registered with the SEC as an open-end diversified management investment company. The assets of the Separate Account are segregated from all other Ameritas assets, and are not chargeable with liabilities arising out of any other business which Ameritas may conduct.

4. Investment Corp. is a wholly-owned subsidiary of Ameritas and is the principal underwriter of the Policies. Investment Corp. is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

5. The Policies are issued through the Separate Account pursuant to Rule 6e–3(T) under the 1940 Act. The Policies will provide for (i) lifetime insurance coverage on the named insured up to age 100, (ii) cash value accumulation, (iii) surrender rights, and (iv) loan privileges. The Policies contain two death benefit options. Death benefit proceeds are payable to the beneficiary of Policies upon receipt by Ameritas of satisfactory proof of death. The amount of the death benefit proceeds is equal to: (i) the death benefit, plus (ii) additional life insurance proceeds provided by any riders, minus (iii) outstanding policy loans, minus (iv) any overdue monthly deduction, including the deduction for the month of death. The Policies incorporate a guaranteed death premium feature under which Policies are guaranteed not to lapse during the first three policy years, provided the specified amount of premiums is paid in advance on a monthly or yearly basis.

6. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Code by, among other things, enacting Section 848 thereof which requires that life insurance companies capitalize and amortize over a period of ten years part of their general expenses for the current year. Under prior law, these expenses were deductible in full from the current year's gross income. Section 848, in effect, accelerates the realization of income from specified insurance contracts for federal income tax purposes and, therefore, the payment of taxes on the income generated by those contracts. Taking into account the time value of money, Section 848 increases the tax burden borne by the insurance company because the amount of general deductions that must be capitalized and amortized is measured by premium payments received under specified contracts, such as the Policies. In this respect, the impact of Section 848 can be compared with that of a state premium tax.

7. The Policies to which the tax burden charge (the ''DAC tax charge'') will apply fall into the category of life insurance contracts identified under Section 848 as those for which the percentage of net premiums that determines the amount of otherwise currently deductible general expenses to be capitalized and amortized is 7.7 percent.

8. The increased tax burden resulting from the applicability of Section 848 to every $10,000 of net premiums received may be quantified as follows. In the year when the premiums are received, Ameritas's general deductions are reduced by $731.50—*i.e.*, an amount equal to (a) 7.7 percent of $10,000 ($770) minus (b) one-half year's portion of the ten-year amortization ($38.50). Using a 35 percent corporate tax rate, this computes to an increase in tax for the current year of $256.03 (*i.e.*, $731.50 multiplied by .35). This increase in tax will be partially offset by increased deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770—$77 in each of the following nine years, and $38.50 in the tenth year.

9. Capital which must be used by Ameritas to satisfy its increased federal tax burden under Section 848 (resulting from the receipt of premiums) is not available to Ameritas for investment. Because it seeks an after tax rate of return of 10 percent on its invested capital,[1] Ameritas submits that a discount rate of at least 10 percent is appropriate for use in calculating the present value.

10. Using a corporate tax rate of 35 percent, and assuming a discount rate of 10 percent, the present value of the tax effect of the increased deductions allowable in the following ten years comes to $160.41. Because this amount partially offsets the increased tax burden, applying Section 848 to the specified contracts imposes an increased tax burden on Ameritas equal to a present value of $95.62 (*i.e.*, $256.03 minus $160.41) for each $10,000 of net premiums.

11. Ameritas does not incur incremental income tax when it passes on state premium taxes to contract owners, because state premium taxes are deductible when computing federal income taxes. In contrast, federal income taxes are not tax-deductible when computing Ameritas's federal income taxes. Therefore, to offset fully the impact of Section 848, Ameritas must impose an additional charge that would make it whole not only for the $95.62 additional tax burden attributable to Section 848, but also for the tax on the additional $95.62 itself. This additional charge can be computed by dividing $95.62 by the complement of the 35 percent federal corporate income tax rate (*i.e.*, 65 percent), resulting in an additional charge of $147.11 for each $10,000 of net premiums, or 1.47 percent.

12. Tax deductions are of value to Ameritas only to the extent that it has sufficient gross income to fully utilize the deductions. Based upon its prior experience, Ameritas submits that it is reasonable to expect that virtually all future deductions will be fully taken.

13. Ameritas submits that a DAC tax charge of 1.00 percent of premium payments would reimburse it for the impact of Section 848 on its federal tax liabilities. Ameritas represents that a 1.00 percent charge is reasonably related to its increased tax burden under Section 848, taking into account the benefit to Ameritas of the amortization permitted by Section 848, and the use by Ameritas of a 10 percent discount rate in computing the future deduction resulting from such amortization, such rate being the equivalent of Ameritas's cost of capital.

Applicants' Legal Analysis

1. Pursuant to Section 6(c) of the 1940 Act, the SEC may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision(s) of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is 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. Applicants request an order of the Commission pursuant to Section 6(c) of the 1940 Act, exempting them from the provisions of Section 27(c)(2) of the 1940 Act and 6e-3(T)(c)(4)(v) thereunder to the extent necessary to permit

[1] In determining its cost of capital, Ameritas considered a number of factors. Ameritas first determined a reasonable risk-free rate of return that could be expected to be earned over the long term, based on current market rates, inflation, and expected future interest rate trends. Ameritas then determined the premium it needed to earn over this risk-free rate in order to compensate for the risk profile of the insurance business. Ameritas also took into consideration any information available about the rates of return earned by other mutual life insurance companies. Ameritas represents that these factors are appropriate considerations in determining it cost of capital.

Ameritas also took into account the ratio of surplus to assets that it seeks to maintain. Ameritas represents that maintaining the ratio of surplus to assets is critical to maintaining both competitive ratings from various rating agencies and to offering competitive pricing on new and in force business. Consequently, Ameritas asserts that its surplus must grow at least at the same rate as its assets.