

6. Applicants submit that the definition of "variable life insurance contract" in Rule 6e-2(c)(1) was drafted at a time when all the variable life insurance contracts then contemplated clearly met this definition, and that the considerations that led the Commission to grant the exemptions in Rule 6e-2 did not depend in any material way upon the fact that the death benefit, as well as cash values, varied with investment experience. Nor did such considerations depend on whether a scheduled premium contract also provided for substantial premium payment flexibility and other features so long as the scheduled premiums, if paid when due, provided for a minimum death benefit guaranteed to at least equal the initial face amount.

7. Applicants further submit that the extent to which favorable investment experience is used to increase death benefits rather than cash values differs considerably among the contracts offered by different issuers in reliance on Rule 6e-2. Applicants also submit that, under all contract designs, the degree to which investment performance changes the death benefit necessarily has an impact on cash values under the Contracts.

8. Applicants represent, that, generally, higher death benefits require higher cost of insurance deductions which, in turn, result in lower cash values. Applicants state that it is desirable for purchasers to be free to choose a benefit structure which they believe suits their own needs with respect to the relationship of cash value, death benefit and investment performance. Applicants also state that Contract owners can do this by, for example, deciding whether to apply excess value to purchase extra death benefit. Using excess value for this purpose will maximize the guaranteed death benefit in the event of favorable investment experience, but will cause

Rule 6e-2, such as paragraph (c)(3), recognize the existence of partial withdrawals; in addition, partial withdrawals and reductions in Face Amount are common features in Contracts governed by Rule 6e-2. Applicants do not seek exemptive relief in this regard.

Applicants also state that they believe the Contract Options provide an additional benefit to a Contract owner by making it possible to continue insurance protection and participation in the Separate Account, if desired, even though the Contract owner may not continue to pay Contract Premiums. Similarly, Applicants believe the existence of the Primary Insured Term Rider and Fixed-Rate Option enhance the benefits available to a Contract owner. Applicants believe the availability of these options does not modify the basic characteristics of the Contract and, therefore, is consistent with the fundamental nature of the Contracts as variable life insurance contracts under paragraph (c)(1) of Rule 6e-2.

Account Value to be less than it otherwise would be.

9. Applicants also submit that the considerations that led the Commission to adopt Rules 6c-3 and 6e-2 apply equally to the Separate Account and the Contracts, and that the exemptions provided by these rules would be granted to the Separate Account and to the other Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested herein.

#### *B. Request for Exemptions Relating to Sales and Administrative Charges*

1. Applicants request exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(c)(2), 27(d) and Rules 6e-2(b)(1), (b)(2), (b)(13)(i), (b)(13)(iv), (b)(13)(v) and (c)(4), and Rule 22c-1 to the extent necessary to permit deductions of: (a) part of a Contract's sales charge from premium payments and part from Account Value as a CDSC, and (b) the CDAC from Account Value. Both the CDSC and the CDAC will be deducted on surrender, Face Amount reduction (including upon partial withdrawals), or lapse.

2. *Section 2(a)(35) and Rules 6e-2(b)(1) and (c)(4)*. Applicants assert that Section 2(a)(35)<sup>11</sup> and Rules 6e-2(b)(1) and (c)(4)<sup>12</sup> may be read to contemplate that the sales charge for a variable life insurance contract will be deducted from premium payments. Applicants submit that Guardian's deduction of the CDSC from Account Value may be deemed inconsistent with these provisions. Further, deduction of the CDSC also may be deemed inconsistent with Rule 6e-2(c)(4) because, in order to facilitate the payment and other flexibility features under the Contracts, the CDSC is computed based on the lesser of actual payments made or Basic Scheduled Premiums payable (rather than as the excess of actual premium payments made over certain amounts, as required by the literal terms of that provision). Accordingly, Applicants request exemptions from Section 2(a)(35) and Rule 6e-2(b)(1) and (c)(4)

<sup>11</sup> "Sales load" is defined under Section 2(a)(35), in relevant part, 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 or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), 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."

<sup>12</sup> Under Rule 6e-2(b)(1), "sales load" has the meaning set forth in Rule 6e-2(c)(4), which defines "sales load" charged on any payment as the excess of the payment over the sum of certain other amounts.

to the extent necessary to permit part of the Contracts' sales charge to be deducted from premium payments and part as a CDSC upon surrender, Face Amount reduction (including upon partial withdrawal) or lapse of a Contract.

In addition, Applicants argue that Rule 6e-2(c)(4) can be construed to allow the imposition of a sales charge on other than premiums because the definition of "sales load" in the Rule does not reflect the actual methodology of administering variable life insurance contracts, referring in subparagraphs (i) and (ii), for example, to other amounts that are not deducted from payments. To this extent, Applicants assert that the applicability of the definition need not be limited to any particular form of sales load. Accordingly, Applicants submit that the CDSC is consistent with the definition of "sales load" set forth in Rule 6e-2(c)(4). Applicants, however, request the exemptions noted above in order to avoid any question concerning full compliance with the 1940 Act and any regulations thereunder.

3. *Section 27(a)(1) and Rule 6e-2(b)(13)(i)*. Section 27(a)(1) limits sales load in terms of a maximum percentage of payments to be made on a periodic payment plan certificate. Rule 6e-2(b)(13)(i) limits the amount of sales charges on a variable insurance contract to a maximum of 9% of the payments to be made under the contract during a period equal to or the lesser of (a) 20 years or (b) the anticipated life expectancy of the insured, based on the 1958 Commissioners' Standard Ordinary Mortality Table ("1958 CSO Tables").

Applicants assert that Section 27(a)(1) and Rule 6e-2(b)(13)(i) could be read to contemplate that the sales charge under the Contracts will be deducted from Premium Payments prior to their allocation to the Separate Account. Consequently, Guardian's deduction of part of its sales charge as a CDSC may be deemed inconsistent with the foregoing provisions to the extent that the sales charge is deducted from other than premium payments. Applicants thus request exemptions from Section 27(a)(1) and Rule 6e-2(b)(13)(i) to the extent necessary to permit part of the Contracts' sales charge to be deducted as a CDSC upon surrender, Face Amount reduction (including upon partial withdrawal) or lapse.

4. *Sections 26(a)(2) and 27(c)(2)*. Applicants state that Sections 26(a)(2)<sup>13</sup>

<sup>13</sup> Section 26(a)(2) provides, in relevant part, that: "no principal underwriter for a depositor of a registered unit investment trust shall sell any