- 4. Applicants submit that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for Equitable to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek exemptive relief would impair Equitable's ability to effectively take advantage of business opportunities as they arise.
- 5. Applicants submit that the reasons cited above also explain why the requested relief is consistent with the purposes of the 1940 Act and the protection of investors. In this regard, Applicants submit that investors would not receive any benefit or additional protection if Equitable were required repeatedly to seek exemptive relief with respect to the same issues addressed in this Application. Indeed, investors might be disadvantaged as a result of Equitable's increased overhead expenses.
- 6. Section 2(a)(35) defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested by the issuer, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.
- 7. The literal wording of Section 2(a)(35) contemplates a front-end sales charge. Although Rule 6c–8 permits the deduction of a contingent deferred sales load, such as the withdrawal charge provided for in the Certificates, that rule is not available for the periodic deduction of a contribution-based deferred distribution fee. Applicants, therefore, request an exemption from Section 2(a)(35) to the extent necessary to permit the assessment of a contribution-based deferred distribution fee under the Accounts.
- 8. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act require, among other things, that all payments received under a periodic payment plan certificate sold by a registered unit investment trust, any depositor thereof or underwriter therefor, be held by a qualified bank as trustee or custodian, under arrangements which prohibit any payment to the depositor or principal underwriter except for the payment of a fee, not exceeding such reasonable amount as the Commission may

- prescribe, for bookkeeping and other administrative services.
- 9. Applicants submit that because the distribution fee is designed to compensate for sales related expenses, not bookkeeping or other administrative services, it could be argued that Section 26(a)(2)(C) precludes the deduction of the distribution fee from the Annuity Account Value in the Account. Applicants also submit that Section 27(c)(2) may be construed to prohibit a registered investment company or a depositor or underwriter for such a company from selling any periodic payment plan certificate (such as the Certificates) unless the proceeds of all the payments under such a certificate are held by a trustee or custodian under an agreement containing the substance of the provisions of Section 26(a)(2). For this reason, Applicants state that it could be argued that the Account, by virtue of the deduction of the distribution fee, does not meet the requirements of Section 26(a)(2)(C) and, therefore, the sale of the Certificates violates Section 27(c)(2). Accordingly, Applicants request exemption from Sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction of the distribution fee in the manner described in this Application.
- 10. Applicants submit that the imposition of a sales load in the form of a contribution-based charge that is deducted over an extended period is more favorable to Certificate owners than the deduction of the equivalent charge as a front-end sales load (as contemplated by Section 2(a)(35)). In this regard, Applicants note that the full amount of a contribution is available for investment in the Account, thereby providing each Certificate owner with more investment dollars than if an equivalent front-end sales charge were deducted from the contribution.
- 11. Applicants also state that deferring a sales charge can benefit Certificate owners by permitting them to receive any positive investment experience on the portion of the charge that is deferred. Applicants further state that, because the distribution fee is not deducted from death benefit proceeds, deducting the distribution fee over time, rather than at issue of the Certificate, can favorably affect the amount of the death benefit payable if death occurs during the first seven Contract years. Applicants also state that the total amount charged to a Certificate owner when the distribution fee is deducted over time is no greater than the amount that would be charged if the distribution fee were deducted from the contribution as a front-end sales load.

- 12. Applicants state that the Commission previously has promulgated regulations permitting the deduction of sales charges from cash value, but only in connection with variable life insurance policies pursuant to Rule 6e–3(T) under the 1940 Act. Applicants submit that the reasoning that justifies the exemptions provided by that rule in connection with variable life insurance policies also justifies exemptive relief in this instance.
- 13. Applicants represent that the distribution fee may not exceed 7% of the contribution made, and the total sales load will never be more than the maximum withdrawal charge of 7%. In this regard, Applicants assert that if a Certificate owner does not withdraw a contribution in the seven-year period after the contribution is made, no withdrawal charge will be applicable, but the 1% maximum distribution fee will be imposed on each Processing Date, for a maximum total of 7% of the contribution made. Applicants further assert that if a partial withdrawal of a contribution is made during that sevenyear period, the amount withdrawn will be subject to a withdrawal charge, but will no longer be part of the contribution base upon which the distribution fee is assessed on a Processing Date. That is, the amount withdrawn would not be subject to any further distribution fee, and the balance of the contribution would not be subject to a withdrawal charge, but would be charged a distribution fee on the Processing Date. Accordingly, Applicants represent that, as the withdrawal charge is reduced 1% in each of the years following the year in which the contribution is made, and the distribution fee only applies to the remaining amount of a contribution after a withdrawal, the sum of the distribution fee and the withdrawal charge (as applicable) will never exceed 7% of the contribution made. Applicants also represent that the sum of the distribution fee and the withdrawal charge (as applicable) always will be lower than the 9% maximum permitted by Rule 6c-8 and the provisions of Section 27(a)(1) of the 1940 Act regarding maximum sales loads for variable insurance products or periodic payments plan certificates.
- 14. Applicants assert that the maximum guaranteed minimum death benefit charge is reasonable in relation to the risk assumed by Equitable under the Certificates. In arriving at this determination, Equitable states that it conducted a large number of trials at different issue ages to determine the expected cost of the guaranteed minimum death benefit. By analyzing