms.

Proposed Forms N-3 and N-4 required an undertaking to file a post-effective amendment as frequently as necessary to ensure that the audited financial statements in the registration statement are never more than 16 months old. A commentator said this undertaking should be deleted, asserting that section 10(a) of the 1933 Act requires updating of financials already if an offering is being made, and that compliance would be burdensome and inconsistent with present practice if no offering is being made. The Commission believes that the requirement to maintain a current prospectus applies to the issuer of variable annuity contracts for so long as payments may be accepted under the contracts, and the undertaking has been modified accordingly.[46]

Form N-4

The following discussion is on comments related solely to proposed Form N-4. Comments and modifications applicable to both Forms N-3 and N-4 are discussed in the prior section.

1. General Instructions, Rule as to Use of Form N-4

One commentator suggested that the Commission permit trust accounts and their underlying portfolio companies, which register on Form N-1A, to use a single integrated prospectus that would provide an integrated discussion of the variable contracts offered by the trust account and of all underlying funding alternatives. The Commission does not believe it is appropriate to permit Form N-4 to be integrated with Form N-1A at this time, since it is adopting a new form specifically designed for trust accounts and which provides a simplified prospectus for those accounts. Further, a change in Commission policy on the prospectus delivery requirements for trust accounts may decrease regulatory compliance costs for registrants and their sponsors.[47]

Part A—Information Required in a Prospectus

2. Item 1—Cover Page

Proposed Form N-4 required that the cover page of the registrant's prospectus contain a statement that the prospectus is not valid unless preceded or accompanied by the prospectuses of *all* of the underlying funds in which a purchaser may invest. This statement would have required a trust account to deliver its prospectus plus the prospectuses of all of its underlying portfolio companies upon the sale of a variable annuity contract. The Commission has reconsidered this statement and determined not to require it on a prospectus cover page; accordingly, upon a sale of a variable annuity contract, a trust account will not necessarily be required to deliver the prospectuses of all of its underlying portfolio companies. The Commission believes that the description of underlying portfolio companies that may be included in a trust account prospectus may, if appropriately presented, be treated as an omitting prospectus under section 10(b) of the 1933 Act, thus removing the necessity for delivery of statutory prospectuses for those companies.[48] Of course, delivery of a prospectus of an underlying company in which a contractowner actually invests will be required pursuant to section 5(b)(2) under the 1933 Act (15 U.S.C. 77e(b)(2)).[49]

3. Item 4—Financial Information

As discussed earlier, the requirement for money market sub-accounts to provide a yield quotation has been deleted except where the registrant advertises on the basis of the sub-account's yield. Paragraph (a) of this item will be adopted to require the registrant to show accumulation unit value at the beginning of a reporting period, at the end of the period, and the number of outstanding accumulation units, as proposed with modifications on the classes of accumulation units for which this information must be shown, as discussed in the prior section.[50]

Costs and Benefits

In its proposing release, the Commission stated that Forms N-3 and N-4 are intended to shorten and simplify the prospectus available to investors, and the Commission requested comment and data concerning the cost savings or burdens to insurance companies and separate accounts. Two commentators submitted comments on this matter. Both stated that the proposed forms

[46] The adoption of this requirement is not intended to negate the validity of previously granted no-action positions. *See* discussion at note 13, *supra*.

[47] The change in policy on prospectus delivery requirements follows in paragraph 2, the discussion on the cover page of the prospectus of Form N-4.

[48] If an offer to invest in any or all of the underlying portfolio companies of a trust account is made by means of a prospectus, then, of course, the prospectus must meet the requirements of section 10 of the 1933 Act. *See* sections 5(b)(1) (15 U.S.C. 77e(b)(1)) and 2(10) of the 1933 Act (15 U.S.C. 77(b)(10)). The proposed cover page statement contemplated that a description of a portfolio company in a trust account prospectus would be treated as a prospectus under section 2(10) of the 1933 Act, unless it was preceded or accompanied by a prospectus meeting the requirements of section 10(a) of the 1933 Act (a "statutory prospectus"). *See* section 2(10) of the 1933 Act. The description would therefore (if not preceded or accompanied by a statutory prospectus) violate section 5(b)(1) of the 1933 Act, which requires that any prospectus used to offer a security for which a registration statement has been filed must meet the requirements of section 10 of the 1933 Act. The Commission, however, believes the description may be structured as an omitting prospectus complying with section 10 for purposes of section 5(b)(1). *See* rule 482 under the 1933 Act (17 CFR 230.482) (under which certain advertisements by investment companies are deemed omitting prospectuses). Therefore, the trust account prospectus containing the description may be sent or given to an investor prior to, or at the same time as, a statutory prospectus for the portfolio companies.

[49] This section requires that a statutory prospectus must accompany or precede any security carried by means of interstate commerce for the purpose of sale or for delivery after sale. Further, if a trust account offers exchange privileges permitting a contractowner to change his or her investment from one underlying fund to another, then the statutory prospectus of the fund into which a contractowner switches must be delivered prior to or upon the exchange pursuant to section 5(b)(2) of the 1933 Act (15 U.S.C. 77(e)(b)(2)).

[50] *See* Paragraph 9 of the discussion on Forms N-3 and N-4, on Item 4 of the forms—Condensed Financial Information, *supra*.

would substantially reduce costs, including printing, mailing, and storage costs, and paperwork burdens. This savings will inure to the benefit of approximately 300 separate account registrants.

Transition Period

Forms N–3 and N–4 will eventually supplant Forms N–1, N–8B–2, and S–6 for insurance company separate accounts funding variable annuity contracts. To permit the Commission and the industry to adjust to the new forms in an orderly fashion, the Commission is providing for a transition period of one year during which all registrants may use either the existing forms or the new forms. After the expiration of the one year transition period, separate accounts that fund variable annuity contracts will be permitted to use Forms N–1 and S–6 only if they no longer offer the contracts to new purchasers.[51] However, the Commission encourages registrants to convert to the simplified prospectus format of Forms N–3 and N–4 since, as stated earlier, this format may be beneficial to both registrants and investors. Forms N–1, N–8B–2, and S–6 will continue to be used by separate accounts that offer variable life insurance contracts.

Statutory Authority

The Commission hereby adopts Form N–3 and Form N–4, amendments to rules 482, 486, 495, 496, and 497 under the Securities Act of 1933, and amendments to rules 8b-11, 8b-12, and 30d-1 under the Investment Company Act of 1940 pursuant to the provisions of sections 7, 10, and 19 of the Securities Act of 1933 (15 U.S.C. 77g, 77j, and 77s) and sections 8, 30, and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-8, 80a-29, and 80a-37).

Guidelines for Registration Statements

Consistent with the Commission's practice of publishing the views of the staff to assist issuers, their counsel, accountants, and others to comply with applicable provisions of the federal securities laws, the Commission published for comment proposed guidelines prepared by the Division of Investment Management (the "staff") to assist in the preparation of Forms N–3 and N–4. Of the seven comment letters the Commission received on proposed Forms N–3 and N–4, five also discussed the guidelines. None of the five commentators opposed the guidelines, and all of the comments addressed specific substantive issues.

The staff has considered the comments and has modified some of the guidelines in response to the comments. The Commission has determined to publish the guidelines to Forms N–3 and N–4. They are a compilation of what the staff believes are applicable Commission releases and staff positions and interpretations, and their publication should assist registrants to expedite the registration process. However, publication of the views of the staff does not afford those views any legal status they would not otherwise have. Nor does such publication prevent the staff from applying the positions set forth in the guidelines flexibly in light of particular circumstances, or from changing those positions if appropriate.

Staff Discussion on Comments to Proposed Guidelines to Forms N–3 and N–4

The following is a brief synopsis of the comments on the proposed guidelines for Forms N–3 and N–4, which were published by the Commission. Since the guideline for the two forms are so similar, and the responses to comments often the same, the guidelines for both forms are generally discussed together. The next section follows the order of the guidelines to Forms N–3, but the discussion relates to the guidelines for both forms unless otherwise indicated by the headings in the discussion. It is followed by a discussion of guidelines that apply only to Form N–4. The guideline numbers in the following discussion refer to the guideline as published for proposal; in some instances, as indicated in text, they differ from the guideline numbers as published in final form.

Guidelines for Forms N–3 and N–4

1. Proposed Guide 3 of the Guidelines for Form N–3—Investment Objectives and Policies

Proposed Guide 3 stated that the Statement of Additional Information should include disclosure of a policy that permits a particular practice even though not use within the past year. One commentator said that this information is not significant to a prospective investor and should be deleted. This part of the guide is intended as a corollary to Item 5(d) of Form N–3, which states that a registrant should not include disclosure of this type of policy in the prospectus. The staff is retaining this part of the guide but it has been modified to clarify its meaning.

2. Proposed Guide 4 of the Guidelines for Forms N–3—Types of Securities

Guide 4 states that if a state insurance law limits the type of investment that the separate account may make to a greater extent than the registrant's fundamental investment policies, the legal limitation should be disclosed in the prospectus. One commentator suggested that this guide should be modified to permit disclosure of this information in the Statement of Additional Information. The staff does not agree with this suggestion because, under these circumstances, the state law limitations are the primary restrictions on certain aspects of portfolio management. Consequently, the staff believes the information is material. Accordingly, this guide is being retained as proposed.

A discussion on repurchase agreements issued by brokers, dealers, or banks has been added to this guide. The discussion addresses the requirement that a repurchase agreement be fully collateralized.

3. Proposed Guide 5 of the Guidelines for Form N–3—Portfolio Turnover

As proposed, this guide stated that new separate accounts other than money market separate accounts should estimate the rate of portfolio turnover they would not exceed. One commentator asserted that this is impossible to predict accurately. The staff believes that this rate can be roughly estimated and that it is indicative of a registrant's portfolio management intentions. Moreover, Guide 5 of the Guidelines to Forms N-1A requests the same information. This statement in the guide is being retained as originally published, particularly since the disclosure is suggested only for the Statement of Additional Information.

Proposed Guide 5 also stated that an existing separate account should disclose its rate of portfolio turnover for each of the past two years. One commentator questioned this statement in light of the requirement in Form N–3, Item 4, to set forth the portfolio turnover rate for each year for which financial information is presented. The staff agrees with this comment and has deleted this statement from the guide.

4. Proposed Guide 7 of the Guidelines for Form N–3—The Borrowing of Money

One commentator suggested that the following guides be combined into one guide on senior securities: Guide 7—The Borrowing of Money, Guide 8—Senior

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[51] Registrants converting to Form N–3 or Form N–4 from one of the existing forms should not file the post-effective amendment to become automatically effective under rule 486(b) (17 CFR 230.486(b)); rather, registrants should use the procedure in rule 486(a).

Securities, Guide 10—Purchases on Margin, and Guide 13—Making Loans to Other Persons. The staff believes that organizing these issues in separate guides makes them easier and more convenient for registrants to use, and the organization is being retained as proposed.

Proposed Guide 7 stated that if a registrant will borrow more than 5% of net assets, it should concisely discuss the purposes and consequences of such borrowing. One commentator stated it is not clear what consequences should be discussed. Among the consequences that warrant disclosure, the staff believes, is the leveraging factor that results from this type of borrowing, and this has been indicated in a parenthetical added to the guide.

5. Proposed Guide 15 to the Guidelines for Form N-3—Trading to Avoid Long-Term Capital Gains and Losses

This guide has been removed since the Deficit Reduction Act of 1984 has effectively eliminated capital gains tax to the sponsoring insurance company attributable to gains and losses of the separate account.

6. Proposed Guide 20 to the Guidelines for Form N-3—Separate Accounts Investing in Other than High Grade Bonds

This guide, renumbered Guide 19 as published in final form, stated that where a registrant chooses to use certain rating criteria in its prospectus disclosure, the registrant should also disclose the minimal rating that the separate account would find acceptable under the rating criteria. One commentator asked whether the rating services' description of their ratings may be disclosed in the Statement of Additional Information. The staff believes that where a registrant uses certain rating criteria, the description of the criteria should be disclosed, and it may be placed in the Statement of Additional Information.

7. Proposed Guide 21 to the Guidelines for Form N-3—Disclosure of Risk Factors

The staff is amending this guide to indicate more clearly its expectations for appropriate risk disclosure. The staff is concerned that many registrants have not been placing adequate risk disclosure in their prospectuses. Frequently, registrants with sub-accounts offering a variety of securities portfolios merely state that there is no assurance that the investment objectives of each sub-account can be achieved, with no additional risk disclosure. The amended guide states that registrants should address in the prospectus the principal speculative or risk factors arising from the securities being offered, which may, for example, be the result of the registrant's particular investment objective, the type of securities in which it invests, the type or size of companies in which it invests, the investment techniques it employs, or from innovative or unusual methods of operation. This amended guide is intended to help registrants in the preparation of registration statements; it is not intended to limit comments on risk disclosure that the staff may have on any particular registration statement. As published in final form, the guide is numbered Guide 20.

8. Proposed Guide 24 to the Guidelines for Form N-3—Management of the Separate Account

As proposed, this guide stated in part that the prospectus should describe the responsibilities of the board of managers under the laws of the jurisdiction where the sponsoring insurance company was organized. One commentator said this statement was probably "cloned" from the guideline for Form N-1A, and it is inappropriate for the N-3 since a separate account is not a separate legal entity under state law and is not comparable to a mutual fund. The staff wishes to promote disclosure of the responsibilities of the board of managers, whether derived from the 1940 Act, state law, or the fundamental documents of the investment company. The guide, renumbered Guide 23 as published in final form, has been revised simply to request disclosure of the responsibilities of the board of managers.

9. Proposed Guide 25 to the Guidelines for Form N-3—Investment Advisory and Other Services

One commentator objected to the statement in this guide that Item 6 of Form N-3 requires a registrant to state that the adviser is responsible for portfolio management. The commentator pointed out that, in fact, Item 6 requires no such statement and that in some cases, the officers of an investment company actually make investment decisions based on advice furnished by the investment adviser. The staff has amended to the guide to reflect more closely the language of Item 6, which requires a registrant to disclose the services provided by its investment adviser, and, in response to Item 6, suggests that a registrant disclose whether the investment adviser is responsible for portfolio management, and if not, who is. This guide has been published in final form as Guide 24.

10. Proposed Guide 27 of the Guidelines for Form N-3 and Proposed Guide 4 of the Guidelines for Form N-4—Redemption

This proposed guide described the redemption requirements of section 22(e) of the 1940 Act (15 U.S.C. 80(a)-22(e)), which applies to both management and trust accounts since each issues redeemable securities.[52] One commentator stated that the guide is inappropriate since separate accounts are not only registered investment companies but also funding vehicles for insurance contracts. The application of the redemption provisions of the 1940 Act to variable annuities has been considered by the staff and registrants over years of regulation of variable annuities, and the application of section 22(e) to variable annuities is well settled.[53] A description of rules 22e-1 and 27c-1 under the 1940 Act [17 CFR 270.22e-1 and 270.27c-1] has been added to the guide. These rules exempt reqistrants from the 1940 Act's redeemability requirements during a payout period with respect to variable payout options based upon life contingencies.

One statement in this guide provided that registrants must disclose in the prospectus procedures for obtaining payment upon redemption shortly after purchase. A commentator questioned the need for this prospectus disclosure in light of "free look" provisions of variable annuity contracts and the long-term nature of variable annuity contracts. However, the staff believes that redemption procedures may be very important to investors and is retaining this statement in the guide. Similarly, the staff is retaining a statement that registrants should disclose procedures by which an investor can avoid delays in payments such as use of a certified check. As published in final form, this guide is Guide 26 in the Guidelines for Form N-3 and Guide 3 in the Guidelines for Form N-4.

11. Proposed Guide 29 of the Guidelines for Form N-3 and Proposed Guide 5 of the Guidelines for Form N-4—Distribution Expenses

The proposed guideline on distribution expenses addressed special arrangements to sell variable annuity contracts to customers of despository

[52] Section 27(c)(1) requires that periodic payment plan certificates be redeemable securities.

[53] *See in the Matter of The Prudential Insurance Company of America*, 41 S.E.C. 335 (1963), *affirmed sub nom., Prudential Insurance Co. of America v. SEC*, 326 F.2d 383 (3d Cir. 1964), *cert. denied*, 377 U.S. 953 (1964).

institutions that may raise issues under the Glass-Steagall Act. Several commentators questioned the relevance of this guide to insurance company separate accounts. Even though it may now be of limited applicability, the staff has retained this part of the guide because of the rapid state of change in the financial services industry in recent years.

A new section has also been added to this guide. It addresses representations made by separate accounts in connection with applications for exemptive relief from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction of charges for the assumption of mortality and/or expense risks. These representations relate to the possibility of direct or indirect use of account assets to finance distribution expenses. The revised guideline indicates that these representations should go in the Statement of Additional Information. The guide is published in final form as Guide 28 in the Guidelines for Form N-3 and Guide 4 in the Guidelines for Form N-4.

12. Proposed Guide 30 of the Guidelines for Form N-3—Tax Consequences

This guideline addressed the offsetting of capital gains of one series against the losses of another series for a series account. Since the Deficit Reduction Act of 1984 eliminated taxation of capital gains and losses for an insurance company attributable to its separate account, this guideline has been removed.

13. Proposed Guide 34 to the Guidelines for Form N-3 and Proposed Guide 9 to the Guidelines for Form N-4—Administrative Charges

Two commentators addressed disclosure recommended by the guide. The proposed guide stated that where a registrant charges an administrative charge as a percentage of assets, it should disclose that contractowners with larger account values may be subsidizing services provided to contractowners with smaller account values. One commentator asserted that larger accounts do not always subsidize smaller ones and that large accounts usually require more servicing than small ones. The staff has revised the guide, as recommended by the commentator, to suggest disclosure that there is no necessary relationship between the administrative charge imposed on a given contract and the amount of expenses that may be attributable to that contract. This guide has been published in final form as Guide 32 in the Guidelines for Form N-3 and Guide 8 in the Guidelines for Form N-4.

14. Proposed Guide 35 to the Guidelines for Form N-3 and Proposed Guide 10 to the Guidelines for Form N-4—Deferred Sales Loads

In discussing the disclosure on deferred sales loads, the staff stated that a sales load not subject to any contingency should be described as a deferred sales load, not a contingent deferred load. In response to a comment questioning the meaning of "contingent," the staff is adding a sentence to indicate that a deferred sales load does not become contingent solely because the sales load is waived in the event of an annuitant's death, or if the registrant provides that a percentage of contract value may be withdrawn without imposition of a sales load. The guide has been renumbered Guide 33 and Guide 9 in the Guidelines for Forms N-3 and N-4, respectively, as published in final form.

15. Proposed Guide 36 of the Guidelines for Form N-3 and Proposed Guide 11 of the Guidelines for Form N-4—Annuity Payments

This guide, renumbered Guides 34 and 10 in the published Guidelines for Forms N-3 and N-4, respectively, has been largely rewritten to reflect the changes in Forms N-3 and N-4 on the disclosure required for annuity payments. The guide outlines the disclosure requirements of the forms and suggests that registrants discuss factors that affect the level of payments in the annuity options available. As recommended by one commentator, it calls for disclosure that is written in a practical, narrative fashion, and it discusses approrpriate disclosure where annuitants are given a choice of assumed investment returns in the annuity options.

The guide also addresses disclosure required for the Statement of Additional Information on the method for determining the amount of annuity payments. The guide retains much of the text from its proposal on appropriate disclosure of initial payments and subsequent payments for variable annuity options.

16. Proposed Guide 37 of the Guidelines for Form N-3 and Proposed Guide 12 of the Guidelines for Form N-4—Assumed Interest Rates

The discussion of assumed interest rates, described in the adopted Forms as assumed investment return, has been included in the guide on annuity payments; therefore, the proposed Guide 37 for the Guidelines for Form N-3 and proposed Guide 12 of the Guidelines for Form N-4 have been deleted.

17. Proposed Guide 39 to the Guidelines for Form N-3 and Proposed Guide 14 to the Guidelines for Form N-4—Automatic Annuity Options

In this guide, the staff affirmed its position that, generally, an automatic purchase of a fixed annuity with amounts that have accumulated on a variable basis is inconsistent with section 27(c)(1) of the 1940 Act. Section 27(c)(1) requires variable annuity contracts to be redeemable securities. One commentator opposed this position asserting that an automatic fixed annuity feature is not a forced redemption and that the staff position doesn't take cognizance of variable annuities as a vehicle for retirement income. The commentator stated that annuity options including a "default provision," are fully disclosed, annuitants are generally given several opportunities to make a choice of payout option, and that the vast majority of participants select a fixed annuity.

The staff continues to believe that a contract with an automatic fixed annuity feature is not a redeemable security and is therefore inconsistent with section 27(c)(1).[54] The staff believes that where an annuitant has indicated that he or she wishes to invest in a separate account offering variable accumulation, the insurance company should not alter the annuitant's intentions in the absence of express authorization. Where variable and fixed payout options are provided, the staff believes that an automatic fixed annuity would constitute a substitution of the judgment of the insurance company for that of the annuitant. Further, the staff believes its position helps ensure that an insurance company will contact an annuitant to determine his or her choice of an annuity option. This guide has been published in final form as Guide 36 in the Guidelines for Form N-3 and Guide 12 in the Guidelines for Form N-4.

18. Proposed Guide 40 in the Guidelines for Form N-3 and Proposed Guide 15 in the Guidelines for Form N-4—Legal Opinions

These proposed guides have been deleted because the undertakings to both Forms N-3 and N-4 have been amended to state more accurately the opinion of counsel required for the registration statement. The guides had

[54] Section 2(a)(32) under the 1940 Act defines a redeemable security as a security under which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets upon presentation of the security to the issuer.

served to explain the proposed undertakings, but the explanation is no longer necessary.

Guidelines for Form N-4

The following discussion relates to a guideline to Form N-4. Guidelines common to Form N-4 and Form N-3 are discussed in the prior section. Proposed Guide 2 to the Guidelines for Form N-4—Cover Page

As proposed, the guide stated that the cover page must contain a statement that the prospectus is not valid unless preceded or accompanied by prospectuses of all the portfolio companies in which a purchaser may invest. The policy on the prospectus delivery requirements for trust accounts has been changed so that only the prospectuses of the underlying portfolio companies in which an investor invests need be delivered.[55] This guide has been deleted.

List of Subjects

Parts 230 and 239

Reporting and recordkeeping requirements, Securities.

Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rules and Forms

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

The Commission is amending Chapter II, Title 17 of the Code of Federal Regulations as follows:

1. The authority citation for Regulation C of Part 230 is revised to read in part as follows:

Authority: Sections 230.400 to 230.499 issued under the Securities Act of 1933, as amended, 15 U.S.C. 77a *et seq.* * * *

Note.—In §§ 230.400 to 230.499, the numbers to the right of the decimal point correspond with the respective rule number in Regulation C, under the Securities Act of 1933.

2. By revising the text of paragraph (d) preceding the note of § 230.482 to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(d) In the case of an investment company which holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in 13 months or less, any quotation of such company's yield contained in such advertisement shall be: (1) a quotation of current yield based on the method of computation prescribed in Form N-1 (set forth in §§ 239.15 and 274.11 of this chapter), Form N-1A (set forth in §§ 239.15A and 274.11A of this chapter), Form N-3 (set forth in §§ 239.17a and 274.11b of this chapter), or Form N-4 (set forth in §§ 239.17b and 274.11c of this chapter) and identifying the length of and the date of the last day in the base period used in computing that quotation, or (2) a quotation of current yield described in paragraph (d)(1) of this section and a corresponding quotation of effective yield determined in accordance with the instructions as to the calculation of effective yield quotations contained in Forms N-1, N-1A, N-3, or N-4.

* * * * *

3. By revising paragraphs (b)(2) introductory text, (b)(3), and (b)(4), and adding paragraph (f) to § 230.486 to read as follows:

§ 230.486 Effective date of post-effective amendments filed by registered separate accounts of insurance companies.

* * * * *

(b) * * *

(2) Any prospectus or Statement of Additional Information filed as a part of such amendment does not include disclosure relating to any of the following events to the extent that such events have occurred since the effective date of the registrant's registration statement or the effective date of its most recent post effective amendment thereto which included a prospectus or Statement of Additional Information, whichever is later, unless such events are disclosed in a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective:

* * * * *

(3) The registrant represents that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) of this section, has occurred since the latest of three dates: (i) The effective date of the separate account's registration statement; (ii) the effective date of its most recent post effective amendment to its registration statement which included a prospectus; or (iii) the filing date of a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective;

(4) Such amendment recites on the facing sheet thereof that the registrant proposes that the amendment will become effective pursuant to paragraph (b) of this section.

* * * * *

(f) For purposes of this section, a post-effective amendment to a registration statement for an offering of securities by a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(37)), as that term is used in paragraphs (a) and (b) of this section and as such amendments are referred to in paragraphs (c) and (d) of this section, shall include a post-effective amendment to a registration statement for an offering of securities by an insurance company funded through a separate account, as defined in section 2(a)(37) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(37)), where the separate account need not register under the Investment Company Act of 1940 pursuant to section 3(c)(11) thereof (15 U.S.C. 80a-3(c)(11)).

4. By revising paragraphs (a), (c), and (d) of § 230.495 to read as follows:

§ 230.495 Preparation of registration statement.

(a) A registration statement on Form N-1A, Form N-3, or Form N-4 shall consist of the facing sheet of the applicable form; cross-reference sheet; a prospectus containing the information called for by such form; the information; list of exhibits; undertakings and signatures required to be set forth in such form; financial statements and schedules; exhibits; any other information or documents filed as part of the registration statement; and all documents or information incorporated by reference in the foregoing (whether or not required to be filed).

* * * * *

(c) In the case of a registration statement filed on Form N-1A, Form N-3, or Form N-4, Parts A and B shall contain the information called for by each of the items of the applicable Part, except that unless otherwise specified, no reference need be made to inapplicable items, and negative answers to any item may be omitted. Copies of Parts A and B may be filed as part of the registration statement in lieu of furnishing the information in item-and-answer form. Wherever such copies are filed in lieu of information in item-and-answer form, the text of the items of the form is to be omitted from the registration statement, as well as from Parts A and B, except to the extent provided in paragraph (d) of this section.

(d) In the case of a registration statement filed on Form N-1A, Form N-3, or Form N-4, where any item of those forms calls for information not required

[55] This is discussed in the Commission release in the section on the cover page of Form N-4.

to be included in Parts A and B, (generally Part C of such form) the text of such items, including the numbers and captions thereof, together with the answers thereto shall be filed with Parts A and B under the cover of the facing sheet of the form as a part of the registration statement. However, the text of such items may be omitted provided the answers are so prepared as to indicate the coverage of the item without the necessity of reference to the text of the item. If any such item is inapplicable, or the answer thereto, is in the negative, a statement to that effect shall be made. Any financial statements not required to be included in Parts A or B shall also be filed as part of the registration proper, unless incorporated by reference pursuant to Rule 411 (§ 230.411 of this chapter).

