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For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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[Release Nos. 33-7177; 34-35815; IC-21117]

Securities Transactions Settlement

June 6, 1995.

AGENCY: Securities and Exchange Commission.

ACTION: Grant of exemption.

SUMMARY: The Securities and Exchange Commission ("Commission") is exempting transactions involving certain insurance contracts from the scope of Rule 15c6-1.

EFFECTIVE DATE: The exemption from Rule 15c6-1 for insurance contracts will be effective on June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jerry Carpenter, Assistant Director, Christine Sibille, Senior Counsel, or Cheryl Oler, Attorney, at 202/942-4187, Office of Securities Processing Regulation, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5-1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On October 6, 1993, the Commission adopted Rule 15c6-1¹ under the Securities Exchange Act of 1934 ("Exchange Act") which establishes three business days after the trade date ("T+3") instead of five business days ("T+5") as the standard settlement time frame for most broker-dealer securities transactions.² Rule 15c6-1 becomes effective June 7, 1995.³

Rule 15c6-1 covers all securities other than exempted securities, government securities, municipal securities,⁴

commercial paper, bankers' acceptances, or commercial bills. The rule contains a specific exemption for sales of unlisted limited partnership interests and alternate settlement time frames for certain firm commitment offerings of new issues.⁵

Certain insurance contracts, including variable annuity contracts and variable life insurance contracts, have been deemed to be securities under the Securities Act of 1933 ("Securities Act"),⁶ and other insurance contracts, such as certain fixed dollar annuity contracts that include a market value adjustment provision, may fall within the definition of securities under the Exchange Act (collectively, these contracts are referred to hereinafter as insurance securities products). Accordingly, as adopted, the scope of Rule 15c6-1 includes purchases and sales of such securities issued by an insurance company.⁷

The American Council of Life Insurance ("ACLI") has requested that the Commission exempt from Rule

Release No. 35427 (February 28, 1995), 60 FR 12798.

⁵ Securities Exchange Act Release No. 35705 (May 11, 1995), 60 FR 26604.

⁶ *Securities and Exchange Commission v. Variable Annuity Life Insurance Co. of America, et al.*, 359 U.S. 65, 79 S.Ct. 618, 3 L.Ed.2d 640 (1959) (variable annuity contracts are "securities" which must be registered with the Commission under the Securities Act); Securities Act Release No. 5360, Securities Exchange Act Release No. 9972, Investment Co. Act Release No. 7644, Investment Advisors Act Release No. 359 (January 31, 1973) (a public offering of variable life insurance contracts involved an offering of securities required to be registered under the Securities Act).

⁷ Within the context of this order, the definition of an insurance company is set forth in Section 2(a)(17) of the Investment Company Act of 1940 ("Investment Company Act"). 15 U.S.C. § 80a-2(a)(17). An insurance company that sells and distributes insurance securities products may be acting as a broker and a dealer as defined in Sections 3(a)(4) and 3(a)(5) of the Exchange Act. There are, however, certain circumstances in which an insurance company that issues and distributes insurance securities may not be required to register with the Commission as a broker-dealer. The Commission staff, for example, has expressed the view that if an insurance company establishes a wholly-owned subsidiary to engage in the offer and sale of insurance securities, and the subsidiary complies with all applicable rules and regulations, including the requirement to direct and supervise all persons engaged directly or indirectly in the offer and sale of securities, it would not recommend enforcement action to the Commission if the insurance company itself did not register with the Commission. Securities Exchange Act Release No. 8389 (August 29, 1968), 33 FR 13005. Consistent with those specifications, the staff of the Division of Market Regulation has further expressed circumstances in which an insurance company may not be required to register as a broker-dealer. See, e.g., *Principal Marketing Services, Inc.* (June 2, 1988); *Pacific Mutual Life Insurance Company* (April 13, 1989); *Allstate Life Insurance Company and Lincoln Benefit Life Company* (September 12, 1988); and *Time Insurance Company* (October 17, 1989).

15c6-1 purchases or redemption transactions of variable annuity contracts, variable life insurance contracts, and certain fixed dollar annuity contracts.⁸ According to ACLI, the complex nature and various unique processing requirements involved in the purchase or sale of insurance securities products cannot practically be condensed into a T+3 settlement cycle.

