Charge may be waived in the event of the death of the owner; and (iii) the death benefit must be provided before the annuity date. The charge is deducted from each portfolio of the Separate Account during each valuation period at an annual rate of 0.90% of the net asset value of each portfolio. If the mortality risk charge is insufficient to cover the actual costs of assuming the mortality risks, First SunAmerica will bear the loss; if the charge proves more than sufficient, the excess will be a gain to First SunAmerica. To the extent First SunAmerica realizes any gain, those amounts may be used at its discretion—including to offset losses experienced when the mortality risk charge is insufficient. The mortality risk charge may not be increased under the Contract.

13. First SunAmerica bears the risk that the contract administration charge will be insufficient to cover the cost of administering the Contracts. For assuming this expense risk, First SunAmerica deducts an expense risk charge form the Separate Account during each valuation period at an annual rate of 0.35% of the net asset value of each portfolio. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts, First SunAmerica will bear the loss; if the charge is more than sufficient, the excess will be a gain to First SunAmerica. To the extent First SunAmerica realizes any gain, those amounts may be used at its discretion—including to offset losses when the expense risk charge is insufficient. The expense risk charge may not be increased under the Contract.

14. Applicants represent that the aggregate amount of any Withdrawal Charges imposed and distribution expense charges paid will never exceed 9% of purchase payments previously made, and that First SunAmerica will monitor each owner's account for the purpose of ensuring that this limitation is not exceeded. Applicants undertake to include in the prospectus forming part of the registration statement for the Contracts statements describing the purpose of the distribution expense charge, and statements that the staff of the Commission deems such charge to constitute a deferred sales charge. Applicants undertake to abide by the representations and undertaking set forth in this paragraph relating to the distribution expense charge in connection with any future contracts, as well as materially similar contracts funded through future separate accounts, relying on the requested order.

Applicants' Legal Analysis

1. Applicants hereby request that the Commission, under Section 6(c) of the 1940 Act, grant exemptions from Section 26(a)(2) and 27(a)(2) thereof to the extent necessary to permit the deduction of mortality and expense risk charges and a distribution expense charge: (i) From the Separate Account under the Contracts and under any future contracts; and (ii) from the assets of any future separate accounts which offer contracts materially similar to the Contracts.

2. Pursuant to Section 6(c) of the Act, the Commission 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 or provisions 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.

3. Sections 26(a)(2) and 27(c)(2) of the 1940 Act require, among other things, that all payments received under a periodic payment plan certificate sold by a registered unit investment trust, any depositor thereof or underwriter therefor, be held by a qualified bank as trustee or custodian, under arrangements which prohibit any payment to the depositor or principal underwriter except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

4. Applicants believe that extending the requested relief to the future contracts, as well as to materially similar contracts funded through future separate accounts, is 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. Applicants submit that such an order would promote competitiveness in the variable annuity contract market by eliminating the need for First SunAmerica to file redundant exemptive applications, thereby reducing First SunAmerica's administrative expenses and maximizing the efficient use of First SunAmerica's resources. The delay and expense involved in having to seek exemptive relief repeatedly would impair the First SunAmerica's ability effectively to take advantage of business opportunities as they arise. Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Applicants submit that if First SunAmerica were required repeatedly to seek exemptive relief with respect to the issues addressed in this application, investors would not receive any benefit or additional protection thereby.

5. Applicants assert that the aggregate of the mortality and expense risk charges, 1.25%, is reasonable in relation to the risks assumed by First SunAmerica under the Contracts and reasonable in amount, as determined by industry practice with respect to comparable annuity products. Applicants state that these determinations are based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees, and guaranteed annuity rates. First SunAmerica undertakes to maintain at its home office, and make available to the Commission upon request, a memorandum detailing the methodology used in making these determinations.

6. Similarly, before relying on any exemptive relief granted herein with respect to any future contracts or any materially similar contracts funded through future separate accounts, Applicants will determine that the mortality and expense risk charges under any such contracts will be reasonable in relation to the risks assumed by First SunAmerica and reasonable in amount, as determined by industry practice with respect to comparable annuity products. First SunAmerica will maintain at its home office, and make available to the Commission upon request, a memorandum detailing the methodology used in making these determinations.

7. First SunAmerica submits that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. First SunAmerica represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis for such conclusion. Similarly, before relying on any exemptive relief granted herein with respect to any future contracts or to any materially similar contracts issued by future separate accounts, Applicants will determine that there is a reasonable likelihood that the distribution financing arrangement will benefit the Separate Account (or