5. By revising § 230.496 to read as follows:

§ 230.496 Contents of prospectus used after nine months.

In the case of a registration statement filed on Form N-1A, Form N-3, or Form N-4 there may be omitted from any prospectus or Statement of Additional Information used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus or the Statement of Additional Information insofar as later information covering the same subjects, including the latest available certified financial statements, as of a date not more than 16 months prior to the use of the prospectus or the Statement of Additional Information is contained therein.

6. By revising paragraphs (c) and (e) of § 230.497 to read as follows:

§ 230.497 Filing of prospectuses—number of copies.

* * * * *

(c) For investment companies filing on Form N-1A (§ 239.12A and § 274.11A of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), or Form N-4 (§ 239.17b and § 274.11c of this chapter), within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, ten copies of each form of prospectus and Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used.

* * * * *

(e) For investment companies filing on Form N-1A, Form N-3, or Form N-4, after the effective date of a registration statement no prospectus which purports to comply with section 10 of the act or Statement of Additional Information which varies from any form of prospectus or Statement of Additional Information filed pursuant to paragraph (b) of this section shall be used until copies thereof have been filed with, or mailed for filing to, the Commission, together with five copies of a cross reference sheet similar to that previously filed, if changed.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

7. The authority citation for Part 239 is revised to read in part as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a *et seq.* * * *

8. By adding § 239.17a to read as follows:

§ 239.17a Form N-3, registration statement for separate accounts organized as management investment companies.

Form N-3 shall be used for registration under the Securities Act of 1933 of securities of separate accounts that offer variable annuity contracts and which register under the Investment Company Act of 1940 as management investment companies, and certain other separate accounts. This form is also to be used for the registration statement of such separate accounts pursuant to Section 8(b) of the Investment Company Act of 1940 (§ 274.11b of this chapter).

9. By adding § 239.17b to read as follows:

§ 239.17b Form N-4, registration statement for separate accounts organized as unit investment trusts.

Form N-4 shall be used for registration under the Securities Act of 1933 of securities of separate accounts that offer variable annuity contracts and which register under the Investment Company Act of 1940 as unit investment trusts, and certain other separate accounts. This form is also to be used for the registration statement of such separate accounts pursuant to Section 8(b) of the Investment Company Act of 1940 (§ 274.11c of this chapter).

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 270 is revised to read in part as follows:

Authority: The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 *et seq.* * * *

11. By revising paragraph (b) of § 270.8b-11 to read as follows:

§ 270.8b-11 Number of copies-signatures-binding.

* * * * *

(b) In the case of a registration statement filed on Form N-1A, Form N-3, or Form N-4, three complete copies of each part of the registration statement (including exhibits and all other papers and documents filed as part of Part C of the registration statement) shall be filed with the Commission.

* * * * *

12. By revising paragraph (b) of § 270.8b-12 to read as follows:

§ 270.8b-12 Requirements as to paper, printing and language.

* * * * *

(b) In the case of a registration statement filed on Form N-1A, Form N-3, or Form N-4, Part C of the registration statement shall be filed on good quality, unglazed, white paper, no larger than 8½ by 11 inches in size, insofar as practicable. The prospectus and Statement of Additional Information, however, may be filed on smaller-sized paper provided that the size of paper used in each document is uniform.

* * * * *

13. By revising paragraph (a) of § 270.30d-1 to read as follows:

§ 270.30d-1 Reports to stockholders of management companies.

(a) Every registered management company shall transmit to each stockholder of record, at least semi-annually, a report containing the financial statements required to be included in such reports by the company's registration statement form under the 1940 Act (instructions E and F of Item 18 of Form N-1, instructions 5 and 6 of Item 23 of Form N-1A, Item 20 of Form N-2, or Item 27(a) of Form N-3) except that the initial report of a newly registered company shall be made as of a date not later than the close of the fiscal year or half-year occurring on or after the date on which the company's notification of registration under the 1940 Act is filed with the Commission.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

14. The authority citation for Part 274 continues to read in part as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.* * * *

15. By adding § 274.11b to read as follows:

§ 274.11b Form N-3, registration statement of separate accounts organized as management investment companies.

Form N-3 shall be used as the registration statement to be filed pursuant to Section 8(b) of the Investment Company Act of 1940 by separate accounts that offer variable annuity contracts to register as management investment companies. This form shall also be used for registration under the Securities Act of 1933 of the securities of such separate accounts (§ 239.17a of this chapter).

16. By adding § 274.11c to read as follows:

§ 274.11c Form N-4, registration statement of separate accounts organized as unit investment trusts.

Form N-4 shall be used as the registration statement to be filed pursuant to Section 8(b) of the Investment Company Act of 1940 by separate accounts that offer variable annuity contracts to register as unit investment trusts. This form shall also be used for registration under the Securities Act of 1933 of the securities of such separate accounts (§ 239.17b of this chapter).

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission previously certified that Form N-3, Form N-4, and the amendments to rules 482, 486, 495, 496, and 497 under the 1933 Act and 8b-11, 8b-12, and 30d-1 under the 1940 Act, if adopted, will not have a significant economic impact on a substantial number of small entities. No comments were received on that certification.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

June 14, 1985.

Note.—Forms N-3 and N-4 and the guidelines for such forms will not be shown in the Code of Federal Regulations.

Form N-3—Registration Statement Under the Securities Act of 1933 ☐

Pre-Effective Amendment No. ——— ☐
Post-Effective Amendment No. ——— ☐
and/or

Registration Statement Under The Investment Company Act of 1940 ☐

Amendment No. ———
(Check appropriate box or boxes.)

(Exact Name of Registrant)

(Name of Insurance Company)

(Address of Insurance Company's Principal Executive Offices)

(Zip Code) ———

Insurance Company's Telephone Number, including Area Code ———

(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering ———

It is proposed that this filing will become effective (check appropriate space)

——— immediately upon filing pursuant to paragraph (b) of Rule 486
——— on (date) pursuant to paragraph (b) of Rule 486
——— 60 days after filing pursuant to paragraph (a) of Rule 486
——— on (date) pursuant to paragraph (a) of Rule 486

CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

The "Approximate Date of Proposed Public Offering" and the table showing the calculation of the registration fee under the Securities Act of 1933 should be included only where securities are being registered under the Securities Act. Registrants that are registering an indefinite number of securities under the Securities Act pursuant to Investment Company Act Rule 24f-2 (17 CFR 270.24f-2) should include the declaration required by Rule 24f-2(a)(1) on the facing sheet, instead of or in addition to the Securities Act registration fee table.

Contents of Form N-3

General Instructions

A. *Rule as to Use of Form N-3.* Form N-3 shall be used by all separate accounts offering variable annuity contracts which are registered under the Investment Company Act of 1940 ("1940 Act") as management investment companies for: (1) An initial registration statement required by section 8(b) of the 1940 Act (15 U.S.C. 80a-8(b)) and any amendments thereto; (2) a registration statement required under the Securities Act of 1933 ("1933 Act") and any amendments thereto; or (3) any combination of these 1940 Act and 1933 Act filings.

Form N-3 shall also be used to file a registration statement under the 1933 Act, and any amendments thereto, for variable annuity contracts funded by separate accounts which would be required to be registered under the 1940 Act as management investment companies except for the exclusion provided by section 3(c)(11) of the 1940 Act.

B. *Registration Fees.* Section 6(b) of the 1933 Act (15 U.S.C. 77(f)(b)) and Rule 457 (17 CFR 230.457) set forth the fee requirements under the 1933 Act. Rule 8b-6 under the 1940 Act (17 CFR 270.8b-6) sets forth the fee for filing an initial registration statement under that Act. The 1940 Act fee is in addition to the fee required under the 1933 Act. Registrants that are increasing the number or amount of securities registered or registering an indefinite number of their securities are also directed to Rules 24e-2 and 24f-2, respectively, under the 1940 Act (17 CFR 270.24e-2 and 270.24f-2) to compute the filing fee.

C. *Number of Copies.* Filings of registration statements on Form N-3 shall contain the number of copies specified in Securities Act Rule 402 (17 CFR 230.402), except that seven additional copies of the registration statement shall be furnished to the

Commission, instead of the ten additional copies required by Rule 402(b).

Filings of amendments on Form N-3 shall contain the number of copies specified in Securities Act Rule 472 (17 CFR 230.472), except that there shall be filed with the Commission three additional copies of such amendment, two of which shall be marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made in the registration statement by the amendment, instead of the eight additional copies with at least five marked as required by Rule 472(a) (17 CFR 230.472(a)).

D. *Special Terms.* The following terms, when used in Form N-3, shall mean:

Registrant. The term "Registrant" means the separate account (as defined in section 2(a)(37) of the 1940 Act (15 U.S.C. 80a-2(a)(37))) which offers the variable annuity contracts.

Insurance Company. The term "insurance company" means the sponsoring insurance company that establishes and maintains the separate account and which owns the assets of the separate account.

Variable Annuity Contract. The term "variable annuity contract" means any accumulation contract or annuity contract, any portion thereof, or any unit of interest or participation therein pursuant to which the value of the contract, either during an accumulation period or after annuitization, or both, varies according to the investment experience of the separate account in which the contract participates. Unless the context otherwise requires, the term refers to the variable annuity contracts being offered pursuant to the Registration Statement prepared on this Form.

Contractowner Account. The term "contractowner account" means any account of any contractowner, participant, annuitant, or beneficiary to which (net) purchase payments under a variable annuity contract are added and from which administrative or transaction charges may be subtracted.

E. *Application of General Rules and Regulations.* If the registration statement is being filed under both the 1933 and 1940 Acts or under only the 1933 Act, the General Rules and Regulations under the 1933 Act, particularly Regulation C (17 CFR 230.400-497), shall apply, and compliance with them will be deemed to the meet the Rules for 1940 Act Registration Statements. However, if the registration statement is being filed only under the 1940 Act, the General Rules and Regulations under that Act, particularly Regulation 8(b) (17 CFR 270.8b-1 to 8b-32), shall apply, exept as noted in General Instruction F below.

F. *Amendments.* Attention is specifically directed to Rule 8b-16 under the 1940 Act (17 CFR 270.8b-16) which requires the annual amendment of Registration Statements filed pursuant to Section 8(b) of the 1940 Act. Where Form N-3 has been used to file a registration statement under both the 1933 and 1940 Acts, any amendment of that registration statement shall be deemed to be filed under both Acts unless otherwise indicated on the facing sheet.

G. *Incorporation by Reference.* A Registrant may, at its discretion, incorporate all or part of the Statement of Additional Information into the prospectus, without physically delivering the Statement of Additional Information to investors with the prospectus. But the Statement of Additional Information must be available to the investor upon request at no charge and any information or documents incorporated by reference into the Statement of Additional Information must be provided along with the Statement of Additional Information.

Rule 411 under the 1933 Act (17 CFR 230.411), and Rules 0-4, 8b-23, 8b-24, and 8b-32 under the 1940 Act 17 CFR 270.0-4, 270.8b-23, 270.8b-24, and 270.8b-32 contain guidance on incorporating information or documents by reference into a registration statement filed on Form N-3. In general, a Registrant may incorporate by reference, in the answer to any item of Form N-3 not required to be in the prospectus, any information elsewhere in the registration statement or in other statements, applications, or reports filed with the Commission.

The rules on incorporation by reference under both the 1933 Act and the 1940 Act are subject to the limitations of Rule 24 of the Commission's Rules of Practice (17 CFR 201.24). Since Rule 24 may be amended from time to time, Registants are advised to review the Rule before incorporating by reference any document as an exhibit to a registration statement.

Subject to these rules, a Registrant may incorporate by reference into the prospectus or the Statement of Additional Information in response to Items 4(a) or 27 of Form N-3 the information in any report to contractowners meeting the requirements of section 30(d) of the 1940 Act (15 U.S.C. 80a-29(d)) and Rule 30d-1 (17 CFR 270.30d-1), provided:

1. The material incorporated by reference is prepared in accordance with, and covers the periods specified by, this Form;

2. The Registrant states in the prospectus or the Statement of Additional Information, at the place where the information would normally appear, that the information is incorporated by reference from a report to security-holders. The Registrant may also describe, in either the prospectus, the Statement of Additional Information, or Part C of the Registration Statement (in response to Item 28(a)), any parts of the report to securityholders that are not incorporated reference and are not a part of the Registration Statement; and

3. The material incorporated by reference is provided with the prospectus or the Statement of Additional Information to each person to whom the prospectus or the Statement of Additional Information is given, unless the person holds securities of the Registrant and otherwise has received a copy of the material. However, Registrant must state in the prospectus or the Statement of Additional Information that it will furnish, without charge, another copy of such report on request and the name, address, and telephone number of the person to contact.

H. *Document Comprising the Registration Statement or Amendment.* 1. A registration statement or an amendment to it filed under both the 1933 and 1940 Acts, except for an amendment described in paragraph 5 below, shall consist of the facing sheet of the Form, the cross-reference sheet required by Rule 495(a) under the 1933 Act (17 CFR 230.495(a)), Part A, Part B, Part C, required signatures, all other documents filed as a part of the registration statement, and documents or information permitted to be incorporated by reference, whether or not required to be filed.

2. A registration statement or an amendment to it which is filed under only the 1933 Act shall contain all the information and documents specified in paragraph 1 of the this Instruction H, except for an amendment filed only under sections 24(e) or (f) of the 1940 Act (15 U.S.C. 80a-24(e), 80a-24(f)).

3. An amendment to a 1933 Act registration statement filed only to register additional securities under Section 24(e) or 24(f) of the 1940 Act need only consist of the facing sheet of the Form, required signatures, and, if filed pursuant to section 24(e) of the 1940 Act, an opinion of counsel concerning the legality of the securities being registered. Registrants are reminded that an opinion of counsel must accompany a Rule 24f-2 notice filed by Registrants that have registered an indefinite number of their shares.

4. A registration statement or an amendment to it which is filed under only the 1940 Act shall consist of the facing sheet of the Form, a cross-reference sheet, responses to all items of Parts A and B except Items 1, 2, 9, and 10, responses to all items of Part C except Items 28(b) (5), (12), (13), and (14), required signatures, and all other documents filed as part of the registration statement.

5. An amendment permitted by paragraph (d)(2) of Rule 486 under the 1933 Act (17 CFR 230.486), which is filed under paragraph (b) of that Rule to change the disclosure in an amendment filed under paragraph (a), shall consist of the facing sheet of the Form, a cross-reference sheet, responses to any items of Part A, Part B, or Part C that are amended or supplemented by the amendment, required signatures, and all other documents filed as part of the registration statement.

I. *Preparation of the Registration Statement or Amendment.* The instructions for Form N-3 are in three parts. Part A relates to the prospectus required by Section 10(a) of the 1933 Act; Part B relates to the Statement of Additional Information that must be provided upon request to recipients of the prospectus; Part C relates to other information that is required to be in the registration statement.

Part A: The Prospectus

The purpose of the prospectus is to provide essential information about the Registrant in a way that will help investors decide whether to purchase the securities being offered. The prospectus should be clear, concise, and understandable. Avoid the use of technical or legal terms, complex language, or excessive detail.

Responses to the items of Part A should be as simple and direct as possible and include only information needed to understand the fundamental characteristics of the Registrant. Descriptions of practices that are required by law generally should not include detailed discussions of the law itself.

Part B: Statement of Additional Information

The items in Part B call for additional information about Registrants which is not required in the prospectus, but which may be of interest to some investors. In addition, Part B gives Registrants an opportunity to provide information about matters that they believe may interest investors.

Registrants should not repeat in Part B information that is in the prospectus, except where necessary to make Part B understandable.

General Instructions for Parts A and B

1. The information in the prospectus and the Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant and the variable annuity contracts. The information need not be in any particular order, with the following exceptions:

(a) Items 1, 2, 3, and 4 (a) and (b) must be in numerical order in the prospectus and may not be preceded or separated by any other item, except as permitted by the instructions to Item 3.

(b) Item 4, "Condensed Financial Information," should not be preceded by any other chart or table (except for the table of contents required by Rule 481(c) under the 1933 Act [17 CFR 230.481(c)]).

(c) All of the information required by Item 7, "Deductions and Expenses," should be in one place in the prospectus.

2. The prospectus or the Statement of Additional Information may contain more information than called for by this Form, provided that the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of required information. Specifically, Registrants are free to include in the prospectus financial statements required to be in the Statement of Additional Information, and may include in the Statement of Additional Information financial statements that may be placed in Part C.

3. The statutory provisions relating to the dating of the prospectus apply equally to the dating of the Statement of Additional Information for purposes of Rule 423 under the 1933 Act (17 CFR 230.423). Furthermore, the Statement of Additional Information should be made available at the same time that the prospectus becomes available for purposes of Rules 430 and 460 under the 1933 Act [17 CFR 230.430, 230.460].

4. Instructions for charts, graphs, tables, and sales literature:

(a) A Registration Statement on this Form may include any chart, graph, or table that is not misleading; however, no chart, graph, or table should precede the condensed financial information specified in Items 4 (a) and (b).

(b) If "sales literature" is included in the prospectus, (1) the literature should not significantly lengthen the prospectus, and it should not obscure essential disclosure and (2) members of the National Association of Securities Dealers, Inc. (NASD) are not relieved of the filing and other requirements of the NASD for investment company sales literature (See Securities Act Release No. 5359, January 26, 1973 (38 FR 7220 (March 19, 1973))).

Part A Information Required In A Prospectus

Item 1. Cover Page

(a) The outside cover page must contain the following information:

(i) The Registrant's name;

(ii) The Insurance Company's name;

(iii) The types of variable annuity contracts offered by the prospectus (e.g., group, individual, single premium immediate, flexible premium deferred);

(iv) Any limitations on the class or classes of purchasers to whom the contract is being offered, in general terms;

(v) Identification of the type of separate account (e.g., money market account, bond account) or a brief statement of the Registrant's investment objectives;

(vi) A statement or statements that (A) the prospectus sets forth information about the registrant that a prospective investor ought to know before investing; (B) the prospectus should be kept for future reference; (C) additional information about the Registrant has been filed with the Commission and is available upon written or oral request and without charge [This statement should explain how to obtain the Statement of Additional Information, whether any of it has been incorporated by reference into the prospectus, and where the table of contents of the Statement of Additional Information appears in the prospectus.];

(vii) The date of the prospectus, and the date of the Statement of Additional Information;

(viii) The statement required by Rule 481(b)(1) under the 1933 Act [17 CFR 230.481(b)(1)]; and

(ix) Such other information as is required by rules of the Commission or of any other governmental authority having jurisdiction over the Registrant for the issuance of its securities.

(b) The cover page may include other information, if it does not, by its nature, quantity, or manner or presentation, impede understanding of the required information.

Item 2. Definitions

Define the special terms used in the prospectus (e.g., accumulation unit, contract owner, participant, sub-account, etc.) in a glossary. In lieu of a glossary, Registrants may use an index of special terms that refers to the page on which each special term is defined.

Instruction: Only special terms used throughout the prospectus must be defined or listed. If a special term, e.g., "net investment factor," is used in only one section of the prospectus, it may be defined there. However, all special terms used in the prospectus must be defined.

Item 3. Synopsis or Highlights

(a) The Registrant should include a synopsis of the information contained in the prospectus when the prospectus is long or complex. Normally, a synopsis should not be provided where the prospectus is twelve printed pages or less.

(b) The synopsis should be a clear and concise description of the key features of the offering and the Registrant, with cross-references to relevant disclosures elsewhere in the prospectus.

(c) If the prospectus does not include a synopsis and the variable annuity contract contains any of the following characteristics, they must be highlighted:

(i) Any portion of the sales load assessed upon redemption or annuitization;

Instruction: If any portion of the sales load is assesed upon redemption or annuitization, the response to this Item need only state the maximum percentage load that may be assessed against any given amount redeemed or annuitized with a cross-reference to a more complete description of the sales load in the prospectus.

(ii) A penalty tax may be assessed pursuant to Section 72(q) of the Internal Revenue Code [26 U.S.C. 72(q)] upon withdrawal of amounts accumulated under any variable annuity contract; or

(iii) The variable annuity contract contains a revocation right (e.g., a "ten-day free look" provision).

Instruction: The highlighted information may not be preceded by the response to any Item except 1 or 2. It may precede Item 2 or be on the cover page. The information does not have to appear under a separate caption.

Item 4. Condensed Financial Information

(a) Furnish the following information for each class of accumulations units of the Registrants, or for such classes of the Registrant and its subsidiaries consolidated as prescribed in Rule 6-03 of Regulation S-X [17 CFR 210.6-03].

PER ACCUMULATION UNIT INCOME AND CAPITAL CHANGES

(for an accumulation unit outstanding throughout the period)

1. Investment income;
2. Expenses;
3. Net investment income;
4. Net realized and unrealized gains (losses) on securities;
5. Net increase (decrease) in accumulation unit value;
6. Accumulation unit value at beginning of period;
7. Accumulation unit value at end of period;
8. Expenses to average net assets;
9. Net investment income to average net assets;
10. Portfolio turnover rate;
11. Number of accumulation units outstanding at end of period.

Instructions: 1. The above information must be provided for each class of accumulation units of the Registrant derived from contracts offered by means of this prospectus and each class derived from contracts no longer offered for sale, but for which Registrant may continue to accept payments. Information need not be provided for any class of accumulation units of the Registrant derived from contracts that are currently offered for sale by means of a different prospectus. Also, information need not be provided for any class of accumulation units that is no longer offered for sale but for which Registrant may continue to accept payments, if the information is provided in a different, but current prospectus of the Registrant.

2. The information shall be presented in comparative columns for each of the last ten

fiscal years of the Registrant (or for the life of the Registrant and its immediate predecessors, if less) but only for periods after the effective date of Registrant's first 1933 Act Registration Statement. In addition, the information shall be presented for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities furnished.

3. Per accumulation unit amounts shall be given at least to the nearest cent. If the computation of the offering price is extended to tenths of a cent or more, then the amounts on the table shall be given in tenths of a cent.

4. Per accumulation unit income and capital changes should only be given for sub-accounts that fund obligations of the Registrant under variable annuity contracts offered by means of this prospectus.

5. If the investment adviser has been changed during the period covered by this Item, the date(s) of such change(s) should be shown in a footnote.

6. The condensed financial information for not less than the latest five fiscal years shall be audited and shall so state. The auditor's statement pertaining to the condensed financial information need not be included in the prospectus.

7. The amount to be shown at caption 3 may be derived from the difference between the per accumulation unit figures obtained by dividing the amount of undistributed net income attributable to an accumulation unit at the beginning and end of the year by the number of accumulation units outstanding on those respective dates. (Other acceptable methods may be used. If another method is used, the method should be explained in a footnote to this table.) The amounts to be shown at captions 1 and 2 are derived by applying to the net investment income on a per accumulation unit basis the ratio of such items, as shown in the financial statements prepared under rule 6-04 of Regulation S-X (17 CFR 210.6-04), to the net income as shown in such statements.

8. "Expenses," as used in caption 2 above, include the expenses described in caption 2 of Rule 6-07 of Regulation S-X. If there were income deductions such as those described in captions 3 and 5 of that Rule, compute the per accumulation unit amounts thereof and state them separately immediately after caption 2 above.

9. The amount to be shown at caption 4, while mathematically determinable by the summation of amounts computed for as many periods during the year as the number of accumulation units increased or decreased is also the balancing figure derived from the other figures in the statement and should be so computed. The amount shown at this caption for an accumulation unit outstanding throughout the year may not accord with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of increases and decreases in the number of accumulation units in relation to fluctuating market values for the portfolio.

10. The "average net assets," as used in captions 8 and 9, shall be computed upon the basis of the value of the net assets determined no less frequently than as of the end of each month.

11. The portfolio turnover rate to be shown at caption 10 shall be calculated as follows:

a. The rate of portfolio turnover shall be calculated by dividing (A) the lesser of purchases or sales of portfolio securities for the particular fiscal year by (B) the monthly average of the value of the portfolio securities owned by the Registrant during the particular fiscal year. Such monthly average shall be calculated by totaling the values of the portfolio securities as of the beginning and end of the first month of the particular fiscal year and as of the end of each of the succeeding eleven months, and dividing the sum by 13.

b. For the purposes of this Item, exclude from both the numerator and the denominator all securities, including options, whose maturities or expiration dates at the time of acquisition were one year or less. All long-term securities, including United States Government securities, should be included. Purchases shall include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost of rights or warrants purchased. Sales shall include the net proceeds of the sale of rights or warrants. Sales shall also include the net proceeds of portfolio securities which have been called, or for which payment has been made through redemption or maturity.

c. If during the fiscal year the Registrant acquired the assets of another separate account in exchange for its own accumulation units, it shall exclude from purchases the value of securities so acquired, and from sales all sales of such securities made following a purchase-of-assets transaction to realign the Registrant's portfolio. In such event, the Registrant shall also make appropriate adjustment in the denominator of the portfolio turnover computation. The Registrant must disclose such exclusions and adjustments in its answer to this Item.

d. Short sales which the Registrant intends to maintain for more than one year and put and call options where the expiration date is more than one year from date of acquisition are included in purchases and sales for purposes of this Item. The proceeds from a short sale should be included in the value of the portfolio securities which the Registrant sold during the reporting period and the cost of covering a short sale should be included in the value of the portfolio securities which the Registrant purchased during the period. The premiums paid to purchase options should be included in the value of the portfolio securities which the Registrant purchased during the reporting period and the premiums received from the sale of options should be included in the value of the portfolio securities which the Registrant sold during the period.

12. The number of accumulation units outstanding at the end of each period may be shown to the nearest thousand (000 omitted), provided it is indicated that such has been done.

(b) Give the following information as of the end of each of the Registrant's last ten fiscal years for each class of senior securities (including bank loans) of the Registrant. If consolidated statements were prepared as of any of the dates specified, the information shall be furnished on a consolidated basis:

Year	Amount of debt outstanding at end of period	Average amount of debt outstanding during the period	Average number of registrant's units outstanding during the period	Average amount of debt per unit during the period
(1)	(2)	(3)	(4)	(5)

Instructions: 1. Instructions 2, 3, and 6 to Item 4(a) also apply here.

