

(3) The same deferred sales load is imposed on all shareholders, except that scheduled variations in or elimination of a deferred sales load may be offered to a particular class of shareholders or transactions. *Provided*, that the conditions in § 270.22d-1 are satisfied. Nothing in this paragraph (a) shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a deferred sales load not yet paid.

(b) For purposes of this section:

(1) *Company* means a registered open-end management investment company, other than a registered separate account, and includes a separate series of the company;

(2) *Exempted person* means any principal underwriter of, dealer in, and any other person authorized to consummate transactions in, securities issued by a company; and

(3) *Deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.

[61 FR 49016, Sept. 17, 1996]

§ 270.6d-1 Exemption for certain closed-end investment companies.

(a) An application under section 6(d) of the Act shall contain the following information:

(1) A brief description of the character of the business and investment policy of the applicant.

(2) The information relied upon by the applicant to satisfy the conditions of paragraphs (1) and (2) of section 6(d) of the Act.

(3) The number of holders of each class of the applicant's outstanding securities.

(4) An unconsolidated balance sheet as of a date not earlier than the end of the applicant's first fiscal year, together with a schedule specifying the title, the amount, the book value and, if determinable, the market value of each security in the applicant's portfolio.

(5) An unconsolidated profit and loss statement for the applicant's last fiscal year.

(6) A statement of each provision of the act from which the applicant seeks

exemption, together with a statement of the facts by reason of which, in the applicant's opinion, such exemption is not contrary to the public interest or inconsistent with the protection of investors.

(b) There shall be attached to each copy of the application a copy of Form N-8A. The form need not be executed, but it shall be clearly marked on its facing page as an exhibit to the application. The filing of Form N-8A in this manner shall not be construed as the filing of a notification of registration under section 8(a) of the Act.

(c) The application may contain any additional information which the applicant desires to submit.

[Rule N-6D-1, 5 FR 4346, Nov. 2, 1940]

§ 270.6e-2 Exemptions for certain variable life insurance separate accounts.

(a) A separate account, and the investment adviser, principal underwriter and depositor of such separate account, shall, except for the exemptions provided in paragraph (b) of this Rule 6e-2, be subject to all provisions of the Act and rules and regulations promulgated thereunder as though such separate account were a registered investment company issuing periodic payment plan certificates if:

(1) Such separate account is established and maintained by a life insurance company pursuant to the insurance laws or code of (i) any state or territory of the United States or the District of Columbia, or (ii) Canada or any province thereof, if it complies to the extent necessary with Rule 7d-1 (17 CFR 270.7d-1) under the Act;

(2) The assets of the separate account are derived solely from the sale of variable life insurance contracts as defined in paragraph (c)(1) of this Rule 6e-2, and advances made by the life insurance company which established and maintains the separate account ("life insurer") in connection with the operation of such separate account;

(3) The separate account is not used for variable annuity contracts or for funds corresponding to dividend accumulations or other contract liabilities not involving life contingencies;

(4) The income, gains and losses, whether or not realized, from assets allocated to such separate account, are, in accordance with the applicable variable life insurance contract, credited to or charged against such account without regard to other income, gains or losses of the life insurer;

(5) The separate account is legally segregated, and that portion of its assets having a value equal to, or approximately equal to, the reserves and other contract liabilities with respect to such separate account are not chargeable with liabilities arising out of any other business that the life insurer may conduct;

(6) The assets of the separate account have, at each time during the year that adjustments in the reserves are made, a value at least equal to the reserves and other contract liabilities with respect to such separate account, and at all other times, except pursuant to an order of the Commission, have a value approximately equal to or in excess of such reserves and liabilities; and

(7) The investment adviser of the separate account is registered under the Investment Advisers Act of 1940.

(b) If a separate account meets the requirements of paragraph (a) of this section, then such separate account and the other persons described in paragraph (a) of this section shall be exempt from the provisions of the Act as follows:

(1) Section 2(a)(35): *Provided, however*, That the term "sales load," as used in the Act and rules and regulations thereunder, shall have the meaning set forth in paragraph (c)(4) of this Rule.

(2) Section 7.

