

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 505.8 and chapter 508, the Iowa Insurance Division hereby gives Notice of Intended Action to adopt new Chapter 96, “Synthetic Guaranteed Investment Contracts,” Iowa Administrative Code.

The rules in Chapter 96 prescribe the terms and conditions under which life insurance companies may issue group annuity contracts and other agreements that in whole or in part establish the insurer’s obligation by reference to a segregated portfolio of assets that is not owned by the insurer; the essential operational features of the segregated portfolio of assets; and the reserve requirements for these group annuity contracts and agreements.

A waiver provision is provided in subrule 96.6(2).

Any interested person may make written comments on the proposed rules on or before November 8, 2011. Written comments may be sent to Matt Hargrafen, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to matthew.hargrafen@iid.iowa.gov or via facsimile to (515)281-3059.

A public hearing will be held on November 8, 2011, at 10 a.m. in the Lobby Conference Room, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine remarks to the subject of the proposed rules.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Insurance Division and advise of their specific needs.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement Iowa Code section 505.8 and chapter 508.

The following amendment is proposed.

Adopt the following **new** 191—Chapter 96:

CHAPTER 96

SYNTHETIC GUARANTEED INVESTMENT CONTRACTS

191—96.1(505,508) Authority. This chapter is promulgated by the commissioner of insurance pursuant to Iowa Code section 505.8.

191—96.2(505,508) Purpose.

96.2(1) The purpose of this chapter is to prescribe:

a. The terms and conditions under which life insurance companies may issue group annuity contracts and other contracts issued in connection with group annuity contracts that in whole or in part establish the insurer’s obligation by reference to a segregated portfolio of assets that is not owned by the insurer;

b. The essential operational features of the segregated portfolio of assets; and

c. The reserve requirements for these contracts.

96.2(2) This chapter is intended to aid in the timely approval of such products by the commissioner and to recognize that timely approval is essential, given the competitive nature of the market for these products.

191—96.3(505,508) Scope and application. This chapter applies to that portion of a group annuity contract or other contract issued in connection with group annuity contracts described in rule 191—96.4(505,508), definition of “synthetic guaranteed investment contract,” and issued by a life insurer that functions as an accounting record for an accumulation fund and has benefit guarantees relating to a principal amount and levels of interest at a fixed rate of return specified in advance. The fixed rate of return will be constant over the applicable rate periods, and may reflect prior and current market conditions with respect to the segregated portfolio but may not reference future changes in market conditions. This chapter applies to all contract forms filed on or after [insert the effective date of these rules]. Contract forms that have been filed before [insert the effective date of these rules] need not be refiled with the commissioner.

191—96.4(505,508) Definitions. For purposes of this chapter, the following definitions shall apply:

“*Account assets*” means the assets in the segregated portfolio plus any assets held in the general account or a separate account to meet the asset maintenance requirements.

“*Actuarial opinion and memorandum*” means the opinion and memorandum of the valuation actuary required to be submitted to the commissioner pursuant to subrule 96.10(8).

“*Affirmatively approved*” means approval of an insurer’s plan of operation for a class of contracts containing the form of contract under review after the plan of operation associated with the class of contracts has been reviewed by the insurer’s domiciliary insurance department and the plan of operation has been found to be in compliance with this chapter by the domiciliary insurance department. Affirmatively approved does not mean approval as a result of the deemer provision.

“*Appointed actuary*” means the qualified actuary appointed or retained either directly by or by the authority of the board of directors through an executive officer of the company to prepare the annual statement of actuarial opinion for the company as a whole pursuant to Iowa Code section 508.36.

“*Asset maintenance requirement*” means the requirement to maintain assets to fund contract benefits in accordance with rule 191—96.10(505,508).

“*Class of contracts*” means the set of all contracts to which a given plan of operation pertains.

“*Commissioner*” means the Iowa commissioner of insurance.

“*Contract value record*” means an accounting record, provided by the contract in relation to a segregated portfolio of assets, that is credited with a fixed rate of return over regular periods and that is used to measure the extent of the insurer’s obligation to the contract holder. The fixed rate of return credited to the contract value record is determined by means of a crediting rate formula or declared at the inception of the contract and is valid for the entire term of the contract.

“*Crediting rate formula*” means a mathematical formula used to calculate the fixed rate of return credited to the contract value record during any rate period and based in part upon the difference between the contract value record and the market value record amortized over an appropriate period. The fixed rate of return calculated by means of this formula may reflect prior and current market conditions with respect to the segregated portfolio, but may not reference future changes in market conditions.