2. The method used to determine the average shown above (e.g., weighted, monthly, daily, etc.) must be described.

3. Column 5 is derived by dividing the amount shown in column 3 by the number shown in column 4.

(c) For each account or sub-account that is held out to be a "money market" account or sub-account or has policies calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less, and which advertises on the basis of current yield, furnish: (1) A yield quotation based on the seven days ended on either (A) the date of the most recent financial statements of the Registrant included in the prospectus or (B) the last day of the most recent month for which it is practicable both to make the required calculation and to include the results in the prospectus, computed by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the sub-account at the beginning of the period, dividing the net change in account value by the value of the account at the beginning of the base period to obtain the base period return, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and multiplying the difference by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent; and (2) the length of and the date of the last day in the base period used in computing that quotation.

Instructions: 1. When calculating the yield quotation required in subsection (c) above, determination of net change in account value must reflect all deductions that are charged to all contract-owner accounts in proportion to the length of the base period and the sub-account's average account size.

2. Deductions from purchase payments and sales loads assessed at the time of redemption or annuitization should not be reflected in the computation of current yield.

3. Realized gains and losses from the sale of securities and unrealized appreciation and depreciation are to be excluded from the calculation of yield.

4. With the presentation of the yield quotation, the Registrant must disclose any material net change that would result from the inclusion of capital changes that are

excluded in the computation pursuant to this Item.

5. The Registrant need not furnish a yield figure for both an accumulation unit of a sub-account for qualified contracts and an accumulation unit for a sub-account for non-qualified contracts funded by the same portfolio, if the two yield figures would not be materially different.

6. The Registrant may furnish separate yield figures for individual and group contracts.

7. In addition to the yield quotation required by this Item, the Registrant may also include a quotation of effective yield, carried to at least the nearest hundredth of one percent, computed by compounding the unannualized base period return by adding 1 to the base period return, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula: Effective yield = [(Base Period Return + 1) $^{365/7} - 1$.

8. When calculating the yield quotation required in subsection (c) above, Registrants that choose to make such an election on an annual basis may use a median account size in place of an average account size in determining the base period return.

9. The Registrant need not include in the prospectus the method of calculating the yield quotation described above. Nevertheless, the Registrant should include the method of calculating this yield figure in the Statement of Additional Information in response to Item 25.

(d) If all the required financial statements of the Registrant and the Insurance Company (see Item 27) are not in the prospectus, state, under a separate caption, where the financial statements may be found. Briefly explain how any financial statements not in the Statement of Additional Information may be obtained.

Item 5. General Description of Registrant and Insurance Company

Concisely discuss the organization and operation or proposed operation of the Registrant. Include the information specified below.

(a) Briefly describe the Insurance Company, including:

(i) Its name, address, and a description of the general nature of its business;

Instruction: The description of the Insurance Company's business should be short and need not list all of the businesses in which the Insurance Company engages or identify the jurisdictions where it does business, if a general description (e.g., "life insurance" or "reinsurance") is provided.

(ii) The date and form of organization of the Insurance Company and the name of the state or other jurisdiction under whose laws it is organized; and

(iii) If the Insurance Company is controlled by another person, the name of that person and the general nature of its business (If the Insurance Company is subject to more than one level of control, simply give the name of the ultimate control person.).

(b) Briefly describe the Registrant, including:

(i) The date and form of organization of the Registrant and the Registrant's classification pursuant to Section 4 of the 1940 Act (15 U.S.C. 80a-4) (i.e., a separate account and an open-end investment company);

(ii) The subclassification of the Registrant pursuant to Section 5(b) of the 1940 Act (15 U.S.C. 80a-5(b));

(iii) A statement indicating

(A) That income, gains, and losses, whether or not realized, from assets allocated to the Registrant are, in accordance with the applicable variable annuity contracts, credited to or charged against the Registrant without regard to other income, gains, or losses of the Insurance Company;

(B) That the assets of the Registrant may not be charged with liabilities arising out of any other business of the Insurance Company, and

(C) Whether the obligations arising under the variable annuity contracts are obligations of the Insurance Company.

(iv) Whether there are sub-accounts of the Registrant (i.e., for qualified and non-qualified contracts or for different portfolios of the Registrant); and

(v) If 10 percent or more of the assets of any sub-account are attributable to one variable annuity contract, the name and address of the contractowner of, and the percentage of assets attributable to, the variable annuity contract.

Instruction: Sub-accounts that fund obligations of the Registrant under contracts that are not offered by means of this prospectus need not be described.

(c) Concisely describe the investment objectives and policies of the Registrant, including:

(i) Whether those objectives may be changed without the approval of a majority of votes; .

(ii) How the Registrant proposes to achieve its objectives including:

(A) The types of securities in which Registrant invests or will invest principally and any special investment practices or techniques that will be used and

(B) The identity of any particular industry or group of industries in which the Registrant proposes to concentrate. (Concentration, for purposes of this Item, is deemed to be investment of 25% or more of the value of Registrant's total assets in a particular industry or group of industries. The policy on concentration should not be inconsistent with Registrant's name.);

(iii) Subject to subparagraph (d) of this Item, the identity of other policies of Registrant that may be changed only with the approval of a majority of votes, including those policies which Registrant deems to be fundamental within the meaning of section 8(b) of the 1940 Act; and

(iv) Subject to subparagraph (d) of this Item, the significant investment policies or techniques (such as risk arbitrage, repurchase agreements, forward delivery contracts, investing for control or management) that are not described pursuant to subparagraphs (ii) or (iii) above that Registrant employs or intends to employ in the foreseeable future.

(d) Discussion of types of investments that will not be Registrant's principal portfolio emphasis, and of related policies or practices, should generally receive less emphasis in the prospectus, and under the circumstances set forth below may be omitted or limited to information necessary to identify the type of investment, policy, or practice. Specifically,

(i) Do not disclose a policy which prohibits a particular practice, or one which permits a particular practice but which the Registrant has not used within the past year and does not intend to use in the foreseeable future, and

(ii) If a policy limits a particular practice so that no more than 5% of Registrant's net assets are at risk, or if Registrant has not followed that practice within the last year, and does not intend to follow such practice in the foreseeable future, simply identify the practice.

(e) Discuss briefly the principal risk factors associated with investment in Registrant, including factors peculiar to the types of portfolio securities in which it invests or intends to invest, as well as those factors generally associated with investment in a company with investment policies and objectives similar to Registrant's.

Item 6. Management

Describe concisely how the business of the Registrant is managed, including:

(a) The responsibilities of the board of managers;

(b) For each investment adviser of the Registrant:

(i) Its name and address and a brief description of its experience as an investment adviser, and, if the investment adviser is controlled by another person, the name of that person and the general nature of its business (If the investment adviser is subject to more than one level of control, simply give the name of the ultimate control person.); and

(ii) The services provided by the investment adviser (If, in addition to providing investment advice, the investment adviser or persons employed by or associated with the investment adviser are, subject to the authority of the board of managers, responsible for overall management of Registrant's business affairs, simply state that fact instead of listing all services provided.);

(c) The identity and principal business address of any other person who provides significant administrative or business affairs management services (e.g., an "Administrator," "Sub-Administrator," or "Servicing Agent"), and briefly describe the services provided;

Instruction: Information need not be given about any services described in response to Item 7(a).

(d) If Registrant engages in any of the following practices, a statement to that effect:

(i) Paying brokerage commissions to any broker

(A) Which is an affiliated person of the Registrant or the Insurance Company, or

(B) Which is an affiliated person of such person, or

(C) An affiliated person of which is an affiliated person of the Registrant, the Insurance Company, the Registrant's investment adviser, or its principal underwriter; and

(ii) Allocating brokerage transactions in a manner that takes into account the sale of investment company securities.

Item 7. Deductions and Expenses

(a) Briefly describe all deductions from purchase payments, contractowner accounts, or assets of the Registrant (e.g., investment advisory fees, sales loads, administrative and transaction charges, risk charges, and premium taxes). Specify the amount of any such deduction as a percentage or dollar figure (e.g., 95% of the average daily net assets or $5 per exchange). Except for the deduction for premium taxes, identify the person who receives the amount deducted, briefly describe what is provided in consideration for the deduction, and explain the extent to which the deduction can be modified.

Instructions: 1. Identification of the range of current premium taxes is sufficient.

2. If proceeds from explicit sales loads will not cover the expected costs of distributing the contracts, identify from what source the shortfall, if any, will be paid. If any shortfall is to be made up from assets from the Insurance Company's general account, disclose, if applicable, that any amounts paid by the Insurance Company may consist, among other things, of proceeds derived from mortality and expense risk charges deducted from the account. If Registrant directly or indirectly pays distribution expenses under 1940 Act Rule 12b-1 (17 CFR 270.12b-1), list the principal types of activities for which payments are or will be made, and (i) if the plan has been in effect for a full fiscal year, give the total amount spent in the most recent fiscal year as a percentage of net assets; or (ii) otherwise briefly describe the basis on which payments will be made (e.g., percentage of net assets, etc.).

3. If the Registrant has been in operation for a full fiscal year, provide the compensation paid to the adviser for the most recent fiscal year as a percentage of average net assets. No further information about the amount of the deduction is required in response to this Item if the adviser is paid on the basis of a percentage of net assets and if the Registrant has neither changed investment advisers nor changed the basis on which the adviser is compensated during the most recent fiscal year. If the fee is paid in some manner other than on the basis of average net assets, briefly describe the basis of payment. If the Registrant has not been in operation for a full fiscal year, state generally what the investment adviser's fee will be as a percentage of average net assets, including any breakpoints. It is not necessary to include precise details as to how the fee is computed or paid.

(b) State the sales load as a percentage of each purchase payment, if it is so calculated, and as percentage of the net amount invested for each breakpoint. For contracts with a deferred sales load, state the sales load as a percentage of the amount withdrawn or surrendered. The percentages should be shown in a table.

(c) Unless set forth in response to paragraph (b), list any special purchase plans or methods established pursuant to a rule or an exemptive order that reflect scheduled variations in, or elimination of, the sales load (*e.g.*, group discounts, waiver of sales load upon annuitization or attainment of a certain age, waiver of a deferred sales load for a certain percentage of contract value ("free corridor"), investment of proceeds from another policy, exchange privileges, employee benefit plans, or the terms of a merger, acquisition or exchange offer made pursuant to a plan of reorganization); identify each class of individuals or transactions to which such plans apply; state each different sales charge available as a percentage of the public offering price and as a percentage of the net amount invested; and state from whom additional information may be obtained. Describe any other special purchase plans or methods established pursuant to a rule that reflect other variations in, or elimination of, the sales load or in any administrative charge or other deductions from purchase payments, and generally describe the basis for the variation or elimination in the sales load or other deduction (i.e., the size of the purchaser, a prior or existing relationship with the purchaser, the purchaser's assumption of certain administrative functions, or other characteristics that result in differences in costs or services).

(d) State the commissions paid to dealers as a percentage of purchase payments.

(e) Provide a statement as to the Registrant's expenses. (If the Registrant has been in existence for a full year, simply set forth the Registrant's total expenses for the most recent full fiscal year as a percentage of average net assets unless the Registrant expects to incur a material amount of extraordinary expenses in the next year. If the Registrant has not been in operation for a full year, list the types of expenses for which Registrant will be responsible.)

(f) If the investment adviser is compensated for its services to the Registrant by someone other than the Registrant, identify the person who provides the compensation and specify the amount.

(g) If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized, including the amount to be amortized and the period over which the amortization will occur.

Item 8. General Description of Variable Annuity Contracts

(a) Identify the person or persons (e.g., the contractowner, participant, annuitant, or beneficiary) who have material rights, including voting rights, under the variable annuity contracts, and briefly describe the nature of those rights, (1) during the accumulation period, (2) during the annuity period, or (3) after the death of the annuitant or contractowner.

Instruction: The Registrant need not repeat rights that are described elsewhere in the prospectus. When describing voting rights, indicate how the rights will be allocated.

(b) Briefly describe any provisions for and limitations on:

(i) Allocation of purchase payments among sub-accounts of the Registrant;

(ii) Transfer of contract values between sub-accounts of the Registrant; and

(iii) Exchanges of variable annuity contracts, including interests or participations therein.

(c) Briefly describe the changes that can be made in the variable annuity contract or the operations of the Registrant by the Registrant or the Insurance Company, including:

(i) Why a change may be made (e.g., changes in applicable law or interpretations of law);

(ii) Who, if anyone, must approve any change (e.g., the contractowner or the Securities and Exchange Commission); and

(iii) Who, if anyone, must be notified of any change.

Instruction: Describe only those changes that would be material to a purchaser of the variable annuity contracts, such as a reservation of the right to deregister the separate account under the 1940 Act. Do not describe possible non-material changes, such as changing the time of day at which accumulation unit values are determined.

(d) Describe how contractowner inquiries should be made.

Item 9. Annuity Period

Briefly describe the annuity options available. The discussion should include:

(a) Material factors that determine the level of annuity benefits;

(b) The annuity commencement date (give the earliest and latest possible dates);

(c) Frequency and duration of annuity payments, and the effect of these on the level of payment;

(d) The effect of assumed investment return;

(e) Any minimum amount necessary for an annuity option and the consequences of an insufficient amount; and

(f) Rights, if any, to change annuity options or to effect a transfer of investment base after the annuity commencement date.

Instructions: 1. Describe the choices, if any, available to a prospective annuitant, and the effect of not specifying a choice. Where an annuitant is given a choice in assumed investment return, explain the effect of choosing a higher, as opposed to a lower, assumed investment return.

2. Detailed diclosure on the method of calculating annuity payments should be placed in the Statement of Additional Information, Item 26.

Item 10. Death Benefit

Briefly describe any death benefit available under a variable annuity contract during the accumulation and the annuity periods. Include:

(a) When the death benefit is calculated and payable and the effect of choosing a specific method of payment on calculation of that death benefit, and

(b) The forms the benefit may take, including the effect of not choosing a payment option, and the period, if any, during which payments must begin under any annuity option.

Item 11. Purchases and Contract Value

(a) Briefly describe the procedures for purchasing a variable annuity contract. Include a concise explanation of:

(i) The minimum initial and subsequent purchase payments required and any limitations on the amount of purchase payments that will be accepted (If there are separate limits for each sub-account, state these limits.);

(ii) A statement of when initial and subsequent purchase payments are credited;

(iii) The way in which purchase payments are credited, including:

(A) An explanation that purchase payments are credited on the basis of accumulation unit value, (B) how accumulation unit value is determined, and (C) how the number of accumulation units credited to a contract is determined.

(b) Explain that investment performance, expenses, and deduction of certain charges affect accumulation unit value.

(c) Identify the method used to value the Registrant's assets (e.g., market value, good faith determination, amortized cost).

(d) Describe when calculations of accumulation unit value are made and that purchase payments are credited to a contract on the basis of accumulation unit value next determined after receipt of a purchase payment.

(e) Identify each principal underwriter (other than the Insurance Company) of the variable annuity contracts and state its principal business address. If the principal underwriter is affiliated with the Registrant, the Insurance Company, or any affiliated person of the Registrant or the Insurance Company, identify how they are affiliated (e.g., the principal underwriter is controlled by the Insurance Company).

Item 12. Redemptions

(a) Briefly describe how a contractowner or annuitant (if the variable annuity option chosen by the annuitant is not based on a life contingency) can redeem a variable annuity contract, including how the proceeds are calculated and when they are payable. Unless described in response to another item in the prospectus, describe any charges that may be attendant upon redemption.

(b) If the Registrant offers the variable annuity contracts in connection with the Texas Optional Retirement Program, describe the restrictions on redemption that apply.

Instruction: Registrants can satisfy this Item by describing the applicable restrictions on redemption on a supplement attached to prospectuses delivered to participants in the Texas Optional Retirement Program.

(c) If a request for redemption may not be honored for a certain period of time after a contractowner's investment, describe briefly.

(d) Briefly describe any provision for lapse or involuntary redemptions under the contract and the reasons for it, such as size of the account or infrequency of purchase payments.

(e) Briefly describe any revocation rights (e.g., "ten-day free look" provisions).

(f) If Registrant, under normal circumstances, intends to redeem in kind, that fact should be disclosed.

Item 13. Taxes

(a) Briefly describe the tax consequences to investors of an investment in the variable annuity contracts being offered.

Instruction: This disclosure need not include a detailed description of applicable law. The discussion should include the taxation of annuity payments, death proceeds, periodic and non-periodic withdrawals, pledges and assignments of the contract (if permitted), and any other method by which taxable income may be received by the investor under the variable annuity contract, as well as the tax benefits accorded annuities during the accumulation period. If the tax consequences vary depending on the use of the variable annuity contract (e.g., to fund an individual retirement annuity or corporate plan), the variations should be briefly described.

(b) Identify the types of qualified plans for which the variable annuity contracts are intended to be used.

Instructions: 1. Identify the types of persons who may use the plans (e.g., corporations, self-employed individuals) and disclose, if applicable, that the terms of the plan may limit the rights otherwise available under the contracts.

2. Do not describe the Internal Revenue Code requirements for qualification of plans or the non-annuity tax consequences of qualification (e.g., the effect on employer taxation).

(c) Briefly describe the impact, if any, of taxation on the determination of account or sub-account values.

Item 14. Legal Proceedings

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, any subsidiary of the Registrant, or Registrant's investment adviser, principal underwriter, or Insurance Company is a party. Include the name of the court where the case is pending, the date filed, and the principal parties. Include similar information for any proceedings instituted by governmental authorities.

Instruction: Legal proceedings are material only to the extent that they are likely to have a material adverse effect upon: (1) the ability of the investment adviser or principal underwriter to perform its contract with the Registrant or of the Insurance Company to meet its obligations under the variable annuity contracts or (2) the Registrant.

Item 15. Table of Contents of the Statement of Additional Information

List the contents of the Statement of Additional Information.

Part B. Information Required in a Statement of Additional Information

Item 16. Cover Page

(a) The outside cover page must contain the following information:

(i) The Registrant's name;

(ii) The Insurance Company's name;

(iii) A statement or statements (A) that the Statement of Additional Information is not a prospectus; (B) that the Statement of Additional Information should be read with the prospectus; and (C) how a copy of the prospectus may be obtained;

(iv) The date of the Statement of Additional Information; and

(v) The date of the related prospectus and any other identifying information that the Registrant deems appropriate.

(b) The cover page may include other information, provided that it does not, by its nature, quantity, or manner of presentation, impede understanding or required information.

Item 17. Table of Contents

List the contents of the Statement of Additional Information and, where useful, provide cross-references to the prospectus.

Item 18. General Information and History

(a) If the Insurance Company's name was changed during the past five years, state its former name and the approximate date on which it was changed. If, at the request of any state, sales of contracts offered by the Registrant have been suspended at any time, of if sales of contracts offered by the Insurance Company have been suspended during the past five years, briefly describe the reasons for and results of the suspension.

(b) If 10 percent or more of the assets of any sub-account are not attributable to variable annuity contracts or to accumulated deductions or reserves (e.g., initial capital contributed by the Insurance Company), state what percentage those assets are of the total assets of the separate account. If the Insurance Company, or any other person controlling the assets, has any present intention of removing the assets from the sub-account, so state.

(c) If the Insurance Company is controlled by another person that, in turn, is controlled by another person, give the name of each control person and the nature of its business.

Item 19. Investment Objectives and Policies

(a) Describe clearly the investment policies of the Registrant. It is not necessary to repeat information contained in the prospectus, but, in augmenting the disclosure about those types of investments, policies, or practices that are briefly discussed or identified in the prospectus, Registrant should refer to the prospectus when necessary to clarify the additional information called for by this Item.

b. Describe any fundamental policy of the Registrant not described in the prospectus with respect to each of the following activities:

(i) The issuance of senior securities;

(ii) Short sales, purchases on margin, and the writing of put and call options;

(iii) The borrowing of money (Describe any fundamental policy which limits Registrant's borrowings of money and state the purpose for which borrowing may be used.);

(iv) The underwriting of securities of other issuers (Include any fundamental policy concerning the acquisition of restricted securities, i.e., securities that must be registered under the 1933 Act before they may be offered or sold to the public.);

(v) The concentration of investments in a particular industry or group of industries;

(vi) The purchase or sale or real estate and real estate mortgage loans;

(vii) Purchase or sale of commodities or commodity contracts including futures contracts;

(viii) The making of loans (For purposes of this Item, the term "loans" does not include the purchase of a portion of an issue of publicly distributed bonds, debentures, or other securities, whether or not the purchase was made upon the original issuance of the securities. However, the term "loan" includes the loaning of cash or portfolio securities to any person.); and

(ix) Any other policy which the Registrant deems fundamental.

Instructions: 1. For purposes of this Item, the term "fundamental policy" is defined as any policy which the Registrant has deemed to be fundamental or which may not be changed without the approval of a majority of the votes available to eligible voters.

2. The Registrant may reserve freedom of action with respect to any of the foregoing activities, but shall express definitely, in terms of a percentage of assets to be devoted to the particular activity, the maximum extent to which the Registrant intends to engage in it. For purposes of (vii) above, see the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(c) Describe fully any significant investment policies of the Registrant not described in the prospectus which are not deemed fundamental and which may be changed without the approval of the majority of votes available to eligible voters (for example, investing for control of management, investing in foreign securities, or arbitrage activities).

Instruction: Registrant should disclose the extent to which it may engage in the above policies and the risks inherent in them.

(d) Explain any significant change in the Registrant's portfolio turnover rates over the last two fiscal years. If the Registrant anticipates a significant change in the portfolio turnover rate from that reported in Item 4(a)(10) for its most recent fiscal year, so state. In the case of a new registration, the Registrant should state its policy with respect to portfolio turnover.

Item 20. Management

(a) Give the following information about each member of the board of managers and officer of the Registrant, and if Registrant has an advisory board, each member of such board. Also state the nature of any family relationship between persons listed.

Name and address	Position(s) held with registrant	Principal occupation(s) during past 5 years
(1)	(2)	(3)

Instructions: 1. The term "officer" means the president, vice-president, secretary, treasurer, controller, and any other officers who perform policy-making functions for the Registrant. The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. The principal business of any corporation or other organization listed under column (3) should be stated unless implicit in its name.

3. If the Registrant has an executive or investment advisory committee, identify the members and state the duties and functions of the committee.

4. Identify by asterisk the members of the board of managers who are interested persons as defined in Section 2(a)(19) of the 1940 Act [15 U.S.C. 80a-2(a)(19)] and the rules thereunder.

(b) For each individual listed in column (1) of the table required by paragraph (a) of this Item, describe any positions held with affiliated persons or principal underwriters of the Registrant.

(c) Give the following information about each person specified below who received from the Registrant or its subsidiaries during the Registrant's last fiscal year aggregate remuneration in excess of $60,000 for services in all capacities:

(i) Each member of the board of managers, each of the three highest paid officers, and each advisory board member of the Registrant;

(ii) Each affiliated person of the Registrant not included in subparagraph (i) except investment advisers;

(iii) Each affiliated person of an affiliate or principal underwriter of the Registrant; and

(iv) All members of the board of managers, officer, and members of the advisory board of the Registrant as a group without naming them.

Name of person	Capacities in which remuneration received	Aggregate remuneration	Pension or retirement benefits accrued during registrant's last fiscal year	Estimated annual benefits upon retirement
(1)	(2)	(3)	(4)	(5)

Instructions: 1. This Item applies to any person who was a member of the board of managers, officer, or member of the advisory board of the Registrant at any time during the last fiscal year. Give information on an accrual basis if practicable.

2. If the Registrant has not completed its first full fiscal year since its organization, give information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding.

3. Columns (4) and (5) should be answered only for those persons named in response to paragraph (a) of this Item and should include all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Registrant or any of its subsidiaries to each such person.

4. Column (4) need not be answered with respect to payments computed on an actuarial basis pursuant to any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

5. The information called for by column (5) may be given in a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

6. In the case of any plan (other than those specified in instruction 3) where the amount set aside each year depends upon the amount of earnings of the issuer or its subsidiaries for such year or a prior year, or where it is otherwise impracticable to state the estimated annual benefits upon retirement, instead of the information called for by column (5), give the total amount set aside or accrued to date, unless it is impracticable to do so, in which case state the method of computing such benefits.

Item 21. Investment Advisory and Other Services

(a) Give the following information about each investment adviser:

(i) The names of all controlling persons of the investment adviser and the basis of such control; and if significant, the business history of any organization that controls the adviser;

(ii) The name of any affiliated person of the Registrant or the Insurance Company who is also an affiliated person of the investment adviser and a list of all capacities in which the person named is affiliated with the Registrant or the Insurance Company and with the investment adviser; and

Instruction: If an affiliated person of the Registrant or the Insurance Company either alone or together with others is a controlling person of the investment adviser, Registrant must disclose such fact but need not supply the specific amount or percentage of the outstanding voting securities of the investment adviser which is owned by the controlling person.

(iii) The method of computing the advisory fee payable by the Registrant including:

(A) The total dollar amounts paid to the adviser by the Registrant or its Insurance Company under the investment advisory contract for the last three fiscal years;

(B) If applicable, any credits which reduced the advisory fee for any of the last three fiscal years; and

(C) Any expense limitation provision.

Instructions: 1. If the advisory fee payable by the Registrant or its Insurance Company varies depending on the Registrant's investment performance in relation to some standard, set forth the standard along with a fee schedule in tabular form. Registrant may include examples showing the fees the adviser would earn at various levels of performance, but such examples must include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State each type of credit or offset separately.

3. Describe only the most restrictive expense limitation provision.

4. If Registrant is organized as a "series" account the response to paragraph (a)(iii) of this Item should describe the methods of allocation and payment of advisory fees for each class or series.

(b) Describe all services performed for or on behalf of the Registrant, which are supplied or paid for wholly or substantially by the investment adviser in connection with the investment advisory contract.

(c) Describe all fees, expenses, and costs of the Registrant that are to be paid by persons other than the investment adviser, the Insurance Company, or the Registrant, and identify such persons.

(d) Give a summary of any contract for the provision of management-related services to the Registrant, which may be of interest to a purchaser of Registrant's securities, unless the contract is described in response to some other item of this form. Show the parties to the contract and the total dollars paid and by whom, for the past three years. If the services under any management-related service contract are paid for by a deduction from contractowner accounts and if the Registrant or Insurance Company has changed the service provider in the past year, state the reasons for the change.

Instructions: 1. A contract for "management-related services" includes any agreement whereby another person agrees to keep, prepare, or file such accounts, books, records, or other documents as the Registrant may be required to keep under federal or state law, or to provide any similar services with respect to the daily operations of the Registrant, but does not include the following: (i) Any contract to provide investment advice to the Registrant; (ii) any agreement to act as custodian or agent to administer purchases and redemptions under the contracts for the Registrant; or (iii) bona fide contracts for outside legal or auditing services, or bona fide contracts for personal employment entered into in the ordinary course of business.

2. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.

3. In summarizing a management-related service contract, include the name of the person providing the service; any direct or indirect relationships between such person and the Registrant, its investment adviser, its Insurance Company, or its principal underwriter; the nature of the services provided; and the basis of the compensation paid for the last three fiscal years.

