performance of the investments chosen by Contract owners, provided the Contract remains in force. The variable insurance amount provides for an initial basic insurance amount, but favorable investment performance and the payment of additional premiums generally will result in an increase in the death benefit.

6. After paying the initial premium, Contract owners generally are free to pay premiums at any time and in any amount (above a minimum of $25), and the Contracts will not lapse if the Contract fund is sufficient to cover monthly fees and charges deducted from the account value.[1] If the Contract owners pays premiums at or above certain levels, the Contract owner will be entitled to guaranteed death benefits even if poor investment performance results in the Contract fund dropping below the amount needed to pay charges due under the Contract. if target premiums are paid at the beginning of each Contract year, the Contract will stay in force during the defined period known as the limited death benefit guaranteed period (assuming no loans or withdrawals).[2] The target premiums will be level if the Contract contains no riders or extra risk charges. If the Contract includes certain riders, these premiums may increase each year, reflecting increasing rider charges. The target level premium, the premium used by Prudential to calculate the applicable charges for sales expenses, is the target premium less premiums for single life riders, and any premiums associated with aviation, avocation, occupational, or temporary extras. The target level premium is always less than the guideline annual premium as defined in Rule 6e–3(T)(c)(8).

7. certain fees and charges are deducted under the Contracts. Each Sub-Account is assessed a daily mortality and expense risk charge, as well as monthly administrative charges, cost of insurance charges, charges for optional rider benefits, charges to compensate Prudential for the risk in providing the death benefit guarantee, and charges for special insurance class rating, if any. In addition to these daily and monthly charges, Prudential will charge the lesser of 2% or $10 for each partial withdrawal, reserving the right to increase this charge to the lesser of 2% or $25. Prudential also will charge up to $25 for each transfer among investment options exceeding 12 in any Contract year. Prudential does not currently impose a charge for decreasing the basic insurance amount but reserves the right to charge up to $25 for each decrease.

8. In addition, Prudential will deduct from each premium payment a charge for taxes attributable to premiums. This charge currently consists of two parts: (1) an amount based on an average of state and local premium taxes—presently, 2.5% of each premium payment; and (2) a charge to cover the estimated cost of an increase in Prudential's federal income tax liabilities that is measured by premiums received, and currently is 1.25% of each payment.

9. During the first 20 Contract years, Applicants also propose to deduct from premium payments a sales charge. This change will be equal to: (1) for the first Contract year, 30% of all premiums up to the amount of the target level premium and 4% of premiums paid in excess of the target level premium (''Excess Premiums''); and (2) for Contract years 2 through 20, 7.5% of all premiums paid in each Contract year to the target premium and 4% for Excess Premiums paid in each such Contract year. If the average age of the insureds is 58 years or more, these charges may be reduced to comply with the sales charge limitations contained in Rule 6e–3(T) under the 1940 Act.

Applicants' Legal Analysis

1. Section 27(a)(3) of the 1940 provides that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment. Section 27(a)(3) further provides that the sales charge deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment.

2. Rule 6e–3(T)(b)(13)(ii) provides a partial exemption from the prohibitions of Section 27(a)(3). Exemptive relief from the prohibitions of Section 27(a)(3) provided by Rule 6e–3(T)(ii) is available if the proportionate amount of sales charge deducted from any premium does not exceed the proportionate amount deducted from any prior premium payment, unless an increase is caused by reductions in the annual cost of insurance or in sales charge for amounts transferred to a variable life insurance contract from another plan of insurance. Rule 6e–3(T)(b)(13)(ii) thus permits a decrease in sales load for any subsequent premium payment but not an increase.

3. Under the Contracts' sales load structure, premium payments that do not exceed the target level premium in a year will be subject to a 30% sales charge in the first year and 7.5% in each subsequent year up to the 20th Contract year. Excess Premium payments in each such year, however, will be subject to only a 4% sales charge. Consequently, if a Contract owner pays Excess Premiums in the Contract year, the Contract owner will pay one level of sales charge on the portion of the premium up to the target level premium and a lower sales charge on the Excess Premiums paid in that same Contract year. Applicants thus request an exemption from the requirements of Section 27(a)(3) and Rule 6e–3(T)(b)(13)(ii) because the Contracts' sales load structure would appear to violate the ''stair-step'' provisions in Section 27(a)(3) and because the exemption from Section 27(a)(3) provided by Rule 6e–3(T)(b)(13)(ii) does not seem to apply to the Contracts' sales load structure.

4. Applicants state that, had they chosen to impose the higher front-end sales load equally on all premium payments, the Contracts would qualify for exemptive relief under Rule 6e–3(T)(b)(13)(ii), subject to the maximum limits permissible under subparagraph (b)(13)(i) of the Rule. Applicants assert, however, that such a front-end charge would be less favorable to Contract owners than provided under the Contracts; under such a sales charge structure, sales load would be recovered by Prudential earlier than is the case under the Contracts' sales load structure. The sales charge structure under the Contracts benefits Contract owners by spreading Prudential's recovery of sales load over a longer period of time, and thereby permitting a greater portion of a Contract owner's Excess Premiums to be credited to account value.

5. In addition, Applicants represent that the sales load structure has been designed based on Prudential's operating expenses for the sale of the Contracts and, thus, reflects in part the lower overall distribution costs (including commissions paid to sales persons) that are associated with Excess Premiums paid over the life of a Contract. Applicants submit that it would not be in the best interests of a Contract owner to require the imposition of a higher sales load

[1] The Contract fund is defined as the total amount credited to a specific Contract and is equal to the sum of all amounts invested in the account and any earnings thereon, the amount invested in the fixed-rate option and earnings thereon, and the principal amount of any Contract debt.

[2] The Contract also allows the Contract owner to choose to pay guideline premiums that, if paid at the beginning of each Contract year, will keep the Contract in force for the life of the Contract regardless of investment performance (assuming no loans or withdrawals). As discussed below, the sales, charges for the Contract are, however, always computed with reference to the target level premium, not the issuer's higher guideline premium required to guarantee the death benefit for life.