

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 34429; 812-15263

Fortune V Separate Account, et al.

November 30, 2021

AGENCY: Securities and Exchange Commission (“Commission”).

Action: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 12(b), 18(f)(1) and 18(i) of the Act.

Summary of Application: Applicants request an order to permit a registered open-end investment company that offers variable annuity contracts (“Contracts”) to issue multiple classes of units (“Units”) with varying administrative and/or distribution expenses and other expenses, and to permit an arrangement for financing the distribution of those Contracts.

Applicants: Fortune V Separate Account (“Fortune V”) and Universal Financial Services (“UFS”).

FILING DATES: The application was filed on September 20, 2021 and amended on October 29, 2021, November 12, 2021, and November 30, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by e-mailing the Commission’s Secretary at Secretarys-Office@sec.gov and serving applicants with a copy of the request by e-mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 22, 2021, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5, hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues

contested. Persons who wish to be notified of a hearing may request notification by e-mailing to the Commission's Secretary at Secretarys-Office@sec.gov.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: c/o Dodie Kent, by email to dodiekent@eversheds-sutherland.com.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Special Counsel, at (202) 551-6764 or Nadya Roytblat, Assistant Chief Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained by searching the Commission's website, at <http://www.sec.gov/search/search.htm>, using the application's file number or the applicant's name, or by calling (202) 551-8090.

Applicants' Representations:

1. Fortune V was established under the laws of Puerto Rico in 2007 by Universal Life Insurance Company ("Universal"), a stock life insurance company domiciled in Puerto Rico, and offers Contracts exclusively to residents of Puerto Rico. Until May 24, 2021, Fortune V was exempt from regulation under the Act pursuant to section 6(a)(1) of the Act. That exemption was repealed on May 24, 2018, effective May 24, 2021. On May 24, 2021, Fortune V filed a Notification of Registration under the Act on Form N-8A as an open-end investment company. In addition, with the repeal of Section 6(a)(1) of the Act, the exemption in section 3(a)(11) of the Securities Act of 1933 is no longer applicable to the Contracts.

2. UFS, a subsidiary of Universal, is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 and as a broker-dealer under the Securities Exchange Act of 1934, and acts as investment adviser and the distributor for Fortune V.

3. Fortune V is comprised of several sub-accounts, each of which has a generally defined investment strategy and invests in a portfolio of separate underlying mutual funds (the “Sub-Accounts”). Applicants calculate the value of the assets in each Sub-Account as of the close of every business day. Fortune V deducts expenses from the net assets of each Sub-Account each business day for investment management, administrative and distribution services.

4. Fortune V offers different classes of Units¹ in a Sub-Account with different levels of expenses that reflect the different liquidity options and death benefits made available to Contract owners, as described in the application. With the exception of Contracts sold until 2011, all classes incur a base annual account charge of 1.40% and, in addition, may be subject to additional charges based on which liquidity option is selected and whether the optional death benefit is selected (not including the base annual account charge, these additional charges are referred to as “Covered Expenses”).

5. All expenses incurred by Fortune V are allocated among its various classes of Units based on the respective average daily net assets attributable to each such class, except that the Unit value and expenses of each class will reflect the Covered Expenses attributable to the class. Covered Expenses of Fortune V allocated to a particular class of Units will be borne on a pro rata basis by each Unit of that class.

6. On November 12, 2021, the board of directors of Fortune V (the "Board"), including a majority of disinterested Board members, adopted a multiple class plan in accordance with Rule 18f-3(d) under the Act. (On November 29, 2021, the Board, including a majority of disinterested Board members, approved clarifying amendments to the plan in accordance with

¹ “Units” refers to accumulation units, which are used to calculate the value allocated to each of the Sub-Accounts in the variable account before the annuitization date.

rule 18f-3.) Also on November 12, 2021, the Board, including a majority of disinterested Board members, adopted a plan for the distribution of Units (“Rule 12b-1 Plan). On November 29, 2021, the Board, including a majority of disinterested Board members, approved clarifying amendments to the Rule 12b-1 Plan in accordance with rule 12b-1.