(3) Section 8 to the extent that:

(i) For purposes of paragraph (a) of section 8, the separate account shall file with the Commission a notification on Form N-6EI-1 which identifies such separate account; and

(ii) For purposes of paragraph (b) of section 8, the separate account shall file with the Commission a form to be designated by the Commission within ninety days after filing the notification on Form N-6EI-1: *Provided, however*, That if the fiscal year of the separate account ends within this ninety day period the form may be filed within nine-

ty days after the end of such fiscal year.

(4) Section 9 to the extent that:

(i) The eligibility restrictions of section 9(a) of the Act shall not be applicable to those persons who are officers, directors and employees of the life insurer or its affiliates who do not participate directly in the management or administration of the separate account or in the sale of variable life insurance contracts funded by such separate account; and

(ii) A life insurer shall be ineligible pursuant to paragraph (3) of section 9(a) of the Act to serve as investment adviser, depositor of or principal underwriter for a variable life insurance separate account only if an affiliated person of such life insurer, ineligible by reason of paragraph (1) or (2) of section 9(a), participates directly in the management or administration of the separate account or in the sale of variable life insurance contracts funded by such separate account.

(5) Section 13(a) to the extent that:

(i) An insurance regulatory authority may required pursuant to insurance law or regulation that the separate account make (or refrain from making) certain investments which would result in changes in the sub-classification or investment policies of the separate account;

(ii) Changes in the investment policy of the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer, provided that such disapproval is reasonable and is based upon a determination by the life insurer in good faith that:

(A) Such change would be contrary to state law; or

(B) Such change would be inconsistent with the investment objectives of the separate account or would result in the purchase of securities for the separate account which vary from the general quality and nature of investments and investment techniques utilized by other separate accounts of the life insurer or of an affiliated life insurance company, which separate accounts have investment objectives similar to the separate account;

(iii) Any action taken in accordance with paragraph (b)(5) (i) or (ii) of this

section and the reasons therefor shall be disclosed in the proxy statement for the next meeting of variable life insurance contractholders of the separate account.

(6) Section 14(a): *Provided*, That until the separate account has total assets of at least \$100,000 the life insurer shall have (i) a combined capital and surplus, if a stock company, or (ii) an unassigned surplus, if a mutual company, of not less than \$1,000,000 as set forth in the balance sheet of such life insurer contained in the registration statement, or any amendment thereto, relating to variable life insurance contracts funded by such separate account filed pursuant to the Securities Act of 1933, as amended.

(7)(i) Section 15(a) to the extent this section requires that the initial written contract pursuant to which the investment adviser serves or acts shall have been approved by the vote of a majority of the outstanding voting securities of the registered company: *Provided*, That:

(A) Such investment adviser is selected and a written contract is entered into before the effective date of the registration statement under the Securities Act of 1933, as amended, for variable life insurance contracts which are funded by the separate account, and that the terms of the contract are fully disclosed in such registration statement, and

(B) A written contract is submitted to a vote of variable life insurance contractholders at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, on condition that such meeting shall take place within one year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request for good cause shown;

(ii) Sections 15 (a), (b) and (c) to the extent that:

(A) An insurance regulatory authority may disapprove pursuant to insurance law or regulation any contract between the separate account and an investment adviser or principal underwriter;

(B) Changes in the principal underwriter for the separate account initi-

ated by contractholders or the board of directors of the separate account may be disapproved by the life insurer: *Provided*, That such disapproval is reasonable;

(C) Changes in the investment adviser of the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer: *Provided*, That such disapproval is reasonable and is based upon a determination by the life insurer in good faith that:

(1) The rate of the proposed investment advisory fee will exceed the maximum rate that is permitted to be charged against the assets of the separate account for such services as specified by any variable life insurance contract funded by such separate account; or

(2) The proposed investment adviser may be expected to employ investment techniques which vary from the general techniques utilized by the current investment adviser to the separate account, or advise the purchase or sale of securities which would be inconsistent with the investment objectives of the separate account, or which would vary from the quality and nature of investments made by other separate accounts of the life insurer or of an affiliated life insurance company, which separate accounts have investment objectives similar to the separate account;

(D) Any action taken in accordance with paragraph (b)(7)(ii) (A), (B) or (C) of this section and the reasons therefor shall be disclosed in the proxy statement for the next meeting of variable life insurance contractholders of the separate account.

