

accumulation phase and the "pay-out" annuity phase. The Company relies upon Rule 26a-1 to assess the Administration Charge, and will monitor the proceeds of the Administration Charge to ensure that they do not exceed expenses without profit.

6. There are no sales charges under the Contracts.

7. The Company will assess a mortality and expense risk charge at an annual rate of 1.25% of the daily net value of the Separate Account. Of this amount, .80% represents mortality risks and .45% represents expense risks.

The mortality risks the Company assumes arise from (1) the guarantee to make monthly payments for the lifetime of the annuitant regardless of how long the annuitant may live; and (2) the guaranteed minimum death benefit risk assumed by the Company in connection with its promise to return, upon the death of the annuitant, the greatest of the Contract value as of the most recent five-year anniversary of the Contract, total purchase payments, or the Contract value at the time of death. The expense risk the Company assumes is the guarantee that the Administration Charge will never be increased regardless of the actual expense incurred by the Company.

#### Applicants' Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act require that all payments received under a periodic payment plan certificate be held by a qualified trustee or a custodian under a trust indenture, and prohibit any payment to the depositor of or a principal underwriter for a registered unit investment trust except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants request an order under Section 6(c) exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to issue Contracts subject to the proposed mortality and expense risk charge.

3. The Company represents that the level of the mortality and expense risk charge is within the range of industry practice for comparable annuity products and is reasonable in relation to the risks assumed under the Contracts. The Company bases this representation on its analysis of publicly available information regarding other insurance companies of similar size and risk ratings offering similar products. Applicants represent that the Company will maintain a memorandum, available to the Commission, setting forth in

detail the products analyzed in the course of, and the methodology and results of, its comparative survey. The Company also maintains, and will make available to the Commission upon request, a supporting actuarial memorandum demonstrating the reasonableness of the mortality and expense risk charge.

4. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk, the loss will be borne by the Company. If the mortality and expense risk charge proves more than sufficient, the excess will be a profit to the Company, and will become a part of the Company's general account surplus.

5. The Company advances sales commissions from its surplus and intends to recover sales expenses through the long-term profitability, if any, derived from the mortality and expense risk charge. If long-term profitability does not materialize, the Company will bear the shortfall in its general account. The Company represents that there exists a reasonable likelihood that this distribution financing arrangement will benefit the separate Account and the Contract owners. Applicants also represent that the basis of this conclusion is set forth in a memorandum maintained on file by the Company which will be made available to the Commission upon its request.

6. The Applicants represent that investments of the Separate Account will be made only in investment companies that, if they adopt any distribution financing plan under Rule 12b-1 under the 1940 Act, will have boards of trustees or directors, the majority of which will not be interested persons as defined in the 1940 Act. Applicants further represent that such boards of directors or trustees must formulate and approve any such distribution plan.

#### Conclusion

Applicants assert that based on the reasons and the facts set forth above, their requested exemptions from Sections 26(c)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Separate Account under the Contracts are 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.

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

**Margaret M. McFarland,**

*Deputy Secretary.*

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#### Heritage Cash Trust, et al.; Notice of Application

January 26, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Heritage Cash Trust ("HCT"), Heritage Capital Appreciation Trust ("HCAT"), Heritage Income-Growth Trust ("HIGT"), Heritage Income Trust ("HIT"), Heritage Series Trust ("HST"), Heritage Asset Management, Inc. (the "Adviser"), and Raymond James & Associates, Inc. (the "Distributor"), and any other open-end management investment companies created in the future, for which the Adviser, or any person directly or indirectly controlling, controlled by, or under common control with the Adviser, serves as investment adviser, and/or for which the Distributor, or any person controlled by or under common control with the Distributor, serves as principal underwriter (collectively, the "Funds").

**RELEVANT ACT SECTIONS:** Order requested pursuant to section 6(c) granting an exemption from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit certain open-end management investment companies to issue and sell multiple classes of shares representing interests in the same portfolios of securities, assess a contingent deferred sales charge ("CDSC") on certain redemptions, defer, and waive the CDSC in certain instances.

**FILING DATES:** The application was filed on August 15, 1994 and amended on November 29, 1994, December 19, 1994 and January 25, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be