11 NCAC 12 .0436 INSURANCE POLICY REQUIREMENTS

The Commissioner shall not approve any variable life insurance form filed pursuant to this Rule unless it conforms to the requirements of this Section:

(1) Filing of Variable Life Insurance Policies. All variable life insurance policies, and all riders, endorsements, applications and other documents which are to be attached to and made a part of the policy and which relate to the variable nature of the policy, shall be filed with the Commissioner and approved by him in writing prior to delivery or issuance for delivery in this state:

(a) The procedures and requirements for such filing and approval shall be, to the extent appropriate and not inconsistent with this Rule, the same as those otherwise applicable to other life insurance policies.

(b) The Commissioner may approve variable life insurance policies and related forms with provisions the Commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by this Rule.

(c) The requirements of Sub-item (3)(e) of this Rule shall not apply to variable life insurance policies and related forms issued in connection with pension, profit-sharing and retirement plans if separate accounts for such policies are exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940.

(2) Mandatory Policy Benefit and Design Requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

(a) The mortality and expense risk shall be borne by the insurer.

(b) Gross premiums for death benefits shall be a level amount for the duration of the premium payment period, but this Subsection shall not be construed to prohibit temporary or permanent additional premiums for incidental insurance benefits or substandard risks. This Subsection shall not be deemed to prohibit the use of fixed benefit preliminary term insurance for a period not to exceed 120 days from the date of the application for a variable life insurance policy. The premium rate for such preliminary term insurance shall be stated separately in the application or receipt.

(c) A minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid [subject to the provisions of Sub-item (4)(b) of this Rule].

(d) The policy shall provide that the variable death benefit shall reflect the investment experience of the variable life insurance separate account established and maintained by the insurer and that the excess, positive or negative, of the net investment return over the assumed investment rate, as applied to the benefit base of each variable life insurance policy, shall be used to provide:

(i) fully paid-up variable life insurance providing coverage for the same period as the basic insurance under the policy or fully paid-up term insurance amounts for a term of annual periods of not less than one year nor more than five years, positive or negative, as the case may be, or a combination thereof; or

(ii) variable life insurance amounts, positive or negative, as the case may be, so that the reserve maintains the same percentage relationship to the variable death benefit as it would have on a corresponding fixed benefit policy; or

(iii) any other form of insurance benefits as the Commissioner may approve.

(e) Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

(f) Changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

(g) The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the Commissioner of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by

G.S. 58-58-55 of the insurance laws of this state (Standard Non-forfeiture Law) for a fixed benefit policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Non-forfeiture Law of this state. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

(h) The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the Commissioner.

(i) In determining the net investment return to be applied to the benefit base the insurer may deduct only the charges described in Rule .0438(7)(a)(i), (ii), (iv), and (v) of this Section.

(3) Mandatory Policy Provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

(a) The cover page or pages corresponding to the cover page of each such policy shall contain:

(i) a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision of that page, that the death benefit may be variable for fixed under specified conditions;

(ii) a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type size used in the text of any provision on that page that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

(iii) a statement that the minimum death benefit will be at least equal to the initial face amount at the date of issue if premiums are duly paid and if there are no outstanding policy loans, partial withdrawals, or partial surrenders;

(iv) the rule, or a reference to the policy provision which describes the method for determining the variable amount of insurance payable at death;

(v) a captioned provision which provides that the policyholder may return the variable life insurance policy within 45 days of the date of the execution of the application or within 10 days of receipt of the policy by the policyholder, whichever is later, and receive a refund of all premium payments for such policy; and

(vi) such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with this Rule;

(vii) for all variable life insurance policies, which do not provide, while in force, a death benefit at least equal to the amount specified at issue or at the most recent policy change requested by the policyholder, must contain an endorsement or sticker, printed in contrasting type or color which contains sufficient cautionary languages such as: "THIS POLICY DOES NOT HAVE A MINIMUM GUARANTEED DEATH BENEFIT. THE DEATH BENEFIT IN THIS POLICY MAY BE LESS THAN OR MAY EXCEED THE PROJECTED BENEFITS REPRESENTED BY THE SOLICITING AGENT."

(b) A provision for a grace period of not less than 31 days from the premium due date which shall provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date;

(c) A provision that the policy will be reinstated at any time within two years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

(i) all overdue premiums with interest at a rate not exceeding eight percent per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding eight percent per annum compounded annually; or

(ii) 110 percent of the increase in cash surrender value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding eight percent per annum compounded annually;

(d) A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

(e) A provision designating the separate account to be used and stating that:

(i) Such separate account shall be used to fund only variable life insurance benefits, except to the extent permitted by Sub-item (5)(c)(vi) of this Rule;

(ii) The assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account; and

(iii) The assets of such separate account shall be valued at least as often as any policy benefits vary but at least monthly;

(f) A provision that at any time during the first 24 months of the variable life insurance policy, so long as premiums are duly paid, the owner may exchange the policy, or any requested increase in face amount, for a life insurance policy providing benefits that do not vary with the investment experience of a variable account. The owner shall be given the option to exchange the variable life insurance policy for a policy of permanent fixed benefit, fixed premium life insurance, or the option to exchange the variable life insurance policy for a policy of flexible benefit, flexible premium life insurance. The new policy shall be on a plan of insurance specified in the policy, provided that the new policy:

(i) shall bear the same date of issue and age at issue as the original variable life insurance policy;

(ii) is issued on a substantially comparable plan of life insurance offered in this state by the insurer or an affiliate on the date of issue of the variable life insurance policy and at the premium rates in effect on that date for the same class of insurance;

