FMA CIRCULAR

CONCERNING OVERFUNDING IN UNIT-LINKED LIFE ASSURANCE

Based on the letter of the Federal Ministry of Finance of 21 January 2000 concerning unit-linked life assurance (Reference Code 9 000 600/2-V/10/00), the Financial Market Authority (FMA) is prompted to state its position on the case of insurance undertakings which have set up the *Deckungsstock* group for unit-linked life assurance pursuant to Article 20 para. 2 no. 3 of the *Versicherungsaufsichtsgesetz* (VAG; Insurance Supervision Act), specifically the conditions governing the difference between the amount of the units in investment funds of the *Deckungsstock* group "Unit-linked life assurance" pursuant to Article 20 para. 2 no. 3 VAG on the one hand and the amount of the technical provisions of unit-linked life assurance (cover requirement pursuant to Articles 19 and 19a VAG) on the other hand.

Any excess in the amount of the units in investment funds of the *Deckungsstock* group "Unit-linked life assurance" pursuant to Article 20 para. 2 no. 3 VAG posted under asset item C. of Article 81c para. 2 VAG compared with the amount of the cover requirement of the *Deckungsstock* group "Unit-linked life assurance" pursuant to Article 20 para. 2 no. 3 VAG posted under liability item E. of Article 81c para. 3 VAG will be considered by the FMA, pending further notice, according to the following conditions:

• The units in investment funds posted in the balance sheet under asset item C. of Article 81c para. 2 VAG must be part of the investment funds offered by the insurance undertaking within the scope of unit-linked life assurance.

• The overfunding of the technical provisions (of the cover requirement) may only result from any necessary advance purchases or the settlement of balance effected for accounting reasons (provided that only the acquisition of full units in investment funds is possible).

• The difference compared with the cover requirement pursuant to liability item E. of Article 81c para. 3 VAG is due to business-related fluctuations and is therefore not to be regarded as a permanent excess.

• The overfunding of the technical provisions (of the cover requirement) must be limited to the absolute minimum required.

• The overfunding of the technical provisions (of the cover requirement) must not exceed 5% of the technical provisions (of the cover requirement) posted under liability item E. of Article 81c para. 3 VAG.

• The aforementioned 5% threshold does not apply if the technical provisions (of the cover requirement) amount to no more than €8m pursuant to liability item E. of Article 81c para. 3 VAG. In this case the maximum amount of €400,000 applies.

The mentioned asset items C. of Article 81c para. 2 VAG (units in investment funds of the *Deckungsstock* group "Unit-linked life assurance" pursuant to Article 20 para. 2 no. 3 VAG) and the liability items E of Article 81c para. 3 VAG (technical provisions of unit-linked life assurance – cover requirement pursuant to Articles 19 and 19a VAG) thus only refer to unit-linked life assurance and not to index-linked life assurance.

In addition, the FMA points out that when acquiring or dedicating units in foreign investment funds to meet the cover requirement of the *Deckungsstock* group "Unit-linked life assurance" (Article 20 para. 2 no. 3) for products that, according to the General Policy Conditions, allow for a right to choose in the benefit event between units in investment funds or cash benefits, insurers must ensure that the units in investment funds pursuant to Articles 30 or 36 of the 1993 *Investmentfondsgesetz* (InvFG; Investment Fund Act) are registered for public distribution in Austria. A list of the registered funds can be downloaded from the website of the Financial Market Authority.