(e) If any person (other than a bona fide member of the board of managers, officer, member of an advisory board, or employee of the Registrant, as such, or a person named as an investment adviser in response to paragraph (a) above), pursuant to any understanding, whether formal or informal, regularly furnishes advice to the Registrant or to the investment adviser of the Registrant about the desirability of the Registrant's investing in, purchasing, or selling securities or other property, or is empowered to determine what securities or other property should be purchased or sold by the Registrant, and receives direct or indirect remuneration, give the following information:

(i) The name of such person;

(ii) A description of the nature of the arrangement, and the advice or information given; and

(iii) Any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in Registrant's portfolio securities) paid for such advice or information, and a statement of how and by whom such remuneration was paid for the last three fiscal years.

Instruction: Do not describe any of the following: (i) Persons whose advice was given solely through uniform publications distributed to subscribers; (ii) persons who gave only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities by the Registrant; (iii) a company which is excluded from the definition of "investment adviser" of an investment company by reason of Section 2(a)(20)(iii) of the 1940 Act [15 U.S.C. 80a-2(a)(20)(iii)]; (iv) any person the character and amount of whose compensation for such service must be approved by a court; or (v) such other persons as the Commission has by rule or order determined not to be an "investment adviser" of an investment company.

(f) Furnish a summary of the significant aspects of any plan under which the Registrant incurs expenses related to the distribution of its shares, and of any agreements related to implementation of the plan.

The summary should include, among other information, the following:

(i) The manner in which amounts paid by the Registrant under the plan during the last fiscal year were spent on:

(A) Advertising,

(B) Printing and mailing of prospectuses to other than current shareholders,

(C) Compensation to underwriters,

(D) Compensation to dealers,

(E) Compensation to sales personnel, and

(F) Other (specify);

(ii) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(A) Any interested person of the Registrant; or

(B) Any director of the Registrant who is not an interested person of the Registrant; and

(iii) The benefits, if any, to the Registrant resulting from the plan.

Instruction: In responding to this Item, Registrants should take note of the requirements of Rule 12b-1 under the 1940 Act [17 CFR 270.12b-1].

(g) Give the name and principal business address of the Registrant's custodian and independent public accountant and provide a general description of the services they perform.

(h) If the portfolio securities of the Registrant are held by a person other than the Insurance Company, a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of each such person.

(i) If an affiliated person of the Registrant or an affiliated person of such an affiliated person acts as administrative or servicing agent for the Registrant, describe the services performed by such person and the basis for remuneration. State, for the past three years, the total dollars paid for the services, and by whom.

Instruction: Information already provided in response to prior items need not be repeated.

Item 22. Brokerage Allocation

(a) Describe how transactions in portfolio securities are effected including a general statement about brokerage commissions and mark-ups on principal transactions and the aggregate amount of any brokerage commissions paid by the Registrant during the three most recent fiscal years. Explain any material increase in brokerage commissions paid by the Registrant during the most recent fiscal year as compared to the two prior fiscal years.

(b)(i) State the total dollar amount, if any, of brokerage comissions paid by the Registrant during the three most recent fiscal years to any broker which: (A) Is an affiliated person of the Registant; (B) is an affiliated person of an affiliated person of the Registrant; or (C) has an affiliated person that is an affiliated person of the Registrant, its Insurance Company, investment adviser, or principal underwriter, and the identity of each such broker and the relationships that cause the broker to the identified in this Item.

(ii) State for each broker identified in response to paragraph (b)(i) of this Item:

(A) The percentage of Registrant's aggregate brokerage commissions paid to each broker during the most recent fiscal year and

(B) The percentage of Registrant's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.

(iii) Where there is a material difference between the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any broker identified in response to paragraph (b)(i) of this Item, state the reasons for such difference.

(c) Describe how brokers will be selected to effect securities transactions for Registrant and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered.

Instructions: 1. If the receipt or products or services other than brokerage or research services is a factor in the selection of brokers, specify such products and services.

2. If the receipt of research services is a factor in selecting brokers, identify the nature of such research services.

3. State whether persons acting on behalf of Registrant are authorized to pay a broker a commission in excess of that which another broker might have charged for the same transaction, because of the value of (a) brokerage or (b) research services provided by the broker.

4. If applicable, explain that research services furnished by brokers through whom Registrant effects securities transactions may be used by Registrant's investment adviser in servicing all of its accounts and that not all such services may be used by the investment

adviser in connection with the Registrant; or, if other policies or practices are applicable to Registrant with respect to the allocation of research services provided by brokers such policies and practices should be explained.

(d) If, during the last fiscal year, Registrant, its Insurance Company, or its investment adviser, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed Registrant's brokerage transactions to a broker because of research services provided, state the amount of such transactions and related commissions.

(e) If the Registrant has acquired during its most recent fiscal year of during the period of time since organization, whichever is shorter, securities of its regular brokers or dealers as defined in rule 10b-1 under the 1940 Act (17 CFR 270.10b-1), or their parents, identify those brokers or dealers and state the value of the Registrant's aggregate holdings of the securities of each subject issuer as of the close of the Registrant's most recent fiscal year.

Instruction: The Registrant need only disclose information with respect to an issuer that derived more than 15% of its gross revenue from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year. If the Registrant has issued more than one class or series of stock, the requested information must be disclosed for the class or series that has securities that are being registered.

Item 23. Purchase and Pricing of Securities Being Offered

(a) Describe the manner in which Registrant's securities are offered to the public. Include a description of any special purchase plans and any exchange privileges not described in the prospectus.

Instruction: Address exchange privileges between sub-accounts, between the Registrant and other separate accounts, and between the Registrant and contracts offered through the Insurance Company's general account.

(b) Describe the method that will be used to determine the sales load on the variable annuity contracts offered by the Registrant.

Instruction: Explain fully any difference in the price at which variable annuity contracts are offered to members of the public, as individuals and as groups, and the prices at which the contracts are offered for any class of transactions or to any class of individuals, including officers, directors, members of the board of managers, or employees of the Registrant, the Insurance Company, its adviser, or underwriter.

(c) Describe the method used to value the Registrant's assets if not described in the prospectus.

Instructions: 1. Describe the valuation procedure used to determine accumulation unit value.

2. If Registrant uses either penny-rounding pricing or amortized cost valuation, pursuant to either an order of exemption from the Commission or Rule 2a-7 under the 1940 Act (17 CFR 270.2a-7), describe the nature, extent and effect of any conditions under the exemption.

(d) Describe the way in which purchase payments are credited to the contract to the extent not described in the prospectus.

(e) If the Registrant has received an order of exemption from Section 18(f) of the 1940 Act (15 U.S.C. 80a-18(f)) from the Commission or has filed a notice of election pursuant to Rule 18f-1 under the Act (17 CFR 270.18f-1) which has not been withdrawn, fully describe the nature, extent, and effect of the exemptive relief in the Statement of Additional Information if the information is not in the prospectus.

Item 24. Underwriters

(a) If the Insurance Company or an affiliate of the Insurance Company is the principal underwriter of the variable annuity contracts, so state.

(b) State whether the offering is continuous.

(c) State the aggregate dollar amount of underwriting commissions paid to, and the amount retained by, the principal underwriter for each of the last three fiscal years.

(d) If during the Registrant's last fiscal year any payments were made by the Registrant to an underwriter of or dealer in the variable annuity contracts unaffiliated with the Registrant or Insurance Company other than: (i) Payments made through deduction from the purchase payments at the time of sale of the variable annuity contracts or from contract values upon redemption, (ii) payments representing the purchase price of portfolio securities acquired by the Registrant, (iii) commissions on any purchase or sale of portfolio securities by the Registrant, or (iv) payments for investment advisory services pursuant to an investment advisory contract, give the following information:

(A) The name and address of the underwriter or dealer;

(B) The circumstances surrounding the payments;

(C) The amount paid; and

(D) How the amount of the payment was determined and the consideration received for it.

Instructions: 1. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.

2. Information need not be given about any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

3. Information need not be given about payments made under any contract to provide investment advice or to act as custodian or administrative or servicing agent.

4. If the payments were made under an arrangement or policy applicable to dealers generally, simply describe the arrangement or policy.

Item 25. Calculation of Yield Quotations of Money Market Sub-Accounts

Describe the method used to compute each yield quotation provided in the prospectus pursuant to Item 4(c).

Instructions: 1. For purposes of the yield computation, the determination of net change in account value must reflect all deductions that are charged to all contract-owner accounts in proportion to the length of the base period and the sub-account's average account size.

2. Deductions from purchase payments and sales loads assessed at the time of redemption or annuitization should not be reflected in the computation of current yield.

3. Realized gains and losses from the sale of securities and unrealized appreciation and depreciation are to be excluded from the calculation of yield.

4. When calculating the yield quotation required in Item 4(c), Registrants that choose to make such an election on an annual basis may use a median account size in place of an average account size in determining the base period return.

Item 26. Annuity Payments

Describe the method for determining the amount of annuity payments if not described in the prospectus. In addition, describe how any change in the amount of a payment after the first payment is determined.

Item 27. Financial Statements

(a) Provide financial statements of the Registrant.

Instructions: 1. The financial statements and schedules required by Regulation S-X (17 CFR Part 210) shall be provided in a separate section of this Part B.

2. Notwithstanding Instruction 1 above, the following statements and schedules required by Regulation S-X may be omitted from Part B and instead included in Part C of the Registration Statement:

(i) The statements of any subsidiary which is not a majority-owned subsidiary and

(ii) The following schedules in support of the most recent balance sheet (a) columns C and D of Schedule III (17 CFR 210.12-03); and (b) Schedule VI (17 CFR 210.12-04).

3. In addition to the requirements of Rule 3-18 of Regulation S-X (17 CFR 210.3-18), any separate account registered under the 1940 Act which has not previously had an effective Registration Statement under the 1933 Act shall include in its initial Registration Statement under the 1933 Act such additional financial statements and condensed financial information (which need not be audited) as is necessary to make the financial statements and condensed financial information included in the Registration Statement as of a date within 90 days prior to the date of filing.

4. Every annual report to contractowners required by section 30(d) of the 1940 Act and Rule 30d-1 under it (17 CFR 270.30d-1) shall contain the following information:

(i) The audited financial statements required by Regulation S-X, as modified by Instruction 2, for the periods specified by Regulation S-X;

(ii) The condensed financial information required by Item 4(a) of this Form, for the five most recent fiscal years, with at least the most recent year audited; and

(iii) Unless shown elsewhere in the report as part of the financial statements required by: (i) Above, the aggregate remuneration paid by the separate account during the period covered by the report (A) to all members of the board of managers and to all members of any advisory board for regular compensation; (B) to each member of the board of managers and to each member of an advisory board for special compensation; (C) to all officers; and (D) to each person of whom any officer or member of the board of managers of the separate account is an affiliated person.

5. Every report required by section 30(d) of the 1940 Act and Rule 30d-1 under it (17 CFR 270.30d-1), except the annual report to contractowners, shall contain the following information (which need not be audited):

(i) The financial statements required by Regulation S-X, as modified by Instruction 2 above, for the period commencing either with (A) the beginning of the separate account's fiscal year (or date of organization, if newly organized) or (B) a date not later than the date after the close of period included in the last report conforming with the requirements of Rule 30d-1 and the most recent preceding fiscal year;

(ii) The condensed financial information required by Item 4(a) of this Form, for the period of the report as specified by (i) above, and the most recent preceding fiscal year; and

(iii) Unless shown elsewhere in the report as part of the financial statements required by (i) above, the aggregate remuneration paid by the separate account during the period covered by the report (A) to all members of the board of managers and to all members of any advisory board for regular compensation; (B) to each member of the board of managers and to each member of an advisory board for special compensation; (C) to all officers; and (D) to each person of whom any officer or member of the board of managers of the separate account is an affiliated person.

6. See General Instruction F regarding incorporation by reference.

(b) Provide financial statements of the Insurance Company.

Instructions: 1. The financial statements and schedules of the Insurance Company required by Regulation S-X shall be provided in a separate section following the response to paragraph (a) of this Item. If the Insurance Company would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Forms N-3 or N-4, its financial statements may be prepared in accordance with statutory requirements.

2. Notwithstanding Instruction 1 above, all statements and schedules required by Regulation S-X, except for the consolidated balance sheets described in Rule 3-01 of Regulation S-X (17 CFR 210.3-01) and any notes thereto, may be omitted from Part B of the Registration Statement and included in Part C of such Registration Statement.

3. Notwithstanding Rule 3-12 of Regulation S-X (17 CFR 210.3-12), the financial statements of the Insurance Company need not be more current than as of the end of the most recent fiscal year of the Insurance Company unless:

(i) The Insurance Company's financial statements have never been included in an effective registration statement under the Securities Act of 1933 of a separate account which offers variable annuity contracts or funds variable life insurance contracts; or

(ii) The balance sheet of the Insurance Company at the end of either of the two most recent fiscal years included in response to this Item shows a combined capital and surplus, if a stock company, of an unassigned surplus, if a mutual company, or less than $1,000,000; or

(iii) The balance sheet of the Insurance Company at the end of a fiscal quarter within 135 days of the expected date of effectiveness under the 1933 Act (or a fiscal quarter within 90 days of filing if the registration statement is filed solely under the 1940 Act) would show a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $1,000,000. If two fiscal quarters end within the 135 day period, the Insurance Company may choose either for purposes of this test.

Any interim financial statements required by this Item need not be comparative with financial statements for the same interim period of an earlier year.

Part C—Other Information

Item 28. Financial Statements and Exhibits

List all financial statements and exhibits filed as part of the Registration Statement.

(a) Financial statements.

Instruction: Designate those financial statements which are included in Part A and Part B of the Registration Statement.

(b) Exhibits:

(1) Copies of the resolution of the board of directors of the Insurance Company authorizing the establishment of the Registrant;

(2) Copies of the existing bylaws or instruments corresponding thereto;

(3) Copies of all custodian agreements and depository contracts under section 17(f) of the 1940 Act (15 U.S.C. 80a-17(f)) with respect to securities and similar investments of the Registrant, including the schedule of remuneration;

(4) Copies of all investment advisory contracts relating to the management of the assets of the Registrant;

(5) Copies of each underwriting or distribution contract between the Registrant and the principal underwriter or the Insurance Company and the principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers;

(6) The form of each variable annuity contract;

(7) The form of application used with any variable annuity contract provided in response to (6) above;

(8) Copies of the certificate of incorporation or other instrument of organization and the by-laws of the Insurance Company;

(9) A copy of any contract of reinsurance in connection with the variable annuity contracts being offered;

(10) Copies of all bonus, profit sharing, pension, or other similar contracts or arrangements wholly or partly for the benefit of members of the board of managers or officers of the Registrant in their capacity as such; any such plan that is not set forth in a formal document, furnish a reasonably detailed description thereof;

(11) Copies of all other material contracts not made in the ordinary course of business which are to be performed in whole or in part at or after the date of filing the Registration Statement;

(12) An opinion of counsel and consent to its use as to the legality of the securities being registered, indicating whether they will be legally issued and will represent binding obligations of the Insurance Company;

(13) Copies of any other opinions, appraisals, or rulings, and consents to their use relied on in preparing this Registration Statement and required by section 7 of the 1933 Act;

(14) All financial statements omitted from Item 27; and

(15) Copies of any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, the Insurance Company, underwriter, adviser, or initial contractowners and written assurances from the Insurance Company or initial contract-owners that the purchases were made for investment purposes without any present intention of redeeming.

Instruction: 1. Subject to the Rules on incorporation by reference and Instruction 2 below, the foregoing exhibits shall be filed as a part of the Registration Statement. Exhibits numbered 5 and 12-14 above need to be filed only as part of a 1933 Act Registration Statement. Exhibits shall be lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

2. A Registrant need not file an exhibit as part of a post-effective amendment if the exhibit has been filed in the Registrant's initial registration statement or in a previous post-effective amendment, unless there has been a change in the exhibit or unless the exhibit is a copy of a consent required by section 7 of the 1933 Act or is a financial statement omitted from Item 27.

Item 29. Directors and Officers of the Insurance Company

Give the following information about each director or officer of the Insurance Company:

Name and principal business address	Positions and offices with insurance company	Positions and offices with registrant
(1)	(2)	(3)

Instruction: Registrants need only provide the above information for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the variable annuity contracts offered by the Registrant, and for executive officers including the Insurance Company's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

Item 30. Persons Controlled by or Under Common Control with the Insurance Company or Registrant

Provide a list or diagram of all persons directly or indirectly contolled by or under common control with the Insurance Company or Registrant and as to each such person indicate: (1) If a company, the state or other sovereign power under whose laws it is organized, (2) the percentage of voting securities owned or other basis of control by the person, if any, immediately controlling it, and (3) its principal business unless such principle business is implicit in its name.

Instructions: 1. The list or diagram shall include the Registrant and the Insurance Company and shall show clearly the relationship between each company named. If the company is controlled by the direct ownership of its securities by two or more persons, so indicate by appropriate cross-reference.

2. Designate (i) subsidiaries for which separate financial statements are filed; (ii) subsidiaries included in the respective consolidated financial statements; (iii) subsidiaries included in the respective group financial statements filed for unconsolidated subsidiaries; and (iv) other subsidiaries, indicating briefly why statements of such subsidiaries are not filed.

Item 31. Number of Contractowners

State as of a specified date within 90 days prior to the date of filing the number of contractowners of qualified and non-qualified contracts offered by Registrant.

Item 32. Indemnification

State the general effect of any contract, arrangements, or statute under which any member of the board of managers, officer, underwriter, or affiliated person of the Registrant is insured or indemnified in any manner against any liability which may be incurred in such capacity, other than insurance provided by any member of the board of managers, officer, underwriter, or affiliated person for their own protection.

Instruction: In responding to this Item, the Registrant should note the requirements of Rules 461 and 484 under the 1933 Act (17 CFR 230.461, 230.484) and Section 17 of the 1940 Act (15 U.S.C. 80a-17).

Item 33. Business and Other Connections of Investment Adviser

Describe any other business, profession, vocation, or employment of a substantial nature in which each investment adviser of the Registrant, and each director, officer, or partner of any such investment adviser, is or has been, at any time during the past two fiscal years, engaged for his or her own account or as director, officer, employee, partner, or trustee.

Instructions: 1. State the name and principal business address of any company of which any person specified above is a director, officer, employee, partner, or trustee, and the nature of such connection.

2. If the investment adviser is the Insurance Company or an affiliate thereof that is also an insurance company, Registrants need only provide the above information for officers or directors who are engaged directly or indirectly in activities relating to the assets of the Registrant, and for executive officers including the Insurance Company's or its affiliate's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

3. The names of investment advisory clients need not be given.

Item 34. Principal Underwriters

(a) Given the name of each investment company (other than the Registrant) for which each principal underwriter currently distributing securities of the Registrant also acts as a principal underwriter, depositor, sponsor, or investment adviser.

(b) Give the following information about each director, officer, or partner of each principal underwriter named in the answer to Item 11(e):

Name and principal business address	Positions and offices with underwriter	Positions and offices with registrant
(1)	(2)	(3)

Instruction: If the principal underwriter is the Insurance Company or an affiliate thereof, and is also an insurance company, Registrants need only provide the above information for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the contracts offered by the Registrant, and for executive officers including the Insurance Company's or its affiliate's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

(c) Give the following information about all commissions and other compensation received by each principal underwriter, directly or indirectly, from the Registrant during the Registrant's last fiscal year:

Name of principal underwriter	Net underwriting discounts and commissions	Compensation on redemption or annuitization	Brokerage commissions	Other compensation
(1)	(2)	(3)	(4)	(5)

Instructions: 1. Show in a note, or otherwise, the nature of the services provided in return for the compensation show in column (5). Include any compensation received by an underwriter for keeping the Registrant's securities in the hands of the public.

2. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.

3. Information need not be given about any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

4. Information need not be given about payments made under any agreement whereby another person contracts with the Registrant or the Insurance Company to provide investment advice or to act as custodian or administrative or servicing agent.

Item 35. Location of Accounts and Records

Give the name and address of each person who maintains physical possession of each account, book, or other document required to be maintained by Section 31(a) of the 1940 Act (15 U.S.C. 80a-30(a)) and the Rules under it (17 CFR 270.31a-1 to 31a-3).

Item 36. Management Services

Give a summary of any contract not discussed in Part A or Part B of this Form under which management-related services are provided to the Registrant, indicating the parties to the contract, the total dollars paid and by whom, for the last three fiscal years.

Instructions: 1. The instructions to Item 21(d) of this Form shall also apply to this Item.

2. Information need not be given about any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

Item 37. Undertakings

Give the following undertakings in substantially this form in all initial registration statements filed under the 1933 Act:

(a) An undertaking to file a post-effective amendment, using financial statements of the Registrant which need not be certified, within four to six months from the effective date of the Registrant's 1933 Act registration statement;

Instructions: 1. Such amendment may be filed earlier only if at least one-half the dollar amount of securities registered has been raised from a public offering and has been substantially invested pursuant to Registrant's investment objectives.

2. Such amendment may be filed later only if the financial statements required by the undertaking are also going to be used in the next semi-annual or annual report to security holders required pursuant to section 30(d) of the 1940 Act and Rule 30d-1 thereunder, the amendment is filed no later than 40 days after the end of the six month period specified in the undertaking, and the amendment becomes effective no later than 60 days after the end of that six month period.

3. The financial statements included in such post-effective amendment should be as of and for the time period reasonably close or as soon as practicable to the date of the amendment, but in no event more than 60 days prior to the date of filing.

(b) An undertaking to file a post-effective amendment to this registration statement as frequently as is necessary to ensure that the audited financial statements in the registration statement are never more than 16 months old for so long as payments under the variable annuity contracts may be accepted;

(c) An undertaking to include either (1) as part of any application to purchase a contract offered by the prospectus, a space that an applicant can check to request a Statement of Additional Information, or (2) a post card or similar written communication affixed to or included in the prospectus that the applicant can remove to send for a Statement of Additional Information;

(d) An undertaking to deliver any Statement of Additional Information and any financial statements required to be made available under this Form promptly upon written or oral request.

SIGNATURES

As required by (the Securities Act of 1933 and) the Investment Company Act of 1940 the Registrant (certifies that it meets the requirements of Securities Act Rule 486(b) for effectiveness of this Registration Statement and) has caused this Registration Statement to be signed on its behalf, in the City of ———, and State of on the —— day of ———, 19——.

(Registrant)

By ———

(Signature and Title)

(Insurance Company)

By ———

(Name of officer of Insurance Company)

(Title)

Instruction: If the registration statement is being filed only under the Securities Act or under both the Securities Act and the Investment Company Act, it should be signed by both the Registrant and the Insurance Company. If the registration statement is being filed only under the Investment Company Act, it should be signed only by the Registrant.

As required by the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)

(Title)

(Date)

Form N-4—Registration Statement Under the Securities Act of 1933 □

Pre-Effective Amendment No. ——— □

Post-Effective Amendment No. ——— □

and/or

Registration Statement Under the Investment Company Act of 1940 □

Amendment No. ———

(Check appropriate box or boxes.)

(Exact Name of Registrant)

(Name of Depositor)

(Address of Depositor's Principal Executive Offices)

(Zip Code) ———

Depositor's Telephone Number, including Area Code ———

(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering ———

It is proposed that this filing will become effective (check appropriate space)

——— immediately upon filing pursuant to paragraph (b) of Rule 486

——— on (date) pursuant to paragraph (b) of Rule 486

——— 60 days after filing pursuant to paragraph (a) of Rule 486

——— on (date) pursuant to paragraph (a) of Rule 486

CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

The "Approximate Date of Proposed Public Offering" and the table showing the calculation of the registration fee under the Securities Act of 1933 should be included only where securities are being registered under the Securities Act. Registrants that are registering an indefinite number of securities under the Securities Act pursuant to Investment Company Act Rule 24f-2 (17 CFR 270.24f-2) should include the declaration required by Rule 24f-2(a)(1) on the facing sheet, instead of or in addition to the Securities Act registration fee table.

Contents of Form N-4

General Instructions

A. *Rule as to Use of Form N-4.* Form N-4 shall be used by all separate accounts offering variable annuity contracts which are registered under the Investment Company Act of 1940 ("1940 Act") as unit investment trusts for: (1) An initial registration statement required by section 8(b) of the 1940 Act (15 U.S.C. 80a-8(b)) and any amendments thereto; (2) a registration statement required under the Securities Act of 1933 ("1933 Act") and any amendments thereto; or (3) any combination of these 1940 Act and 1933 Act filings.

Form N-4 shall also be used to file a registration statement under the 1933 Act and any amendments thereto for variable annuity contracts funded by separate accounts which would be required to be registered under the 1940 Act as unit investment trusts except for the exclusion provided by section 3(c)(11) of the 1940 Act (15 U.S.C. 80a-3(c)(11)).

B. *Registration Fees.* Section 6(b) of the 1933 Act (15 U.S.C. 77(f)(b)) and Rule 457 (17 CFR 230.457) set forth the fee requirements under the 1933 Act. Rule 8b-6 under the 1940 Act (17 CFR 270.8b-6) sets forth the fee for filing an initial registration statement under that Act. The 1940 Act fee is an addition to the fee required under the 1933 Act. Registrants that are increasing the number or amount of securities registered or registering an indefinite number of their securities are also directed to Rules 24e-2 and 24f-2, respectively, under the 1940 Act (17 CFR 270.24e-2 and 270.24f-2) to compute the filing fee.

C. *Number of Copies.* Filings of registration statements on Form N-4 shall contain the number of copies specified in Securities Act Rule 402 (17 CFR 230.402), except that seven additional copies of the registration statement shall be furnished to the Commission, instead of the ten additional copies required by Rule 402(b).

Filings of amendments on Form N-4 shall contain the number of copies specified in Securities Act Rule 472 (17 CFR 230.472), except that there shall be filed with the Commission three additional copies of such amendment, two of which shall be marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made in the registration statement by the amendment, instead of the eight additional copies with at least five marked as required by Rule 472(a) (17 CFR 230.472(a)).

D. *Special Terms.* The following terms, when used in Form N-4, shall mean:

Registrant. The term "Registrant" means the separate account (as defined in section 2(a)(37) of the 1940 Act (15 U.S.C. 80a-2(a)(37))) which offers the variable annuity contracts.

Depositor. The term "depositor" means the person primarily responsible for the organization of the Registrant and the person who has continuing functions or responsibilities with respect to the administration of the affairs of the Registrant other than the trustee or custodian. The term includes the sponsoring insurance company that establishes and maintains the separate account. If there is more than one such person the information called for in this Form about the depositor shall be provided for each such person.