“*Duration*” means, with respect to the segregated portfolio assets or guaranteed contract liabilities, a measure of price sensitivity to changes in interest rates, such as the Macaulay duration or option-adjusted duration.

“*Fair market value*” means a reasonable estimate of the amount that a knowledgeable buyer of an asset would be willing to pay, and a knowledgeable seller of an asset would be willing to accept, for the asset without duress in an arm’s length transaction. In the case of a publicly traded security, the fair market value is the price at which the security is traded or, if no price is available, a price that appropriately reflects the latest bid and asked prices for the security. For all non-publicly traded assets, fair market value will be determined in accordance with valuation practices customarily used within the financial industry.

“*Investment guidelines*” means a set of written guidelines, established in advance by the person with investment authority over the segregated portfolio, to be followed by the investment manager. The guidelines shall include a description of:

1. The segregated portfolio’s investment objectives and limitations;

2. The investment manager's degree of discretion;
3. The duration, asset class, quality, diversification, and other requirements of the segregated portfolio; and
4. The manner in which derivative instruments may be used, if at all, in the segregated portfolio.

"*Investment manager*" means the person (including the contract holder) responsible for managing the assets in the segregated portfolio in accordance with the investment guidelines in a fiduciary capacity to the owner of the assets.

"*Market value record*" means an accounting record provided by the contract to reflect the fair market value of the segregated portfolio.

"*NAIC*" means the National Association of Insurance Commissioners.

"*Permitted custodial institution*" means a bank, trust company or other licensed fiduciary services provider.

"*Plan of operation*" means a written plan meeting the requirements of paragraph 96.5(2)"a."

"*Qualified actuary*" means an individual who meets the qualification standards set forth in 191—paragraph 5.34(5)"b."

"*Rate period*" means the period of time during which the fixed rate of return credited to the contract value record is applicable between crediting rate formula adjustments.

"*Segregated portfolio*" means:

1. A portfolio or subportfolio of assets to which the contract pertains that is held in a custody or trust account by the permitted custodial institution and identified on the records of the permitted custodial institution as special custody assets held for the exclusive benefit of the retirement plans or other entities on whose behalf the contract holder holds the contract; and

2. Any related cash or currency received by the permitted custodial institution for the account of the contract holder and held in a deposit account for the exclusive benefit of the retirement plans or other entities on whose behalf the contract holder holds the contract.

"*Spot rate*," corresponding to a given time of benefit payment, means the yield on a zero-coupon noncallable and nonprepayable United States government obligation maturing at that time, or the zero-coupon yield implied by the price of a representative sampling of coupon-bearing, noncallable and nonprepayable United States government obligations in accordance with a formula set forth in the plan of operation. To the extent that guaranteed contract liabilities are denominated in the currency of a foreign country rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency acceptable to the commissioner and are supported by investments denominated in the currency of the foreign country, the spot rate may be determined by reference to substantially similar obligations of the government of the foreign country. For liabilities other than those described above, the spot rate shall be determined on a basis mutually agreed upon by the insurer and the commissioner.

"*Synthetic guaranteed investment contract*" or "*contract*" means a group annuity contract or other contract issued in connection with a group annuity contract that in whole or in part establishes the insurer's obligations by reference to a segregated portfolio of assets that is not owned by the insurer.

"*Unilateral contract termination event*" means an event allowing the insurer to unilaterally and immediately terminate the contract, without future liability or obligation to the contract holder.

"*United States government obligation*" means a direct obligation issued, assumed, guaranteed or insured by the United States or by an agency or instrumentality of the United States government.

"*Valuation actuary*" means the appointed actuary or, alternatively, a qualified actuary designated by the appointed actuary to render the actuarial opinion pursuant to rule 191—96.10(505,508). Written documentation of any such designation shall be on file at the company and available for review by the commissioner upon request.

"*Value of guaranteed contract liabilities*" means the same as set forth in subrule 96.10(6).

191—96.5(505,508) Financial requirements and plan of operation. A contract may not be delivered or issued for delivery in this state unless the issuing insurer is licensed as a life insurance company in this state and is financially qualified under the provisions of subrule 96.5(1). In addition, a domestic

insurer may not deliver or issue for delivery, either in this state or outside this state, a contract unless the insurer has satisfied the requirements of subrule 96.5(2) with respect to the class of contracts to which the contract belongs.

