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UNITED KINGDOM

## US Separate Accounts - Institutional Client Survey

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### 3 Important Table Assumptions

This survey covers the marketing and ongoing rules applicable to the provision of portfolio management services to institutional clients resident in this country by a U.S. investment adviser ("Adviser") registered with the U.S. Securities and Exchange Commission ("SEC") on a "Separate Account" basis. Such institutional clients shall include insurance companies, asset management companies, banks, pension funds, government funds, brokers and large or public companies. For these purposes, the term Separate Account shall mean an account established by a client or prospective client of the Adviser ("Client") that is typically placed with a third-party custodian or broker and managed by the Adviser pursuant to the terms of an investment management agreement between the Adviser (or its affiliate) and the Client that provides the Adviser (or its affiliate) with discretionary authority over the assets and responsibility for managing the Separate Account's securities portfolio on a daily basis. This survey assumes that representatives of the Adviser (or its European Union affiliate authorized to provide cross-border investment services under the EU Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ("MiFID") (the "MiFID Firm")) will conduct all marketing activity with respect to the provision of portfolio management services, which are to be managed by the Adviser (or its affiliate) on a Separate Account basis. We have also assumed, for purposes of this survey, that the Adviser is not licensed in any jurisdiction outside of the United States. The information below is only a summary of the most important rules and regulations applicable in the jurisdiction to the marketing and provision of portfolio management services. It should not be read as definitive legal advice with respect to all facts and circumstances. Further advice on any specific facts and circumstances may of course be provided on request.

### Institutional Client

Q: Is there a definition of institutional client? If so, what is it?

A: See Appendix A.

### A. Authorization Requirements

Q: **A.1** Is the Adviser required to obtain a license/authorization to provide portfolio management services to residents of this country?

A: No. As discussed more fully below, the Adviser's provision from outside the U.K. of discretionary portfolio management services to a U.K. Client should not require the Adviser to obtain a licence/authorisation in the U.K. Marketing the Adviser's investment management services to a potential Client in the U.K. may involve the Adviser or the MiFID Firm (as applicable) in making a "financial promotion" in the U.K., which might require licensing/authorisation in the U.K.; however, there are broad exemptions from these requirements for promotions to "institutional clients" (as defined in Appendix A hereto).

Under Section 19 of Financial Services Markets Act 2000 ("FSMA"), any person who carries on a regulated activity in the U.K. must be authorised by the U.K. Financial Conduct Authority ("FCA") or Prudential Regulation Authority ("PRA") or exempt (an appointed representative, tied agent or some other exemption). Breach of Section 19 may be a criminal offence and punishable on conviction on indictment by a maximum term of two years' imprisonment and/or a fine. Agreements made by or through unauthorised persons in breach of Section 19 are unenforceable.

Regulated activities are detailed in The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO"), which is secondary legislation under FSMA. In Part II of the RAO, "managing investments", "dealing in investments", "arranging", and "advising on investments" are considered regulated activities. However, the FCA generally regards the regulated activity of "managing investments" to take place where the discretionary decisions relating to the client's portfolio are taken. Accordingly, the Adviser's provision of discretionary investment management services for a U.K. client's Separate Account from outside the U.K. should not involve the Adviser carrying on a regulated activity in the U.K.

Further, Section 21 of the FSMA prohibits an unauthorised person from issuing an invitation or inducement to a prospective investor to engage in an investment activity in the U.K. (a "financial promotion"). Breach of Section 21 is a criminal offence and is punishable on conviction on indictment by a maximum term of two years' imprisonment and/or a fine. Contracts made as the result of an unlawful communication in breach of Section 21 are unenforceable and any resulting investors may be entitled to recover their money. Since "managing investments" is an investment activity, marketing the investment management services of the Adviser to a potential Client in the U.K. could amount to such an invitation or inducement to engage in an investment activity. However, the FSMA (Financial Promotion) Order 2005 (the "FPO") contains a number of exemptions from the financial promotion restriction in FSMA Section 21. These include broad exemptions for promotions to "investment professionals" and certain "high net worth" businesses, as defined in Appendix A.

Q: **A.2** Do the requirements differ if contact was unsolicited?

A: No.

Q: **A.3** Can the portfolio management take place on a discretionary or non-discretionary basis?

A: Yes. Non-discretionary portfolio management services provided to a U.K. Client would potentially amount to the U.K. regulated activity of "advising on investments" and, unlike "managing investments" (see A.1 above), this may potentially be regarded as taking place in the U.K. where the service is provided to a U.K. Client.

However, the RAO includes certain exclusions from the general prohibition in Section 19 of the FSMA. These include the overseas person exclusions in Article 72 of the RAO, which permit a person who does not have a permanent place of business in the U.K. (an "overseas person") to carry on certain activities in the U.K. without being authorised by the FCA or PRA. Such overseas person may give advice on investments (e.g., on a Separate Account basis from the United States) to persons in the U.K., provided that advice was the result of a "legitimate approach". A legitimate approach is one where the overseas person does not contravene the financial promotion restriction in Section 21 of the FSMA. To do this, the actions of the overseas person must be covered by the exemptions in the FPO. Practically, these exemptions would restrict the persons for whom the overseas person could engage in Separate Account non-discretionary management to "investment professionals" and certain "high net worth entities", as defined in Appendix A.