Variable Annuity Contract. The term "variable annuity contract" means any accumulation contract or annuity contract, any portion thereof, or any unit of interest or participation therein pursuant to which the value of the contract, either during an accumulation period or after annuitization, or both, varies according to the investment experience of the separate account in which the contract participates. Unless the context otherwise requires, the term refers to the variable annuity contracts being offered pursuant to the Registration Statement prepared on this Form.

Contractowner Account. The term "contractowner account" means any account of a contractowner, participant, annuitant, or beneficiary to which (net) purchase payments under a variable annuity contract are added and from which administrative or transaction charges may be subtracted.

Portfolio Company. The term "portfolio company" means any company in which the Registrant invests.

E. *Application of General Rules and Regulations.* If the registration statement is being filed under both the 1933 and 1940 Acts or under only the 1933 Act, the General Rules and Regulations under the 1933 Act, particularly Regulation C (17 CFR 230.400-497), shall apply, and compliance with them will be deemed to meet the rules for 1940 Act Registration Statements. However, if the registration statement is being filed only under the 1940 Act, the General Rules and Regulations under that Act, particularly Regulation 8(b) (17 CFR 270.8b-1 to 8b-32), shall apply, except as noted in General Instruction F below.

F. *Amendments.* Where Form N-4 has been used to file a registration statement under both the 1933 and 1940 Acts, any amendment of that registration statement shall be deemed to be filed under both Acts unless otherwise indicated on the facing sheet.

G. *Incorporation by Reference.* A Registrant may, at its discretion, incorporate all or part of the Statement of Additional Information into the prospectus, without physically delivering the Statement of Additional Information to investors with the prospectus. But the Statement of Additional Information must be available to the investor upon request at no charge and any information or documents incorporated by reference into the Statement of Additional Information must be provided along with the Statement of Additional Information.

Rule 411 under the 1933 Act (17 CFR 230.411), and rules 0-4, 8b-23, 8b-24, and 8b-32 under the 1940 Act (17 CFR 270.0-4, 270.8b-23, 270.8b-24, and 270.8b-32) contain guidance on incorporating information or documents by reference into a registration statement filed on Form N-4. In general, a Registrant may incorporate by reference, in the answer to any item of Form N-4 not required to be in the prospectus, any information elsewhere in the registration statement or in other statements, applications, or reports filed with the Commission.

The rules on incorporation by reference under both the 1933 Act and the 1940 Act are subject to the limitations of Rule 24 of the Commission's Rules of Practice (17 CFR 201.24). Since Rule 25 may be amended from time to time, Registrants are advised to review the rule prior to incorporating by reference any document as an exhibit to a registration statement.

H. *Documents Comprising the Registration Statement or Amendment.* 1. A registration statement or an amendment to it filed under both the 1933 and 1940 Acts, except for an amendment described in paragraph 5 below, shall consist of the facing sheet of the Form, the cross-reference sheet required by Rule 495(a) under the 1933 Act (17 230.495(a)), Part A, Part B, Part C, required signatures, all other documents filed as a part of the registration statement, and documents or information permitted to be incorporated by reference, whether or not required to be filed.

2. A registration statement or an amendment to it which is filed under only the 1933 Act shall contain all the information and documents specified in paragraph 1 of this Instruction H, except for an amendment to a 1933 Act registration statement filed only under sections 24 (e) or (f) of the 1940 Act (15 U.S.C. 80a-24(e), 80a-24(f)).

3. An amendment of a 1933 Act registration statement filed only to register additional securities under section 24(e) or 24(f) of the 1940 Act need only consist of the facing sheet of the Form, required signatures, and, if filed pursuant to section 24(e) of the 1940 Act, an opinion of counsel concerning the legality of the securities being registered. Registrants are reminded that an opinion of counsel must accompany a Rule 24f-2 notice filed by Registrants that have registered an indefinite number of their shares.

4. A registration statement or an amendment to it which is filed under only the 1940 Act shall consist of the facing sheet of the Form, a cross-reference sheet, responses to all items of Part A and B except Items 1, 2, 8, and 9, responses to all items of Part C except Items 24(b) (3), (9), (10), and (11), required signatures, and all other documents filed as part of the registration statement.

5. An amendment permitted by paragraph (d)(2) of Rule 486 under the 1933 Act (17 CFR 230.486), which is filed under paragraph (b) of that rule to change the disclosure in an amendment filed under paragraph (a), shall consist of the facing sheet of the Form, a cross-reference sheet, responses to any items of Part A, Part B, or Part C that are amended or supplemented by the amendment, required signatures, and all other documents filed as part of the registration statement.

I. *Preparation of the Registration Statement or Amendment.* The instructions for Form N-4 are in three parts. Part A relates to the prospectus required by section 10(a) of the 1933 Act; Part B relates to the Statement of Additional Information that must be provided upon request to recipients of the prospectus; Part C relates to other information that is required to be in the registration statement.

Part A: The Prospectus

The purpose of the prospectus is to provide essential information about the Registrant in a way that will help investors decide whether to purchase the securities being offered. The prospectus should be clear, concise, and understandable. Avoid the use of technical or legal terms, complex language, or excessive detail.

Responses to the items of Part A should be as simple and direct as possible and include only information needed to understand the fundamental characteristics of the Registrant. Decriptions of practices that are required by law generally should not include detailed discussions of the law itself.

Part B: Statement of Additional Information

The items in Part B call for additional information about Registrant which is not required in the prospectus, but which may be of interest to some investors. In addition, Part B gives Registrants an opportunity to provide information about matters that they believe may interest investors.

Registrants should not repeat in Part B information that is in the prospectus, except where necessary to make Part B understandable.

General Instructions for Parts A and B

1. The information in the prospectus and Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant and the variable annuity contacts. The information need not be in any particular order, with the following exceptions:

(a) Items 1, 2, 3, and 4(a) must be in numerical order in the prospectus and may not be preceded or separated by any other item, except as permitted by the instructions to Item 3.

(b) Item 4, "Condensed Financial Information," should not be preceded by any other chart or table (except for the table of contents required by Rule 481(c) under the 1933 Act (17 CFR 230.481(c)).

(c) All of the information required by Item 6, "Deductions and Expenses," should be in one place in the prospectus.

2. The prospectus or the Statement of Additional Information may contain more information than called for by this Form, provided that the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of required information. Specifically, Registrants are free to include in the prospectus financial statements required to be in the Statement of Additional Information, and may include in the Statement of Additional Information financial statements that may be placed in Part C.

3. The statutory provisions relating to the dating of the prospectus apply equally to the dating of the Statement of Additional Information for purposes of Rule 423 under the 1933 Act (17 CFR 230.423). Furthermore, the Statement of Additional Information should be made available at the same time that the prospectus becomes available for purposes of Rules 430 and 460 under the 1933 Act (17 CFR 230.430, 230.460).

4. Instructions for charts, graphs, tables, and sales literature:

(a) A Registration Statement on this Form may include any chart, graph, or table that is not misleading.

(b) If "sales literature" is included in the prospectus, (1) the literature should not significantly lengthen the prospectus, and it should not obscure essential disclosure and (2) members of the National Association of Securities Dealers, Inc. (NASD) are not relieved of the filing and other requirements of the NASD for investment company sales literature (See Securities Act Release No. 5359, January 26, 1973 (38 FR 7220 (March 19, 1973)).

Part A Information Required in A Prospectus

Item 1. Cover Page

(a) The outside cover page must contain the following information:

(i) The Registrant's name;

(ii) The depositor's name;

(iii) The types of variable annuity contracts offered by the prospectus (e.g., group, individual, single premium immediate, flexible premium deferred);

(iv) Any limitations on the class or classes of purchasers to whom the contract is being offered, in general terms;

(v) A statement or statements that (A) the prospectus sets forth the information about the Registrant that a prospective investor ought to know before investing; (B) the prospectus should be kept for future reference; (C) additional information about the Registrant has been filed with the Commission and is available upon written or oral request and without charge (This statement should explain how to obtain the Statement of Additional Information, whether any of it has been incorporated by reference into the prospectus, and where the table of contents of the Statement of Additional Information appears in the prospectus.);

(vi) The date of the prospectus, and the date of the Statement of Additional Information;

(vii) The statement requried by Rule 481(b)(1) under the 1933 Act (17 CFR 230.481(b)(1));

(viii) The names of the portfolio companies;

(ix) Such other information as is required by rules of the Commission or of any other governmental authority having jurisdiction over the Registrant for the issuance of its securities.

(b) The cover page may include other information, if it does not, by its nature, quantity, or manner of presentation, impede understanding of required information.

Item 2. Definitions

Define the special terms used in the prospectus (e.g., accumulation unit, contractowner, participant, sub-account, etc.) in a glossary. In lieu of a glossary, Registrants may use an index of special terms that refers to the page on which each special term is defined.

Instruction: Only special terms used throughout the prospectus must be defined or listed. If a special term, e.g., "net investment factor," is used in only one section of the prospectus, it may be defined there. However, all special terms used in the prospectus must be defined.

Item 3. Synopsis or Highlights

(a) The Registrant should include a synopsis of the information in the prospectus when the prospectus is long or complex. Normally, a synopsos should not be provided where the prospectus is twelve printed pages or less.

(b) The synopsis should be a clear and concise description of the key features of the offering and the Registrant, with cross-references to relevant disclosures elsewhere in the prospectus.

(c) If the prospectus does not include a synopsis and the variable annuity contract contains any of the following characteristics, they must be highlighted:

(i) Any portion of the sales load assessed upon redemption or annuitization;

Instruction: If any portion of the sales load is assessed upon redemption or annuitization, the response to this Item need only state the maximum percentage load that may be assessed against any given amount redeemed or annuitized with a cross-reference to a more complete description of the sales load in the prospectus.

(ii) A penalty tax may be assessed pursuant to section 72(q) of the Internal Revenue Code (26 U.S.C. 72(q)) upon withdrawal of amounts accumulated under any variable annuity contract; or

(iii) The variable annuity contract contains a revocation right (e.g., a "ten-day free look" provision).

Instruction: The highlighted information may not be preceded by the response to any Item except 1 or 2. It may precede Item 2 or be on the cover page. The information does not have to appear under a separate caption.

Item 4. Condensed Financial Information

(a) Furnish the following information for each class of accumulation units of the Registrant.

Accumulation Unit Values. For an accumulation unit outstanding throughout the period.

1. Accumulation unit value at beginning of period;

2. Accumulation unit value at end of period;

3. Number of accumulation units outstanding at the end of period.

Instructions: 1. The above information must be provided for each class of accumulation units of the Registrant derived from contracts offered by means of this prospectus and each class derived from contracts no longer offered for sale, but for which Registrant may continue to accept payments. Information need not be provided for any class of accumulation units of the Registrant derived from contracts that are currently offered for sale by means of a different prospectus. Also, information need not be provided for any class of accumulation units that is no longer offered for sale but for which Registrant may continue to accept payments, if the information is provided in a different, but current prospectus of the Registrant.

2. The information shall be presented in comparative columns for each of the last ten fiscal years of the Registrant (or for life of the Registrant and its immediate predecessors, if less) but only from the later of the effective date of Registrant's or the relevant portfolio company's first 1933 Act Registration Statement. In addition, the information shall be presented for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities furnished.

3. Accumulation unit amounts shall be given at least to the nearest cent. If the computation of the offering price is extended to tenths of a cent or more, then the amounts on the table should be given in tenths of a cent.

4. Accumulation unit values should only be given for sub-accounts that fund obligations of the Registrant under variable annuity contracts offered by means of this prospectus.

(b) For each account or sub-account that is funded by a "money market" fund or portfolio company with policies calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less, and which advertises on the basis of current yield, furnish: (1) A yield quotation based on the seven days ended on either (A) the date of the most recent financial statements of the Registrant included in the prospectus or (B) the last day of the most recent month for which it is practicable both to make the required calculation and to include the results in the prospectus, computed by determining the net change, exclusive of capital changes, in the value of a hypothetical preexisting account having a balance of one accumulation unit of the sub-account at the beginning of the period, dividing the net change in account value by the value of the account at the beginning of the base period to obtain the base period return, and multiplying the difference by (365/7) with the resulting figure carried to at least the nearest hundredth of one percent and (2) the length of and the date of the last day in the base period used in computing the quotation.

Instructions: 1. When calculating the yield quotation required in subsection (b) above, the determination of net change in account value must reflect all deductions that are charged to all contractowner accounts in proportion to the length of the base period and the sub-account's average account size.

2. Deductions from purchase payments and sales loads assessed at the time of redemption or annuitization should not be reflected in the computation of current yield.

3. Realized gains and losses from the sale of securities and unrealized appreciation and depreciation of the sub-account and the portfolio company are to be excluded from the calculation of yield.

4. With the presentation of the yield quotation, Registrant must disclose any material net change that would result from

the inclusion of capital changes that are excluded in the computation pursuant to this Item.

5. The Registrant need not furnish a yield figure for both an accumulation unit of a sub-account for qualified contracts and an accumulation unit for a sub-account for non-qualified contracts funded by the same portfolio company, if the two yield figures would not be materially different.

6. The Registrant may furnish separate yield figures for individual and group contracts.

7. In addition to the yield quotation required by this Item, the Registrant may also include a quotation of effective yield, carried to at least the nearest hundredth of one percent, computed by compounding the unannualized base period return by adding 1 to the base period return, raising the sum to a power equal to 365 divided by 7, and subtracting one from the result according to the following formula: Effective yield = (Base Period Return + 1) $^{365/7}$ − 1.

8. When calculating the yield quotation required in subsection (b) above, registrants that choose to make such an election on an annual basis may use a median account size in place of an average account size in determining the base period return.

9. The Registrant need not include in the prospectus the methods of calculating the yield quotation described above, nevertheless, the Registrant should include the method of calculating this yield figure in the Statement of Additional Information in response to Item 21.

(c) If all the required financial statements of the Registrant and the depositor (see Item 23) are not in the prospectus, state, under a separate caption, where the financial statements may be found. Briefly explain how any financial statement not in the Statement of Additional Information may be obtained.

Item 5. General Description of Registrant, Depositor, and Portfolio Companies

Concisely discuss the organization and operation or proposed operation of the Registrant. Include the information specified below. (a) Briefly describe each depositor, including:

(i) Its name, address, and description of the general nature of its business;

Instruction: The description of the depositor's business should be short and need not list all of the businesses in which the depositor engages or identify the jurisdictions where it does business, if a general description (e.g., "life insurance" or "reinsurance") is provided.

(ii) The date and form of organization of the depositor and the name of the state or other jurisdiction under whose laws it is organized; and

(iii) If the depositor is controlled by another person, the name of that person and the general nature of its business (If the depositor is subject to more than one level of control, simply give the name of the ultimate control person.).

(b) Briefly describe the Registrant, including:

(i) The date and form of organization of the Registrant and the Registrant's classification pursuant to section 4 of the 1940 Act (15 U.S.C. 80a-4) (i.e., a separate account and a unit investment trust);

(ii) A statement indicating

(A) That income, gains, and losses, whether or not realized from assets allocated to the Registrant are, in accordance with the applicable annuity contracts, credited to or charged against the Registrant without regard to other income, gains, or losses of the depositor,

(B) That the assets of the Registrant may not be charged with liabilities arising out of any other business of the depositor, and

(C) Whether the obligations under the variable annuity contracts are obligations of the depositor.

(iii) Whether there are sub-accounts of the Registrant (i.e., for qualified and non-qualified contracts or for different portfolio companies).

Instruction: Sub-accounts that fund obligations of the Registrant under contracts that are not offered by means of this prospectus need not be described.

(c) Briefly describe each portfolio company, including:

(i) Its name;

(ii) Its type (e.g., money market fund, bond fund, balanced fund, etc.) or a brief statement concerning its investment objectives; and

(iii) Its investment adviser.

(d) State conspicuously from whom a prospectus containing more complete information on each portfolio company may be obtained, and that an investor should read that prospectus carefully before investing.

(e) Concisely discuss the rights of contractowners, annuitants, participants, or beneficiaries to instruct the Registrant on the voting of portfolio company securities underlying their interest in the Registrant, including the manner in which votes will be allocated.

(f) Identify and state the principal business address of any person who provides significant administrative or business affairs management services (e.g., an "Administrator," "Sub-Administrator," "Servicing Agent"), and briefly describe the services provided.

Instruction: Information need not be given in response to this Item about any services described in response to Item 6(a).

Item 6. Deductions and Expenses

(a) Briefly describe all deductions from purchase payments, contractowner accounts, or assets of the Registrant (e.g., sales loads, administrative and transaction charges, risk charges, and premium taxes). Specify the amount of any such deduction as a percentage or dollar figure (e.g., .95% of the average daily net assets or $5 per exchange).

Except for the deduction for premium taxes, identify the person who receives the amount deducted, briefly describe what is provided in consideration for the deduction, and explain the extent to which the deduction can be modified.

Instruction: 1. Identification of the range of current premium taxes is sufficient.

2. If proceeds from explicit sales loads will not cover the expected costs of distributing the contracts, identify from what source the shortfall, if any will be paid. If any shortfall is to be made up from assets from the depositor's general account, disclose, if applicable, that any amounts paid by the depositor may consist, among other things, of proceeds derived from mortality and expense risk charges deducted from the account.

(b) State the sales load as a percentage of each purchase payment, if it is so calculated, and as a percentage of the net amount invested for each breakpoint. For contracts with a deferred sales load; state the sales load as a percentage of the amount withdrawn or surrendered. The percentages should be shown in a table.

(c) Unless set forth in response to paragraph (b), list any special purchase plans or methods established pursuant to a rule or an exemptive order that reflect scheduled variation in, or elimination of, the sales load (*e.g.*, group discounts, waiver of sales load upon annuitization or attainment of a certain age, waiver of deferred sales load for a certain percentage of contract value ("free corridor"), investment of proceeds from another policy, exchange privileges, employee benefit plans, or the terms of a merger, acquisition or exchange offer made pursuant to a plan of reorganization); identify each class of individuals or transactions to which such plans apply; state each different sales charge available as a percentage of the public offering price and as a percentage of the net amount invested; and state from whom additional information may be obtained. Described any other special purchase plans or methods established pursuant to a rule that reflect other variations in, or elimination of, the sales load or in any administrative charge or other deductions from purchase payments, and generally describe the basis for the variation or elimination in the sales load or other deduction (i.e., the size of the purchaser, a prior or existing relationship with the purchaser, the purchaser's assumption of certain administrative functions, or other characteristics that result in differences in costs or services).

(d) State the commissions paid to dealers as a percentage of purchase payments.

(e) Provide a statement as to the Registrant's expenses. (If the Registrant has been in existence for a full year, simply set forth the Registrant's total expenses for the most recent full fiscal year as a percentage of average net assets, unless the Registrant expects to incur a material amount of extraordinary expenses in the next year. If the Registrant has been been in operation for a full year, list the types of expenses for which Registrant will be responsible.)

(f) State that there are deductions from and expenses paid out of the assets of the portfolio companies that are described in the prospectuses for those companies.

(g) If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized, including the amount to be amortized and the period over which the amortization will occur.

Item 7. General Description of Variable Annuity Contracts

(a) Identify the person or persons (e.g., the contractowner, participant, annuitant, or beneficiary) who have material rights under the variable annuity contracts, and the nature of those rights, (1) during the accumulation period, (2) during the annuity period, or (3) after the death of the annuitant or contractowner.

Instruction: The Registrant need not repeat rights that are described elsewhere in the prospectus.

(b) Briefly describe any provisions for and limitations on:

(i) Allocation of purchase payments among sub-accounts of the Registrant;

(ii) Transfer of contract values between sub-accounts of the Registrant; and

(iii) Exchanges of variable annuity contracts, including interests or participations therein.

(c) Briefly describe the changes that can be made in the variable annuity contracts or the operations of the Registrant by the Registrant or the depositor, including:

(i) Why a change may be made (e.g., changes in applicable law or interpretations of law);

(ii) Who, if anyone, must approve any change (e.g., the contractowner or the Securities and Exchange Commission); and

(iii) Who, if anyone, must be notified of any change.

Instruction: Describe only those changes that would be material to a purchaser of the variable annuity contracts, such as a reservation of the right to deregister the separate account under the 1940 Act. Do not describe possible non-material changes, such as changing the time of day at which accumulation unit values are determined.

(d) Describe how contractowner inquiries should be made.

Item 8 Annuity Period

Briefly describe the annuity options available. The discussion should include:

(a) Material factors that determine the level of annuity benefits;

(b) The annuity commencement date (give the earliest and latest possible dates);

(c) Frequency and duration of annuity payments, and the effect of these on the level of payment;

(d) The effect of assumed investment return;

(e) Any minimum amount necessary for an annuity option and the consequences of an insufficient amount; and

(f) Rights, if any, to change annuity options or to effect a transfer of investment base after the annuity commencement date.

Instructions: 1. Describe the choices, if any, available to a prospective annuitant, and the effect of not specifying a choice. Where an annuitant is given a choice in assumed investment return, explain the effect of choosing a higher, as opposed to a lower, assumed investment return.

2. Detailed disclosure on the method of calculating annuity payments should be placed in the Statement of Additional Information, Item 22.

Item 9. Death Benefit

Briefly describe any death benefit available under a variable annuity contract during the accumulation and the annuity periods. Include:

(a) When the death benefit is calculated and payable and the effect of choosing a specific method of payment on calculation of that death benefit, and

(b) The forms the benefit may take, including the effect of not choosing a payment option and the period, if any, during which payments must begin under any annuity option.

Item 10. Purchases and Contract Value

(a) Briefly describe the procedures for purchasing a variable annuity contract. Include a concise explanation of:

(i) The minimum initial and subsequent purchase payments required and any limitations on the amount of purchase payments that will be accepted (If there are separate limits for each sub-account, state these limits.);

(ii) A statement of when initial and subsequent purchase payments are credited; and

(iii) The way in which purchase payments are credited, including: (A) An explanation that purchase payments are credited on the basis of accumulation unit value, (B) how accumulation unit value is determined, and (C) how the number of accumulation units credited to a contract is determined.

(b) Explain that investment performance of the portfolio company, exprenses, and deduction of certain charges affect accumulation unit value.

(c) Describe when calculations of accumulation unit value are made and that purchase payments are credited to a contract on the basis of accumulation unit value next determined after receipt of a purchase payment.

(d) Identify each principal underwriter (other than the depositor) of the variable annuity contracts and state its principal business address. If the principal underwriter is affiliated with the Registrant, the depositor, or any affiliated person of the Registrant or the depositor, identify how they are affiliated (e.g., the principal underwriter is controlled by the depositor).

Item 11. Redemptions

(a) Briefly describe how a contractowner or annuitant (if the variable annuity option chosen by the annuitant is not based on a life contingency) can redeem a variable annuity contract, including how the proceeds are calculated and when they are payable.

(b) If the Registrant offers the variable annuity contracts in connection with the Texas Optional Retirement Program, describe the restrictions on redemption that apply.

Instruction: Registrants can satisfy this Item by describing the applicable restrictions on redemption on a supplement attached to prospectuses delivered to participants in the Texas Optional Retirement Program.

(c) If a request for redemption may not be honored for a period of time after a contractowner's investment, describe briefly.

(d) Briefly describe any provision for lapse or involuntary redemptions under the contract and the reasons for it, such as the size of the account or infrequency of purchase payments.

(e) Briefly describe any revocation rights (e.g., "ten-day free look" provisions).

Item 12. Taxes

(a) Briefly describe the tax consequences to investors of an investment in the variable annuity contracts being offered.

Instruction: This disclosure need not include detailed description of applicable law. The discussion should include the taxation of annuity payments, death proceeds, periodic and non-periodic withdrawals, pledges and assignments of the contract (if permitted), and any other method by which taxable income may be received by the investor under the variable annuity contract, as well as the tax benefits accorded annuities during the accumulation period. If the tax consequences vary depending on the use of the variable annuity contract (i.e., to fund an individual retirement annuity or corporate plan), the variations should be briefly described.

(b) Identify the types of qualified plans for which the variable annuity contracts are intended to be used.

Instructions: 1. Identify the types of persons who may use the plans (e.g., corporations, self-employed individuals) and disclose, if applicable, that the terms of the plan may limit the right otherwise available under the contracts.

2. Do not describe the Internal Revenue Code requirements for qualifications of plans or the non-annuity tax consequences of qualification (e.g., the effect on employer taxation).

(c) Briefly describe the impact, if any, of taxation on the determination of account or sub-account values.

Item 13. Legal Proceedings

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, any subsidiary of the Registrant, or the Registrant's principal underwriter or depositor is a party. Include the name of the court where the case is pending, the date filed, and the principal parties. Include similar information for any proceedings instituted by governmental authorities.

Instruction: Legal proceedings are material only to the extent that they are likely to have a material adverse effect upon: (1) The ability of the principal underwriter to perform its contract with the Registrant or of the depositor to meet its obligations under the variable annuity contracts; or (2) the Registrant.

Item 14. Table of Contents of the Statement of Additional Information

List the contents of the Statement of Additional Information.

Part B—Information Required in a Statement of Additional Information

Item 15. Cover Page

(a) The outside cover page must contain the following information:

(i) The Registrant's name;

(ii) The depositor's name;

(iii) A statement or statements (A) that the Statement of Additional Information is not a prospectus; (B) that the Statement of Additional Information should be read with the prospectus; and (C) how a copy of the prospectus may be obtained;

(iv) The date of the Statement of Additional Information; and

(v) The date of the related prospectus and any other identifying information that the Registrant deems appropriate.

(b) The cover page may include other information, provided that it does not by its nature, quantity, or manner of presentation, impede understanding of required information.

Item 16. Table of Contents

List the contents of the Statement of Additional Information and, where useful, provide cross-references to the prospectus.

Item 17. General Information and History

(a) If the depositor's name was changed during the past five years, state its former name and the approximate date on which it was changed. If, at the request of any state, sales of contracts offered by the Registrant have been suspended at any time, or if sales of contracts offered by the depositor have been suspended during the past five years, briefly describe the reasons for and results of the suspension.

(b) If 10 percent or more of the assets of any sub-account are not attributable to variable annuity contracts or to accumulated deductions or reserves (e.g., initial capital contributed by the depositor), state what percentage those assets are of the total assets of the separate account. If the depositor, or any other person controlling the assets, has any present intention of removing the assets from the sub-account, so state.

(c) If the depositor is controlled by another person that, in turn, is controlled by another person, give the name of each control person and the nature of its business.

Item 18. Services

(a) Describes all fees, expenses, and costs of the Registrant which are to be paid by persons other than the depositor or the Registrant, and identify such persons.

(b) Give a summary of any contract for the provision of management-related services to the Registrant that may be of interest to a purchaser of Registrant's securities, unless the contract is described in response to some other item of this form. Identify the parties to the contract, and show, for the past three years, the total dollars paid and by whom.