(8) Section 16(a) to the extent that:

(i) Persons serving as directors of the separate account prior to the first meeting of such account's variable life insurance contractholders are exempt from the requirement of section 16(a) of the Act that such persons be elected by the holders of outstanding voting securities of such account at an annual or special meeting called for that purpose, *Provided*, That:

(A) Such persons have been appointed directors of such account by the life insurer before the effective date of the

registration statement under the Securities Act of 1933, as amended, for variable life insurance contracts which are funded by the separate account and are identified in such registration statement (or are replacements appointed by the life insurer for any such persons who have become unable to serve as directors), and

(B) An election of directors for such account shall be held at the first meeting of variable life insurance contract-holders after the effective date of the registration statement under the Securities Act of 1933, as amended, relating to contracts funded by such account, which meeting shall take place within one year after such effective date, unless the time for holding such meeting shall be extended by the Commission upon written request for good cause shown;

(ii) A member of the board of directors of such separate account may be disapproved or removed by the appropriate insurance regulatory authority if such person is ineligible to serve as a director of the separate account pursuant to insurance law or regulation of the jurisdiction in which the life insurer is domiciled.

(9) Section 17(f) to the extent that the securities and similar investments of the separate account may be maintained in the custody of the life insurer or an insurance company which is an affiliated person of such life insurer: *Provided, That:*

(i) The securities and similar investments allocated to such separate account are clearly identified as to ownership by such account, and such securities and similar investments are maintained in the vault of an insurance company which meets the qualifications set forth in paragraph (b)(9)(ii) of this section, and whose procedures and activities with respect to such safekeeping function are supervised by the insurance regulatory authorities of the jurisdiction in which the securities and similar investments will be held;

(ii) The insurance company maintaining such investments must file with an insurance regulatory authority of a State or territory of the United States or the District of Columbia an annual statement of its financial con-

dition in the form prescribed by the National Association of Insurance Commissioners, must be subject to supervision and inspection by such authority and must be examined periodically as to its financial condition and other affairs by such authority, must hold the securities and similar investments of the separate account in its vault, which vault must be equivalent to that of a bank which is a member of the Federal Reserve System, and must have a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than \$1,000,000 as set forth in its most recent annual statement filed with such authority;

(iii) Access to such securities and similar investments shall be limited to employees of or agents authorized by the Commission, representatives of insurance regulatory authorities, independent public accountants for the separate account, accountants for the life insurer and to no more than 20 persons authorized pursuant to a resolution of the board of directors of the separate account, which persons shall be directors of the separate account, officers and responsible employees of the life insurer or officers and responsible employees of the affiliated insurance company in whose vault such investments are maintained (if applicable), and access to such securities and similar investments shall be had only by two or more such persons jointly, at least one of whom shall be a director of the separate account or officer of the life insurer;

(iv) The requirement in paragraph (b)(9)(i) of this section that the securities and similar investments of the separate account be maintained in the vault of a qualified insurance company shall not apply to securities deposited with insurance regulatory authorities or deposited in a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934, as amended, or such person as may be permitted by the Commission, or to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or

placed in escrow for the account of such separate account in connection with a loan or other transaction authorized by specific resolution of the board of directors of the separate account, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or to other transactions necessary or appropriate in the ordinary course of business relating to the management of securities;

(v) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the custody of the life insurer or affiliated insurance company, shall sign a notation in respect of such deposit, withdrawal or order which shall show (A) the date and time of the deposit, withdrawal or order, (B) the title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (C) the manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (D) if withdrawn and delivered to another person the name of such person. Such notation shall be transmitted promptly to an officer or director of the separate account or the life insurer designated by the board of directors of the separate account who shall not be a person designated for the purpose of paragraph (b)(9)(iii) of this section. Such notation shall be on serially numbered forms and shall be preserved for at least one year;

(vi) Such securities and similar investments shall be verified by complete examination by an independent public accountant retained by the separate account at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such separate account. A certificate of such accountant stating that he has made an examination of such securities and investments and describing the nature and extent of the examination shall be transmitted to the Commission by the

accountant promptly after each examination;

