

necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of mortality and expense risk and enhanced death benefit charges from the assets of the Separate Account and any Future Accounts in connection with the Existing Contracts and Future Contracts.

4. Applicants assert that the mortality and expense risk charge of 1.25% is reasonable in relation to the risks assumed by Western National under the Existing Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that these determinations are based upon an analysis of the mortality risks (taking into consideration such factors as the guaranteed annuity purchase rates), the expense risks (taking into account the existence of charges against the Separate Account assets for other than mortality and expense risks), the estimated costs for certain product features and industry practice with respect to comparable variable annuity products. Western National undertakes to maintain at its principal office a memorandum, available to the Commission, setting forth in detail the products analyzed and the methodology and results of this analysis.

5. Applicants assert that the charge of 0.15% for the Enhanced Death Benefit is reasonable in relation to the risks assumed by Western National under the Existing Contracts for providing the Enhanced Death Benefit. Western National undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the risk charge of

0.15% for the enhanced death benefit is reasonable in relation to the risks assumed by Western National under the Existing Contracts.

6. Applicants represent that, before relying on exemptive relief requested in this application in connection with Future Contracts, Applicants will determine that any enhanced death benefit risk charges under such contracts are reasonable in relation to the related risks assumed by Western National under such Future Contracts. Applicants represent that Western National will maintain and make available to the Commission upon request a memorandum setting forth in detail the methodology used in making that determination with respect to Future Accounts.

7. Applicants represent that, before relying on exemptive relief requested in this application in connection with Future Contracts, Applicants will determine that any mortality and expense risk charges under such contracts are reasonable in amount as determined by industry practice with respect to comparable annuity products and/or reasonable in relation to the risks assumed by Western National. Applicants represent that Western National will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion with respect to the Future Accounts.

8. Western National has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. Western National represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

9. Applicants represent that, before relying on exemptive relief requested in this application in connection with Future Contracts or Future Accounts, Applicants will determine that there is a reasonable likelihood that the distribution financing arrangement will benefit the Separate Account and its investors or Future Accounts and their investors. Western National represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

10. Western National represents that the assets of the Separate Account and any Future Accounts will be invested only in underlying mutual funds which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b-1 under the 1940 Act, to have such plan

formulated and approved by their board of directors, the majority of whom are not "interested persons" of such funds within the meaning of Section 2(a)(19) of the 1940 Act.

11. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 2(a)(32), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act, and from Rule 22c-1 promulgated thereunder, to the extent necessary to permit Western National to issue Contracts providing for the Bonus and its recapture if the owner makes a withdrawal prior to the seventh contract anniversary in excess of 10% of the contract value each contract year.

12. Applicants represent that contract owners do not have a vested interest in the principal amount of the Bonus until seven contract years have elapsed from the date of payment of the Bonus by Western National and that, until such time, the Bonus is the property of Western National.

13. Applicants represent that it is not administratively feasible for them to track the Bonus amounts in the Separate Account. Accordingly, the Mortality and Expense Risk Charge, the Administrative Charge and, when applicable, the Enhanced Death Benefit Charge (collectively, the "Asset-Based Charges"), will be assessed against the entire value of each Contract holder's account, including the Bonus amount, even during the period when the Owner's interest in the Bonus has not vested (the first seven Contract years). As a result, during the first seven years of each Contract that includes a Bonus, the aggregate Asset-Based Charges assessed will be higher than those that would be charged if the Contract did not include the Bonus.

14. Applicants represent that the Bonus and its recapture will involve none of the abuses to which Sections 2(a)(32), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), and 27(d) of the 1940 Act and Rule 22c-1 thereunder were intended to prevent. Applicants also state that the Bonus will be attractive to and in the interest of investors because it will permit owners to put 101% of their purchase payments to work for them in the selected investment options. Applicants further explain that the earnings attributable to the Bonus always will be retained by the owner, and the principal amount of the Bonus also will be retained if the initial purchase payment is not withdrawn for seven contract years.

15. Applicants submit that their request for exemptive relief would promote competitiveness in the variable annuity contract market by eliminating the need for redundant exemptive