96.5(1) An insurer will be financially qualified under this rule if its most recent statutory financial statements reflect at least \$1 billion in admitted assets or \$100 million in capital and surplus, and its risk-based capital results do not place it at a regulatory level of action. In lieu of the requirements in the preceding sentence, the insurer may be required to satisfy such other financial qualification requirements set forth by the commissioner as having been deemed necessary or appropriate in a particular case to protect the insurer's policyholders and the public.

96.5(2) A domestic insurer will satisfy the requirements of this subrule with respect to a class of contracts if the insurer has filed with the commissioner a plan of operation pertaining to the class of contracts, together with copies of the forms of contract in the class, and the filing of the plan of operation has been approved or has not been disapproved within the 60-day period following the date of filing, in which event the plan of operation shall be deemed approved.

a. The plan of operation for a class of contracts shall describe the financial implications for the insurer of the issuance of contracts in the class and shall include at least the following:

(1) A statement that the plan of operation will be administered in accordance with the requirements prescribed by the commissioner pursuant to this chapter, along with a statement that the insurer will comply with the plan of operation in its administration of the contract;

(2) A statement describing the methods and procedures used to value statutory liabilities for purposes of rule 191—96.10(505,508);

(3) A description of the criteria used by the insurer in approving the investment manager for the segregated portfolio of assets associated with a contract in the class, if the investment manager is an entity other than the insurer or is controlling, controlled by or under common control with the insurer;

(4) A description of the insurer's requirement for reports concerning the assets in each segregated portfolio and transactions involving the assets and a description of how the insurer can use the information in a report to determine that the segregated portfolio is being managed in accordance with its investment guidelines. The insurer shall require that the report be prepared no less frequently than quarterly and include a complete statement of segregated portfolio holdings and their fair market value;

(5) A demonstration of financial results for one or more sample contracts from the class of contracts showing, at a minimum, the projected contract value records, the applicable fixed rate or rates of return, and the projected market value records and describing how the investments in the segregated portfolio reflect provision for benefits insured by the contract and how the contract value and market values and the rates of return may be affected by changes in the investment returns of the segregated portfolio and by reasonably anticipated deposits to and withdrawals from the segregated portfolio by the contract holder, and any advances made by the insurer to the contract holder. The sample contracts shall be chosen to reasonably represent the range of results that could be expected from possible combinations of contract provisions of all contracts within the class. The demonstration shall include at least three hypothetical return scenarios: level, increasing, and decreasing. For each of these scenarios, at least three withdrawal scenarios shall be modeled: zero, moderate, and high. The commissioner may require additional scenarios if deemed necessary to fully understand the risks under the class of contracts. The demonstration period shall be the greater of five years or the minimum period the insurer must underwrite the risk;

(6) A statement that all contracts in the class of contracts satisfy the requirement of rule 191—96.9(505,508) regarding unilateral contract terminations, together with a description of all termination events, discontinuation triggers and options, notice requirements, corrective action procedures, all other contract safeguards, and the procedures to be followed when a unilateral contract termination event occurs;

(7) A description of the allowable investment parameters (such as objectives, asset classes, quality, duration and diversification requirements applied to the assets held within the segregated portfolio) to be reflected in the investment guidelines applicable to each contract issued in the class to which the submitted plan of operation applies; and a description of the procedures that will be followed by the

insurer in evaluating the appropriateness of any specific investment guidelines submitted by the contract holder. If the insurer chooses to operate a contract in accordance with investment guidelines that do not conform to the criteria established pursuant to this subparagraph, the nonconforming set of investment guidelines shall be filed with the commissioner in accordance with the filing requirements of this subrule;

(8) An unqualified opinion by a qualified actuary with expertise to evaluate the adequacy of the consideration charged by the insurer for the risks it has assumed with respect to the contracts in the class to which the plan of operation applies;

(9) A statement that the actuarial opinion and memorandum required by rule 191—96.10(505,508) shall include, with respect to the class of contracts to which the plan of operation applies:

1. If a payment has been made by the insurer in the prior reporting period under a contract in the class, the amount of aggregate risk charges (net of administrative expenses) for contracts in the class and the aggregate amount of any losses incurred; and

2. An inventory of all material unilateral contract termination events in the class that have not been cured within the time period specified and that have occurred during the prior reporting period for which the company decided not to terminate the contract.

b. Review of the plan of operation by the commissioner may necessitate requests for information to supplement that furnished pursuant to paragraph 96.5(2) “*a.*” Replies made in compliance with such requests for information should be made in sufficient detail that any follow-up correspondence can be held to a minimum.