Instruction: 1. A contract for "management-related services" includes any agreement whereby another person agrees to keep, prepare, or file such accounts, books, records, or other documents as the Registrant may be required to keep under federal or state law, or to provide any similar services with respect to the daily operations of the Registrant, but does not include the following: (i) Any agreement to act as custodian or agent to administer purchases and redemptions under the contracts, or (ii) bona fide contracts for outside legal or auditing services, or bona fide contracts for personal employment entered into in the ordinary course of business.

2. In summarizing a management-related service contract, include: the name of the person providing the service; any direct or indirect relationships between such person and the Registrant, its depositor, or its principal underwriter; the nature of the services provided; and the basis of the compensation paid for the last three fiscal years.

(c) Give the name and principal business address of the Registrant's custodian and independent public accountant and provide a general description of the services they perform.

(d) If the assets of the Registrant are held by a person other than the depositor, a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of each such person.

(e) If an affiliated person of the Registrant or the depositor, or an affiliated person of such an affiliated person, acts as administrative or servicing agent for the Registrant, furnish a description of the services performed by that person and the basis for remuneration. State, for the past three years, the total dollars paid for the services, and by whom.

Instruction: No disclosure need be given in response to paragraph (e) of the Item for an administrative or servicing agent who is also the depositor.

(f) If the depositor is the principal underwriter of the variable annuity contracts, so state.

Item 19. Purchase of Securities Being Offered

(a) Describe the manner in which Registrant's securities are offered to the public. Include a description of any special purchase plans and any exchange privileges not described in the prospectus.

Instruction: Address exchange privileges between sub-accounts, between the Registrant and other separate accounts, and between the Registrant and contracts offered through the depositor's general account.

(b) Describe the method that will be used to determine the sales load on the variable annuity contracts offered by the Registrant.

Instruction: Explain fully any difference in the price at which variable annuity contracts are offered to members of the public, as individuals and as groups, and the prices at which the contracts are offered for any class of transactions or to any class of individuals, including officers, directors, members of the board of managers, or employees of the Registrant's depositor, underwriter, portfolio company, or investment adviser to the portfolio company.

Item 20. Underwriters

(a) If the depositor or an affiliate of the depositor is the principal underwriter of the variable annuity contracts, so state.

(b) State whether the offering is continuous.

(c) State the aggregate dollar amount of underwriting commissions paid to, and the amount retained by, the principal underwriter for each of the last three fiscal years.

(d) If during the Registrant's last fiscal year any payments were made by the Registrant to an underwriter of or dealer in the variable annuity contracts that is unaffiliated with the Registrant or the depositor, other than payments made through deduction from the purchase payments at the time of sale of the variable annuity contracts or from contract values upon redemption, give the following information:

(i) The name and address of the underwriter or dealer;

(ii) The circumstances surrounding the payments;

(iii) The amount paid; and

(iv) How the amount of the payment was determined and the consideration received for it.

Instructions: 1. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.

2. Information need not be given about any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

3. Information need not be given about payments made under any contract to act as administrative or servicing agent.

4. If the payments were made under an arrangement or policy applicable to dealers generally, simply describe the arrangement or policy.

Item 21. Calculation of Yield Quotations of Money Market Sub-Accounts

Describe the method used to compute each yield quotation provided in the prospectus pursuant to Item 4(b).

Instructions: 1. For purposes of the yield computation, the determination of net change in account value must reflect all deductions that are charged to all contract-owner accounts in proportion to the length of the base period and the sub-account's average account size.

2. Deductions from purchase payments and sales loads assessed at the time of redemption or annuitization should not be reflected in the computation of current yield.

3. Realized gains and losses from the sale of securities and unrealized appreciation and depreciation of the sub-account and the portfolio company are to be excluded from the calculation of yield.

4. When calculating the yield quotation required in Item 4(b), Registrants that choose to make such an election on an annual basis may use a median account size in place of an average account size in determining the base period return.

Item 22. Annuity Payments

Describe the method for determining the amount of annuity payments if not described in the prospectus. In addition, describe how any change in the amount of a payment after the first payment is determined.

Item 23. Financial Statements

(a) Provide financial statements of the Registrant.

Instruction: The financial statements and schedules required by Regulation S-X (17 CFR Part 210) shall be provided in a separate section. Financial statements of the Registrant may be limited to:

(i) An audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year;

(ii) An audited statement of operations for the most recent fiscal year conforming to the requirements of Rule 6-07 of Regulation S-X (17 CFR 210.6-07); and

(iii) Audited statements of changes in net assets conforming to the requirements of Rule 6-08 of Regulation S-X (17 CFR 210.6-08) for the two most recent fiscal years.

(b) Provide financial statements of the depositor.

Instructions: 1. The financial statements and schedules of the depositor required by Regulation S–X shall be provided in a separate section following the response to paragraph (a) of this Item. If the Insurance Company would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Form N-3 or N-4, its financial statements may be prepared in accordance with statutory requirements.

2. Notwithstanding Instruction 1 above, all statements and schedules required by Regulation S-X, except for the consolidated balance sheets described in Rule 3-01 of Regulation S-X (17 CFR 210.3-01) and any notes thereto, may be omitted from Part B and instead included in Part C of the Registration Statement.

3. Notwithstanding Rule 3-12 of Regulation S-X (17 CFR 210.3-12), the financial statements of the depositor need not be more current than as of the end of the most recent fiscal year of the depositor unless:

(i) The depositor's financial statements have never been included in an effective registration statement under the Securities Act of 1933 of a separate account which offers variable annuity contracts or funds variable life insurance contracts; or

(ii) The balance sheet of the depositor at the end of either of the two most recent fiscal years included in response to this Item shows a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $1,000,000; or

(iii) The balance sheet of the depositor at the end of a fiscal quarter within 135 days of the expected date of effectiveness under the 1933 Act (or a fiscal quarter within 90 days of filing if the registration statement is filed solely under the 1940 Act) would show a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $1,000,000. If two fiscal quarters end within the 135 day period, the depositor may choose either for purposes of this test.

Any interim financial statements required by this Item need not be comparative with financial statements for the same interim period of an earlier year.

Part C. Other Information

Item 24. Financial Statements and Exhibits

List all financial statements and exhibits filed as part of the Registration Statement.

(a) Financial statements.

Instruction: Designate those financial statements which are included in Part A and Part B of the Registration Statement.

(b) Exhibits:

(1) Copies of the resolution of the board of directors of the depositor authorizing the establishment of the Registrant;

(2) Copies of all agreements for custody of securities and similar investments of the Registrant, including the schedule of remuneration;

(3) Copies of each underwriting or distribution contract between the Registrant and the principal underwriter or the depositor and the principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers;

(4) The form of each variable annuity contract;

(5) The form of application used with any variable annuity contract provided in response to (4) above;

(6) Copies of the certificate of incorporation or other instrument of organization and the by-laws of the depositor;

(7) A copy of any contract of reinsurance in connection with the variable annuity contracts being offered;

(8) Copies of all other material contracts not made in the ordinary course of business which are to be performed in whole or in part on or after the date of filing the Registration Statement;

(9) An opinion of counsel and consent to its use as to the legality of the securities being registered, indicating whether they will be legally issued and will represent binding obligations of the depositor;

(10) Copies of any other opinions, appraisals, or rulings, and consents to their use relied on in preparing this Registration Statement and required by Section 7 of the 1933 Act;

(11) All financial statements omitted from Item 23; and

(12) Copies of any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, the depositor, underwriter, or initial contractowners and written assurances from the depositor or initial contractowners that the purchases were made for investment purposes without any present intention of redeeming.

Instruction: 1. Subject to the rules on incorporation by reference and Instruction 2 below, the foregoing exhibits shall be filed as a part of the Registration Statement. Exhibits numbered 3 and 9-11 above need be filed only as part of a 1933 Act Registration Statement. Exhibits shall be lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

2. A Registrant need not file an exhibit as part of a post-effective amendment if the exhibit has been filed in the Registrant's initial registration statement or in a previous post-effective amendment, unless there has been a change in the exhibit or unless the exhibit is a copy of a consent required by Section 7 of the 1933 Act or is a financial statement omitted from Item 23.

Item 25. Directors and Officers of the Depositor

Give the following information about each director or officer of the depositor:

Name and principal business address	Positions and offices with depositor

Instruction: Registrants need only provide the above information for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the variable annuity contracts offered by the Registrant, and for executive officers including the depositor's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

Item 26. Persons Controlled by or Under Common Control with the Depositor or Registrant

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the depositor or Registrant and for each such person indicate (1) if a company, the state or other sovereign power under whose laws it is organized, (2) the percentage of voting securities owned or other basis of control by the person, if any, immediately controlling it, and (3) its principal business unless such principal business is implicit in its name.

Instructions: 1. This list or diagram shall include the Registrant and the depositor and shall show clearly the relationships between each company named. If a company is controlled by direct ownership of its securities by two or more persons, so indicate by appropriate cross-reference.

2. Designate (i) subsidiaries for which separate financial statements are filed; (ii) subsidiaries included in the respective consolidated financial statements; (iii) subsidaries included in the respective group financial statements filed for unconsolidated subsidiaries; and (iv) other subsidiaries, indicating briefly why statements of such subsidiaries are not filed.

Item 27. Number of Contractowners

State as of a specified date within 90 days prior to the date of filing the number of contractowners of qualified and non-qualified contracts offered by Registrant.

Item 28. Indemnification

State the general effect of any contract, arrangements, or statute under which any underwriter or affiliated person of the Registrant is insured or indemnified in any manner against any liability which may be incurred in such capacity, other than insurance provided by any underwriter or affiliated person for his own protection.

Instruction: In responding to this Item the Registrant should note the requirements of Rules 461 and 484 under the 1933 Act (17 CFR 230.461, 230.484) and section 17 of the 1940 Act (15 U.S.C. 80a-17).

Item 29. Principal Underwriters

(a) Give the name of each investment company (other than the Registrant) for which each principal underwriter currently distributing securities of the Registrant also acts as a principal underwriter, depositor, sponsor, or investment adviser.

(b) Give the information required by the following table with respect to each director, officer, or partner of each principal underwriter named in the answer to Item 10(d):

Name and principal business address	Positions and offices with underwriter
(1)	(2)

Instruction: If a principal underwriter is the depositor or an affiliate thereof, and is also an insurance company, the above information for officers or directors need only be provided for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the variable annuity contracts offered by the Registrant, and for executive officers including the depositor's or its affiliate's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

(c) Give the following information about all commissions and other compensation received by each principal underwriter, directly or indirectly, from the Registrant during the Registrant's last fiscal year:

Name of principal underwriter	Net underwriting discounts and commissions	Compensation on redemption or annuitization	Brokerage commission	Compensation
(1)	(2)	(3)	(4)	(5)

Instructions: 1. Show in a note, or otherwise, the nature of the services provided in return for the compensation shown in column (5).

2. Information need not be given about bona fide contracts with the Registrant or its depositor for outside legal or auditing services, or bona fide contracts for personal employment entered into with the Registrant or its depositor in the ordinary course of business.

3. Information need not be given about any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

4. Information need not be given about payments made under any agreement whereby another person contracts with the Registrant or its depositor to perform as custodian or administrative or servicing agent.

Item 30. Location of Accounts and Records

Give the name and address of each person who maintains physical possession of each account, book, or other document, required to be maintained by section 31(a) of the 1940 Act (15 U.S.C. 80a–30(a)) and the rules under it (17 CFR 270.31a–1 to 31a–3).

Item 31. Management Services

Give a summary of any contract not discussed in Part A or Part B of this Form under which management-related services are provided to the Registrant, showing the parties to the contract and the total dollars paid and by whom, for the last three fiscal years.

Instructions: 1. The instructions to Item 18(b) of this Form shall also apply to this Item.

2. Information need not be given about any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

Item 32. Undertakings

Give the following undertakings in substantially this form in all initial registration statements filed under the 1933 Act:

(a) An undertaking to file a post-effective amendment to this registration statement as frequently as is necessary to ensure that the audited financial statements in the registration statement are never more than 16 months old for so long as payments under the variable annuity contracts may be accepted;

(b) An undertaking to include either (1) as part of any application to purchase a contract offered by the prospectus, a space that an applicant can check to request a Statement of Additional Information, or (2) a post card or similar written communication affixed to or included in the prospectus that the applicant can remove to send for a Statement of Additional Information;

(c) An undertaking to deliver any Statement of Additional Information and any financial statements required to be made available under this Form promptly upon written or oral request.

Signatures

As required by (the Securities Act of 1933 and) the Investment Company Act of 1940, the Registrant (certifies that it meets the requirements of Securities Act Rule 486(b) for effectiveness of this Registration Statement and) has caused this Registration Statement to be signed on its behalf, in the City of ———, and State of ——— on this ——— day of ———, 19——.

(Registrant)

By ———

(Signature and Title)

(Depositor)

By ———

(Name of officer of depositor)

(Title)

Instruction: If the registration statement is being filed only under the Securities Act or under both the Securities and the Investment Company Act, it should be signed by both the Registrant and its depositor. If the registration statement is being filed only under the Investment Company Act, it should be signed only the Registrant.

As required by the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)

(Title)

(Date)

Guidelines for Form N-3

This release contains Guidelines prepared by the Division of Investment Management for registration statements on Form N-3 for management separate accounts. The Guidelines are based on Commission releases and staff interpretations. Adherence to these Guidelines should speed the examination by the Division's staff of registration statements on Form N-3.

The Guidelines are not rules of the Commission and, except as noted, represent only the views of the staff of the Division, not the Commission. The Guidelines should be read with the Investment Company Act Releases cited in them. The policies stated in the Guidelines may be changed if necessary.

Table of Contents

Guide 1. Name of Registrant

The registrant's name must be consistent with section 35 of the Investment Company Act of 1940 ("1940 Act"), which prohibits, among other things, use of a name or title that is deceptive or misleading. If the name suggests a certain type of investment policy, it should be consistent with registrant's investment policies. If the name indicates that registrant is a money market separate account, registrant should have a policy requiring investment of at least 80% of its assets in debt securities maturing in thirteen months or less.

If the name implies that registrant will invest primarily in a particular type of security, other than money market instruments, or in a certain industry or industries, the registrant should have an investment policy requiring that, under normal circumstances, at least 65 percent of the value of its total assets will be invested in the indicated type of security or industry.[1] Further, the registrant's name may not be so similar to the name of an existing investment company as to cause confusion in identifying the separate account.

In the Division's view, the discussion in Investment Company Act Release No. 5510 (October 8, 1968) about the proprietary rights of an investment company and its adviser in the company's name is not applicable to separate accounts.

Guide 2. Series Accounts

If the separate account operates as a series account, *i.e.*, it has more than one portfolio, then the registrant should provide disclosure in the prospectus and Statement of Additional Information about each portfolio offered, the registrant should indicate when the discussion is addressing the separate account, *e.g.*, the election of members of the board of managers (*see* rule 18f-2 under the 1940 Act (17 CFR 270.18f-2)), and when it is addressing the portfolio, *e.g.*, in identifying investment risks. Specifically, the registrant should identify in response to Item 1(a)(v) the type of each portfolio or briefly state its investment objectives. Similarly, the sub-classification of each portfolio should be identified in response to Item 5(b)(ii) and the investment objectives, policies, practices, and risks of each portfolio should be described in response to Item 5 or Item 19, as appropriate. Expense allocation practices should be described in response to Item 7. Also, if fees, transfer rights, or minimum initial or subsequent purchase payment requirements differ between portfolios, the responses to Items 7, 8, 11, and 23 should reflect the differences. Any other characteristics of the registrant which vary among portfolios, *e.g.*, valuation procedures, shold be described in the prospectus or Statement of Additional Information, as appropriate.

Guide 3. Investment Objectives and Policies

The prospectus should clearly and concisely state the registrant's investment objectives and policies (including the types of securities in which it will invest). Although it is not possible to define precisely what level of investment makes a particular type of investment one in which the registrant invests "principally," as that term is used in Item 5(c)(ii)(A), generally, the amount of disclosure about a particular type of investment should be consistent with its prominence in the registrant's portfolio, with emphasis on the main types of investments the registrant proposes to make and the basic risks of those investments. Discussions of types of investments that will not be emphasized in the registrant's portfolio should be brief and, in many cases, may be limited to identifying the particular type of investments. (As discussed below, the instructions describe certain circumstances in which disclosure may be so limited.) Similar treatment should be given to other practices, such as borrowing money. Registrants should avoid extensive legal and technical detail and need not discuss every possible contingency, such as remote risks.[2]

Registrant should not describe negative investment policies in the prospectus, *i.e.*, policies that prohibit a particular type of investment or practice. Section 8(b) of the 1940 Act may, however, require information about such policies in the registration statement. Registrant should provide very limited disclosure about policies that will permit it to invest on more than 5 percent of its assets in certain types of securities. For example, if a registrant plans to invest no more than 5 percent of its net assets in speculative growth stocks, it is sufficient to state that policy in the prospectus without elaboration.

The Statement of Additional Information should include a more complete discussion of registrant's investment policies that were described briefly, or not at all, in the prospectus. More complete descriptions of the registrant's principal types of investments may also be appropriate, depending on the circumstances. A policy that permits a particular practice, but which has not been used within the past year, as well as whether the registrant intends to use the practice in the coming year, should also be disclosed in the Statement of Additional Information.

Guide 4. Types of Securities

The registrant should discuss in the prospectus the types of securities in which it will invest to reach its investment objective. If the name of the registrant implies investment in a particular type of security (*e.g.*, Common Stock Separate Account), its policy should be consistent with its name (*see* Guide 1). The proportions of the registrant's assets to be invested in debt or equity securities need not be stated in terms of a percentage of total assets.

If the registrant intends to invest in foreign securities or real estate or make loans, see Guides 20, 12, or 13, respectively.

If state insurance law limits the types of investments the separate account may make to a greater extent than the registrant's fundamental investment policies, the legal limitation should be disclosed in the prospectus.

Any repurchase agreement entered into with a broker, a dealer, or a bank must be fully collateralized. A repurchase agreement is fully collateralized only if the market value of the securities held as collateral plus any accrued interest on those securities is equal to or greater than the amount at which the broker, dealer, or bank will repurchase the securities or repay the principal amount borrowed plus interest accrued on the principal amount. Further, the market value of the securities held as collateral must be marked to the market daily during the entire term of the agreement and the repurchase agreement should provide that additional collateral will be required from the broker, dealer, or bank if the market value of the securities falls below the repurchase price. In addition, a registrant must acquire actual or constructive possession of the collateral.[3]

Guide 5. Portfolio Turnover

The registrant should briefly discuss in the prospectus the probable effect of investment techniques on the registrant's rate of total portfolio turnover, if these effects will be significant and if portfolio turnover will have brokerage, tax, or other significant consequences. If the registrant has had or anticipates having a portfolio turnover rate of approximately 100 percent or more, the discussion should (1) include any tax and brokerage consequences which will result from the higher portfolio turnover rate, and (2) cross-reference the discussions of income taxes and brokerage practices included in the prospectus. The Statement of Additional Information should discuss portfolio turnover if the prospectus does not or it may supplement the prospectus disclosure. New separate accounts, other than money market separate accounts, should estimate what rate of portfolio turnover will, generally, not be exceeded (*e.g.*, 50 percent, 100 percent, 150 percent etc.).

A separate account that invests substantial portions of its assets in both common stock and debt securities or preferred stock, should separately describe its portfolio turnover policy for the common stock and debt portions of its portfolio.[4]

Guide 6. Business History

The registrant should list in the Statement of Additional Information all prior names of its sponsoring insurance company during the past five years. For a newly organized insurance company, the registrant should state that the company has no prior operating history.

Guide 7. The Borrowing of Money

The registrant should state in the prospectus any intention to borrow from a bank or otherwise to leverage its assets. If registrant will not borrow more than 5 percent of net assets, it may simply state its intention. If registrant will engage in a higher level of borrowing, it should concisely discuss the purposes and consequences of such borrowing (such as increased leverage).[5] The Statement of Additional

[1] *See* Guide 18, *Concentration of Investments in Particular Industries.*

[2] *See* individual subject headings of these Guidelines concerning disclosure for specific investment techniques or policies.

[3] Investment Company Act Release No. 10666 (April 18, 1979) (44 FR 25128 (April 27, 1979)); Investment Company Act Release No. 13005 (February 2, 1983); Letter from Gerald Osheroff, Associate Director of the Division of Investment Management, to Matthew Fink, General Counsel of the Investment Company Institute (pub. avail. May 7, 1985).

[4] *See* Guide 4, *Types of Securities.*

[5] *See* Investment Company Act Release No. 7220 (June 9, 1972) (37 FR 12790 (June 24, 1972)).

Information may contain any additional disclosure.

Separate accounts organized as open-end management investment companies ("management accounts") are permitted to borrow from banks under 18(f) of the 1940 Act. Under section 18(g) of that Act, certain borrowings for temporary purposes are also permitted. A registrant may not borrow in excess of 5 percent of the value of its total assets for any reason without first obtaining the approval of its eligible voters unless the registrant has so provided in its prospectus.[6] Generally, the prospectus need not restate provisions of law limiting borrowing by the registrant.

Because borrowings involve the creation of a senior security, see Guide 8.

Guide 8. Senior Securities, Reverse Repurchase Agreements, Firm Commitment Agreements, and Standby Commitment Agreements

Section 18(f) of the 1940 Act prohibits the issuance of senior securities by management accounts except borrowings from banks up to the specified asset coverage. Policies on borrowings should be set forth in the prospectus or in the Statement of Additional Information, depending upon the significance of the policies (*see* Guide 7).

The registration statement should concisely disclose the nature and consequences of the separate account's participation in securities trading practices such as reverse repurchase agreements, firm commitment agreements, and standby commitment agreements.[7] The extent to which such disclosure should be included in the prospectus will depend on how often and to what degree the registrant engages in those kinds of trading practices (*see* Guide 3). The registration statement should (1) describe the potential risk of loss to a separate account and its investors from those transactions, (2) identify the securities trading practices as distinct from the underlying securities, (3) explain the difference in investment goals of participating in the securities trading practices and investing in the underlying securities (*i.e.*, securities used as collateral for the trading practices), and (4) provide any other material information about the practices and the separate account's participation in them. Additionally, the registrant's name should not be misleading in light of its securities trading practices.

Guide 9. Short Sales

In the Division's view, a short sale involves the creation of a senior security and is, therefore, subject to the limitations of section 18 of the 1940 Act. The staff has taken the position that in order to comply with section 18 of the 1940 Act, the selling registrant must put in a segregated account (not with the broker) cash or United States government securities equal in value to the difference between (a) the market value of the securities sold short when they were sold short and (b) any cash or United States government securities required to be deposited as collateral with the broker in connection with the short sale (not including the proceeds from the short sale). In addition, until registrant replaces the borrowed security, it must daily maintain the segregated account at such a level that (1) the amount deposited in it plus the amount deposited with the broker as collateral will equal the current market value of the securities sold short, and (2) the amount deposited in it plus the amount deposited with the broker as collateral will not be less than the market value of the securities at the time were sold short.[8]

Selling short is not the same as selling short "against the box." While a short sale is made by selling a security the separate account does not own, a short sale is "against the box" to the extent that the separate account contemporaneously owns or has the right to obtain at no added cost securities identical to those sold short. The procedures described above for short sales subject to section 18 of the 1949 Act are not applicable to short sales "against the box."

If the registrant expects to sell short, or to sell short "against the box," its policy and the effect of such policy should be described in the registration statement. Whether the description should be included in the prospectus will depend upon how often and in what amount the registrant will sell short (*see* Guide 3). The registration statement should include

1. An explanation of the requirement of collateral and a segregated account and

2. The maximum percentage of the value of the registrant's net assets that will be, when added together: (a) Deposited as collateral for the obligation to replace securities borrowed to effect short sales and (b) allocated to segregated accounts in connection with short sales.[9]

Guide 10. Purchases on Margin

Because of the prohibition in section 18 of the 1940 Act against the issuance of senior securities by management accounts, except in connection with borrowings from banks, the Division's position is that management accounts may not establish or use a margin account with a broker to effect securities transactions on margin.[10]

Guide 11. Restricted Securities

Although the acquisition of restricted securities (securities that must be registered under the Securities Act of 1933 before they may be offered or sold to the public) might not be deemed to be an underwriting commitment under section 12(c) of the 1940 Act, a registrant should describe in the prospectus any policy permitting the purchase of restricted securities if such securities constitute five percent or more of the registrant's portfolio securities. Otherwise, registrant's policy concerning restricted securities should be described in the Statement of Additional Information.

Note.—If a management account holds a material percentage of its assets in restricted securities, such holdings may raise questions about valuation and the separate account's ability to make payment within seven days of the date it receives a request for the withdrawal of contract values. *See also* Guides 13 and 26.

Guide 12. Purchase and Sale of Real Estate

Registrant should indicate the type of real estate investments which it proposes to make, if any, in response to Item 5 and Item 19, as appropriate in light of the level of any such investments (*see* Guide 3). A management account should not acquire illiquid assets, including real estate without an established market, in excess of 10 percent of the registrant's net assets.[11]

For purposes of these disclosure requirements, the Division views an interest in real estate as including securities (other than marketable securities) of companies whose assets consist substantially of real property and interests in real property, including mortgages and other liens, but does not include securities of companies whose investments in real estate are incidental to its primary business, *e.g.*, banks.[12]

Guide 13. The Making of Loans to Other Persons

In response to Item 19, and, if appropriate, in Item 5, the registrant should state its policy on the purchase of non-publicly offered debt securities (including convertible securities).[13] The purchase of a portion of an issue of publicly-distributed bonds, debentures, or other securities, whether or not the purchase is made upon the original issuance of the securities, is not a loan. The registrant should state whether it will make loans which are short term (nine months or less), long term, or both. If a management account holds a material percentage of its assets in debt securities having no established market, there may be a question about the ability of the separate account to make payment within seven days of the date it receives a request for the withdrawal of contract values. A management account should not acquire illiquid assets, including debt securities for which there is no established market, in excess of 10 percent of the registrant's net assets.[14]

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[6] *See* sections 13(a), 18(f)(1), and 18(g) of the 1940 Act. *See also* Investment Company Act Release No. 7221 (June 9, 1972) (37 FR 12790 (June 24, 1972)).

[7] For a more complete dicussion of reverse repurchase agreements, firm commitment agreements, and standby commitment agreements, *see* Investment Company Act Release No. 10666 (April 18, 1979) (44 FR 25128 (April 27, 1979)).

[8] Investment Company Act Release No. 7221 (June 9, 1972) (37 FR 12790 (June 24, 1972)).

[9] Investment Company Act Release No. 7220, *supra* note 5.