(vii) Securities and similar investments of a separate account maintained with a bank or other company whose functions and physical facilities are supervised by Federal or state authorities pursuant to any arrangement whereby the directors, officers, employees or agents of the separate account or the life insurer are authorized or permitted to withdraw such investments upon their mere receipt are deemed to be in the custody of the life insurer and shall be exempt from the requirements of section 17(f) so long as the arrangement complies with all provisions of this paragraph (b)(9), except that such securities will be maintained in the vault of a bank or other company rather than the vault of an insurance company.

(10) Section 18(i) to the extent that:

(i) For the purposes of any section of the Act which provides for the vote of securityholders on matters relating to the investment company:

(A) Variable life insurance contractholders shall have one vote for each \$100 of cash value funded by the separate account, with fractional votes allocated for amounts less than \$100;

(B) The life insurer shall have one vote for each \$100 of assets of the separate account not otherwise attributable to contractholders pursuant to paragraph (b)(10)(i)(A) of this section, with fractional votes allocated for amounts less than \$100: *Provided*, That after the commencement of sales of variable life insurance contracts funded by the separate account, the life insurer shall cast its votes for and against each matter which may be voted upon by contractholders in the same proportion as the votes cast by contractholders; and

(C) The number of votes to be allocated shall be determined as of a record date not more than 90 days prior to any meeting at which such vote is held: *Provided*, That if a quorum is not present at the meeting, the meeting may be adjourned for up to 60 days without fixing a new record date;

(ii) The requirement of this section that every share of stock issued by a registered management investment company (except a common-law trust

of the character described in section 16(b)) shall be a voting stock and have equal voting rights with every other outstanding voting stock shall not be deemed to be violated by actions specifically permitted by any provision of this Rule.

(11) Section 19 to the extent that the provisions of this section shall not be applicable to any dividend or similar distribution paid or payable pursuant to provisions of participating variable life insurance contracts.

(12) Sections 22(d), 22(e), and 27(c)(1) and Rule 22c-1 promulgated under section 22(c) to the extent:

(i) That the amount payable on death and the cash surrender value of each variable life insurance contract shall be determined on each day during which the New York Stock Exchange is open for trading, not less frequently than once daily as of the time of the close of trading on such exchange: *Provided*, That the amount payable on death need not be determined more than once each contract month if such determination does not reduce the participation of the contract in the investment experience of the separate account: *Provided further, however*, That if the net valuation premium for such contract is transferred at least annually, then the amount payable on death need be determined only when such net premium is transferred;

(ii) Necessary for compliance with this Rule 6e-2 or with insurance laws and regulations and established administrative procedures of the life insurer with respect to issuance, transfer and redemption procedures for variable life insurance contracts funded by the separate account including, but not limited to, premium rate structure and premium processing, insurance underwriting standards, and the particular benefit afforded by the contract: *Provided, however*, That any procedure or action shall be reasonable, fair and not discriminatory to the interests of the affected contractholder and to all other holders of contracts of the same class or series funded by the separate account: *And, further provided*, That any such action shall be disclosed in the form required to be filed by the separate account with the Commission pur-

suant to paragraph (b)(3)(ii) of this Rule 6e-2.

(13) Section 27 to the following extent:

(i) Sections 27(a)(1) and 27(h)(1) to the extent that the sales load, as defined in paragraph (c)(4) of this section, on any variable life insurance contract which is funded by the separate account shall not exceed 9 per centum of the payments to be made thereon during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured named in the contract based on the 1958 Commissioners Standard Ordinary Mortality Table;

(ii) Sections 27(a)(3) and 27(h)(3): *Provided*, That the proportionate amount of sales load deducted from any payment during the contract period shall not exceed the proportionate amount deducted from any prior payment during the contract period except that such amount may exceed the amount deducted from a prior payment if the increase is caused by the grading of cash values into reserves or reductions in the annual cost of insurance;

(iii) Sections 27(c)(2), 26(a)(1) and 26(a)(2): *Provided*, That the life insurer complies, to the extent applicable, with all other provisions of section 26 as if it were a trustee, depositor or custodian for the separate account, and:

(A) Files with the insurance regulatory authority of a state or territory of the United States or of the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than \$1,000,000;

(B) Is examined from time to time by the insurance regulatory authority of such state, territory or District of Columbia as to its financial condition and other affairs and is subject to supervision and inspection with respect to its separate account operations; and

(C) Limits the fees for administrative services to amounts that are reasonable in relation to services rendered and expenses incurred. The Commission shall retain jurisdiction regarding the determination of such fees;

(iv) Sections 27(c)(1) and 27(d), to the extent that such sections require that the variable life insurance contract be redeemable or provide for a refund in cash: *Provided*, That such contract provides for election by the contractholder of a cash surrender value or certain non-forfeiture and settlement options which are required or permitted by the insurance law or regulation of the jurisdiction in which the contract is offered: *And further provided*, That unless required by the insurance law or regulation of the jurisdiction in which the contract is offered or unless elected by the contractholder, such contract shall not provide for the automatic imposition of any option, including, but not limited to, an automatic premium loan, which would involve the accrual or payment of an interest or similar charge;

(v) Section 27(d): *Provided*, That the variable life insurance contract gives the holder thereof the right to:

(A) Surrender the contract at any time during the first 24 months after issuance and receive in cash an amount not less than the sum of the present value of his contract which is the cash surrender value next computed after receipt by the life insurer of the request for surrender in proper form, plus, depending upon the period over which such contract has been retained by the contractholder, an amount which is a refund of any excess paid for sales loading prior to surrender: *Provided, however*, That if payments for the contract have not been duly paid on the date the request for surrender is received by the life insurer, and if the sum of the cash surrender value and the amount of any excess sales loading which would otherwise be refundable in cash were applied to provide (without sales loading) a nonforfeiture benefit in accordance with the contract, then the contractholder shall be entitled to receive in cash the present value, next computed after receipt by the life insurer of the request for surrender in proper form, of any non-forfeiture benefit then in force. The amount of sales loading to be refunded shall be equal to that part of the excess paid for sales loading which is over the sum of 30 per centum of payments made for the first contract year plus 10 per centum of the

payments made for the second contract year; and

(B) Convert the contract at any time during the first 24 months after issuance so long as payments are duly made to a life insurance policy on the life of the insured which provides for fixed death benefits and cash surrender values pursuant to a plan of insurance specified in the contract issued by the life insurer, or by a life insurance company affiliated with such insurer, which provides for the same initial amount of insurance as the variable life insurance contract and premiums which are based on the same issue age and risk classification of the insured as the variable life insurance contract, which conversion shall be subject to an equitable adjustment in payments and cash values to reflect variances, if any, in the payments and cash values under the original contract and the new policy: *Provided*, That the method of computing such adjustment shall be filed with the Commission as an exhibit to the form required pursuant to paragraph (b)(3)(ii) of this Rule;

(vi) A depositor or principal underwriter for a variable life insurance contract sold subject to section 27(d) or section 27(f) of the Act, or both, shall be exempt from the requirements of Rule 27d-1 if an insurance company undertakes in writing to guarantee the performance of all obligations of such depositor or principal underwriter under sections 27(d) and 27(f) of the Act to refund charges and such insurance company, depositor and principal underwriter comply with all provisions of Rule 27d-2;

(vii) Section 27(e) and Rule 27e-1 thereunder to the extent that the separate account and the depositor and principal underwriter therefor, when such persons are subject to paragraph (b)(13)(v) of this Rule, are required to provide a notice of right of withdrawal and refund to holders of variable life insurance contracts, if the life insurer or a duly authorized agent provides a notice of withdrawal and refund rights on Form N-27I-1, to the holder of any variable life insurance contract under which a refund may be available, provided that such notice shall be sent by first class mail to the contractholder:

(A) At issuance of the variable life insurance contract, which notice may be sent together with the issued variable life insurance contract and an illustration, in a form appropriate for inclusion in the prospectus for the variable life insurance contract, of gross annual payments, death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured; and