The Commission recognizes that the mechanics of purchases and redemptions of insurance securities products are distinct from those of other securities and that, because of the time required to complete necessary preparations, such transactions typically require more protracted settlement periods. Specifically, the Commission believes that compliance with the unique requirements of state and federal law, as well as of the particular administrative procedures, applicable to insurance securities products demands additional time beyond the standard settlement process, and supports an exemption of such securities from Rule 15c6-1. For example, the Commission notes that the purchase process for a variable life insurance contract involves the assessment of insurability of the contract purchaser and the acceptance of the mortality risk before a contract can be issued for delivery.⁹ Processing of an annuity contract may be protracted by substantial review to determine that any requirements imposed under the Internal Revenue Code ("IRC") or the Employee Retirement Income Security Act ("ERISA") are met.

In addition, such insurance securities products are subject to extensive federal and state regulation on timing of certain actions.¹⁰ For example, once processing for a contract is complete, many states require that the insurer provide the purchaser with the right to return the contract for any reason within a specified time of delivery, generally ten days, and to receive a refund of the premium or the contract's cash value without imposition of surrender charges.¹¹

⁸ Letters from Robert S. McConaughy, Senior Counsel, ACLI, to Brandon Becker, Director, Division of Market Regulation, Commission (April 18, 1995 and May 17, 1995).

⁹ This assessment is time consuming because it may involve medical examinations, laboratory tests, and review of medical records.

¹⁰ Insurance companies are regulated primarily by the states in which they are organized and operate. In addition, federal regulations govern some aspects of insurance contract issuance affecting the timing of such transactions. For example, Rule 22c-1(c) under the Investment Company Act requires that an insurer price a variable annuity contract within certain time frames.

¹¹ E.g., New York Insurance Law § 4240(13) (McKinney 1985).

⁶ 17 CFR 200.30-3(a)(29).

¹ 17 CFR 240.15c6-1 (1994).

² Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

³ As adopted, Rule 15c6-1 was to become effective June 1, 1995. In order to provide for an efficient conversion the Commission changed the effective date to June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

⁴ Pursuant to Municipal Securities Rulemaking Board rules, transactions in municipal securities are required to settle by T+3. Securities Exchange Act

Likewise, the redemption or withdrawal process for insurance securities products often extends beyond the T+3 time frame. With respect to annuity contracts, the effectiveness of a withdrawal request may be delayed by the need for additional information or instructions from the contract owner with respect to the withholding of proceeds or payments to the Internal Revenue Service. In addition, while the processing of a withdrawal may take place mechanically through the insurer's systems, various circumstances may give rise to additional or preliminary manual processing which can lengthen the withdrawal process.¹² Withdrawals also may require insurers' compliance with applicable IRC provisions or ERISA requirements, as well as various administrative procedures which are relevant only to insurance securities products and not to other securities. Such compliance may demand extra processing time for withdrawals.¹³

The various administrative processes and the requirements under state and federal law which pertain to insurance securities products add complexity and time to the purchase and sale of such securities. These circumstances support the exemption of such securities from the scope of Rule 15c6-1.

Furthermore, permitting a longer settlement cycle for transactions involving insurance securities products does not appear to adversely affect the market risk concerns which the T+3 settlement cycle seeks to address. In adopting Rule 15c6-1, the Commission stated that three day settlement would reduce risk by decreasing the time between trade execution and settlement during which the value of securities

¹² For example, contracts between insurers and contract owners may contain special rights restriction provisions which limit the right to effect withdrawals or impose other restrictions originating from, among other things, a tax lien or divorce decree. Such contracts usually require manual processing which results in delay of the actual processing of the withdrawal.