[10] Investment Company Act Release No. 7221, *supra* note 6.

[11] *See, e.g.*, Investment Company Act Release No. 5847 (October 21, 1969) (35 FR 19989 (December 31, 1970)).

[12] However, interests in companies that invest in real estate are not interests in real estate for purposes of section 3(c)(5)(C) of the Act. *See* Investment Company Release No. 3140 (November 18, 1960) (25 FR 12177 (November 29, 1960)).

[13] *See* Investment Company Act Release No. 7220, *supra* note 5.

[14] Investment Company Act Release No. 5847, *supra* note 11.

Guide 14. Other Policies Which are Changeable Only if Authorized by a Majority of Votes or Which the Registrant Deems a Matter of Fundamental Policy

Item 5 discusses the amount of prospectus disclosure about investment policies which are changeable only if approved by a majority of votes and any other policy (whether or not an *investment* policy) which the registrant treats as "fundamental." Generally, the prospectus need not describe policies that prohibit certain practices or practices that the registrant does not intend to follow. Information concerning negative investment policies or practices is, however, required to be included in the Statement of Additional Information.

When the vote required by the registrant's by-laws is stricter than that required by the 1940 Act to change a policy (*see* section 2(a)(42) and section 13), the Statement of Additional Information should so state.

By-laws or other basic organizational documents submitted as exhibits to the registration statement should be reviewed to make certain a particular policy stated in response to Item 5 is not contrary to the registrant's organizational documents. For example, if the resolution of the board of directors of the sponsoring insurance company authorizing the establishment of the registrant prohibits the registrant from borrowing, the registrant should not state a policy of issuing senior securities. The registrant's organizational documents should not contain any provision which precludes compliance with the 1940 Act or the rules under it. The organizational documents also should provide the registrant's board of managers with authority to take whatever action may be necessary to comply with any applicable federal statute or rule.

Guide 15. Investment in Companies for the Purpose of Exercising Control or Management

If one of the registrant's significant investment policies is to invest in companies for the purpose of exercising control, as defined in section 2(a)(9) of the 1940 Act, the registrant should explain in the prospectus the extent to which, and when, such investments will be made. A statement that the registrant is diversified or that it has a policy of not acquiring more than 10 percent of the outstanding voting securities of any one issuer is not enough, since even such registrants could invest for the purpose of exercising control or management.[15]

Guide 16. Investment in Securities of Other Investment Companies

Section 12(d)(1) of the 1940 Act limits the percentage of voting securities of any other investment company which the registrant may acquire. That section also limits, with some exceptions, the percentage of the value of the registrant's assets that may be invested in securities of other investment companies.

If the registrant intends to invest significantly in the securities of other investment companies, the registrant should state in the prospectus the percentage of its assets which may be so invested. Otherwise, the registrant should show in the Statement of Additional Information the percentage of its assets which may be invested in securities of other investment companies.

Guide 17. Tax-free Bonds—Issuer Diversification

The identification of the issuer of a tax-exempt security for purposes of section 5(b)(1) of the 1940 Act depends on the terms and conditions of the security. When the assets and revenues of an agency, authority, instrumentality, or other political subdivision are separate from those of the government creating the subdivision and the security is backed only by the assets and revenues of the subdivision, the subdivision would be the sole issuer for purposes of section 5(b)(1).[16] Similarly, if an industrial development bond is backed only by the assets and revenues of the non-governmental user, then the non-governmental user would be the sole issuer for purposes of section 5(b)(1). A guarantee by the creating government or some other entity would be considered a separate security which must be valued and included in the 5 percent limit of section 5(b)(1) except as permitted under rule 5b-2 of the Act.[17]

Guide 18. Concentration of Investments in Particular Industries

Section 8(b)(1) of the 1940 Act requires every registered investment company to include in its registration statement a recital of its policies with respect to concentration. Investment (including holdings of debt securities) of more than 25 percent of the value of the registrant's assets in any one industry represents concentration. If the registrant intends to concentrate in a particular industry or group of industries, it should specify in the prospectus the industry or group of industries.

If the registrant does not intend to concentrate, no further investment may be made in any given industry if, upon making the proposed investment, 25 percent or more of the value of the registrant's assets would be invested in such industry. However, when securities of a given industry constitute more than 25 percent of the value of the registrant's assets as a result of changes in value of either concentrated securities or other securities, the excess need not be sold.

The approval of a majority of votes is generally necessary to change to a concentration policy or a policy of not concentrating (*See* section 13(a)(3) of the 1940 Act). If the registrant has employed a policy of concentration in the past but does not intend to follow that policy in the future, its intention and its estimate of the time required to implement a policy of not concentrating should be specifically disclosed in the Statement of Additional Information.

Investment discretion on the part of management to concentrate, without the approval of eligible voters, has been considered by the Division to be prohibited by sections 8(b)(1) and 13(a)(3) of the 1940 Act, unless the statement of investment policy clearly indicates when and under what specific conditions any changes between concentration and non-concentration would be made. Registrants may not reserve the right to concentrate in particular industries "without limitation if deemed advisable and in the best interests of the contract owners".[18]

Money market separate accounts may declare an investment policy on industry concentration reserving freedom of action to concentrate their investments in government securities, as defined in the 1940 Act, and certain bank instruments issued by domestic banks[19] if the Statement of Additional Information discloses the type and nature of the various bank instruments in which the registrant intends to invest and the criteria for evaluating and selecting such investments. Money market separate accounts may not reserve freeedom of action to concentrate investments in the commercial paper of issuers in any one industry.[20]

Further, the statement of concentration policy required by section 8(b)(1) does not apply to investments in tax-exempt securities issued by governments or political subdivisions of governments since such issuers are not members of any industry.

Note.—In determining industry classifications, the staff will ordinarily use the current *Directory of Companies Filing Annual Reports with the Securities and Exchange Commission*, (the "Directory") published by the Commission. A registrant may refer to the *Directory*, or may select its own industry classifications, but such classifications must be reasonable and should not be so broad that the primary economic characteristics of the companies in a single class are materially different. Registrants selecting their own industry classifications should disclose them (a) in the prospectus in the case of a policy to concentrate, or (b) in the Statement of Additional Information in the case of a policy not to concentrate.

Guide 19. Separate Accounts Investing In Other Than High-Grade Bonds

If the registrant seeks high income by investing in other than high-grade bonds,[21] it

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[15] Investment Company Act Release No. 7221, *supra* note 6.

[16] Investment Company Act Release No. 9785 (May 31, 1977) 42 FR 29130 (June 7, 1977)).

[17] *Id.*

[18] Investment Company Act Release No. 9011 (October 30, 1975) (40 FR 54241 (November 21, 1975)).

[19] United States branches of foreign banks may be considered domestic banks if it can be demonstrated that they are subject to the same regulation as United States banks. Foreign branches of domestic banks, however, are not registered in the United States and are not considered "domestic banks." Nevertheless, if a registrant can show that the investment risk associated with investing in instruments issued by the foreign branch of a domestic bank is the same as that of investing in instruments issued by the domestic parent, in that the domestic parent would be unconditionally liable in the event that the foreign branch failed to pay on its instruments for any reason, then the staff believes that the registrant may treat that foreign branch as a domestic bank for purposes of concentration. Otherwise, the staff is of the opinion that the registrant may not reserve freedom of action to concentrate its investments in instruments issued by foreign branches of domestic banks.

[20] Investment Company Act Release No. 9011, *supra* note 18.

[21] These would include, for example, bonds receiving a Standard & Poor's rating of BBB or lower or a Moody's rating of Baa or lower.

should concisely but clearly disclose in the prospectus the risks involved in such investments either in response to Item 5 or Item 1 (on the cover page). Where the registrant chooses to use certain rating criteria in its prospectus disclosure, the registrant should also disclose the minimal rating that the separate account would find acceptable under the rating criteria it has chosen. The registrant may place rating services' descriptions of their rating criteria in the Statement of Additional Information.

Guide 20. Disclosure of Risk Factors

A registrant should address in the prospectus the principal speculative or risk factors arising from the securities being offered. These risks may, for example, be the result of the registrant's particular investment objective, the type of securities in which it invests, the type or size of companies in which it invests, the investment techniques it employs, or an innovative or unusual method of operation. Other risk factors may be due to the absence of an operating history, minimal capitalization, or the nature of a registrant's business.

A registrant that intends to invest as much as 10 percent of its assets in foreign securities which are not publicly traded in the United States must disclose this in the prospectus. For many foreign securities, however, there are dollar-denominated American Depository Receipts ("ADRs"), which are traded in the United States on exchanges or over-the-counter, are issued by domestic banks, and do not involve the same currency risk as a foreign security. ADRs need not be treated as foreign securities for purposes of the risk disclosure suggested by this guide.

Guide 21. Government Securities

If the registrant is investing in United States Government securities, the prospectus should explain when and to what extent the registrant intends to do so. If the registrant is significantly investing in United States Government securities on a routine basis, the prospectus should include the following information: (1) The types of Government securities in which the separate account will invest; (2) examples of Government agencies and instrumentalities in whose securities the separate account will invest; and (3) whether the securities of such agency or instrumentality are (a) supported by the full faith and credit of the United States, (b) supported by the ability to borrow from the Treasury, (c) supported only by the credit of the agency or instrumentality, or (d) supported by the United States in some other way.

Guide 22. Foreign Currency Transactions

If the registrant proposes to invest in securities denominated in foreign currencies or to engage in currency conversion transactions, these policies should be disclosed in the prospectus and, if appropriate, in the Statement of Additional Information (*see* Guide 3). If the registrant plans to use foreign currency forward contracts to cover activities which are essentially speculative, such forward contracts will be considered "senior securities" as defined in section 18 of the 1940 Act and will be subject to the limitations discussed in Investment Company Act Release No. 10666 (April 18, 1979) (45 FR 25128 (April 27, 1979)).

Guide 23. Management of the Separate Account

The prospectus must describe how the registrant's business is managed, but disclosure about the role of the board of managers may be limited to a general statement of the responsibilities of the board of managers.

The registrant must disclose in the Statement of Additional Information the name and address, position with registrant, and principal occupation during the past five years of each member of the board of managers and officer of the registrant performing a "policy-making function" for the registrant. Any position held with affiliated persons or principal underwriters of the registrant by each of these individuals must be described. The family relationships among these individuals must also be disclosed. Executive and investment advisory committee members must be identified and their functions briefly discussed. In addition, the registrant must indicate which membess of its board of managers are "interested persons" as that term is defined by section 2(a)(19) of the 1940 Act and the rules thereunder.

The composition of the registrant's board of managers must satisfy section 10 of the 1940 Act. The Federal Reserve Board takes the position that, under section 32 of the Banking Act of 1933, an officer or director of a bank which is a member of the federal reserve system may not serve as an officer, director, or employee of an open-end investment company, including a management account, that is currently offering its shares.[22]

An "advisory board," as that term is defined in section 2(a)(1) of the 1940 Act is a body composed of persons who serve the registrant in only that capacity. Therefore, officers, members of the board of managers, the investment adviser for, and counsel to the registrant may not serve on any such board.[23] The composition of an advisory board, if a management account chooses to have one, is also subject to the requirements of section 10 of the 1940 Act.

The term, "family relationship," as applied to registrant's officers and members of the board of managers in Item 20, is broader than the definition of a "member of the immediate family" contained in section 2(a)(19) of the 1940 Act.[24]

Item 20 requires the registrant to disclose in the Statement of Additional Information the aggregate remuneration received by certain officers, members of the board of managers, members of the advisory board, and certain categories of such persons from the registrant and its subsidiaries, during the registrant's last fiscal year, and all retirement and pension benefits to be received by those individuals from the registrant pursuant to an existing plan. This requirement applies to any individual who was a member of the board of managers, officer, or member of the advisory board of registrant during the last fiscal year and received aggregate remuneration in excess of $60,000.

It is the Commission's view that the registrant must disclose all forms of remuneration received by specified officers and members of the board of managers.[25] "Remuneration" is intended to include cash and non-cash items, *i.e.*, not only all salaries, fees, and bonuses but also personal benefits, commonly known as "perquisites."[26] It is the Commission's view that management is in the best position to determine whether or not a benefit should be considered remuneration, in light of the facts and circumstances of each situation.

Guide 24. Investment Advisory and Other Services

Item 6 requires the registrant to identify in the prospectus its investment adviser and the services provided by its investment adviser. Registrants should address whether the investment adviser is responsible for portfolio management, and if not, who is. If the registrant's adviser has no previous experience in advising a mutual fund or management account, this fact should be disclosed as a risk factor in the prospectus.

Item 21 calls for additional information in the Statement of Additional Information about the background and function of each person providing the registrant with advisory services, especially the identities of all controlling persons of each investment adviser and the basis for their control. The registrant must identify any affiliations between such persons and the registrant. If any affiliated person of the registrant is also an affiliated person of an adviser, the identity of that person and all bases of affiliation must be disclosed. Item 21 calls for a detailed discussion in the Statement of Additional Information concerning the method used to compute the advisory fee paid by the registrant or its sponsoring insurance company. In addition, the registrant must describe in Part B all services performed for it, or on its behalf, pursuant to any investment advisory or management-related service contract,[27] and in each case must identify the persons paying for such services. The registrant must also summarize the substantive portions of any management-related service contract, which may be of interest to a purchaser of the registrant's securities. Any person providing investment advice on a more informal basis must also be identified, and the nature of the arrangement

[22] Investment Company Act Release No. 7221, *supra* note 6.

[23] *Id.*

[24] *See also* Investment Company Act Release No. 7220, *supra* note 5.

[25] As stated in Investment Company Act Release No. 9900 (August 18, 1977) (42 FR 43058 (August 26, 1977)).

[26] For a detailed discussion of those personal benefits which the staff has interpreted to be remuneration requiring disclosure, *see* Investment Company Act Release Nos. 9900, *supra;* 10112 (February 6, 1978) (43 FR 6060 (February 13, 1978)); 12070 (December 3, 1981) (46 FR 60421 (December 10, 1981)).

[27] *See* instructions for Item 21(d) of Form N-3 for the definition of the term "management-related service contract."

and remuneration should be discussed. All investment advisory services must be provided pursuant to a written contract which complies with the provisions of section 15 of the 1940 Act.[28]

Item 6 requires the registrant to provide in the prospectus the name and address of any administrative or servicing agent for the separate account. Item 21 calls for identifying information concerning the custodian and independent public accountant. All custodial arrangements are subject to section 17(f) of the 1940 Act and the rules under it. If the registrant's portfolio securities are held by any person other than the sponsoring insurance company, a commercial bank, trust company, or registered depository, the registrant must state in the Statement of Additional Information the nature of the business of each such person. Item 21 also requires the disclosure of any services performed by, and the basis of remuneration received by, any affiliated person of registrant or of any affiliate of such affiliate, other than the sponsoring insurance company, which acts as administrative or servicing agent for registrant. If a custodian is affiliated with the management account, the management account is considered a self-custodian for purposes of section 17(f) of the 1940 Act and is subject to regulatory requirements different from those applicable to other custodians.

Guide 25. Brokerage Allocation

If the registrant uses affiliated brokers or takes the sale of its contracts into account when allocating brokerage,[29] a statement to that effect must be included in the prospectus in response to Item 6. In addition, a management account must receive exemptive relief from section 27(c)(2) of the 1940 Act before it may pay commissions to affiliated brokers.

Responses to Item 6 should be concise and should not include lengthy descriptions of technical or legal requirements or practices that are standard in the investment company industry. Registrants must provide in the Statement of Additional Information a more complete explanation of the brokerage allocation practices in which they engage. In addition, Item 22 requires the registrant to describe how transactions in portfolio securities are effected, including a statement about mark-ups on principal transactions and brokerage commissions paid during the most recent fiscal year. Further, a registrant must describe in the Statement of Additional Information how it selects brokers and evaluates the commissions to be paid, including the factors considered, such as research services provided by that broker. If research services furnished by brokers used by the registrant to effect its transactions may be used by the registrant's investment adviser to service all its managed accounts, not just for the benefit of the registrant, such practices must be described and explained. No disclosure suggested by this guide about brokerage allocation practices need be given if registrant is not required to respond to Item 22 of the Form.

Guide 26. Redemption

Section 22(e) of the 1940 Act prohibits suspension of the right of redemption or postponement of payment upon redemption of a redeemable security of a management account, for more than seven days after the proper tender of the security for redemption, with certain limited exceptions. Redemption payments may be withheld for more than seven days, if necessary, to prevent the loss or dilution of net asset value that can occur when purchase checks are dishonored.[30] The procedures for obtaining payment upon redemption shortly after purchase must be disclosed in the prospectus, as should any procedures an investor can follow to avoid delays in redemption payments, such as use of a certified check to purchase the variable annuity contracts.

To accommodate contracts that provide for variable annuity options based on life contingencies, rules 22e-1 and 27c-1 under the 1940 Act (17 CFR 270.22e-1 and 270.27c-1) grant exemptions from the redemption requirements of sections 22(e) and 27(c)(1). Rule 27c-1 exempts registered separate accounts, their depositors and underwriters from the requirement in section 27(c)(1) of the 1940 Act that a periodic payment plan certificate be a redeemable security (and from the surrender provisions of section 27(d) of the 1940 Act) with respect to the annuity payment period of variable annuity contracts under which payments are based on life contingencies.

If there is a synopsis in the prospectus, it should show where in the prospectus investors can find a description of redemption procedures.[31]

Redemption procedures are frequently confusing to investors. Therefore, special care should be given to explaining when signature guarantees are necessary, and who can make such guarantees.[32]

Guide 27. Valuation of Securities Being Offered

Registrant must identify in the prospectus the valuation method used. Sometimes, value can be determined fairly in more than one way. For any asset traded on a national exchange, valuation normally should be based on market value when readily available.[33] If a security was traded on the valuation date, the last quoted sale price generally is used. For securities listed on more than one national securities exchange, the last quoted sale, up to the time of valuation, on the exchange on which the security is principally traded should be used or, if there were no sales on that exchange on the valuation date, the last quoted sale, up to the time of valuation, on the other exchanges should be used.

If there was no sale on the valuation date but published closing bid and asked prices are available, the valuation should be within the range of the quoted prices. Some companies as a matter of policy use the bid price, others use the mean of the bid and asked prices, and still others use a valuation within the range of bid and asked prices considered to best represent value in that circumstance; each of these policies is acceptable if consistently applied. Normally, the use of the asked price alone is not appropriate. Where, on the valuation date, only a bid price or an asked price is quoted or the spread between bid and asked prices is substantial, quotations for several days should be reviewed. If sales have been infrequent or there is a thin market in the security, or the size of the reported trades is not representative of the fund's holding (as in the case of certain debt securities), further consideration should be given as to whether "market quotations are readily available." If they are not readily available, the alternative method of valuation prescribed by section 2(a)(41)—"fair value as determined in good faith by the board of directors"—should be used.

For debt or equity securities traded over-the-counter where closing prices are not readily available, quotations should be obtained from more than one broker-dealer, particularly if quotations are available only from broker-dealers not known to be established market-makers for that security. A company may adopt a policy of using a mean of the bid prices, or of the bid and asked prices, or of the prices of a representative selection of broker-dealers quoted on a particular security; or it may use a valuation within the range of bid and asked prices considered best to represent value in that circumstance. Any of these policies are appropriate if consistently applied.

If the validity of the quotations appears to be questionable, or if the number of quotations indicates that there is a thin market in the security, further consideration should be given to whether "market quotations are readily available." If it is decided that they are not readily available, the security should be valued at "fair value as determined in good faith" by the board of managers.

[28] Registrants should note that the disclosure requirements of both Part A and Part B apply to sub-advisers as well, *see* Investment Company Act Release 7220, *supra* note 5.

[29] On March 4, 1981, the Commission approved an NASD proposal to amend portions of Article III, section 26 of the NASD Rules of Fair Practice and related interpretations of the "Anti-Reciprocal Rule," Investment Company Act Release No. 11662 (March 4, 1981) (46 FR 16012 (March 10, 1981)). The rule as amended no longer prohibits NASD members from seeking or granting brokerage commissions in connection with the sale of investment company shares, and permits NASD members to sell shares of investment companies that follow a disclosed policy of considering sales of their shares as a factor in the selection of broker-dealers to execute portfolio transactions, subject to specified conditions.

[30] For a discussion of the conditions under which an investment company can delay redemption for more than seven days pending clearance of purchase checks, *see* Investment Company Institute (Pub. avail. May 3, 1975).

[31] *See* Guide 31: *The Synopsis.*

[32] *See* Investment Company Act Release No. 7220, *supra* note 5.

[33] Investment Company Act Release No. 7221, *supra* note 6. Registrants often value their debt securities by reference to other securities which are considered comparable in rating, interest rate, due date, etc. (often called "matrix pricing") or rely on pricing services which use matrix pricing for valuation of these instruments. Responsibility for making sure that a pricing method is proper rests with the registrant.

To comply with section 2(a)(41) of the Act and rule 2a-4 under the Act, the members of the board of managers must be satisfied that all appropriate factors relevant to the value of securities for which market quotations are not readily available have been considered and determine the method of arriving at the fair value of each such security. No single standard for determining "fair value in good faith" can be established, since fair value depends upon individual circumstances. Generally, the current "fair value" of an issue of securities being valued by the board of managers would be the amount which the owner might reasonably expect to receive for them upon their current sale.[34]

Securities held by the registrant that may not be sold to the public without an effective registration statement under the Securities Act are considered securities for which market quotations are not readily available. They must, therefore, be valued in good faith by the board of managers.[35] It would be improper for the board of managers to value these securities at the market quotation for unrestricted securities of the same class without considering other relevant factors, although the quotation may be considered in making the final valuation.[36] The existence of a shelf registration for the restricted securities also may be considered as a factor in determining the value of the securities, but there may not be an automatic valuation at market price based on this factor alone.[37]

The valuation of short sales of securities, which are not traded on a national exchange, can be at the asked price, that being the most conservative value, or the mean average of bid and asked prices. The use of bid price alone to value short positions is not appropriate.

Certain securities trading practices such as reverse repurchase agreements, firm commitment agreements, and standby commitment agreements require the consideration of special factors in connection with valuation. For example, changes in the value of a firm commitment agreement will affect the price at which shares of a management account may be sold or redeemed. Accordingly, members of the board of managers in determining fair value, must take care that no inaccuracies exist with regard to the valuation of such trading practices.[38] In valuing standby commitments (puts), registrants using the amortized cost method of valuation should indicate that the acquisition of a standby commitment will not affect the valuation of the underlying security. The actual standby commitment will be valued at zero in determining net asset value. In such event, where the separate account pays directly or indirectly for a standby commitment, its cost will be reflected as an unrealized depreciation for the period during which the commitment is held by the separate account and will be reflected in realized gain or loss when the commitment is exercised or expires.[39]

The maturity of a municipal obligation purchased by the separate account will not be considered shortened by any standby commitment to which such obligation is subject. Therefore, standby commitments will not affect the dollar weighted average maturity of the separate account's portfolio. However, where a money market separate account acquires a variable rate or floating rate municipal obligation having a demand feature which allows the separate account unconditionally to obtain the amount due from the issuer upon notice of seven days or less, the maturity of the instrument will normally be the longer of the notice period for the commitment or the time remaining to the next rate adjustment.

Money market separate accounts with portfolio securities that mature in one year or less may use the amortized cost method to value their securities pursuant to the conditions of rule 2a-7.[40] If the portfolio of a money market separate account is to be valued at amortized cost, there must be disclosure in the Statement of Additional Information concerning the effect of this method of valuation on the separate account's accumulation unit value and yield as interest rates change, and on the corresponding dilution of interests in the separate account.

The prospectus must disclose when calculations of accumulation unit value are generally made. The current accumulation unit value of redeemable securities should be computed in accordance with rule 22c-1 under the 1940 Act (17 CFR 270.22c-1), *i.e.*, at least once daily on each weekday (except for customary national and local business holidays listed in the prospectus) in which there is sufficient trading in the separate account's portfolio securities so that the current accumulation unit value might be materially affected by changes in the value of these portfolio securities and on which an order for purchase or redemption of its securities is received. These calculations of accumulation unit value should be made at such specific time or times during the day as determined no less frequently than annually by a majority of the board of managers of the separate account. A separate account need not compute accumulation unit value on a day when no security was tendered for redemption and no order to purchase such security was received or was on hand, having been received since the last previous computation of accumulation unit value.[41]

Guide 28. Distribution Expenses

Item 7 requires that separate accounts that bear distribution expenses in accordance with rule 12b-1 disclose this fact to shareholders in the prospectus.[42]

Many registrants are exempted from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit them to deduct a charge for the assumption of mortality and/or expense risks from the separate account. In furtherance of requests for this exemptive relief, where proceeds from explicit sales loads will not be sufficient to cover expected distribution costs, many registrants represent, among other things, that there is a reasonable likelihood that the separate account's distribution financing arrangement will benefit the separate account and contractowners.[43] These representations should be disclosed in the Statement of Additional Information.

When special arrangements will be made to sell variable annuity contracts to customers of depository institutions, possible applicability of the Glass-Steagall Act should be discussed in the prospectus. The legal issues raised by payments to depository institutions for their services in this connection should be identified, and the consequences for the separate account, if these issues are resolved adversely, should also be discussed.

Guide 29. Financial Statements

The form, content, and presentation of financial statements are prescribed by Regulation S-X (17 CFR Part 210). If the financial statements of the registrant are not provided because the registrant does not have any assets, a statement to that effect should be placed before the financial statements of the sponsoring insurance company in the Statement of Additional Information.

Guide 30. Yield Quotations of Money Market Separate Accounts

For guidance in responding to Item 4(c) and Item 25, the registrant should refer to Investment Company Act Release No. 13049 (February 28, 1983) (48 FR 10297 (March 11, 1983)); Investment Company Act Release No. 11028 (January 28, 1980) (45 FR 7578 (February 4, 1980)); and Investment Company Act Release No. 11379 (September 30, 1980) (45 FR 67079 (October 9, 1980)).

Deductions should be pro rated among the sub-accounts of the separate account. If the deduction is a flat fee charged to all contractowner accounts (*e.g.*, $25.00 per contractowner account per year), the deduction should be prorated by multiplying the flat fee by a fraction the numerator of

[34] For a general discussion of the factors to be considered in this determination, *see* Investment Company Act Release No. 6295 (December 23, 1970) (35 FR 19986 (December 31, 1970)).

[35] Investment Company Act Release No. 7221, *supra* note 6.

[36] Investment Company Act Release No. 5847, *supra* note 11.

[37] Investment Company Act Release No. 6121 (July 20, 1970).

[38] Investment Company Act Release No. 10666, *supra* note 7.