191—96.6(505,508) Required contract provisions and filing requirements. A contract may not be delivered or issued for delivery in this state unless the contract satisfies the requirements of subrule 96.6(1) and the issuing insurer has satisfied the requirements of subrule 96.6(2) with respect to the contract.

96.6(1) The contract shall:

a. Provide that the assets to which the contract pertains and for which a contract value record is established will be maintained in a segregated portfolio of a permitted custodial institution;

b. Grant the insurer the right to perform audits and inspections of assets held in the segregated portfolio from time to time upon reasonable notice to the permitted custodial institution;

c. Provide that the insurer will receive prior notice of and the right to approve any appointment or change of investment manager;

d. Give a description of how the contract value record will be determined and, where applicable, adjusted by a crediting rate formula;

e. State the maximum rate period between crediting rate formula recalculations that will be permitted, if any;

f. Provide the insurer with the right to refuse to recognize any new deposits to the segregated portfolio unless there is a written agreement between the insurer and the contract holder as to the permissible levels and timing of new deposits;

g. Clearly identify all circumstances under which insurer payments or advances to the contract holder are to be made;

h. Clearly identify the types of withdrawals made on a market value basis;

i. Provide either a fixed maturity schedule or a settlement option permitting the contract holder to receive the contract value record over time, provided that no unilateral contract termination event has occurred; and

j. Include a provision stating, or substantially similar to, the following:

No waiver of remedies by the insurer that is a party to this contract, following the breach of any contractual provision of the contract, or of the investment guidelines applicable to it, or the failure to enforce the provisions or guidelines, which constitutes grounds for termination of the contract for cause by the insurer, and which breach or failure is not cured within 30 days following the insurer’s discovery of it, shall be effective against an insurance commissioner in any future rehabilitation or insolvency proceedings against the insurer unless approved in advance, in writing, by the commissioner.

96.6(2) An insurer will satisfy the filing and approval requirements of this rule with respect to a contract if the insurer has filed the form of the contract with the commissioner, the form is accompanied by the items specified in paragraphs 96.6(2) “a,” “b” and “c,” and the form has been approved or has not been disapproved within the 30-day period following the date of filing, in which event the form of contract shall be deemed approved. Notwithstanding the foregoing, the requirement for filing and approval of the form of contract may be waived at the discretion of the commissioner.

a. The form of contract filed for approval shall be accompanied by a statement that the contract meets the conditions of subrule 96.6(1).

b. The form of contract filed for approval shall be accompanied by a statement:

(1) Specifying the range of variation of variable contract provisions, if any, that could have a material effect on the risk assumed by the insurer under the contract, including withdrawal methodology, crediting rate formula and termination events;

(2) Describing how the fair market value will be determined;

(3) Describing the crediting rate formula, if any, and how it will operate to take into account the difference between the market value record and the contract value record over time; and

(4) Listing events that give the insurer the right to terminate the contract immediately.

c. If the plan of operation pertaining to the class of contracts to which the contract belongs:

(1) Has been affirmatively approved by the insurance commissioner of the state in which the issuing insurer is domiciled, the form of contract filed for approval shall be accompanied by a statement verifying the receipt of approval and indicating that the approval was an affirmative approval.

(2) Has been deemed approved in the state in which the issuing insurer is domiciled, the form of contract filed for approval shall be accompanied by a statement indicating that the issuing insurer has met the requirements for deemed approval.

(3) Has not been approved, either affirmatively or by deemer, in the state in which the issuing insurer is domiciled, the form of contract filed for approval shall be accompanied by a statement of this fact, together with a plan of operation pertaining to the contract.

191—96.7(505,508) Investment management of the segregated portfolio.

96.7(1) The investment manager must have full responsibility for the management of all segregated portfolio assets within the constraints specified in the investment guidelines.

96.7(2) The investment guidelines shall be submitted to the insurer for underwriting review before the contract becomes effective.

96.7(3) If the insurer accepts a proposed change to the investment guidelines or allows the contract to operate in accordance with investment guidelines that do not conform to the criteria established in subparagraph 96.5(2) “a”(7), approval of the nonconforming investment guidelines must be obtained pursuant to subrule 96.5(2).

