each Contract Anniversary on which the "skipped" Premium otherwise would be due or, in later, on the date the Premium Skip Option is effected. The remaining 9.5% is deducted as part of the Premium Charges when any unscheduled Premium Payment is made. Thus, part of the Premium Charges applied to any unscheduled Payment is to collect charges covered by Rules 6e–2(c)(4)(vi) and (vii), which refer to charges for substandard risk and for incidental insurance benefits deducted from Account Value.

Applicants represent that if Premium Assessments were required to be deducted solely from Premiums, it would be necessary for Guardian: (a) to reduce Contract payment flexibility, and/or (b) further limit the classes of insureds for whom a Contract will be available and limit or eliminate the rider benefits to be made available under a Contract. Applicants submit that purchasers and prospective purchasers of a Contract would find these results undesirable.

Rule 6e-2(c)(4), among other things, requires that charges referred to in Rule 6e-2(c)(4)(vi) and (vii) be subtracted from gross payments in determining amounts of "sales load." Rule 6e-2(c)(7)requires the amount of gross premiums attributable to such charges to be subtracted for purposes of determining the amount of "payments" on which sales load percentages are calculated in order to evaluate compliance with Rule 6e-2's various sales load limitations. Accordingly, Applicants subtract any Premium Assessments (including that deducted from Premiums and from Account Value upon exercise of Premium Skip Option) from Premium Payments to compute "sales load" under Rule 6e-2(c)(4) and to compute the amount of payments under Rule 6e-2(c)(7).

Where, because of the payment and other flexibility features of a contract. the entire Premium for a Contract Year is not paid, Rule 6e-2(c)(7) might still require Applicants to deduct certain amounts from any payments that were made, for sales load compliance purposes. These deductions would be for payments made that would be deemed "attributable" to charges for substandard risks and incidental insurance benefits. If this were so, Applicants would subtract the same amount in determining the amount of sales load under paragraph (c)(4) of Rule 6e-2. The amount would be the same because part of any payments deemed "attributable" to such charges would, in effect, be deducted as a portion of Premium Charges, and part would be deducted as a portion of Account Value

upon exercise of the Premium Skip Option.

4. Guaranteed Insurance Amount Charge. Applicants represent that the guaranteed insurance amount charge compensates Guardian for the risk that it assumes in guaranteeing death benefits under a Contract. Applicants submit that this charge essentially is an insurance charge that was not contemplated at the time that the 1940 Act was adopted. Although Rule 6e– 2(c)(4)(iii) provides for such a charge, it does not expressly authorize it to be deducted from Account Value.

Applicants submit that Rule 6e–3(T) authorizes deductions from Account Value for a minimum death benefit guarantee charge in connection with variable life insurance contracts qualified to rely on that rule, conditioned on the life insurer's making certain representations. Further, proposed amendments to Rule 6e–2 would similarly authorize such deductions from Account Value. Accordingly, Guardian makes the following representations and undertakings, which are consistent with the proposed amendments:

(a) The level of the guaranteed insurance amount charge is reasonable in relation to the risks assumed by Guardian under the Contracts. The methodology used to support this representation is based on an analysis of the pricing structure of the Contracts, including all charges, and an analysis of the various risks, including special risks arising out of Contract provisions that allow unscheduled payments and, in certain circumstances, skipping Premiums. Guardian undertakes to keep and make available to the Commission on request the documents or memoranda used to support this representation.

(b) Guardian has concluded that: the proceeds from the sales charges may not cover the expected costs of distribution; surplus arising from the guaranteed insurance amount charge (among other sources) may be used to cover the distribution costs; and there is a reasonable likelihood that the distribution financing arrangements of the Separate Account will benefit the Separate Account and the Contracts owners. Guardian undertakes to keep and make available to the Commission on request a memorandum setting forth basis of this representation; and

(c) The Separate Account will invest only in management investment companies that have undertaken, in the event they should adopt any plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees, as appropriate), a majority of whom are not interested persons of the company, formulate and approve such plan.

D. Request for Exemptions Relating to Use of 1980 CSO Tables

1. As discussed above, Rule 6e-2(b)(1)makes the definition of "sales load" in Rule 6e-2(c)(4) applicable to the Contracts. Section 27(a)(1) prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e-2(b)(13)(i) provides an exception from Section 27(a)(1) to the extent that sales load, as defined in Rule 6e-2(c)(4), does not exceed 9% of payments to be made on the variable life insurance contract during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured based on the 1958 CSO Tables. Rule 6e-2(c)(4), in defining sales load, contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Tables and an assumed investment rate specified in the contract.18

2. Applicants assert it is appropriate that the deduction for the cost of insurance be based on the 1980 CSO Tables in determining what is deemed to be the sales load under the Contracts because: (a) the 1980 CSO Tables ¹⁹ reflect more recent information and data about mortality than the 1958 CSO Tables; (b) use of either the 1958 CSO Tables or the 1980 CSO Tables be permitted under proposed amendments to Rule 6e–2 for purposes of Rule 6e– 2(b)(13)(i) and (c)(4), depending on which relates to the insurance rates guaranteed under a contract; and (c) the

¹⁹ Applicants state that the 1980 CSO Tables were adopted by the National Association of Insurance Commissioners subsequent to adoption of Rule 6e– 2 by the Commission.

¹⁸An assumed investment rate of 4% is specified in the Contract and used for purposes of determining the required Basic Scheduled Premiums. "Assumed investment rate" is defined by Rule 6e-2(c)(5) to be the net rate of investment return specified in the contract which would result in neither an increase nor a decrease in the variable death benefit of the contract above or below the guaranteed minimum death benefit. Applicants submit that this definition accurately describes the Contract's 4% assumed investment rate only so long as all other assumptions used in establishing Basic Scheduled Premiums holds true and only until the Death Benefit is increased in order for the Contract to qualify as life insurance for federal tax law purposes or the variable insurance amount is applicable. Applicants assert, however, the Rule 6e-2(c)(5) has never been interpreted to require that a contract's death benefit always vary in relation to performance above or below the assumed investment rate. Applicants believe it is appropriate to consider 4% to be the assumed investment rate for purposes of Rule 6e-2(c)(5) and, thus, seek no exemptive relief in this regard.