(B) If the contractholder has failed to make a payment prior to the expiration of the refund right provided by paragraph (b)(13)(v) of this Rule and the contract has not been reinstated within 30 days following the expiration of the grace period provided in the variable life insurance contract for making of any payment due: *Provided, however,* In any event, if a payment is not made when due such notice shall be sent not less than 15 days prior to the expiration of the refund right, which notice may be sent together with a notification that the payment is overdue or an offer to reinstate the contract;

(viii) Section 27(f) and Rule 27f-1: *Provided, That:*

(A) The contractholder may elect to return the contract within 45 days of the date of the execution of the application for insurance or within 10 days after receipt of the issued contract by the contractholder, or within 10 days after mailing of the notice of the right of withdrawal, whichever is later, and receive a refund of all payments made for such contract;

(B) A refund of all payments to redeeming contractholders will not in any way affect the interests in the separate account or the benefits of other variable life insurance contractholders;

(C) Notice of such withdrawal right and a statement of charges on Form N-27I-2 is sent by first class mail to the contractholder, which notice and statement may be accompanied by the variable life insurance contract and an illustration, in a form appropriate for inclusion in the prospectus for the variable life insurance contract, of payments, death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured;

(D) The contractholder, in conjunction with the notice of withdrawal

right referred to in paragraph (b)(13)(viii)(C) of this rule, is provided with a form of request for refund of payments made, which form shall set forth;

(1) Instructions as to the manner in which a refund may be obtained including the address to which the request form should be mailed; and

(2) Spaces necessary to indicate the date of such request, the contract number and the signature of the contractholder; and

(E) Within 7 days from the receipt of such duly executed timely request for refund, the life insurer will refund in cash to the contractholder the entire amount of payments made on the contract;

(ix) Solely for purposes of paragraphs (b)(13)(v) and (viii) of this Rule, the postmark date on the envelope containing the variable life insurance contract shall determine whether such contract has been submitted for surrender or conversion within the designated period.

(14) Section 32(a)(2): *Provided, That:*

(i) The independent public accountant is selected before the effective date of the registration statement under the Securities Act of 1933, as amended, for variable life insurance contracts which are funded by the separate account, and the identity of such accountant is disclosed in such registration statement, and

(ii) The selection of such accountant is submitted for ratification or rejection to variable life insurance contractholders at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, on condition that such meeting shall take place within one year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request for good cause shown.

(15) If the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company;

(i) The eligibility restrictions of section 9(a) of the Act shall not be applicable to those persons who are officers, directors and employees of the life insurer or its affiliates who do not participate directly in the management or administration of any registered management investment company described above;

(ii) The life insurer shall be ineligible pursuant to paragraph (3) of section 9(a) of the Act to serve as investment adviser of or principal underwriter for any registered management investment company described in this paragraph (b)(15) only if an affiliated person of such life insurer, ineligible by reason of paragraph (1) or (2) of section 9(a), participates in the management or administration of such company;

(iii) The life insurer may vote shares of the registered management investment companies held by the separate account without regard to instructions from contractholders of the separate account if such instructions would require such shares to be voted:

(A) To cause such companies to make (or refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such companies or to approve or disapprove any contract between such companies and an investment adviser when required to do so by an insurance regulatory authority subject to the provisions of paragraphs (b)(5)(i) and (7)(ii)(A) of this section; or

(B) In favor of changes in investment objectives, investment adviser of or principal underwriter for such companies subject to the provisions of paragraphs (b)(5)(ii) and (7)(ii) (B) and (C) of this section;

(iv) Any action taken in accordance with paragraph (b)(15)(iii)(A) or (B) of this section and the reasons therefor shall be disclosed in the next report to contractholders made pursuant to section 30(e) (15 U.S.C. 80a-29(e)) and § 270.30e-2;

(v) Any registered management investment company established by the insurer and described in this paragraph (b)(15) shall be exempt from section 14(a) provided that until such company has total assets of at least \$100,000 the life insurer shall have at least the min-

imum net worth prescribed in paragraph (b)(6) of this section; and

(vi) Any registered management investment company established by the insurer and described in this paragraph (b)(15) shall be exempt from sections 15(a), 16(a), and 32(a)(2) of the Act, to the extent prescribed by paragraphs (b)(7)(i), (b)(8)(i), and (b)(14), provided that such company complies with the conditions set forth in those paragraphs as if it were a separate account.