191—96.8(505,508) Purchase of annuities. For contracts that are group annuity contracts and that make available to the contract holder the purchase of immediate or deferred annuities for the benefit of individual members of the group, an annuity may not be purchased without the delivery of the contractually agreed-upon consideration in cash to the insurer from the segregated portfolio for allocation to the insurer’s general account or a separate account. The insurer shall collect adequate consideration for the cost of annuities purchased under contract option by transfer from the segregated portfolio.

191—96.9(505,508) Unilateral contract terminations. A contract subject to this chapter shall allow the insurer to unilaterally and immediately terminate, without future liability of the insurer or obligation to provide further benefits, upon the occurrence of any one of the following events that is material and that is not cured within 30 days following the insurer’s discovery of it:

96.9(1) The investment guidelines are changed without the advance consent of the insurer and the investment manager is not controlling, controlled by or under common control with the insurer;

96.9(2) The segregated portfolio, if managed by an entity that is not controlling, controlled by or under common control with the insurer, is invested in a manner that does not comply with the investment guidelines; or

96.9(3) Investment discretion over the segregated portfolio is exercised by or granted to anyone other than the investment manager.

191—96.10(505,508) Reserves. This rule describes asset maintenance requirements for segregated portfolios governed by this chapter.

96.10(1) At all times, an insurer shall hold minimum reserves in the general account or one or more separate accounts, as appropriate, equal to the excess, if any, of the value of the guaranteed contract liabilities, determined in accordance with subrules 96.10(6) and 96.10(7), over the market value of the assets in the segregated portfolio less the deductions provided for in subrule 96.10(2). The reserve requirements of this subrule shall be applied on a contract-by-contract basis.

96.10(2) In determining compliance with the asset maintenance requirement and the reserve for the value of guaranteed contract liabilities specified in subrule 96.10(1), the insurer shall deduct a percentage of the market value of an asset as follows:

a. For debt instruments, the percentage shall be the NAIC asset valuation “reserve objective factor,” but the factor shall be increased by 50 percent for the purpose of this calculation if the difference in durations of the assets and liabilities is more than one-half year.

b. For assets that are not debt instruments, the percentage shall be the NAIC asset valuation reserve “maximum reserve factor.”

96.10(3) To the extent that expected guaranteed contract benefits are denominated in the currency of a foreign country and are supported by segregated portfolio assets denominated in the currency of the foreign country, the percentage deduction for these assets under subrule 96.10(2) shall be that for a substantially similar investment denominated in the currency of the United States.

96.10(4) To the extent that expected guaranteed contract benefits are denominated in the currency of the United States and are supported by segregated portfolio assets denominated in the currency of a foreign country, and to the extent that expected guaranteed contract benefits are denominated in the currency of a foreign country and are supported by segregated portfolio assets denominated in the currency of the United States, the deduction for debt instruments under subrule 96.10(2) shall be increased by 15 percent of the market value of the assets unless the currency exchange risk on the assets has been adequately hedged, in which case the percentage deduction under subrule 96.10(2) shall be increased by 0.5 percent. No expected guaranteed contract benefits denominated in the currency of a foreign country shall be supported by segregated portfolio assets denominated in the currency of another foreign country without the approval of the commissioner. For purposes of this subrule, the currency exchange risk on an asset is deemed to be adequately hedged if:

a. It is an obligation of:

(1) A jurisdiction that is rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency acceptable to the commissioner;

(2) Any political subdivision or other governmental unit of such a jurisdiction, or any agency or instrumentality of such a jurisdiction, political subdivision or other governmental unit; or

(3) An institution that is organized under the laws of any such jurisdiction; and

b. At all times the principal amount of the obligation and scheduled interest payments on the obligation are hedged against the United States dollar pursuant to contracts or agreements that are:

(1) Issued by or traded on a securities exchange or board of trade regulated under the laws of the United States or Canada or a province of Canada;

(2) Entered into with a United States banking institution that has assets in excess of \$5 billion and that has obligations outstanding, or has a parent corporation that has obligations outstanding, that are rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency, or with a broker-dealer registered with the Securities and Exchange Commission that has net capital in excess of \$250 million; or

(3) Entered into with any other banking institution that has assets in excess of \$5 billion and that has obligations outstanding, or has a parent corporation that has obligations outstanding, that are rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency and that is organized under the laws of a jurisdiction that is rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency.

