

relief with respect to the same issues addressed in this application.

5. Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks undertaken by the company and within the range of industry practice with respect to comparable annuity products. Applicants base this representation on an analysis of the mortality risks, taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates, the nature of the death benefit provided, the number of transfers permitted without charge and the ability to make free withdrawals. The Company represents that it will maintain at its principal office a memorandum, available to the Commission upon request, setting forth in detail this analysis.

6. Applicants acknowledge that it is possible that the Company's revenues from the contingent deferred sales charge could be less than its costs of distributing the Contracts. In that case, the excess distribution costs would have to be paid out of the Company's general assets, including the profits, if any, from the mortality and expense risk charge. In those circumstances, a portion of the mortality and expense risk charge might be viewed as offsetting a portion of the costs relating to the distribution of the Contracts. The Company represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and Contract Owners. The basis for such a conclusion will be set forth in a memorandum maintained by the Company at its principal office and available to the Commission upon request.

7. The Company represents that the Separate Account will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b-1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

8. Pursuant to Section 6(c) of the 1940 Act, the Applicants also request that the Commission issue an order to provide exemptive relief from Section 22(d) to the extent necessary to permit the Applicants to waive the contingent deferred sales charge under the Contracts and Future Contracts in the event of the contingencies triggering the right to make the medically related or a disability related free withdrawal as defined above.

9. Section 22(d) of the 1940 Act prohibits a registered investment company, its principal underwriter or a dealer in its securities from selling any redeemable security issued by such registered investment company to any person except at a public offering price described in the prospectus. Rule 6c-8 adopted under the 1940 Act permits variable annuity separate accounts to impose a deferred sales charge. Although Rule 6c-8, unlike proposed Rule 6c-10, does not impose any conditions on the ability of the investment company involved to provide for variations in the deferred sales charges, Rule 6c-8 (again unlike proposed Rule 6c-10) does not provide an exemption from Section 22(d). Applicants recognize that the proposed waiver of the contingent deferred sales charge in connection with "medically related free withdrawals" or "disability related free withdrawals" described above could be viewed as causing the Contracts to be sold at other than a uniform offering price. Rule 22d-1 is not directly applicable to Applicants' proposed waiver of the contingent deferred sales charge because that rule has been interpreted as granting relief only for scheduled variations in front-end sales loads, not deferred sales loads.

10. Rule 22d-2 under the 1940 Act exempts registered variable annuity accounts, their principal underwriters, dealers and their sponsoring insurance companies from Section 22(d) to the extent necessary to permit variations in the sales load or in any administrative charge or other deductions from the purchase payments, provided that such variations reflect differences in costs or services, are not unfairly discriminatory and are adequately described in the prospectus. Applicants, however, do not represent that the waiver of the withdrawal charge under the defined circumstances reflects differences in sales costs or services, and, for that reason, Applicants do not rely on Rule 22d-2 for the requested relief, even assuming that Rule 22d-2 does apply to deferred sales loads.

11. Applicants submit that the proposed waiver is consistent with the policies of Section 22(d) and the rules promulgated thereunder. One of the purposes of Section 22(d) is to prevent an investment company from discriminating among investors by charging different prices to different investors. Applicants represent that, to the extent permitted by state law, the provisions relating to "medically related free withdrawals" or "disability related free withdrawals" will be included in all Contracts. Eligibility will be based on the Contract Owner experiencing the

defined medically related contingencies. Therefore, the benefit will not unfairly discriminate among Contract Owners. Applicants submit that the waiver is advantageous to Contract Owners by permitting them, upon experiencing a defined contingency, to make withdrawals from the Contract without imposition of the contingent deferred sales charge. Applicants represent that the waiver will not result in dilution of the interests of any other Contract Owners. Applicants also submit that waiving the contingent deferred sales charge under such circumstances will not result in the occurrence of any of the abuses that Section 22(d) is designed to prevent.

12. Applicants represent that the waiver of the contingent deferred sales charge in connection with "medically related free withdrawals" and "disability related free withdrawals" meets the substantive requirements of Rule 22d-1 in that the waiver will be uniformly available to all eligible Contract Owners, except where prohibited by state law, and that this provision will be adequately described in the prospectus of the Contracts.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from Sections 22(d), 26(a)(2) and 27(c)(2) of the 1940 Act to permit the Company (i) to deduct the mortality and expense risk charge from the assets of the Separate Account under the Contracts and (ii) to waive the contingent deferred sales charge for defined "medically related free withdrawals" and "disability related free withdrawals" under the Contracts meet the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Affordable Housing Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.