(iii) include such riders and incidental insurance benefits as were included in the original policy if such riders and incidental insurance benefits are issued with the new policy;

(iv) shall be issued subject to an equitable premium or cash value adjustment that takes appropriate account of the premiums and cash values under the original and new policies; A detailed statement of the method of computing such adjustment shall be filed with the commissioner;

(v) shall not require evidence of insurability for this exchange;

(g) A provision that the policy and any papers attached hereto by the insurer, including the application if attached, constitute the entire insurance contract;

(h) A designation of the officers of the insurer who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on his behalf, shall be considered as representation and not warranties;

(i) An identification of the owner of the insurance contract;

(j) A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary and a provision for disbursement of benefits in the absence of a beneficiary designation;

(k) A statement of any conditions or requirements concerning the assignment of the policy;

(l) A description of any adjustment in policy values to be made in the event of misstatement of age or sex of the insured;

(m) A provision that the policy shall be incontestable by the insurer after it has been in force for two years during the life time of the insured;

(n) A provision stating that the investment policy of the separate account shall not be changed without the approval of the insurance commissioner of the state of domicile of the insurer, and that the approval process is on file with the Commissioner of this state;

(o) A provision that payment of variable death benefits in excess of the minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

(i) for up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account; or

(ii) otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical;

(p) A description of the basis for computing the cash surrender value under the policy shall be included; Such surrender value may be expressed as either:

(i) a schedule of cash value amounts per one thousand dollars ($1,000) of variable face amount at each attained age or policy year for at least 20 years from issue, or for the premium paying period, if less than 20 years; or

(ii) one cash value schedule as described in Sub-item (3)(p)(i) of this Rule for the death benefit, or for each one thousand dollars ($1,000) of death benefit, which would be in effect if the net investment return is always equal to the assumed investment rate and a second schedule applicable to any adjustments to the death benefit (disregarding the minimum death benefit guarantee and term insurance amounts) if the net investment return does not equal the assumed investment rate at each age for at least 20 years from issue, or for the premium paying period if it is less than 20 years;

(q) Premiums for incidental insurance benefits shall be stated separately;

(r) Any other policy provisions required by this Rule;

(s) Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this Rule.

(4) Non-forfeiture, Partial Withdrawal, Policy Loan and Partial Surrender Provisions. Every variable life insurance policy delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholders than the following:

(a) a provision for non-forfeiture insurance benefits so that at least one such benefit is offered on a fixed basis from the due date of the premium in default:

(i) Variable extended term insurance may not be offered;

(ii) A given non-forfeiture option need not be offered on both a fixed and a variable basis;

(iii) The insurer may establish a reasonable minimum cash surrender value below which any such non-forfeiture insurance options will not be available;

(b) a provision for policy loans (which may at the option of the insurer be entitled and referred to as a partial withdrawal provision) not less favorable to the policyholder than the following:

(i) Up to 75 percent but if the loan is made from the general account not more than 90 percent of the policy's cash value may be borrowed;

(ii) The amount borrowed, or any repayment thereof, shall not affect the amount of the premium payable under the policy;

(iii) The amount borrowed shall bear interest at a rate not to exceed eight percent per year compounded annually;

(iv) Any indebtedness shall be deducted from the proceeds payable on death;

(v) Any indebtedness shall be deducted from the cash value upon surrender or in determining any non-forfeiture benefit;

(vi) Whenever the indebtedness exceeds the cash value, the insurer shall give notice of intent to cancel the policy if the excess indebtedness is not repaid within 31 days after the date of mailing of such notice;

(vii) The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policy holder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110 percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request;

(viii) The policy may specify a reasonable minimum amount which may be borrowed at any time but such minimum shall not apply to any automatic premium loan provision;

(ix) No policy loan provision is required if the policy is under the extended insurance non-forfeiture option;

(x) In addition to the foregoing, the policy may contain partial surrender provision; however, any such provision shall provide that the policyholder may request part of the cash value and both the variable and minimum death benefits will be reduced in proportion to the percentage of the cash value received by the policyholder and the premium for the remaining amount of insurance will also be reduced to the appropriate rates for the reduced amount of insurance. The policy may provide that a partial surrender provision shall not require the insurer to reduce the amount of the minimum death benefit to less than the lowest amount of minimum death benefit which would have been issued to the insured under the insurance plans of the insurer at the time the policy was issued. The policy must clearly provide that the policyholder has the option of electing to exercise the cash value privileges of the policy loan or partial withdrawal provision rather than the partial surrender provision;

(xi) All policy loan, partial withdrawal, or partial surrender provisions shall be constructed so that variable life insurance policyholders who have not exercised such provision are not disadvantaged by the exercise thereof;

(xii) Monies paid to the policyholders upon the exercise of any policy loan, partial withdrawal, or partial surrender provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the monies for policy loans from the general account.

(5) Other Policy Provisions. The following provisions may in substance be included in a variable life insurance policy or related form delivered or issued for delivery in this state:

(a) An exclusion for suicide within two years of the policy issue date;

(b) Incidental insurance benefits may be offered on a fixed basis only;

(c) Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options.

(i) The amount of the dividend may be credited against premium payments;

(ii) The amount of the dividend may be applied to provide paid-up amounts of additional fixed benefit whole life insurance;

(iii) The amount of the dividend may be applied to provide paid-up amounts of additional variable life insurance;

(iv) The amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

(v) The amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance;

(vi) The amount of the dividend may be deposited as a variable deposit in the separate account if the separate account is exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940;

(d) A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans or partial withdrawals under Item (4) of this Rule except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.

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