96.10(5) Synthetic guaranteed investment contracts may provide for the allocation to one or more separate accounts of all or any portion of the amount needed to meet the asset maintenance requirement. If the contract provides that the assets in the separate account shall not be chargeable with liabilities arising out of any other business of the insurer, the insurer shall maintain in a distinct separate account that is so chargeable: that portion of the amount needed to meet the asset maintenance requirement that has been allocated to separate accounts, less the amounts contributed to separate accounts by the contract holder in accordance with the contract and the earnings on the contract.

96.10(6) For purposes of this chapter, the “value of guaranteed contract liabilities” is defined to be the sum of the expected guaranteed contract benefits, each discounted at a rate corresponding to the expected time of payment of the expected guaranteed contract benefit that is not greater than the maximum multiple of the spot rate supportable by the expected return from the segregated portfolio assets, and in no event greater than 105 percent of the spot rate as described in the plan of operation, pursuant to rule 191—96.5(505,508), or the actuary’s opinion and memorandum, pursuant to subrule 96.10(8), except that if the expected time of payment of an expected guaranteed contract benefit is more than 30 years, it shall be discounted from the expected date of payment to year 30 at a rate of no more than 80 percent of the 30-year spot rate and from year 30 to the date of valuation at a rate not greater than 105 percent of the 30-year spot rate.

96.10(7) In calculating the value of guaranteed contract benefits:

a. All expected guaranteed contract benefits potentially available to the contract holder on an ongoing basis shall be considered in the valuation process and analysis, and the reserve held must be sufficient to fund the greatest present value of each independent expected guaranteed contract benefit. For purposes of this subrule, the right granted to the contract holder to exit the contract by discharging the insurer of its obligations under the contract and taking control of the assets in the segregated portfolio shall not be considered an expected guaranteed contract benefit.

b. To the extent that future guaranteed cash flows are dependent upon the benefit responsiveness of an employer-sponsored plan, a best estimate based on company experience, or other reasonable criteria if company experience is not available, shall be used in the projections of future cash flows.

96.10(8) Actuarial opinion and memorandum for segregated portfolios are governed by this chapter.

a. An insurer that issues a synthetic guaranteed investment contract subject to this chapter shall submit to the commissioner annually by March 1 following the December 31 valuation date an actuarial opinion and, upon request, a memorandum showing the status of the accounts as of the prior December 31. The actuarial opinion and memorandum shall be in form and substance satisfactory to the commissioner.

b. The actuarial memorandum required by this chapter is deemed to be confidential to the same extent, and under the same conditions, as the actuarial memorandum required by Iowa Code section 508.36(2)“d”(8).

c. Except in cases of fraud or willful misconduct, the valuation actuary shall not be liable for damages to any person (other than the insurer and the commissioner) for any act, error, omission, decision, or conduct with respect to the actuary’s opinion.

d. The statement of actuarial opinion submitted in accordance with paragraph 96.10(2)“a” shall consist of:

- (1) A paragraph identifying the valuation actuary and the valuation actuary’s qualification;
- (2) A scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the valuation actuary’s work;
- (3) A reliance paragraph describing those areas, if any, where the valuation actuary has deferred to other experts in developing data, procedures or assumptions;

(4) An opinion paragraph expressing the valuation actuary's opinion with respect to the matters described in subparagraphs 96.10(8) "e"(1) and (2); and

(5) One or more additional paragraphs which may be needed for individual companies in the following cases:

1. If the valuation actuary considers it necessary to state a qualification of the valuation actuary's opinion;

2. If the valuation actuary must disclose an inconsistency in the method of analysis used at the prior opinion date with that used for this opinion;

3. If the valuation actuary chooses to add a paragraph briefly describing the assumptions which form the basis of the actuarial opinion.

e. This paragraph describes the contents of the opinion paragraph of the actuarial opinion.

(1) The actuarial opinion shall state, after taking into account any risk charge payable, the segregated portfolio assets, and the amount of any reserve liability with respect to the asset maintenance requirement, that the account assets make adequate provision for expected guaranteed contract benefits.