Applicants’ Legal Analysis:

1. Section 18(f)(1) of the Act provides, in relevant part, that an open-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock.

2. Section 12(b) of the Act makes it unlawful, with certain exceptions, for any registered open-end investment company to act as a distributor of securities, except through an underwriter, in contravention of such rules as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 12b-1 under the Act provides that an open-end investment company that engages in financing any activity that is primarily intended to result in the sale of its shares will be deemed to be acting as a distributor of securities of which it is the issuer, unless it adopts a written plan that meets certain requirements.

3. Applicants state that the issuance and sale of multiple classes of Units of Fortune V may be deemed to be prohibited by section 18(f)(1) of the Act and to violate section 18(i). Applicants also state that the use of Sub-Account assets to finance the distribution of the Contracts may be deemed to violate section 12(b) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(f)(1) and 18(i) to the extent that the proposed issuance and sale of multiple classes of Units of Fortune V with varying Covered Expenses may be deemed: (1) to result in the issuance of a “senior security” within the meaning of section 18(g) of the Act and thus be prohibited by section 18(f)(1); and (2) to violate the equal voting provisions of section 18(i) of the Act. In addition, Applicants request an exemption under section 6(c) of the Act from section 12(b), to the extent that Fortune V may be deemed to be acting as a distributor of its own securities within the meaning of rule 12b-1 under the Act, solely with respect to the initial shareholder approval requirement in rule 12b-1(b) as it applies to the Rule 12b-1 Plan adopted on November 12, 2021 and amended on November 29, 2021. Applicants state that, for the reasons discussed below, they satisfy the standard for relief under section 6(c) of the Act.

5. Applicants state that the different classes of Units provide the Applicants with the flexibility to offer different liquidity options and death benefits to Contract owners. Further, Applicants assert that being limited to a single liquidity option may adversely affect Fortune V’s ability to maintain and attract retirement assets and maintain significant economies of scale.

6. Applicants submit that the proposed allocation of Covered Expenses and voting rights relating to the Covered Expenses applicable to the classes of Units in Fortune V is equitable and will not discriminate against any group of participants. Applicants state that Fortune V will

comply with the requirements of rule 18f-3 under the Act. Applicants further state that Fortune V will disclose in its prospectus the fees, charges, estimated expenses and other characteristics of each class of Units offered for sale by the prospectus, as is required for open-end investment companies offering multiple classes under Form N-1A; and Fortune V will disclose expenses borne by Contract owners during the reporting period in annual and semi-annual reports as if it were an open-end investment company registered on Form N-1A.

7. Applicants further state that the Board has adopted the Rule 12b-1 Plan which complies with rule 12b-1 under the Act except for the initial shareholder approval requirement in rule 12b-1(b)(1). Applicants state that, when the Fortune V was established under the laws of Puerto Rico in 2007, it was exempt from the Act pursuant to section 6(a)(1) thereof, and only became subject to section 12(b) on May 24, 2021, long after the Contracts were offered and sold to the Contract owners. Applicants state that the Rule 12b-1 Plan does not change the rights or benefits of Contract owners, but reflects the current terms and provisions of the Contracts. Applicants also note that the Rule 12b-1 Plan was adopted prior to any public offering of shares of Fortune V as a registered investment company.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Fortune V will disclose in its prospectus the estimated expenses and other characteristics of each class of Units offered for sale by the prospectus, as is required for open-end, multiple class funds under Form N-1A. Fortune V will disclose expenses borne by Contract owners during the reporting period in annual and semi-annual reports as if it were an open-end management investment company registered on Form N-1A.

2. Fortune V will comply with rule 18f-3 under the Act.

3. Fortune V will comply with section 12(b) of the Act and rule 12b-1 under the Act (except with respect to the initial shareholder approval requirement in rule 12b-1(b)(1) for the Rule 12b-1 Plan adopted on November 12, 2021 and amended on November 29, 2021).

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier
Assistant Secretary