

and 27(c)(2)¹⁴ may be read to require that proceeds of all Premium Payments under a Contract be deposited in the Separate Account, and that no payment be made from the Separate Account to any Applicant, or any affiliated person thereof, except for bookkeeping and other administrative services. Accordingly, Guardian's imposition of the CDSC may be deemed to be inconsistent with the foregoing provisions to the extent that the deduction could constitute payment for an expense not specifically permitted. Applicants thus request exemptions from Sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the CDSC to be deducted upon surrender, Face Amount reduction (including upon partial withdrawal) or lapse of a Contract.

5. *Sections 2(a)(32), 27(c)(1) and 27(d), Rules 6e-2(b)(12), (b)(13)(iv) and (b)(13)(v).* Sections 2(a)(32), 27(c)(1) and 27(d) prohibit Applicants from selling a Contract unless it is a "redeemable security," defined under Section 2(a)(32) as entitling an owner of a Contract, upon surrender, to receive approximately his or her proportionate share of the Separate Account's current net assets. Section 27(d) provides a Contract owner with certain surrender and sales charge refund rights.

Rules 6e-2(b)(12), (b)(13)(iv) and (b)(13)(v) provide exemptions from Section 27(a)(1), and Rule 6e-2(b)(13)(iv) and (b)(13)(v) afford exemptions from Section 27(d), to the extent necessary for cash value to be regarded as satisfying the redemption and sales charge refund requirements of the 1940 Act. Applicants note, however, that the exemptions afforded by Rules 6e-2(b)(12), 6e-2(b)(13)(iv) and (b)(13)(v) may not contemplate the deduction of the Surrender Charge (*i.e.*, the CDSC and the CDAC). Guardian's

deduction of the Surrender Charge can be viewed as reducing the proceeds that the Contract owner would receive on surrender below a Contract owner's proportionate share of the Separate Account's current net assets.

Further, Applicants note that Rule 6e-2 was adopted at a time when less flexibility regarding payments and other contract features was offered than subsequently has been permitted. Because of these features, Applicants state that it is unclear how the technical sales load computation provisions in Rule 6e-2 apply to the Contracts. Accordingly, because certain provisions of the Contracts' sales charge structure may be inconsistent with the provisions of Sections 2(a)(32), 27(c)(1) and 27(d) and paragraphs (b)(12), (b)(13)(iv) and (b)(13)(v) of Rule 6e-2, Applicants request exemptions from those provisions to the extent necessary to permit part of the Contracts' sales charge to be deducted from Premium Payments and part to be deducted as a CDSC, and to permit the deduction of the CDAC on surrender, Face Amount reduction (including upon partial withdrawal) or lapse.

In addition, Applicants submit that, although Section 2(a)(32) does not specifically contemplate the imposition of a sales charge and an administrative charge at the time of redemption, such charges are not necessarily inconsistent with the definition of "redeemable security." Applicants further submit that the charges are little different, for this purpose, from the "redemption" charge authorized in Section 10(d)(4) of the 1940 Act. Applicants argue that Congress intended that such a redemption charge, expressly described as a "discount from net asset value," be deemed consistent with the concept of "proportionate share" under Section 2(a)(32).

Consistent with Section 2(a)(32), Applicants therefore assert that the Contracts will be "redeemable securities" because the Contracts provide for full surrender for the Net Cash Surrender Value and are expected to provide for partial withdrawals of Cash Surrender Value in excess of the Benchmark value. Applicants represent that the prospectus for the Contracts will disclose the contingent deferred nature of part of the sales charge and of the administrative charges. Accordingly, Applicants state that there will be no restriction on, or impediment to, surrender that should cause the Contracts to be considered other than a redeemable security. Upon surrender or lapse, a Contract owner will receive his or her proportionate share of the Separate Account (*i.e.*, the amount of

net Basic Scheduled Premiums and unscheduled payments made, reduced by the amount of all charges and deductions and increased or decreased by the amount of investment performance credited to a Contract).

6. *Section 22(c) and Rules 6e-2(b)(12) and 22c-1.* Applicants state that Rule 22c-1 prohibits the redemption of a Contract except at its current net asset value next computed after receipt of the request for surrender or partial withdrawal. Rule 6e-2(b)(12) provides exemptions from the redemption procedures mandated by Rule 22c-1. Nonetheless, Applicants submit that the rule may not contemplate the deduction of the Surrender Charge, which can be viewed as causing a Contract to be redeemed at a price based on less than a Contract's current net asset value next computed after full or partial surrender of a Contract. Consequently, the Surrender Charge may be deemed to be inconsistent with the foregoing rules.

Applicants submit that Rule 22c-1 and Rule 6e-2(b)(12) together impose requirements with respect to both the amount payable on surrender and the time as of which such amount is calculated. The requirement of these rules regarding the amount payable to a Contract owner on surrender is essentially the same as the requirements that are explicit or implicit in certain other provisions of the 1940 Act and rules thereunder from which Applicants are requesting exemptions.

Regarding the timing requirement of Rule 22c-1, Applicants state that they will determine the Net Cash Surrender Value under a Contract consistent with their current procedures and in accordance with Rules 6e-2(b)(12)(i) and 22c-1, and on a basis next computed after receipt of a Contract owner's request for surrender of a Contract or partial withdrawal. In addition, Applicants assert that the Commission's purpose in adopting Rule 22c-1 was to minimize (i) dilution of the interests of the other security holders and (ii) speculative trading practices that are unfair to such holders. Applicants state that the CDSC would in no way have the dilutive effect that Rule 22c-1 is designed to prohibit because a surrendering Contract owner would "receive" no more than an amount equal to the Net Cash Surrender Value determined pursuant to the formula set out in his or her Contract and after receipt of the request. Further, variable life insurance contracts do not lend themselves to the kind of speculative short-term trading that Rule 22c-1 was aimed against, and, further, the CDSC would discourage, rather than encourage, any such trading.

security of which the trust is the issuer unless the instrument pursuant to which the security is issued provides that no payment to the depositor or of the principal underwriter for such trust, or to any affiliated person of such depositor or underwriter, shall be allowed the trustee or custodian as an expense, expect that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping and other administrative services of a character normally performed by the trustee or custodian itself."

¹⁴ Section 27(c)(2) provides, in relevant part, that: "it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the proceeds of all payments on such certificate (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having specified qualifications and are held by such trustee or custodian under an indenture or agreement containing specified provisions."