the Contract Anniversary nearest the insured's 100th birthday:

(1) Contract Charge and Administration Charge: The Contract charge is equal to \$10 per month during Contract Years 1 through 3, and \$4 per month thereafter (guaranteed not to exceed \$8 per month). The Administrative Charge is equal to \$0.02 to \$0.04 (increasing with issue age) per \$1,000 of Face Amount during the first 12 Contract Years, and \$0.015 per \$1,000 of Face Amount thereafter, for underwriting, issuing and maintaining the Contract. Guardian does not expect to profit from these charges.⁷

(2) Guaranteed Insurance Amount Charge: \$0.01 per \$1,000 of Face Amount to compensate Guardian for the risk it assumes by guaranteeing that a Contract will remain in force if all premiums have been paid when due and no loans have been taken, regardless of the investment experience of the Investment Division; and

- (3) Cost of Insurance Charge: A charge, based on the 1980 CSO Tables (discounted at the monthly equivalent of 4% per year), is deducted and calculated by multiplying the net amount at risk on a Monthly Date (amount by which the Death Benefit on the first day of the Contract month exceeds the Account Value on the same day, after monthly deductions for contract and administration charges and the Guaranteed Insurance Amount charge have been processed) by the applicable monthly cost of insurance rate, divided by \$1,000.
- d. Separate Account Charges: Each Investment Division currently is assessed a charge for mortality and expense risks that Guardian assumes, at a current effective annual rate of .60% of the value of its assets. Guardian reserves the right to increase the mortality and expense risk charge up to a maximum effective annual rate of .90%, subject to further Commission authorization. Guardian assumes a mortality risk under the Contracts that insured may live for shorter periods of time than estimated, and assumes an expense risk that its actual costs of issuing and administering the Contracts may be more than it estimated. No charge currently is deducted from Separate Account assets for income taxes attributable to the Separate

Account or the Contracts. Guardian reserves the right to impose such charges if the income tax treatment of variable life insurance changes, or if there is a change in Guardian's tax status.

e. Fund Expenses: Charges for investment advisory and other expenses incurred by the Funds are deducted from assets of the relevant Fund and are indirectly borne by Contract owners.

Applicants' Legal Analysis

Section 6(c) authorizes the Commission, by order and upon application, to exempt any person, security, or transaction, or class of persons, securities, or transactions, from any provisions of the 1940 Act. The Commission grants relief under Section 6(c) to the extent an 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 1940 Act. For the reasons stated below, Applicants assert that the requested exemptions satisfy the standards of Section 6(c).

A. Request for Exemptions Relating to Definition of "Variable Life Insurance Contract"

1. Applicants note that Rule 6c-3 under the 1940 Act provides that a separate account that meets the requirements of Rule 6e-2(a) 8 and registers as an investment company under the 1940 Act also is exempt from the 1940 Act provisions set forth in Rule 6e-2(b), except for Sections 7 and 8(a), under the same terms and conditions as a separate account claiming exemption directly under Rule 6e-2.9 Applicants state that the Separate Account satisfies the conditions of Rule 6e-2(a) and, therefore, is entitled to rely on Rule 6e-3. Accordingly, the Separate Account is exempt from the provisions of the 1940 Act specified in paragraph (b) of Rule 6e-2, except for Sections 7 and 8(a) of the 1940 Act, under the same terms and

conditions as a separate account claiming exemption under Rule 6e–2.

Rule 6e–2(c)(1) defines a "variable life insurance contract" to include only life insurance contracts that provide both a death benefit and a cash surrender value which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an initial dollar amount stated in a contract. The required guaranteed minimum death benefit need be provided only so long as payments are duly made in accordance with the contract's terms.

2. Applicants submit that under the Contracts the Death Benefit varies to reflect investment experience within the meaning of Rule 6e–2(c)(1). Applicants concede, however, that the Death Benefit is not precisely the type of variable death benefit contemplated when Rule 6e–2 was adopted, and that the Contracts also contain other provisions that are not specifically addressed in Rule 6e–2.

3. Applicants believe that Option 2 Death Benefit falls within the requirement that it "vary to reflect the investment experience of the separate account," although it varies only when Account Value exceeds Benchmark Value. Applicants submit that this situation is analogous to more conventional scheduled premium variable life insurance contracts where death benefits are increased when investment experience exceeds an assumed investment rate. Applicants assert that Rule 6e-2(c)(1) clearly contemplates that a death benefit would vary only if it exceeds a guaranteed minimum death benefit.

4. Applicants state, however, that Option 1 will fail to satisfy this requirement if the Death Benefit has not been otherwise increased to provide the minimum death benefit required by Section 7702 of the Code of the variable insurance amount.

5. Applicants request exemptions from the definition of "variable life insurance contract" in Rule 6e–2(c)(1) and from all Sections of the 1940 Act and rules thereunder specified in Rule 6e–2(b) (other than Sections 7 and 8(a)), under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2(a), and to the extent necessary to permit the offer and sale of the Contracts in reliance on Rule 6e–2, except as otherwise set forth herein. 10

⁷ Applicants represent that each of these fees is reasonable, and in an amount that does not exceed the expenses to which such charge relates that are currently anticipated to be incurred over the lifetime of the Contracts. The maximum amount of each of these fees or charges is guaranteed not to increase during the term of the Contract. Guardian does not anticipate realizing a profit from these charges.

 $^{^8}$ Rule 6e–2(a) states that "a separate account * * * shall, except for the exemptions provided in paragraph (b) [of Rule 6e–2], be subject to all provisions of [the 19040 Act] * * * as though such separate account were a registered investment company issuing periodic payment plan certificates," provided that the conditions set forth in Rule 6e–2(a) are met. Thus, Rule 6e–2(a) contemplates that a variable life separate account relying on Rule 6e–2 will not be registered under the 1940 Act.

⁹ Accordingly, all registered separate accounts issuing variable life insurance products do so in reliance on Rule 6c–3, and not directly in reliance on Rules 6e–2 or 6e–3(T), as applicable. Applicants represent that the application will be amended during the notice period to reflect these statements.

 $^{^{10}\,} Both$ Death Benefit Options provide for a guaranteed minimum death benefit at least equal to the Contract's initial Face Amount, as required by Rule 6e–2(c)(1). The Contracts also permit a reduction in Face Amount (including reductions through partial withdrawals). Certain provisions of