

7. In support of their request for exemptions relating to sales and administrative charges, discussed above, Applicants submit that the deduction on a contingent deferred basis of part of the sales charge and the administrative charge will be advantageous to Contract owners for the following reasons.

a. First, the deferred charge structure has been accepted as an appropriate feature of life insurance products under Rule 6e-3(T) as well as pursuant to exemptive relief granted by the Commission, expands investors choices without sacrificing investor protection, and reinforces the intention that the product be held as a long term investment.

b. Second, the amount of a Contract owner's premium payment allocated to the Separate Account and available to earn a return for a Contract owner will be greater than it otherwise would have been if the sales and administrative charges were deducted from Premiums.

c. Third, Applicants represent that the total dollar amount of a sales load payable under a Contract is no higher than would be permitted by Rule 6e-2(b)(13), if taken entirely as front-end deductions from Premium Payments under a Contract for which all Premium Payments have been paid, as well as from any unscheduled Premium Payments. Moreover, for a Contract owners who does not lapse or surrender in the early Contract years, the dollar amount of the sales load is lower than otherwise would be permitted if taken entirely as front-end deductions. Furthermore, no Surrender Charge is deducted from any Death Benefit paid under a Contract.

Similarly, the total dollar amount of the CDAC under a Contract is no higher than if the charge were taken in full for the first Contract year, and is less for Contract owners who do not lapse, reduce the Face Amount by request or partial withdrawal, or surrender prior to the thirteenth contract year. Applicants represent that this charge has not been increased to take into account the time value of money or the fact that not all Contract owners will incur the charge. Applicants state that Guardian does not anticipate a profit on the CDAC.<sup>15</sup>

d. Fourth, the allocation of a greater amount of Premium Payments to the Separate Account initially reduces the net amount at risk (Death Benefit less Account Value), upon which the cost of insurance charge is based.

8. Applicants submit that if Guardian is not permitted to charge sales and administrative charges in the form of

contingent deferred charges and deducts these charges entirely from premiums, it could be charging continuing Contract owners more than otherwise may be necessary to recover the distribution and issuance costs attributable to such Contract owners. Applicants contend that their charge structure, by contrast, provides greater equity among both Contract owners who surrender and those who continue as Contract owners.

9. Applicants state that the CDSC, consistent with the definition in Section 2(a)(35), is an amount "chargeable to sales or promotional activities." Although not imposed on "payments," Applicants submit that the charge will cover expenses associated with the offer and sales of the Contracts, including commissions paid to sales personnel, promotional expenses and sales administration expenses. Similarly, the CDAC is for estimated administrative expenses connected with the Contracts. Applicants represent that these administrative expenses exclude any costs properly attributable to sales or distribution activity.

10. Applicants contend that the fact that the timing of the imposition of the Surrender Charge may not fall within the literal pattern of all the provisions discussed herein does not change the essential nature of the sales charge structure.

11. Although the methodology for computing sales charges under the Contracts may not have been contemplated by Rule 6e-2 as originally adopted, Applicants represent that the percentage of sales load imposed during the first two Contract Years will be no greater than the sum of: 30% of payments made during the first Contract Year up to an amount equal to an annual Basic Scheduled Premium, plus 10% of payments made during the second Contract Year up to an amount equal to an annual Basic Scheduled Premium, plus 9% of all unscheduled Premium Payments made during the first two Contract Years. Additionally, the percentage of sales load under the Contract will not exceed 9% of Basic Scheduled Premiums expected to be paid over the shorter of 20 years or the expected life expectancy of the insured. Moreover, Guardian does not anticipate making a profit on the CDAC. Therefore, Applicants submit that the Contract is consistent with the principals and policies underlying the limitations of Section 27 and Rule 6e-2(b)(13).

### *C. Deductions From Account Value of the Cost of Insurance, Guaranteed Insurance Amount Charge and Premium Assessments*

1. Applicants submit that Sections 26(a)(2) and 27(c)(2), read together, could be interpreted to prohibit Guardian from deducting the following charges from Account Value: (a) Cost of insurance charge, (b) guaranteed insurance amount charge, and (c) if a Contract Premium is "skipped," charges for Premium Assessments in connection with the Premium Skip Option. Accordingly, Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) and Rule 6e-2(b)(13)(iii)<sup>16</sup> to the extent necessary to permit deduction of these charges from Account Value.<sup>17</sup> Applicants submit that, as described above, the method of deducting these charges is fair and reasonable in that the charges are not designed to yield more revenues than if they were assessed solely against premium payments.

#### *2. Cost of Insurance Charges.*

Applicants submit that the method of deducting this charge is fair and reasonable. Applicants represent that they believe all other variable life insurance contracts provide for cost of insurance deductions from cash value, which under a Contract consists of the unloaned Account Value.

3. *Premium Assessments.* As described above, Premium Assessments are deducted from Premium Payments before the Basic Scheduled Premium (net of Premium Charges) is allocated to the Separate Account. However, when, pursuant to the Premium Skip Option, Premiums are "skipped," and not paid, an amount equal to 90.5% of any Premium Assessment that otherwise would be deducted from a premium will be deducted from Account Value on

<sup>16</sup> Rule 6e-2(b)(13)(iii) provides an exemption from Sections 27(c)(2) and 26(a)(2), subject to certain conditions, which Applicants submit they satisfy as noted herein.

<sup>17</sup> Applicants state that they are not seeking exemptions from these provisions with regard to the maximum handling fee for unscheduled premium payments that may be imposed under the Contracts (which will be deducted from premium payments in reliance on Rule 6e-2(c)(4)(iv), or the CDAC, the partial withdrawal charge, the transfer charge that may be imposed under the Contracts, or the Contract and Administration Charges deducted as part of the monthly deduction (each of which will be deducted pursuant to Rule 6e-2(b)(13)(iii)). Applicants state that each of these charges is reasonable, and in an amount that does not exceed the expenses to which such charge relates that are currently anticipated to be incurred by Guardian over the lifetime of the insureds covered by the Contracts. Applicants represent that the maximum amount of each of these fees and charges is guaranteed not to increase during the term of the Contracts. Guardian does not anticipate realizing a profit on these fees or charges.

<sup>15</sup> Guardian intends to rely on Rule 6e-2(b)(13)(iii)(C) with regard to the CDAC.