¹³ Variable annuities, for example, can be used to fund a variety of plans, including tax sheltered annuities, each of which has its own set of complex tax rules regarding withdrawals. Certain variable life insurance contracts may become subject to classification as modified endowment contracts which have taxable predeath distributions. Consequently, some insurers undertake additional examination of withdrawal transactions to determine prior to their completion if the contracts at issue could be classified as a modified endowment contract. Payment of death benefits on variable life insurance contracts and on variable annuity contracts frequently require extended processing time because insurance companies cannot make payments until they receive and review all documentation relevant to the claims and in some instances conduct an investigation of the claims.

could deteriorate.¹⁴ While insurance securities products are securities, neither the insurance company nor purchaser is subject to the same settlement risks attendant to the purchase of most securities. Moreover, insurance securities products are not traded in secondary market.

Likewise, withdrawal or redemption of an insurance securities product bears less risk to insurers and contract owners. Extensive state regulations exist to ensure that insurers meet their obligations to pay withdrawal proceeds to contract owners. Accordingly, an exemption from Rule 15c6-1 for insurance securities products does not appear to be inconsistent with the purposes of Rule 15c6-1.

The Commission believes that an exemption is appropriate to provide issuers with the time needed to settle transactions involving insurance securities products. Such an exemption should not affect the current regulatory scheme governing insurance securities products, including the relevant sections and rules under the Investment Company Act and the Securities Act pertaining to the purchase and sale of securities issued by insurance companies. Accordingly, the Commission finds that such exemption is consistent with the public interest and the protection of investors.

It is hereby ordered that a contract for the purchase or sale of any security issued by an insurance company as defined in Section 2(a)(17) of the Investment Company Act of 1940¹⁵ ("Investment Company Act") that is funded by or participates in a "separate account" as defined in Section 2(a)(37) of the Investment Company Act,¹⁶ including a "variable annuity contract" as defined in Rule 0-1(e)(1) under the Investment Company Act¹⁷ or a "variable life insurance contract" as defined in Rule 6e-2(c)(1) or Rule 6e-3(T)(c)(1) under the Investment Company Act,¹⁸ or any other insurance contract registered as a security under the Securities Act of 1933,¹⁹ shall be exempt from the requirements of Rule 15c6-1.²⁰ This exemption is subject to modification or revocation at any time

¹⁴ Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 [File No. S7-5-93]. The other reasons given by the Commission for the rule's adoption, coordination between the derivative and cash markets and encouragement of greater efficiency in clearing agency and broker-dealer operations, are not applicable to insurance securities products.

¹⁵ 15 U.S.C. 80a-2(a)(17).

¹⁶ 15 U.S.C. 80a-2(a)(37).

¹⁷ 17 CFR 270.0-1(e)(1).

¹⁸ 17 CFR 270.6e-2(c)(1) and 270.6e-3(T)(c)(1).

¹⁹ 15 U.S.C. 77a-77mm.

²⁰ 17 CFR 240.15c6-1 (1994).

the Commission determines that such modification or revocation is consistent with the public interest or the protection of investors.

For the Commission by the Division of Market Regulation pursuant to delegated authority.²¹

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35805; International Series Release No. 816; File No. SR-Amex-95-04]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Currency Warrants Based on the Mexican Peso

June 5, 1995.

On February 8, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² filed with the Securities and Exchange Commission ("Commission") a proposed rule change to permit the listing of foreign currency warrants based on the value of the U.S. dollar in relation to the Mexican peso ("Peso Warrants"). Notice of the proposal appeared in the **Federal Register** on February 17, 1995.³ The Exchange subsequently filed Amendment No. 1 to the proposal on March 16, 1995. Notice of Amendment No. 1 to the proposal appeared in the **Federal Register** on March 30, 1995.⁴ No comment letters were received on the original proposed rule change or on Amendment No. 1. The Exchange then filed Amendment No. 2 to the proposal on May 11, 1995,⁵ and Amendment No.

²¹ 17 CFR 200.30-3(a)(55).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 35363 (February 13, 1995, 60 FR 9416).

⁴ In Amendment No. 1, the Exchange amended the proposal to specify customer margin levels for the proposed currency warrants. See Securities Exchange Act Release No. 35524 (March 22, 1995), 60 FR 16517.

⁵ Amendment No. 2, as discussed herein, effectively supersedes Amendment No. 1 by specifying higher minimum customer margin levels than those proposed in Amendment No. 1. See Letter from Howard Baker, Senior Vice President, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated May 11, 1995 ("Amendment No. 2").