

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.

[ARC 9926B, IAB 12/14/11, effective 1/18/12]