[39] There may be alternative methods of valuing of standby commitments, but in any event the value of the standby commitment together with the underlying security should not exceed the amount received by the separate account upon disposal of the underlying security. At the time these guidelines were published, the staff was considering recommending a rule or interpretive release to the Commission on valuation of standby commitments and securities subject to standby commitments. Registrants should check rule 2a-7 for any amendments on this matter.

[40] Investment Company Act Release No. 13380 (July 11, 1983) (48 FR 32555 (July 18, 1983)).

[41] Investment Company Act Release No. 10827 (August 13, 1979) (44 FR 48659 (August 20, 1979)).

[42] For a more detailed discussion of the contents of the rule, *see* Investment Company Act Release No. 11414 (October 28, 1980) (45 FR 73898 (November 7, 1980)).

[43] For a discussion of representations by applicants seeking this exemptive relief, *see* Investment Company Act Release No. 14190 (October 11, 1984) (49 FR 40879, October 18, 1984)).

which is the average number of contractowner accounts that have money allocated to the sub-account and the denominator of which is the sum of the average number of contractowner accounts for all of the sub-accounts for that kind of contract (*i.e.*, all of the "qualified" sub-accounts or all of the "non-qualified" sub-accounts).

Guide 31. The Synopsis

A synopsis provided pursuant to Item 3 of Form N–3 should clearly and concisely describe the key features of the offering and the registrant. The information in the synopsis need not be in the order or the manner described in this Guide, and it may be presented in a question-and-answer format.

The synopsis should include (1) a brief description of how the registrant proposes to achieve its investment objectives, including the types of securities in which the registrant proposes to invest primarily and whether the registrant proposes to separate as a diversified or nondiversified investment company and (2) a summary of the principal speculative or risk factors associated with investment in the registrant, including factors peculiar to the registrant as well as those generally associated with investment in an investment company with objectives and policies similar to registrant's.

The synopsis should also (1) provide the name of the investment adviser, and, if any other person provides services of the type customarily provided by an investment adviser, the identity of such person and the services provided; (2) provide a cross-reference to the description in the prospectus of how to purchase the variable annuity contracts; (3) provide cross-references to the descriptions in the prospectus of how a contractowner (or annuitant) may redeem and any penalty taxes that may be assessed upon redemption; (4) state the maximum percentage load that may be assessed against any given amount redeemed or annuitized and provide a cross-reference to the description in the prospectus of the deductions and expenses; and (5) provide either a full description of or a cross-reference to the description in the prospectus of any "ten-day free look" or similar provisions.

The synopsis may include additional information, provided that it does not, by its nature, quantity, or manner of presentation, impede understanding of required information.

Guide 32. Administrative Charges

The discussion of any administrative charge deducted from the value of the contractowner's account should (1) concisely describe how the charge is deducted in both the accumulation and annuity periods, (2) explain whether the charge is deducted at the beginning of the contract year for the coming year or deducted at the end of the contract year for the prior year, (3) describe whether the charge is prorated for any period (*e.g.*, between the contract anniversary date and the date of redemption or the date of annuitization), and (4) if the administrative charge is a percentage of assets, disclose that there is no necessary relationship between the amount of the administrative charge imposed on a given contract and the amount of expenses that may be attributable to that contract.

Any administrative charge that is deducted from contractowner accounts and is not a charge or expense of the registrant should not be accounted for as an expense or otherwise included in the determination of net investment income of the registrant. Rather, the amount of the administrative charges should be accounted for, and presented in financial statements of the registrant, as a reduction of ownership units. Whether the amount of such administrative charges is separated in the registrant's financial statement from other withdrawal or redemption amounts that result in a reduction of ownership units depends upon individual facts.

Guide 33. Deferred Sales Loads

Item 7 of Form N–3 requires the registrant to describe any sales loads. A sales load not subject to any contingency should be described as a deferred sales load, *not a* "contingent" deferred sales load. A deferred sales load does not become contingent solely because the sales load is waived in the event of an annuitant's death or if the registrant provides that a given percentage of contract value may be withdrawn without imposition of a sales load (a "free corridor").

The description of any deferred sales load (contingent or not) should include (1) how the deduction will be allocated among subaccounts of the registrant; (2) when, if ever, the sales load will be waived (for example, as part of the death benefit or upon redemptions by contractowners who are also employees of the registrant); and (3) the maximum amount of the sales load as a percentage of purchase payments received. See rule 6c–8 under the 1940 Act (17 CFF 270.6c–8) which limits the amount of a deferred sales load to no more than nine percent of the purchase payments received. If the deferred sales load varies according to the length of time a particular purchase payment has been invested, the description should indicate whether withdrawals will be attributed to purchase payments in the order in which they were invested in the separate account (FIFO) or in the reverse order of investment (LIFO).

The description of a deferred sales load should also explain whether, in the case of a partial redemption, the amount deducted will be a percentage of the amount requested by the contractowner or the total amount withdrawn, and whether the sales load will be deducted from the amount requested or the amount remaining after the contractowner has received the amount requested. For example, if the sales load is 7% and the contractowner has requested $100, the description should make plain whether:

(a) The contractowner receives $93 and the sales load is $7 for a total withdrawal of $100 (*i.e.*, the sales load is 7% of the both the amount requested and the total withdrawal and is deducted from the amount requested);

(b) The contractowner receives $100 and the sales load is $7 for a total withdrawal of $107 (*i.e.*, the sales load is 7% of the amount requested and is deducted from the contract value remaining after the contractowner is paid the amount requested); or

(c) The contractowner receives $100 and the sales load is $7.53 for a total withdrawal of $107.53 (*i.e.*, the sales load is 7% of the total withdrawal and is deducted from the contract value remaining after the contractowner is paid the amount requested).

Additionally, if the registrant allows withdrawal or a given percentage of contract value without imposing a deferred sales load (*e.g.*, a 10% free withdrawal each year), the description of this privilege should indicate when the contract value will be computed to determine the amount of the permitted free withdrawal (e.g., at the beginning of the contract year or the date of the withdrawal request).

Guide 34. Annuity Payments

Item 9 of Form N–3 requires registrants to describe in the prospectus the annuity options available under a contract and the material factors that determine the level of annuity benefits. Registrants should discuss variables that impact the level of payments such as the age at which payments begin, the form of annuity, the frequency of payments, annuity purchase rates, and assumed investment return. The discussion should include any options on the form of annuity such as life annuities, term certain annuities, joint and survivor life annuities, and any other variations. In general, responses to this item should include practical narrative disclosure. Mathematical illustrations and the mechanics of determining annuity payments may be placed in the Statement of Additional Information, Item 26.

Item 9 also calls for disclosure of the effect of assumed investment return. Registrants should explain that annuity payments will vary to reflect the investment experience of the separate account and that the assumed investment return is a fulcrum rate around which variable annuity payments will fluctuate to reflect whether investment experience of the separate account is better or worse than the assumed investment return. Where annuitants are given a choice in assumed investment returns, registrants should explain that a higher assumed investment return will result in a higher initial payment, a more slowly rising series of subsequent payments when actual investment performance (minus any deductions and expenses) exceeds the assumed investment return, and a more rapid drop in subsequent payments when actual investment performance (minus any deductions and expenses) is less than the assumed investment return.

Item 26 requires registrants to disclose in the Statement of Additional Information the method for determining the amount of annuity payments. Registrants should disclose how the initial annuity payment is determined, and if subsequent payments differ from the first, an explanation of how the subsequent payments are determined. Generally, registrants should explain that the amount of the initial payment is determined by applying the value of the annuitant's contract as of the date of annuitization (adjusted for any deductions) to the annuity purchase rate for the annuitant's annuity option, sex, and adjusted age. The specific time when the calculation will be made and the particular deductions that will be made at that time also should be disclosed.

Registrants should disclose that the amount of subsequent annuity payments is determined by multiplying the number of annuity units credited to an annuitant's account by the value of an annuity unit at the time of each payment where (1) the number of annuity units credited to an annuitant's account is determined by dividing the amount of the first annuity payment by the value of an annuity unit at the time of that payment, and (2) the value of an annuity unit changes to reflect investment performance of the separate account adjusted by a factor to neutralize the assumed investment return. Registrants should also disclose any deductions affecting the amount of annuity payments and where relevant, that changes in the value of an annuity unit reflect deductions of mortality and risk expense charges.

Guide 35. Crediting of Contract Values

Item 11(a)(ii) of Form N-3 requires disclosure about when initial and subsequent purchase payments are credited. Section 22(c) of the 1940 Act (15 U.S.C. 80a-22(c)) and rule 22c-1 (17 CFR 270.22c-1) establish standards for crediting purchase payments for securities of registered investment companies. However, the staff has not objected to disclosure that an *initial* purchase payment under a variable annuity contract would be credited within two business days of receipt if the contract application and other necessary information were complete as received by the office issuing the contract, and within five business days of receipt if the application and other information were incomplete when received. Registrants following this practice must disclose it and also disclose that, if the initial purchase payment is not credited within five business days, the purchase payment will be immediately returned unless the prospective purchaser has been informed of the delay and *specifically* requests that the purchase payment not be returned.[44]

Additionally, registrants should disclose any special procedures for crediting initial purchase payments in the case of incomplete applications (*e.g.*, allocation of an initial purchase payment to the money market sub-account if no sub-account has been specified).

Guide 36. Automatic Annuity Options

Item 9 of Form N-3 calls for disclosure about choices available to a prospective annuitant and the effect of not specifying a choice. Registrants should disclose any automatic purchase of a fixed annuity (*i.e.*, the annuity selection that will be made by the company if the prospective annuitant has not chosen an option). The staff has taken the position that an automatic annuity involving a fixed pay out of amounts that have accumulated on a variable basis is not consistent with section 27(c)(1) of the 1940 Act (15 U.S.C. 80a-27(c)(1)). However, the staff does not object to an automatic fixed annuity purchase if the only options available under the variable annuity contract are fixed annuities.

[44] The Commission proposed codifying these standards in an amendment to rule 22c-1 under the Act. *See* Investment Company Act Release No. 13913 (May 1, 1984) (49 FR 19320 (May 7, 1984)).

Guidelines for Form N-4

This release contains Guidelines prepared by the Division of Investment Management for registration statements on Form N-4 for separate accounts organized as unit investment trusts. The Guidelines are based on Commission releases and staff intepretations. Adherence to these Guidelines should speed the examination by the Division's staff of registration statements on Form N-4.

The Guidelines are not rules of the Commission and, except as noted, represent only the views of the staff of the Division, not the Commission. The Guidelines should be read with the Investment Company Act Releases cited in them. The policies stated in the Guidelines may be changed if necessary.

Table of Contents

Guide 1. Name of Registrant

The registrant's name must be consistent with section 35 of the Investment Company Act of 1940 ("1940 Act"), which prohibits, among other things, use of a name or title that may be deceptive or misleading.

In the Division's view, the discussion in Investment Company Act Release No. 5510 (October 8, 1968) about the proprietary rights of an investment company in its name is not applicable to separate accounts.

Guide 2. Business History

The registrant should list in the Statement of Additional Information all prior names of its depositor during the past five years. For a newly organized insurance company, registrant should state that the company has no prior operating history.

Guide 3. Redemption

Section 22(e) of the 1940 Act prohibits suspension of the right of redemption or the postponement of payment upon redemption of a redeemable security of a separate account organized as a unit investment trust, for more than seven days after the proper tender of the security for redemption, with certain limited exceptions. The staff has taken the position, however, that redemption payments can be withheld for more than seven days if necessary to prevent the loss or dilution of net asset value that can occur when purchase checks are dishonored.[1] The procedures for obtaining payment upon redemption shortly after purchase must be disclosed in the prospectus, as should any procedures an investor can follow to avoid delays in redemption payments, such as use of a certified check to purchase the variable annuity contract.

To accommodate contracts that provide for variable annuity options based on life contingencies, rules 22e-1 and 27c-1 under the 1940 Act (17 CFR 270.22e-1 and 27c-1) grant exemptions from the redemption requirements of sections 22(e) and 27(c)(1). Rule 27c-1 exempts registered separate accounts, their depositors and underwriters from the requirement in section 27(c)(1) of the 1940 Act that periodic payment plan certificate be a redeemable security (and from the surrender provisions of section 27(d) of the 1940 Act) with respect to the annuity payment period of variable annuity contracts under which payments are based on life contingencies.

If there is a synopsis in the prospectus, it should show where in the prospectus investors can find a description of redemption procedures.[2]

Redemption procedures are frequently confusing to investors. Therefore, special care should be given to explaining when signature guarantees are necessary, and who can make such guarantees.[3]

Guide 4. Distribution Expenses

Many registrants are exempted from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit them to deduct a charge for the assumption of mortality and/or expense risks from the separate account. In furtherance of requests for this exemptive relief, where proceeds from explicit sales loads will not be sufficient to cover expected distribution costs, many registrants represent that there is a reasonable likelihood that the separate account's distribution financing arrangement will benefit the separate account and contractowners, among other requirements.[4] These representations should be disclosed in the Statement of Additional Information.

When special arrangements will be made to sell variable annuity contracts to customers of depository institutions, possible applicability of the Glass-Steagall Act should be discussed in the prospectus. The legal issues raised by payments to depository institutions for their services in this connection should be identified, and the consequences for the separate account, if these issues are resolved adversely, should also be discussed.

Guide 5. Financial Statements

The form, content, and presentation of financial statements are prescribed by Regulation S-X (17 CFR 210). If financial

[1] For a discussion of the conditions under which an investment company can delay redemption for more than seven days pending clearance of purchase checks, *see* Investment Company Institute (Pub. avail. May 3, 1975).

[2] *See* Guide 7: *The Synopsis.*

[3] Investment Company Act Release No. 7220 (June 9, 1972) (37 FR 12790 (June 24, 1972)).

[4] For a discussion of representations by applicants seeking this exemptive relief, *see* Investment Company Act Release No. 14190 (October 11, 1984) (49 FR 40879, October 18, 1984).

statements of the registrant are not provided because the registrant does not have any assets, a statement to that effect should be placed before the financial statements of the depositor in the Statement of Additional Information.

Guide 6. Yield Quotations of Money Market Sub-Accounts

For guidance in responding to Item 4(b) and Item 21, the registrant should refer to Investment Company Act Release No. 13049 (February 28, 1983) (48 FR 10297 (March 11, 1983)); Investment Company Act Release No. 11028 (January 28, 1980) (45 FR 7578 (February 4, 1980)); and Investment Company Act Release No. 11379 (September 30, 1980) (45 FR 67079 (October 9, 1980)).

Deductions should be pro rated among the sub-accounts of the separate account. If the deduction is a flat fee charged to all contractowners accounts (*e.g.*, $25.00 per contractowner account per year), the deduction should be pro rated by multiplying the flat fee by a fraction the numerator of which is the average number of contractowner accounts that have money allocated to the sub-account and the denominator of which is the sum of the average number of contractowner accounts that have money allocated to each of the sub-accounts for the same kind of contract (*i.e.*, all of the "qualified" sub-accounts or all of the "non-qualified" sub-accounts).

Guide 7. The Synopsis

A synopsis provided pursuant to Item 3 of Form N-4 should clearly and concisely describe the key features of the offering and the registrant. The information in the synopsis need not be in the order or the manner described in this guide, and it may be presented in a question-and-answer format.

The synopsis should include: (1) A cross-reference to the description in the prospectus of how to purchase the variable annuity contracts being offered; (ii) cross-references to the descriptions in the prospectus of how a contractowner (or annuitant) may effect a redemption and any penalty taxes that may be assessed upon redemption; (iii) the maximum percentage load that may be assessed against any given amount redeemed or annuitized and a cross-reference to the description in the prospectus of the deductions and expenses; and (iv) either a full description of or a cross-reference to the description in the prospectus of any "ten-day free look" or similar provisions.

The synopsis may include additional information, provided that it does not, by its nature, quantity, or manner of presentation, impede understanding of required information.

Guide 8. Administrative Charges

The discussion of any administrative charge deducted from the value of the contractowner's account should (1) concisely describe how the charge is deducted in both the accumulation and annuity periods, (2) explain whether the change is deducted at the beginning of the contract year for the coming year or deducted at the end of the contract year for the prior year, (3) describe whether the charge is prorated for any period (*e.g.*, between the contract anniversary date and the date of redemption or the date of annuitization), and (4) if the administrative charge is a precentage of assets, disclose that there is no necessary relationship between the amount of administrative charge imposed on a given contract and the amount of expenses that may be attributable to that contract.

Any administrative charge that is deducted from contractowner accounts and is not a charge or expense of the registrant should not be accounted for as an expense or otherwise included in the determination of net investment income of the registrant. Rather, the amount of the administrative charges should be accounted for, and presented in financial statements of the registrant, as a reduction of ownership units. Whether the amount of such administrative charges is separated in the registrant's financial statements from other withdrawal or redemption amounts that result in a reduction of ownership units depends upon individual facts.

Guide 9. Deferred Sales Loads

Item 6 of Form N-4 requires the registrant to describe any sales loads. A sales load not subject to any contingency should be described as a deferred sales load, *not* a "contingent" deferred sales load. A deferred sales load does not become contingent solely because the sales load is waived in the event of an annuitant's death or if the registrant provides that a given percentage of contract value may be withdrawn without imposition of a sales load (a "free corridor").

The description of any deferred sales load (contingent or not) should include how the deduction will be allocated among sub-accounts of the Registrant; when, if ever, the sales load will be waived (for example, as part of the death benefit or upon redemptions by contractowners who are also employees of the depositor); and the maximum amount of the sales load as a percentage of purchase payments received. See rule 6c-8 under the 1940 Act (17 CFR 270.6c-8) which limits the amount of a deferred sales load to no more than nine percent of the purchase payments received. If the deferred sales load varies according to the length of time a particular purchase payment has been invested, the description should indicate whether withdrawals will be attributed to purchase payments in the order in which they were invested in the separate account (FIFO) or in the reverse order of investment (LIFO).

The description of a deferred sales load should also explain whether, in the case of a partial redemption, the amount deducted will be a percentage of the amount requested by the contractowner or the total amount withdrawn, and whether the sales load will be deducted from the amount requested or the amount remaining after the contractowner has received the amount requested. For example, if the sales load is 7% and the contractowner has requested $100, the description should make plain whether:

(a) The contractowner receives $93 and the sales load is $7 for a total withdrawal of $100 (*i.e.*, the sales load is 7% of both the amount requested and the total withdrawal and is deducted from the amount requested);

(b) The contractowner receives $100 and the sales load is $7 for a total withdrawal of $107 (*i.e.*, the sales load is 7% of the amount requested and is deducted from the contract value remaining after the contractowner is paid the amount requested); or

(c) The contractowner receives $100 and the sales load is $7.53 for a total withdrawal of $107.53 (*i.e.*, the sales load is 7% of the total withdrawal and is deducted from the contract value remaining after the contractowner is paid the amount requested.

Additionally, if the registrant allows withdrawal of a given percentage of contract value without imposing a deferred sales load (*e.g.*, a 10% free withdrawal each year), the description of this privilege should indicate when the contract value will be computed to determine the amount of the permitted free withdrawal (*e.g.*, at the beginning of the contract year or the date of the withdrawal request).

Guide 10. Annuity Payments

Item 8 of Form N-4 requires registrants to describe in the prospectus the annuity options available under a contract and the material factors that determine the level of annuity benefits. Registrants should discuss variables that impact the level of payments such as the age at which payments begin, the form of annuity, the frequency of payments, annuity purchase rates, and assumed investment return. The discussion should include any options on the form of annuity such as life annuities, term certain annuities, joint and survivor life annuities, and any other variations. In general, responses to this item should include practical narrative disclosure. Mathematical illustrations and the mechanics of determining annuity payments should be placed in the Statement of Additional Information, Item 22.

Item 8 also calls for disclosure of the effect of assumed investment return. Registrants should explain that annuity payments will vary to reflect the investment experience of the portfolio company and that the assumed investment return is a fulcrum rate around which variable annuity payments will fluctuate to reflect whether investment experience of the portfolio company is better or worse than the assumed investment return. Where annuitants are given a choice in assumed investment return, registrants should explain that a higher assumed investment return will result in a higher initial payment, a more slowly rising series of subsequent payments when actual investment performance (minus any deductions and expenses) exceeds the assumed investment return, and a more rapid drop in subsequent payments when actual investment performance (minus any deductions and expenses) is less than the assumed investment return.

Item 22 requires registrants to disclose in the Statement of Additional Information the method for determining the amount of annuity payments. Registrants should disclose how the initial annuity payment is determined, and if subsequent payments differ from the first, an explanation of how the subsequent payments are determined. Generally, registrants should explain that the amount of the initial payment is determined by applying the value of the annuitant's contract as of the date of annuitization (adjusted for any deductions) to the annuity purchase rate for the annuitant's annuity option, sex, and adjusted age. The specific time when the calculation will be made and the particular deductions that will be made at that time also should be disclosed. Registrants should disclose that the amount of subsequent annuity payments is determined by multiplying the number of annuity units credited to an annuitant's account by the value of an annuity unit at the time of each payment where (1) the number of annuity units credited to an annuitant's account is determined by dividing the amount of the first annuity payment by the value of an annuity unit at the time of that payment, and (2) the value of an annuity unit changes to reflect investment performance of the underlying portfolio company, adjusted by a factor to neutralize the assumed investment return. Registrants should disclose any deductions affecting the amount of annuity payments, and, where applicable, that changes in the value of an annuity unit reflect deductions of mortality and expense risk charges.

Guide 11. Crediting of Contract Values

Item 10 of Form N-4 requires disclosure about when initial and subsequent purchase payments are credited. Section 22(c) of the 1940 Act (15 U.S.C. 80a-22(c)) and rule 22c-1 (17 CFR 270.22c-1) establish standards for crediting purchase payments for securities of registered investment companies. However, the staff has not objected to disclosure that an *initial* purchase payment under a variable annuity contract would be credited within two business days of receipt if the contract application and other necessary information were complete as received by the office issuing the contract, and within five business days of receipt if the application and other information were incomplete when received. Registrants following this practice must disclose it and also disclose that, if the initial purchase payment is not credited within five business days, the purchase payment will be immediately returned unless the prospective purchaser has been informed of the delay and *specifically* requests that the purchase payment not be returned.[5]

Additionally, registrants should disclose any special procedures for crediting initial purchase payments in the case of incomplete applications (*e.g.*, allocation of an initial purchase payment to the sub-account which invests in the money market fund if no sub-account has been specified).

Guide 12. Automatic Annuity Options

Item 8 of Form N-4 calls for disclosure about annuity option choices available to a prospective annuitant and the effect of not specifying a choice. Registrants should disclose any automatic purchase of a fixed annuity (*i.e.*, the annuity selection that will be made by the company if the prospective annuitant has not chosen an option). The staff has taken the position that an automatic annuity involving a fixed pay out of amounts that have accummulated on a variable basis is not consistent with section 27(c)(1) of the 1940 Act (15 U.S.C. 80a-27(c)(1)). However, the staff does not object to an automatic fixed annuity purchase if the only options available under the variable annuity contract are fixed annuities.

[5] The Commission proposed codifying these standards in an amendment to rule 22c-1 under the Act. *See* Investment Company Act Release No. 13913 (May 1, 1984) [49 FR 19320 (May 7, 1984)].

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17 CFR PART 288

[Release Nos. 33-6589- 34-22158; 39-996; AFDB-1]

Primary Offerings by the African Development Bank

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today is adopting a new regulation specifying the periodic and other reports to be filed with it by the African Development Bank. The regulation is virtually identical to the regulations previously adopted by the Commission in connection with primary distributions of securities issued by the International Bank for Reconstruction and Development, the Inter-American Development Bank and the Asian Development Bank.

EFFECTIVE DATE: June 25, 1985.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus, (202) 272-3246, or Martin L. Meyrowitz, (202) 272-3250, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") today adopted rules and regulations specifying the periodic and other reports to be filed with it in connection with the primary distribution of securities issued by the African Development Bank ("AFDB" or "the Bank"). The regulation, which would be designated Regulation AFDB,[1] is virtually identical to Regulations BW,[2] IA,[3] and AD,[4] which prescribe the reports to be filed with the Commission by the International Bank for Reconstruction and Development ("IBRD"), the Inter-American Development Bank ("IAD"), and the Asian Development Bank ("AD"), respectively. (These three, along with the African Development Bank, may sometimes be collectively referred to herein as the "Banks".)[5]

[1] 17 CFR Part 288.

[2] 17 CFR Part 285.

[3] 17 CFR Part 286

[4] 17 CFR Part 287

I. Background

United States membership in the IBRD, IAD, AD and AFDB was authorized by the Bretton-Woods Agreements Act, the Inter-American Development Bank Act, the Asian Development Bank Act, and the African Development Bank Act (the "Act"), respectively.[6] Section 9(a) of the Act[7] and each of the aforementioned Acts provides, in relevant part, that certain securities issued or guaranteed by each of the Banks are "exempted securities" within the meaning of section 3(a)(2) of the Securities Act of 1933[8] and section 3(a)(12) of the Securities Exchange Act of 1934.[9] An exemption is also available under the Trust Indenture Act of 1939.[10] Despite the exemptions, each of the Acts requires the Banks to file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be necessary in the public interest or for the protection of investors.[11]

The organization and financing of the AFDB closely follows the pattern of the other international development banks which preceded it. These development banks differ somewhat from traditional banks. They are non-profit financial institutions which do not accept deposits or make short-term loans. Their shareholders are governments. They are organized to make loans fostering

[5] Regulation BW was adopted in Securities Act Release No. 3384 (January 9, 1950). Regulation IA was adopted in Securities Act Release No. 4290 (October 25, 1960). Regulation AD was adopted in Securities Act Release No. 4889 (December 18, 1967).

[6] 22 U.S.C. 286 et seq., Pub. L. No. 79-171, approved July 31, 1945; 22 U.S.C. 283 et seq., Pub. L. No. 86-147, approved August 7, 1959; 22 U.S.C. 285 et seq., Pub. L. No. 89-369, approved March 16, 1966; 22 U.S.C. 290i, Pub. L. No. 97-35, approved August 13, 1981, respectively.

[7] 22 U.S.C. 290i-9(a).

[8] 15 U.S.C. 77a-77aa (1976 and Supp. V 1981), *as amended by* the Business Regulatory Reform Act of 1982, Pub. L. No. 97-261, § 19(d), 96 Stat. 1121 (1982); specifically 15 U.S.C. 77c(a)(2).

[9] 15 U.S.C. 78a-78kk (1976 and Supp. V 1981), *as amended by* theAct of June 6, 1983, Pub. L. No. 98-38; specifically 15 U.S.C. 78c(a)(12).

[10] 15 U.S.C. 77aaa-77bbbb, *as amended*; specifically 15 U.S.C. 77ddd(4).

[11] *See* note 7, *supra*.