

1980 CSO Tables must be used for all contracts that rely on Rule 6e-3(T).

3. Applicants further represent that: (a) Guardian uses the 1980 CSO Tables to establish Premium rates and determine reserve liabilities for the Contracts; (b) the guaranteed cost of insurance rates under the Contracts are based on the 1980 Tables; (c) the mortality rates reflected in the 1980 CSO Tables more nearly approach the mortality experience which Guardian believes will apply to the Contracts; and (d) for Contracts issued for insured at advance ages, appropriate adjustments have been made in the CDSC structure to ensure that, subject to the other exemptive relief requested herein, the 9% standard prescribed by Rule 6e-2(b)(13)(i) will be met over the expected lifetimes of such insureds, based on the 1980 CSO Tables.

#### *E. Request for Exemptions Relating to Custodianship Arrangements*

1. Applicants state that Section 26(a)(1) and Section 26(a)(2), in effect, prohibit Applicants from selling the Contracts unless the Contracts are issued pursuant to a trust indenture or other such instrument that designates one or more qualified trustees or custodians to have possession of all securities in which Guardian and the Separate Account invest. Applicants submit that Section 27(c)(2), in effect, could be read to prohibit Applicants from selling the Contracts unless the proceeds of all Premium Payments are deposited with a qualified trustee or custodian. Applicants further submit that Rule 6e-2(b)(13)(iii), in relevant part, provides an exemption from Sections 26(a)(1), 26(a)(2) and 27(c)(2), provided that Guardian complies with all other applicable provisions of Section 26 as though it were a trustee or custodian for the Separate Account and assuming it meets the other requirements set forth in the rule.

2. Applicants assert that the holding of Fund shares by Guardian and the Separate Account under an open account arrangement, without having possession of share certificates and without a trust indenture or other such instrument, may be deemed to be inconsistent with the foregoing provisions. Nevertheless, Applicants represent that current industry practice calls for separate accounts organized as UITs, such as the Separate Account, to hold shares of management investment companies in uncertificated form. This practice is believed to contribute to efficiency in the purchase and sale of such shares by separate accounts and to bring about cost savings generally. Therefore, Applicants submit that the

requirements of the 1940 Act and Rule 6e-2 regarding share ownership are inconsistent with current industry practice and its rationale.

3. Applicants further note that the Commission has adopted and proposed the following rules which would grant the requested exemptions: (a) Rules 6e-3(T)(b)(13)(iii)(B) and (C), in effect, grant the requested exemptions, but only for contracts covered by Rule 6e-3(T); (b) proposed Rule 6e-2(b)(13)(iii)(B) would permit a life insurer, such as Guardian, to hold the assets of a separate account without a trust indenture or other such instrument; (c) proposed Rule 6e-2(b)(13)(iii)(C) would permit a separate account organized as a UIT to hold the securities of registered investment companies, such as the Funds, that offer shares to the Separate Account in uncertificated form; and (d) Rule 26a-2, adopted by the Commission, affords exemption essentially similar to those requested here regarding variable annuity contracts. Applicants presume, based on information and belief, that the Commission adopted or proposed the foregoing exemptive rules based on a determination that safekeeping of separate account assets does not necessarily depend on the presence of a trustee, custodian or trust indenture or the issuance of share certificates, where state insurance law protects separate account assets, and open account arrangements foster administrative efficiency and cost savings.

4. The proposed exemptive provisions of Rule 6e-2(b)(13)(iii)(B) and (C) subject a life insurer to certain conditions. Guardian represents that it will: (a) comply with conditions of Rule 6e-2(b)(13)(iii)(B) and (C); (b) comply with all other applicable provision of Section 26 as if it were a trustee or custodian for the Separate Account (subject to the other exemptive relief requested in this application); and (c) will file with the insurance regulatory authority of Delaware an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it (i) has a combined capital and surplus of not less than \$1 million, (ii) is examined from time-to-time by the insurance regulatory authority of Delaware as to its financial condition and other affairs, and (iii) is subject to supervision and inspection with respect to its separate account operations.

5. Applicants further believe that the Commission has determined that compliance with such conditions, which contemplate state protection of separate account assets, will help assure

that the exemptions will be consistent with the public interest, the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

#### *F. Request for Exemptions Relating to Waiver of Notice of Withdrawal and Refund Rights*

1. Section 27(e) and Rules 27e-1 and 6e-2(b)(13)(vii),<sup>20</sup> in effect require a notice of right of withdrawal and refund on Form N-271-1 to be provided to Contract owners entitled to a refund of sales load in excess of the limits permitted by Rule 6e-2b(13)(v). The Contracts limit the amount of the CDSC that may be deducted by excess sales load limits consistent with those set forth in Rule 6e-2(b)(13)(v)(A). Thus, under the Contracts' sales load structure, no excess sales load will be paid by or refunded to a Contract owner surrendering, effecting a Face Amount reduction or lapsing in the first two Contract years.<sup>21</sup>

2. Rule 27e-1(a) specifies that no notice need be mailed when there is otherwise no entitlement to receive any refund of sales load. Rule 27e-1 and Rule 6e-2 were both adopted in the context of front-end loaded products only, and in the broader context of the companion requirements in Section 27 for the depositor or underwriter to maintain segregated funds as security to assure the refund of any excess sales load.

3. Applicants submit that requiring delivery of Form N-271-1 could confuse Contract owners and potentially encourage a Contract owner to surrender during the first two Contract Years against the Contract owner's best

<sup>20</sup> Section 27(e) requires, with respect to any periodic payment plan certificate sold subject to Section 27(d) (which requires the refund of any excess sales load paid during the first 18 months after issuance), written notification of the right to surrender and receive a refund of the excess sales load. Rule 27(e) establishes the requirements for the notice mandated by Section 27(e) and prescribes Form N-271-1 for that purpose. Rule 6e-2(b)(13), which modifies the requirements of Section 27 and the rules thereunder, adopts Form N-271-1 and requires it to be sent to a contract owner upon issuance of a contract and again during any lapse period in the first two contract years. The Form requires statements of (i) the contract owner's right to receive back excess sales load for a surrender during the first two contract years, (ii) the date that the right expires, and (iii) the circumstances in which the right may not apply upon lapse.

<sup>21</sup> Applicants submit that the application of the technical sales load computation provisions in Rule 6e-2 to a modified scheduled premium contract is unclear. Applicants state that the reduction of the CDSC during the first two Contract Years is intended to reflect the requirements of Rule 6e-2 and take into account the Contract's payment flexibility in a manner that is consistent with Rule 6e-3(T)(b)(13)(v)(A), which specifically addresses flexible premium variable life insurance products.