(2) The opinion shall also state that:

1. Reserves for expected guaranteed contract benefits are calculated pursuant to the requirements of subrule 96.10(1);

2. After taking into account any reserve liability with respect to the asset maintenance requirement, the amount of the account assets satisfies the asset maintenance requirement;

3. The fixed-income segregated portfolio conforms to and justifies the rates used to discount expected guaranteed contract benefits for valuation pursuant to subrule 96.10(6);

4. Whether any rates used pursuant to subrule 96.10(6) to discount expected guaranteed contract benefits and other items applicable to the segregated portfolio were modified from the rate or rates described in the plan of operation filed pursuant to rule 191—96.5(505,508); and

5. The level of risk charges, if any, retained in the general account is appropriate in view of such factors as the nature of the expected guaranteed contract benefits and losses experienced in connection with contracts and other pricing factors.

f. The opinion shall be accompanied by a certificate from an officer of the insurer responsible for monitoring compliance with the asset maintenance requirements for synthetic guaranteed investment contracts describing the extent to and manner in which, during the preceding year:

(1) Actual benefit payments conformed to the benefit payment estimated to be made as described in the plan of operation;

(2) The determination of the fair market value of the segregated portfolio conformed to the valuation procedures described in the plan of operation, including a statement of the procedures and sources used during the year; and

(3) Any assets were transferred to or from the insurer's general account or any amounts were paid to the insurer by any contract holder to support the insurer's guarantee.

g. The actuarial memorandum shall:

(1) Substantially conform with those portions of 191—subrule 5.34(7) that are applicable to asset adequacy testing and that either:

1. Demonstrate the adequacy of account assets based upon cash flow analysis, or

2. Explain why cash flow testing analysis is not appropriate, describe the alternative methodology of asset adequacy testing used, and demonstrate the adequacy of account assets under that methodology;

(2) Clearly describe the assumptions the valuation actuary used in support of the actuarial opinion, including any assumptions made in projecting cash flows under each class of assets, and any dynamic portfolio hedging techniques utilized and the tests performed on the utilization of the techniques;

(3) Clearly describe how the valuation actuary has reflected the cost of capital;

(4) Clearly describe how the valuation actuary has reflected the risk of default on obligations and mortgage loans, including obligations and mortgage loans that are not investment grade;

(5) Clearly describe how the valuation actuary has reflected withdrawal risks, if applicable, including a discussion of the positioning of the contracts within the benefit withdrawal priority order pertaining to the contracts;

(6) If the plan of operation provides for investments in segregated portfolio assets other than United States government obligations, demonstrate that the rates used to discount contract liabilities pursuant to subrule 96.10(6) conservatively reflect expected investment returns, taking into account any foreign exchange risks;

(7) If the contracts provide that in certain circumstances the contracts would cease to be funded by a segregated portfolio and instead would become contracts funded by the general account, clearly describe how any increased reserves would be provided for if and to the extent these circumstances occur;

(8) State the amount of account assets maintained in a separate account that are not chargeable with liabilities arising out of any other business of the insurer;

(9) State the amount of reserves and supporting assets as of December 31 and where the reserves are shown in the annual statement;

(10) State the amount of any contingency reserve carried as part of surplus;

(11) State the market value of the segregated asset portfolio; and

(12) Where separate account assets are not chargeable with liabilities arising out of any other business of the insurer, describe how the level of risk charges payable to the general account provides an appropriate compensation for the risk taken by the general account.

96.10(9) When the insurer issues a synthetic guaranteed investment contract and complies with the asset maintenance requirements of subrule 96.10(1), the insurer need not maintain an asset valuation reserve with respect to those account assets.

96.10(10) This subrule describes the reserve valuation requirements for contracts subject to this chapter.

a. Reserves for synthetic guaranteed investment contracts subject to this chapter shall be an amount equal to the sum of the following:

(1) The amounts determined as the minimum reserve as required under subrule 96.10(1);

(2) Any additional amount determined by the insurer's valuation actuary as necessary to make adequate provision for all expected guaranteed contract benefits; and

(3) Any additional amount determined as necessary by the commissioner due to the nature of the expected guaranteed contract benefits.

b. The amount of any reserves required by paragraph 96.10(4) "a" may be established by either:

(1) Allocating sufficient assets to one or more separate accounts; or

(2) Setting up the additional reserves in the general account.

191—96.11(505,508) Severability. If any provision of this chapter or its application to any person or circumstances is judged invalid by a court of competent jurisdiction, the judgment shall not affect or impair the validity of the other provisions of this chapter.

191—96.12(505,508) Effective date. This chapter shall take effect [insert effective date of these rules].

These rules are intended to implement Iowa Code section 505.8 and chapter 508.