the Commission's Public Reference Room. Copies of the filing also will be available at the offices of OPRA. All submissions should refer to File No. S7– 8–90 and should be submitted by July 3. 1995.

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: Securites 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 15c6–1 ¹ 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

⁷Within 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,

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

^{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

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

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).

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

⁹This 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).