(c) When used in this rule:

(1) *Variable life insurance contract* means a contract of life insurance, subject to regulation under the insurance laws or code of every jurisdiction in which it is offered, funded by a separate account of a life insurer, which contract, so long as payments are duly paid in accordance with its terms, provides for:

(i) A death benefit and cash surrender value which vary to reflect the investment experience of the separate account;

(ii) An initial stated dollar amount of death benefit, and payment of a death benefit guaranteed by the life insurer to be at least equal to such stated amount; and

(iii) Assumption of the mortality and expense risks thereunder by the life insurer for which a charge against the assets of the separate account may be assessed. Such charge shall be disclosed in the prospectus and shall not be less than fifty per centum of the maximum charge for risk assumption as disclosed in the prospectus and as provided for in the contract.

(2) *Incidental insurance benefits* means insurance benefits provided pursuant to the variable life insurance contract, other than the minimum and variable death benefit, which do not vary in amount or duration in accordance with the investment performance of the separate account, and include, but are not limited to, accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, and family income or fixed benefit term riders.

(3) *Minimum death benefit* is the amount guaranteed by the life insurer to be paid pursuant to a variable life insurance contract in the event of the death of the insured without regard to

the investment performance of the separate account funding the variable life insurance contract, if payments are duly made and if there are no outstanding loans, partial withdrawals or partial surrenders, but does not include any incidental insurance benefits.

(4) *Sales load* charged on any payment is the excess of the payment over the sum of the following:

(i) The amount of the cash value for the first contract year, if any, and the amount of the increase in the cash value for each subsequent contract year, that is attributable to payments made and not attributable to investment earnings;

(ii) The cost of insurance for the period for which the payment is made based on the 1958 Commissioners Standard Ordinary Mortality Table and the assumed investment rate specified in the contract;

(iii) A reasonable charge necessary to cover the risk assumed by the life insurer that the variable death benefit will be less than the guaranteed minimum death benefit;

(iv) Any administrative expenses or fees which are reasonable and in amounts not exceeding anticipated administrative expenses and fees not properly chargeable to sales or promotional activities;

(v) A deduction approximately equal to state premium taxes;

(vi) Any additional charge assessed if the insured does not meet standard underwriting requirements;

(vii) Any additional charge assessed specifically for any incidental insurance benefits which do not vary in relation to the performance of the separate account;

(viii) Any additional charge, in the nature of an interest or service charge or administrative fee, assessed when payments are made more frequently than annually;

(ix) For a participating variable life insurance contract, a deduction for dividends to be paid or credited in accordance with the dividend scale in effect on the issue date of the contract assuming a gross annual investment return for the separate account which funds such contract of 4 percent after deduction for any Federal income taxes, which deduction may be deter-

mined pursuant to either of the following methods, provided that the same method must be applied with respect to each payment under the contract:

(A) The actuarial level annual equivalent of dividends to be paid or credited over the period described in paragraph (b)(13)(i) of this section, based upon the mortality, interest and lapse assumptions used in computing the dividend scale for such contract multiplied by the fraction of the contract year for which the payment is made; or

(B) That portion of the dividend to be paid for the contract year which does not depend on the making of additional payments.

(5) *Assumed investment rate* is the rate of investment return specified in the contract which would be required to be credited to a variable life insurance contract, after deduction of charges for Federal income taxes, investment management fees, portfolio transaction expenses and mortality and expense guarantees, to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable pursuant to the variable life insurance contract if the death benefit did not vary according to the investment experience of the separate account.

(6) *Variable death benefit* is the amount of death benefit, other than incidental insurance benefits, payable under a variable life insurance contract which varies to reflect the investment performance of the separate account, and which would be payable in the absence of the minimum death benefit.

(7) *Payment*, as used in paragraphs (b)(13)(i), (b)(13)(ii) and (b)(13)(v)(A) of this section and in sections 27(a)(2) and 27(h)(2) solely with respect to variable life insurance contracts, means the gross premium payment made less any portion of such gross premium charged for or attributable to the items specified in paragraphs (c)(4)(vi), (vii) and (viii) of this section. "Payment," as used in any other section of the Rule,

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means the gross premiums paid or payable for the variable life insurance contract.

(Secs. 6(c) and 38(a) of the Act (15 U.S.C. 80a-6(c) and 80a-37(a), respectively))

[41 FR 47027, Oct. 27, 1976; 41 FR 52668, Dec. 1, 1976, as amended at 49 FR 1477, Jan. 12, 1984; 67 FR 43536, June 28, 2002]

§ 270.6e-3(T) Temporary exemptions for flexible premium variable life insurance separate accounts.

(a) A separate account, and its investment adviser, principal underwriter and depositor, shall, except as provided in paragraph (b) of this Rule, comply with all provisions of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) and the rules under it that apply to a registered investment company issuing periodic payment play certificates if:

(1) It is a separate account within the meaning of section 2(a)(37) of the Act (15 U.S.C. 80a-2(a)(37)) and is established and maintained by a life insurance company pursuant to the insurance laws or code of (i) any state or territory of the United States or the District of Columbia, or (ii) Canada or any province thereof, if it complies with Rule 7d-1 (17 CFR 270.7d-1) under the Act (the "life insurer");

(2) The assets of the separate account are derived solely from (i) the sale of flexible premium variable life insurance contracts ("flexible contracts") as defined in paragraph (c)(1) of this Rule, (ii) the sale of scheduled premium variable life insurance contracts ("scheduled contracts") as defined in paragraph (c)(1) of Rule 6e-2 (17 CFR 270.6e-2) under the Act, (iii) funds corresponding to dividend accumulations with respect to such contracts, and (iv) advances made by the life insurer in connection with the operation of such separate account;

(3) The separate account is not used for variable annuity contracts or other contract liabilities not involving life contingencies;

(4) The separate account is legally segregated, and that part of its assets with a value approximately equal to the reserves and other contract liabilities for such separate account are not chargeable with liabilities arising from any other business of the life insurer;

(5) The value of the assets of the separate account, each time adjustments in the reserves are made, is at least equal to the reserves and other contract liabilities of the separate account, and at all other times approximately equals or exceeds the reserves and liabilities; and

(6) The investment adviser of the separate account is registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.).

(b) A separate account that meets the requirements of paragraph (a) of this Rule, and its investment adviser, principal underwriter and depositor shall be exempt with respect to flexible contracts funded by the separate account from the following provisions of the Act:

(1) Section 2(a)(35) (15 U.S.C. 80a-2(a)(35)), *Provided, however*, That the term "sales load," as used in the Act and rules under it, shall have the meaning set forth in paragraph (c)(4) of this Rule. *And provided further*, That in connection with any sales load deducted pursuant to paragraph (d)(1) of this Rule, the separate account and other persons shall be exempt from sections 2(a)(32) (15 U.S.C. 80a-2(a)(32)), 12(b) (15 U.S.C. 80a-12(b)), 22(c) (15 U.S.C. 80a-22(c)), 26(a) (15 U.S.C. 80a-26(a)), 27(c)(1) (15 U.S.C. 80a-27(c)(1)), 27(c)(2) (15 U.S.C. 80a-27(c)(2)), and 27(d) (15 U.S.C. 80a-27(d)), and Rules 12b-1 (17 CFR 270.12b-1) and 22c-1 (17 CFR 270.22c-1).

(2) Section 7 (15 U.S.C. 80a-7).

(3) Section 8 (15 U.S.C. 80a-8), to the extent that:

(i) For purposes of paragraph (a) of section 8, the separate account filed with the Commission a notification on Form N-6EI-1 (17 CFR 274.301) which identifies the separate account; and

(ii) For purposes of paragraph (b) of section 8, the separate account shall file with the Commission the form designated by the Commission within ninety days after filing the notification on Form N-6EI-1, *Provided, however*, That if the fiscal year of the separate account end within this ninety day period, the form may be filed within ninety days after the end of such fiscal year.

(4) Section 9 (15 U.S.C. 80a-9), to the extent that: