electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor. Currently, orders for up to 100 options contracts are eligible for AUTOM and public customer orders for up to 25 contracts are eligible for AUTO–X, the automatic execution feature of AUTOM.[2] AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO–X are handled manually by the specialist. The current proposal does not impact AUTO–X order size eligibility.

The Exchange proposes to increase the maximum eligible size of AUTOM orders from 100 to 500 contracts. This change is intended to extend the benefits of AUTOM to additional users. The Exchange notes that the maximum AUTOM order size has remained the same since 1990. In light of the PHLX's experience with AUTOM over the past seven years, including five years during which the maximum AUTOM order size has been 100 contracts, the Exchange believes that it is appropriate, at this time, to increase the maximum size of the option orders eligible for routing and delivery through AUTOM to 500 contracts. The PHLX notes that the most recent change, in 1990, increased the eligible order size for AUTOM from 10 to 100 contracts.[3]

The PHLX states that the AUTOM system has sufficient capacity to operate with a maximum order size of 500 contracts, such that AUTOM and AUTO–X functioning would not be adversely affected by the proposal.

Accordingly, the PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest by extending the benefits of AUTOM, including prompt and efficient order handling, to orders for up to 500 contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after May 23, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes that the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13895 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

(December 30, 1993), 59 FR 790 (order approving File No. SR–PHLX–93–57, extending pilot through 31, 1994).

[2] The Commission recently approved a PHLX proposal to codify the use of AUTOM and AUTO–X for index options. *See* Securities Exchange Act Release No. 34920 (October 31, 1994), 59 FR 5510 (November 7, 1994) (order approving File No. SR–PHLX–94–40). In addition, the Commission has approved a PHLX proposal to codify the Exchange's practice of accepting certain orders for AUTOM and AUTO–X. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 60 FR 19616 (April 19, 1995) (order approving File No. SR–PHLX–95–18). AUTO–X was approved as part of the AUTOM pilot program in 1991. *See* Securities Exchange Act Release No. 28978, *supra* note 1.

[3] *See* Securities Exchange Act Release No. 28516 (October 3, 1990), 55 FR 41408 (October 11, 1990) (order approving File No. SR–PHLX–90–18).

[4] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–21104; No. 812–9200]

The Guardian Insurance & Annuity Company, Inc., et al.

May 31, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: The Guardian Insurance & Annuity Company, Inc. (''Guardian''), The Guardian Separate Account K (''Separate Account'') and Guardian Investor Services Corporation (''Guardian Services'').

RELEVANT 1940 ACT SECTIONS Order requested under Section 6(c) granting exemptions from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2), 27(d), and 27(e) of the 1940 Act, and paragraphs (b)(1), (b)(12), (b)(13)(i), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(vii), (c)(1), (c)(4) of Rule 6e–2, and Rules 6e–3(T)(c)(4)(v), 22c–1 and 27e–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to offer and sell certain variable whole life insurance contracts with modified scheduled premiums (''Contracts'') that provide for: (1) A death benefit that may or may not vary based on investment experience; (2) a sales charge deducted from premium payments and as a contingent deferred sales charge; (3) a contingent deferred administrative charge; (4) deduction from Account Value for cost of insurance charges, guaranteed insurance amount charges, substandard mortality risks and incidental insurance benefits, including a Premium Skip Option; (5) values and charges based on the 1980 Commissioners' Standard Ordinary Mortality Tables (''1980 CSO Tables''); (6) the holding of underlying fund shares by the Separate Account without the use of a trustee under an open account arrangement and without trust indenture; and (7) a waiver of notice of refund and withdrawal rights. Applicants also request exemptive relief to deduct a charge from premium payments received under the Contracts, and from premiums received under certain single premium, scheduled premium and flexible premium variable life insurance contracts (''Other Contracts'') to be issued by Guardian through the Separate Account or any other separate account established by Guardian (''Future Accounts''), to compensate Guardian for its increased federal tax burden resulting from the receipt of such premiums.[1]

FILING DATE: The application was filed on August 29, 1994 and amended on May 4, 1995. Applicants have represented that the application will be amended during the notice period to reflect certain representations made herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 26, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Richard T. Potter, Esq., The Guardian Insurance & Annuity Company, Inc., 201 Park Avenue, South, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Wendy Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Guardian is a stock life insurance company and a wholly-owned subsidiary of The Guardian Life Insurance Company of America. Guardian is authorized to conduct a life insurance business in all 50 States and the District of Columbia.

2. The Separate Account is registered as a unit investment trust (''UIT) under the 1940 Act and interests in the Contracts are registered under the Securities Act of 1933 (''1933 Act''). Future Accounts will be registered under the 1940 Act as UITs. The Separate Account and the Future Accounts will be used to support the Contracts or the Other Contracts.

The Separate Account currently consists of six investment divisions (''Investment Divisions''), each investing in a corresponding fund registered under the 1940 Act as a diversified open-end management company (''Fund'' or collectively, ''Funds''). The Funds serve as underlying funding vehicles for the Contracts. Each Fund is managed by a registered investment adviser. Additional Investment Divisions may be established in the future and may invest in the Funds or in other underlying investment vehicles.

3. Guardian Services, the principal underwriter for the Contracts, is a registered broker-dealer under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

4. Under the Contracts, premiums may be paid on a scheduled or an unscheduled basis (collectively, ''Premium Payments''), subject to certain exceptions and conditions. Each Premium Payment is subject to ''Premium Assessments'' which are paid in connection with a Contract issued on a substandard basis and for supplemental insurance benefits provided by rider or endorsement. If, however, the ''Premium Skip Option'' is elected,[2] 90.5% of Premium Assessment otherwise payable from Premium Payments is deducted from Account Value. The remaining Premium Payment (''Basic Scheduled Premium'')[3] is used to purchase base Contract coverage and is reduced by certain Premium Charges, discussed below.[4]

Each unscheduled Premium Payment also is subject to deduction of Premium Charges, including the remaining 9.5% of Premium Assessment otherwise payable from Premium Payments if the Premium Skip Option is in effect. Thus, Premium Assessments usually are deducted from Premium Payments before sales load and other charges against Premiums are imposed. Premium Assessments deducted from Account Value (under the Premium Skip Option), in effect, are deductions from amounts previously subject to Premium Charges (which are equal to a total of 9.5% of Premiums until the cumulative total of Basic Scheduled Premiums and unscheduled Premium Payments is an amount equal to twelve Basic Scheduled Premiums). Accordingly, a discounting of Premium Assessments deducted from Account Value reflects the fact that the deductions are being made from post-premium charge amounts. Net Premiums are credited to Account Value and allocated to the Investment Divisions, or to the Fix-Rate Option, as specified by the Contract owner.

5. Two Death Benefit Options are available: (1) ''Option 1 Death Benefit,'' equal to the Face Amount of a Contract until the Contract Anniversary nearest the insured's 100th birthday; and (2) ''Option 2 Death Benefit,'' equal to the

[1] Applicants represent that the application will be amended during the notice period to delete Future Accounts as applicants and to request that exemptive relief to deduct such a charge be extended to Future Accounts in connection with the offering of Other Contracts.

[2] A Premium Skip Option permits the Contract owner, after the first Contract Year, to skip annual Premium Payments without the Contract lapsing, subject to certain conditions.

[3] The Basic Scheduled Premium initially is calculated at the issuance of the Contract and thereafter on each subsequent date that a Contract premium is due until the later of: (a) the Contract Anniversary nearest the insured's 70th birthday; or (b) the 10th Contract Anniversary (''Guaranteed Premium Period''). After the Guaranteed Premium Period, the Basic Scheduled Premium will be reviewed on each ''Contract Review Date'' (the monthly date prior to each Contract anniversary). If on that date the Account Value is: (a) less than the ''Benchmark Value,'' then the Basic Scheduled Premium will be increased to no more than the ''maximum'' amount set forth in the Contract; or (b) higher than the Benchmark Value, then the Basic Scheduled Premium could be reduced to no less than the Basic Scheduled Premium payable during the Guaranteed Premium Period.

The Benchmark Value approximately equals the Account Value needed on a Contract Anniversary for the Contract to endow at age 100 for the Face Amount, assuming (a) all Basic Scheduled Premiums are paid when due and do not increase after the Guaranteed Premium Period due to re-determination on a Review Date; (b) no unscheduled payments, partial withdrawals, reductions in Face Amount, or loans have been or will be made; (c) a level net annual rate of return on Account Value of 4%; and (d) deduction on each Monthly Date of the maximum Contract Charge, Administrative Charge, Guaranteed Insurance Amount and Cost of Insurance Charges.

[4] The portion of a Premium Payment that consists of Premium Assessments is not subject to Premium Charges.

Face Amount of a Contract plus the excess of Account Value on the date of death over a Contract's "Benchmark Value" for the applicable Contract Year, adjusted to the date of death until the Anniversary nearest the insured's 100th birthday. Under either Option, Death Benefits are guaranteed not to be less then a Contract's then-current Face Amount as long as Premium Payments are made, or excused, and there is no outstanding Contract Debt. If, however, a greater Death Benefit would be provided under either one of two "Alternative Death Benefits," (a) the minimum death benefit required under Section 7702 of the Code, or (b) the variable insurance amount, then the greater Alternative Death Benefit will be paid. Thus, the Death Benefit under either Option 1 or Option 2 varies with investment experience when the Account Value is sufficiently large that: (a) the Death Benefit is increased in order for a Contract to qualify as life insurance for federal tax law purposes; or if greater, (b) the Death Benefit is increased to the variable insurance amount. This may occur because of favorable investment experience, unscheduled Premium Payments, imposition of lower than guaranteed charges, or a combination of these factors.

6. Various fees and expenses are deducted from Premium Payments under the Contracts:

a. Premium Charges: The following charges are deducted from each Premium Payment:

(1) *Sales Charge:* A Premium Sales Charge equal to 6.0% of all Premium Payments until the cumulative total of all such Payments is equal to twelve Basic Scheduled Premiums; thereafter, the charge will be equal to 3.0% of all such payments.

(2) *Premium Tax Charge:* A State Premium Tax Charge of 2.5% which is an approximate average of the rates Guardian expects to pay in all states over the lifetime of the insureds covered by the Contracts. Guardian reserves the right to increase if its premium taxes increase due to a change in state law.

(3) *Federal Premium Tax Burden Charge:* A charge of 1.0% to compensate Guardian for an increase in its federal income tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986 ("Code"), as amended by the Omnibus Budget Reconciliation Act of 1990 ("OBRA").

(4) *Processing Charge:* Guardian reserves the right to impose a maximum charge of $2.00 from each unscheduled Premium Payment received for processing costs, including recordkeeping. Guardian does not expect a profit from this fee, if imposed.

b. Transaction Charges: The following charges are deducted proportionately from Account Value attributable to the Investment Divisions until the Account value is depleted, and then from the Fixed-Rate Option:

(1) *Surrender Charge:* A Contingent Deferred Sales Charge ("CDSC") and a Contingent Deferred Administrative Charge ("CDAC") are deducted during the first 12 Contract Years upon withdrawal, surrender, reduction in Face Amount, or lapse.

(A) CDSC:[5] For an insured age 78 or less, the lesser of (i) 36% of the annual Basic Scheduled Premium payable for the first Contract Year, less the sum of 3% of all Basic Scheduled Premiums and unscheduled Premium Payments actually paid under the Contract up to the date that the Surrender Charge is incurred and any deferred sales charges deducted for prior Face Amount reductions; or (ii) a percentage of the then payable annual Basic Scheduled Premium specified in the following chart for the Contract Year during which the Surrender Charge is applied:

Contract year[6]	Percentage
1	36
2	33
3	30
4	27
5	24
6	21
7	18
8	15
9	12
10	9
11	6
12	3
13+	0

(B) CDAC: The CDAC compensates Guardian for certain administrative expenses as follows (per $1,000 Base Contract Face Amount), subject to certain decreases associated with a reduction in Face Amount:

ADMINISTRATIVE SURRENDER CHARGE

Year (ages)	1	2	3	4	5	6	7	8	9	10	11	12	13+
00–27	2.4	2.20	2.0	1.80	1.6	1.40	1.2	1.00	0.8	0.60	0.4	0.20	.00
28–29	3.0	2.75	2.5	2.25	2.0	1.75	1.5	1.25	1.0	0.75	0.5	0.25	.00
30–31	3.6	3.30	3.0	2.70	2.4	2.10	1.8	1.50	1.2	0.90	0.6	0.30	.00
32–33	4.2	3.85	3.5	3.15	2.8	2.45	2.1	1.75	1.4	1.05	0.7	0.35	.00
34–80	4.8	14.40	4.0	3.60	3.2	2.80	2.4	2.00	1.6	1.20	0.8	0.40	.00

(2) *Partial Withdrawal Administration Charge:* The lesser of $25 or 2% of the amount withdrawn for certain administrative costs. Guardian does not expect to profit from this charge.

(3) *Transfer Charge:* Guardian reserves the right to deduct $25 for each transfer in excess of four transfers during a Contract Year. No transfer charge will be imposed in connection with dollar cost averaging feature or loans. Guardian does not expect to profit from this charge.

(4) *Premium Skip Option Charge:* An amount equal to 90.5% of any Premium Assessment that otherwise would be deducted from an annual Premium will be deducted on each Contract Anniversary on which the "skipped" Premium otherwise would be due or, if later, on the date the Premium Skip Option is effected. The remaining 9.5% is deducted as part of the Premium Charges for any unscheduled Premium Payment.

c. Monthly Deductions: The following charges are deducted monthly proportionately from Account Value attributable to each Investment Division and the Fixed-Rate Option, ending on

[5] The total sales charge (Premium Sales Charge and CDSC) is subject to a maximum of 9% of Basic Scheduled Premiums paid under the Contract over the shorter of 20 years or the insured's anticipated life expectancy.

[6] In order to preclude the possibility that Guardian would be required to refund any sales load, the Contracts provide that the CDSC imposed during the first two Contract Years will be no greater than the sum of: 24% of payments made during the first Contract Year up to an amount equal to an annual Basic Scheduled Premium; plus 4% of payments made during the second Contract Year up to an amount equal to an annual Basic Scheduled Premium; plus 3% of all unscheduled payments made during the first two Contract Years.

the Contract Anniversary nearest the insured's 100th birthday:

(1) *Contract Charge and Administration Charge:* The Contract charge is equal to $10 per month during Contract Years 1 through 3, and $4 per month thereafter (guaranteed not to exceed $8 per month). The Administrative Charge is equal to $0.02 to $0.04 (increasing with issue age) per $1,000 of Face Amount during the first 12 Contract Years, and $0.015 per $1,000 of Face Amount thereafter, for underwriting, issuing and maintaining the Contract. Guardian does not expect to profit from these charges.[7]

(2) *Guaranteed Insurance Amount Charge:* $0.01 per $1,000 of Face Amount to compensate Guardian for the risk it assumes by guaranteeing that a Contract will remain in force if all premiums have been paid when due and no loans have been taken, regardless of the investment experience of the Investment Division; and

(3) *Cost of Insurance Charge:* A charge, based on the 1980 CSO Tables (discounted at the monthly equivalent of 4% per year), is deducted and calculated by multiplying the net amount at risk on a Monthly Date (amount by which the Death Benefit on the first day of the Contract month exceeds the Account Value on the same day, after monthly deductions for contract and administration charges and the Guaranteed Insurance Amount charge have been processed) by the applicable monthly cost of insurance rate, divided by $1,000.

d. Separate Account Charges: Each Investment Division currently is assessed a charge for mortality and expense risks that Guardian assumes, at a current effective annual rate of .60% of the value of its assets. Guardian reserves the right to increase the mortality and expense risk charge up to a maximum effective annual rate of .90%, subject to further Commission authorization. Guardian assumes a mortality risk under the Contracts that insured may live for shorter periods of time than estimated, and assumes an expense risk that its actual costs of issuing and administering the Contracts may be more than it estimated. No charge currently is deducted from Separate Account assets for income taxes attributable to the Separate Account or the Contracts. Guardian reserves the right to impose such charges if the income tax treatment of variable life insurance changes, or if there is a change in Guardian's tax status.

e. Fund Expenses: Charges for investment advisory and other expenses incurred by the Funds are deducted from assets of the relevant Fund and are indirectly borne by Contract owners.

Applicants' Legal Analysis

Section 6(c) authorizes the Commission, by order and upon application, to exempt any person, security, or transaction, or class of persons, securities, or transactions, from any provisions of the 1940 Act. The Commission grants relief under Section 6(c) to the extent an 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. For the reasons stated below, Applicants assert that the requested exemptions satisfy the standards of Section 6(c).

A. Request for Exemptions Relating to Definition of ''Variable Life Insurance Contract''

1. Applicants note that Rule 6c–3 under the 1940 Act provides that a separate account that meets the requirements of Rule 6e–2(a)[8] and registers as an investment company under the 1940 Act also is exempt from the 1940 Act provisions set forth in Rule 6e–2(b), except for Sections 7 and 8(a), under the same terms and conditions as a separate account claiming exemption directly under Rule 6e–2.[9] Applicants state that the Separate Account satisfies the conditions of Rule 6e–2(a) and, therefore, is entitled to rely on Rule 6e–3. Accordingly, the Separate Account is exempt from the provisions of the 1940 Act specified in paragraph (b) of Rule 6e–2, except for Sections 7 and 8(a) of the 1940 Act, under the same terms and conditions as a separate account claiming exemption under Rule 6e–2.

Rule 6e–2(c)(1) defines a ''variable life insurance contract'' to include only life insurance contracts that provide both a death benefit and a cash surrender value which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an initial dollar amount stated in a contract. The required guaranteed minimum death benefit need be provided only so long as payments are duly made in accordance with the contract's terms.

2. Applicants submit that under the Contracts the Death Benefit varies to reflect investment experience within the meaning of Rule 6e–2(c)(1). Applicants concede, however, that the Death Benefit is not precisely the type of variable death benefit contemplated when Rule 6e–2 was adopted, and that the Contracts also contain other provisions that are not specifically addressed in Rule 6e–2.

3. Applicants believe that Option 2 Death Benefit falls within the requirement that it ''vary to reflect the investment experience of the separate account,'' although it varies only when Account Value exceeds Benchmark Value. Applicants submit that this situation is analogous to more conventional scheduled premium variable life insurance contracts where death benefits are increased when investment experience exceeds an assumed investment rate. Applicants assert that Rule 6e–2(c)(1) clearly contemplates that a death benefit would vary only if it exceeds a guaranteed minimum death benefit.

4. Applicants state, however, that Option 1 will fail to satisfy this requirement if the Death Benefit has not been otherwise increased to provide the minimum death benefit required by Section 7702 of the Code of the variable insurance amount.

5. Applicants request exemptions from the definition of ''variable life insurance contract'' in Rule 6e–2(c)(1) and from all Sections of the 1940 Act and rules thereunder specified in Rule 6e–2(b) (other than Sections 7 and 8(a)), under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2(a), and to the extent necessary to permit the offer and sale of the Contracts in reliance on Rule 6e–2, except as otherwise set forth herein.[10]

[7] Applicants represent that each of these fees is reasonable, and in an amount that does not exceed the expenses to which such charge relates that are currently anticipated to be incurred over the lifetime of the Contracts. The maximum amount of each of these fees or charges is guaranteed not to increase during the term of the Contract. Guardian does not anticipate realizing a profit from these charges.

[8] Rule 6e–2(a) states that ''a separate account * * * shall, except for the exemptions provided in paragraph (b) [of Rule 6e–2], be subject to all provisions of [the 19040 Act] * * * as though such separate account were a registered investment company issuing periodic payment plan certificates,'' provided that the conditions set forth in Rule 6e–2(a) are met. Thus, Rule 6e–2(a) contemplates that a variable life separate account relying on Rule 6e–2 will not be registered under the 1940 Act.

[9] Accordingly, all registered separate accounts issuing variable life insurance products do so in reliance on Rule 6c–3, and not directly in reliance on Rules 6e–2 or 6e–3(T), as applicable. Applicants represent that the application will be amended during the notice period to reflect these statements.

[10] Both Death Benefit Options provide for a guaranteed minimum death benefit at least equal to the Contract's initial Face Amount, as required by Rule 6e–2(c)(1). The Contracts also permit a reduction in Face Amount (including reductions through partial withdrawals). Certain provisions of

6. Applicants submit that the definition of ''variable life insurance contract'' in Rule 6e–2(c)(1) was drafted at a time when all the variable life insurance contracts then contemplated clearly met this definition, and that the considerations that led the Commission to grant the exemptions in Rule 6e–2 did not depend in any material way upon the fact that the death benefit, as well as cash values, varied with investment experience. Nor did such considerations depend on whether a scheduled premium contract also provided for substantial premium payment flexibility and other features so long as the scheduled premiums, if paid when due, provided for a minimum death benefit guaranteed to at least equal the initial face amount.

7. Applicants further submit that the extent to which favorable investment experience is used to increase death benefits rather than cash values differs considerably among the contracts offered by different issuers in reliance on Rule 6e–2. Applicants also submit that, under all contract designs, the degree to which investment performance changes the death benefit necessarily has an impact on cash values under the Contracts.

8. Applicants represent, that, generally, higher death benefits require higher cost of insurance deductions which, in turn, result in lower cash values. Applicants state that it is desirable for purchasers to be free to choose a benefit structure which they believe suits their own needs with respect to the relationship of cash value, death benefit and investment performance. Applicants also state that Contract owners can do this by, for example, deciding whether to apply excess value to purchase extra death benefit. Using excess value for this purpose will maximize the guaranteed death benefit in the event of favorable investment experience, but will cause Account Value to be less than it otherwise would be.

9. Applicants also submit that the considerations that led the Commission to adopt Rules 6c–3 and 6e–2 apply equally to the Separate Account and the Contracts, and that the exemptions provided by these rules would be granted to the Separate Account and to the other Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested herein.

B. Request for Exemptions Relating to Sales and Administrative Charges

1. Applicants request exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(c)(2), 27(d) and Rules 6e–2(b)(1), (b)(12), (b)(13)(i), (b)(13)(iv), (b)(13)(v) and (c)(4), and Rule 22c–1 to the extent necessary to permit deductions of: (a) part of a Contract's sales charge from premium payments and part from Account Value as a CDSC, and (b) the CDAC from Account Value. Both the CDSC and the CDAC will be deducted on surrender, Face Amount reduction (including upon partial withdrawals), or lapse.

2. *Section 2(a)(35) and Rules 6e–2 (b)(1) and (c)(4).* Applicants assert that Section 2(a)(35) [11] and Rules 6e–2 (b)(1) and (c)(4) [12] may be read to contemplate that the sales charge for a variable life insurance contract will be deducted from premium payments. Applicants submit that Guardian's deduction of the CDSC from Account Value may be deemed inconsistent with these provisions. Further, deduction of the CDSC also may be deemed inconsistent with Rule 6e–2(c)(4) because, in order to facilitate the payment and other flexibility features under the Contracts, the CDSC is computed based on the lesser of actual payments made or Basic Scheduled Premiums payable (rather than as the excess of actual premium payments made over certain amounts, as required by the literal terms of that provision). Accordingly, Applicants request exemptions from Section 2(a)(35) and Rule 6e–2 (b)(1) and (c)(4) to the extent necessary to permit part of the Contracts' sales charge to be deducted from premium payments and part as a CDSC upon surrender, Face Amount reduction (including upon partial withdrawal) or lapse of a Contract.

In addition, Applicants argue that Rule 6e–2(c)(4) can be construed to allow the imposition of a sales charge on other than premiums because the definition of ''sales load'' in the Rule does not reflect the actual methodology of administering variable life insurance contracts, referring in subparagraphs (i) and (ii), for example, to other amounts that are not deducted from payments. To this extent, Applicants assert that the applicability of the definition need not be limited to any particular form of sales load. Accordingly, Applicants submit that the CDSC is consistent with the definition of ''sales load'' set forth in Rule 6e–2(c)(4). Applicants, however, request the exemptions noted above in order to avoid any question concerning full compliance with the 1940 Act and any regulations thereunder.

3. *Section 27(a)(1) and Rule 6e–2(b)(13)(i).* Section 27(a)(1) limits sales load in terms of a maximum percentage of payments to be made on a periodic payment plan certificate. Rule 6e–2(b)(13)(i) limits the amount of sales charges on a variable insurance contract to a maximum of 9% of the payments to be made under the contract during a period equal to or the lesser of (a) 20 years or (b) the anticipated life expectancy of the insured, based on the 1958 Commissioners' Standard Ordinary Mortality Table (''1958 CSO Tables'').

Applicants assert that Section 27(a)(1) and Rule 6e–2(b)(13)(i) could be read to contemplate that the sales charge under the Contracts will be deducted from Premium Payments prior to their allocation to the Separate Account. Consequently, Guardian's deduction of part of its sales charge as a CDSC may be deemed inconsistent with the foregoing provisions to the extent that the sales charge is deducted from other than premium payments. Applicants thus request exemptions from Section 27(a)(1) and Rule 6e–2(b)(13)(i) to the extent necessary to permit part of the Contracts' sales charge to be deducted as a CDSC upon surrender, Face Amount reduction (including upon partial withdrawal) or lapse.

4. *Sections 26(a)(2) and 27(c)(2).* Applicants state that Sections 26(a)(2) [13]

Rule 6e–2, such as paragraph (c)(3), recognize the existence of partial withdrawals; in addition, partial withdrawals and reductions in Face Amount are common features in Contracts governed by Rule 6e–2. Applicants do not seek exemptive relief in this regard.

Applicants also state that they believe the Contract Options provide an additional benefit to a Contract owner by making it possible to continue insurance protection and participation in the Separate Account, if desired, even though the Contract owner may not continue to pay Contract Premiums. Similarly, Applicants believe the existence of the Primary Insured Term Rider and Fixed-Rate Option enhance the benefits available to a Contract owner. Applicants believe the availability of these options does not modify the basic characteristics of the Contract and, therefore, is consistent with the fundamental nature of the Contracts as variable life insurance contracts under paragraph (c)(1) of Rule 6e–2.

[11] ''Sales load'' is defined under Section 2(a)(35), in relevant part, as:

''the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.''

[12] Under Rule 6e–2(b)(1), ''sales load'' has the meaning set forth in Rule 6e–2(c)(4), which defines ''sales load'' charged on any payment as the excess of the payment over the sum of certain other amounts.

[13] Section 26(a)(2) provides, in relevant part, that: ''no principal underwriter for a depositor of a registered unit investment trust shall sell any

Continued

and 27(c)(2)[14] may be read to require that proceeds of all Premium Payments under a Contract be deposited in the Separate Account, and that no payment be made from the Separate Account to any Applicant, or any affiliated person thereof, except for bookkeeping and other administrative services. Accordingly, Guardian's imposition of the CDSC may be deemed to be inconsistent with the foregoing provisions to the extent that the deduction could constitute payment for an expense not specifically permitted. Applicants thus request exemptions from Sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the CDSC to be deducted upon surrender, Face Amount reduction (including upon partial withdrawal) or lapse of a Contract.

5. *Sections 2(a)(32), 27(c)(1) and 27(d), Rules 6e–2(b)(12), (b)(13)(iv) and (b)(13)(v).* Sections 2(a)(32), 27(c)(1) and 27(d) prohibit Applicants from selling a Contract unless it is a ''redeemable security,'' defined under Section 2(a)(32) as entitling an owner of a Contract, upon surrender, to receive approximately his or her proportionate share of the Separate Account's current net assets. Section 27(d) provides a Contract owner with certain surrender and sales charge refund rights.

Rules 6e–2(b)(12), (b)(13)(iv) and (b)(13)(v) provide exemptions from Section 27(a)(1), and Rule 6e–2(b)(13)(iv) and (b)(13)(v) afford exemptions from Section 27(d), to the extent necessary for cash value to be regarded as satisfying the redemption and sales charge refund requirements of the 1940 Act. Applicants note, however, that the exemptions afforded by Rules 6e–2(b)(12), 6e–2(b)(13)(iv) and (b)(13)(v) may not contemplate the deduction of the Surrender Charge (*i.e.,* the CDSC and the CDAC). Guardian's deduction of the Surrender Charge can be viewed as reducing the proceeds that the Contract owner would receive on surrender below a Contract owner's proportionate share of the Separate Account's current net assets.

Further, Applicants note that Rule 6e–2 was adopted at a time when less flexibility regarding payments and other contract features was offered than subsequently has been permitted. Because of these features, Applicants state that it is unclear how the technical sales load computation provisions in Rule 6e–2 apply to the Contracts. Accordingly, because certain provisions of the Contracts' sales charge structure may be inconsistent with the provisions of Sections 2(a)(32), 27(c)(1) and 27(d) and paragraphs (b)(12), (b)(13)(iv) and (b)(13)(v) of Rule 6e–2, Applicants request exemptions from those provisions to the extent necessary to permit part of the Contracts' sales charge to be deducted from Premium Payments and part to be deducted as a CDSC, and to permit the deduction of the CDAC on surrender, Face Amount reduction (including upon partial withdrawal) or lapse.

In addition, Applicants submit that, although Section 2(a)(32) does not specifically contemplate the imposition of a sales charge and an administrative charge at the time of redemption, such charges are not necessarily inconsistent with the definition of ''redeemable security.'' Applicants further submit that the charges are little different, for this purpose, from the ''redemption'' charge authorized in Section 10(d)(4) of the 1940 Act. Applicants argue that Congress intended that such a redemption charge, expressly described as a ''discount from net asset value,'' be deemed consistent with the concept of ''proportionate share'' under Section 2(a)(32).

Consistent with Section 2(a)(32), Applicants therefore assert that the Contracts will be ''redeemable securities'' because the Contracts provide for full surrender for the Net Cash Surrender Value and are expected to provide for partial withdrawals of Cash Surrender Value in excess of the Benchmark value. Applicants represent that the prospectus for the Contracts will disclose the contingent deferred nature of part of the sales charge and of the administrative charges. Accordingly, Applicants state that there will be no restriction on, or impediment to, surrender that should cause the Contracts to be considered other than a redeemable security. Upon surrender or lapse, a Contract owner will receive his or her proportionate share of the Separate Account (*i.e.,* the amount of net Basic Scheduled Premiums and unscheduled payments made, reduced by the amount of all charges and deductions and increased or decreased by the amount of investment performance credited to a Contract).

6. *Section 22(c) and Rules 6e–2(b)(12) and 22c–1.* Applicants state that Rule 22c–1 prohibits the redemption of a Contract except at its current net asset value next computed after receipt of the request for surrender or partial withdrawal. Rule 6e–2(b)(12) provides exemptions from the redemption procedures mandated by Rule 22c–1. Nonetheless, Applicants submit that the rule may not contemplate the deduction of the Surrender Charge, which can be viewed as causing a Contract to be redeemed at a price based on less than a Contract's current net asset value next computed after full or partial surrender of a Contract. Consequently, the Surrender Charge may be deemed to be inconsistent with the foregoing rules.

Applicants submit that Rule 22c–1 and Rule 6e–2(b)(12) together impose requirements with respect to both the amount payable on surrender and the time as of which such amount is calculated. The requirement of these rules regarding the amount payable to a Contract owner on surrender is essentially the same as the requirements that are explicit or implicit in certain other provisions of the 1940 Act and rules thereunder from which Applicants are requesting exemptions.

Regarding the timing requirement of Rule 22c–1, Applicants state that they will determine the Net Cash Surrender Value under a Contract consistent with their current procedures and in accordance with Rules 6e–2(b)(12)(i) and 22c–1, and on a basis next computed after receipt of a Contract owner's request for surrender of a Contract or partial withdrawal. In addition, Applicants assert that the Commission's purpose in adopting Rule 22c–1 was to minimize (i) dilution of the interests of the other security holders and (ii) speculative trading practices that are unfair to such holders. Applicants state that the CDSC would in no way have the dilutive effect that Rule 22c–1 is designed to prohibit because a surrendering Contract owner would ''receive'' no more than an amount equal to the Net Cash Surrender Value determined pursuant to the formula set out in his or her Contract and after receipt of the request. Further, variable life insurance contracts do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against, and, further, the CDSC would discourage, rather than encourage, any such trading.

security of which the trust is the issuer unless the instrument pursuant to which the security is issued provides that no payment to the depositor of or the principal underwriter for such trust, or to any affiliated person of such depositor or underwriter, shall be allowed the trustee or custodian as an expense, expect that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping and other administrative services of a character normally performed by the trustee or custodian itself.''

[14] Section 27(c)(2) provides, in relevant part, that: ''it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the proceeds of all payments on such certificate (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having specified qualifications and are held by such trustee or custodian under an indenture or agreement containing specified provisions.''

7. In support of their request for exemptions relating to sales and administrative charges, discussed above, Applicants submit that the deduction on a contingent deferred basis of part of the sales charge and the administrative charge will be advantageous to Contract owners for the following reasons.

a. First, the deferred charge structure has been accepted as an appropriate feature of life insurance products under Rule 6e–3(T) as well as pursuant to exemptive relief granted by the Commission, expands investors choices without sacrificing investor protection, and reinforces the intention that the product be held as a long term investment.

b. Second, the amount of a Contract owner's premium payment allocated to the Separate Account and available to earn a return for a Contract owner will be greater than it otherwise would have been if the sales and administrative charges were deducted from Premiums.

c. Third, Applicants represent that the total dollar amount of a sales load payable under a Contract is no higher than would be permitted by Rule 6e–2(b)(13), if taken entirely as front-end deductions from Premium Payments under a Contract for which all Premium Payments have been paid, as well as from any unscheduled Premium Payments. Moreover, for a Contract owners who does not lapse or surrender in the early Contract years, the dollar amount of the sales load is lower than otherwise would be permitted if taken entirely as front-end deductions. Furthermore, no Surrender Charge is deducted from any Death Benefit paid under a Contract.

Similarly, the total dollar amount of the CDAC under a Contract is no higher than if the charge were taken in full for the first Contract year, and is less for Contract owners who do not lapse, reduce the Face Amount by request or partial withdrawal, or surrender prior to the thirteenth Contract year. Applicants represent that this charge has not been increased to take into account the time value of money or the fact that not all Contract owners will incur the charge. Applicants state that Guardian does not anticipate a profit on the CDAC.[15]

d. Fourth, the allocation of a greater amount of Premium Payments to the Separate Account initially reduces the net amount at risk (Death Benefit less Account Value), upon which the cost of insurance charge is based.

8. Applicants submit that if Guardian is not permitted to charge sales and administrative charges in the form of contingent deferred charges and deducts these charges entirely from premiums, it could be charging continuing Contract owners more than otherwise may be necessary to recover the distribution and issuance costs attributable to such Contract owners. Applicants contend that their charge structure, by contrast, provides greater equity among both Contract owners who surrender and those who continue as Contract owners.

9. Applicants state that the CDSC, consistent with the definition in Section 2(a)(35), is an amount ''chargeable to sales or promotional activities.'' Although not imposed on ''payments,'' Applicants submit that the charge will cover expenses associated with the offer and sales of the Contracts, including commissions paid to sales personnel, promotional expenses and sales administration expenses. Similarly, the CDAC is for estimated administrative expenses connected with the Contracts. Applicants represent that these administrative expenses exclude any costs properly attributable to sales or distribution activity.

10. Applicants contend that the fact that the timing of the imposition of the Surrender Charge may not fall within the literal pattern of all the provisions discussed herein does not change the essential nature of the sales charge structure.

11. Although the methodology for computing sales charges under the Contracts may not have been contemplated by Rule 6e–2 as originally adopted, Applicants represent that the percentage of sales load imposed during the first two Contract Years will be no greater than the sum of: 30% of payments made during the first Contract Year up to an amount equal to an annual Basic Scheduled Premium, plus 10% of payments made during the second Contract Year up to an amount equal to an annual Basic Scheduled Premium, plus 9% of all unscheduled Premium Payments made during the first two Contract Years. Additionally, the percentage of sales load under the Contract will not exceed 9% of Basic Scheduled Premiums expected to be paid over the shorter of 20 years or the expected life expectancy of the insured. Moreover, Guardian does not anticipate making a profit on the CDAC. Therefore, Applicants submit that the Contract is consistent with the principals and policies underlying the limitations of Section 27 and Rule 6e–2(b)(13).

C. Deductions From Account Value of the Cost of Insurance, Guaranteed Insurance Amount Charge and Premium Assessments

1. Applicants submit that Sections 26(a)(2) and 27(c)(2), read together, could be interpreted to prohibit Guardian from deducting the following charges from Account Value: (a) Cost of insurance charge, (b) guaranteed insurance amount charge, and (c) if a Contract Premium is ''skipped,'' charges for Premium Assessments in connection with the Premium Skip Option. Accordingly, Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) and Rule 6e–2(b)(13)(iii)[16] to the extent necessary to permit deduction of these charges from Account Value.[17] Applicants submit that, as described above, the method of deducting these charges is fair and reasonable in that the charges are not designed to yield more revenues than if they were assessed solely against premium payments.

2. *Cost of Insurance Charges.* Applicants submit that the method of deducting this charge is fair and reasonable. Applicants represent that they believe all other variable life insurance contracts provide for cost of insurance deductions from cash value, which under a Contract consists of the unloaned Account Value.

3. *Premium Assessments.* As described above, Premium Assessments are deducted from Premium Payments before the Basic Scheduled Premium (net of Premium Charges) is allocated to the Separate Account. However, when, pursuant to the Premium Skip Option, Premiums are ''skipped,'' and not paid, an amount equal to 90.5% of any Premium Assessment that otherwise would be deducted from a premium will be deducted from Account Value on

[15] Guardian intends to rely on Rule 6e–2(b)(13)(iii)(C) with regard to the CDAC.

[16] Rule 6e–2(b)(13)(iii) provides an exemption from Sections 27(c)(2) and 26(a)(2), subject to certain conditions, which Applicants submit they satisfy as noted herein.

[17] Applicants state that they are not seeking exemptions from these provisions with regard to the maximum handling fee for unscheduled premium payments that may be imposed under the Contracts (which will be deducted from premium payments in reliance on Rule 6e–2(c)(4)(iv), or the CDAC, the partial withdrawal charge, the transfer charge that may be imposed under the Contracts, or the Contract and Administration Charges deducted as part of the monthly deduction (each of which will be deducted pursuant to Rule 6e–2(b)(13)(iii). Applicants state that each of these charges is reasonable, and in an amount that does not exceed the expenses to which such charge relates that are currently anticipated to be incurred by Guardian over the lifetime of the insureds covered by the Contracts. Applicants represent that the maximum amount of each of these fees and charges is guaranteed not to increase during the term of the Contracts. Guardian does not anticipate realizing a profit on these fees or charges.

each Contract Anniversary on which the ''skipped'' Premium otherwise would be due or, in later, on the date the Premium Skip Option is effected. The remaining 9.5% is deducted as part of the Premium Charges when any unscheduled Premium Payment is made. Thus, part of the Premium Charges applied to any unscheduled Payment is to collect charges covered by Rules 6e–2(c)(4)(vi) and (vii), which refer to charges for substandard risk and for incidental insurance benefits deducted from Account Value.

Applicants represent that if Premium Assessments were required to be deducted solely from Premiums, it would be necessary for Guardian: (a) to reduce Contract payment flexibility, and/or (b) further limit the classes of insureds for whom a Contract will be available and limit or eliminate the rider benefits to be made available under a Contract. Applicants submit that purchasers and prospective purchasers of a Contract would find these results undesirable.

Rule 6e–2(c)(4), among other things, requires that charges referred to in Rule 6e–2(c)(4)(vi) and (vii) be subtracted from gross payments in determining amounts of ''sales load.'' Rule 6e–2(c)(7) requires the amount of gross premiums attributable to such charges to be subtracted for purposes of determining the amount of ''payments'' on which sales load percentages are calculated in order to evaluate compliance with Rule 6e–2's various sales load limitations. Accordingly, Applicants subtract any Premium Assessments (including that deducted from Premiums and from Account Value upon exercise of Premium Skip Option) from Premium Payments to compute ''sales load'' under Rule 6e–2(c)(4) and to compute the amount of payments under Rule 6e–2(c)(7).

Where, because of the payment and other flexibility features of a contract, the entire Premium for a Contract Year is not paid, Rule 6e–2(c)(7) might still require Applicants to deduct certain amounts from any payments that were made, for sales load compliance purposes. These deductions would be for payments made that would be deemed ''attributable'' to charges for substandard risks and incidental insurance benefits. If this were so, Applicants would subtract the same amount in determining the amount of sales load under paragraph (c)(4) of Rule 6e–2. The amount would be the same, because part of any payments deemed ''attributable'' to such charges would, in effect, be deducted as a portion of Premium Charges, and part would be deducted as a portion of Account Value upon exercise of the Premium Skip Option.

4. *Guaranteed Insurance Amount Charge.* Applicants represent that the guaranteed insurance amount charge compensates Guardian for the risk that it assumes in guaranteeing death benefits under a Contract. Applicants submit that this charge essentially is an insurance charge that was not contemplated at the time that the 1940 Act was adopted. Although Rule 6e–2(c)(4)(iii) provides for such a charge, it does not expressly authorize it to be deducted from Account Value.

Applicants submit that Rule 6e–3(T) authorizes deductions from Account Value for a minimum death benefit guarantee charge in connection with variable life insurance contracts qualified to rely on that rule, conditioned on the life insurer's making certain representations. Further, proposed amendments to Rule 6e–2 would similarly authorize such deductions from Account Value. Accordingly, Guardian makes the following representations and undertakings, which are consistent with the proposed amendments:

(a) The level of the guaranteed insurance amount charge is reasonable in relation to the risks assumed by Guardian under the Contracts. The methodology used to support this representation is based on an analysis of the pricing structure of the Contracts, including all charges, and an analysis of the various risks, including special risks arising out of Contract provisions that allow unscheduled payments and, in certain circumstances, skipping Premiums. Guardian undertakes to keep and make available to the Commission on request the documents or memoranda used to support this representation.

(b) Guardian has concluded that: the proceeds from the sales charges may not cover the expected costs of distribution; surplus arising from the guaranteed insurance amount charge (among other sources) may be used to cover the distribution costs; and there is a reasonable likelihood that the distribution financing arrangements of the Separate Account will benefit the Separate Account and the Contracts owners. Guardian undertakes to keep and make available to the Commission on request a memorandum setting forth basis of this representation; and

(c) The Separate Account will invest only in management investment companies that have undertaken, in the event they should adopt any plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees, as appropriate), a majority of whom are not interested persons of the company, formulate and approve such plan.

D. Request for Exemptions Relating to Use of 1980 CSO Tables

1. As discussed above, Rule 6e–2(b)(1) makes the definition of ''sales load'' in Rule 6e–2(c)(4) applicable to the Contracts. Section 27(a)(1) prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e–2(b)(13)(i) provides an exception from Section 27(a)(1) to the extent that sales load, as defined in Rule 6e–2(c)(4), does not exceed 9% of payments to be made on the variable life insurance contract during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured based on the 1958 CSO Tables. Rule 6e–2(c)(4), in defining sales load, contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Tables and an assumed investment rate specified in the contract.[18]

2. Applicants assert it is appropriate that the deduction for the cost of insurance be based on the 1980 CSO Tables in determining what is deemed to be the sales load under the Contracts because: (a) the 1980 CSO Tables [19] reflect more recent information and data about mortality than the 1958 CSO Tables; (b) use of either the 1958 CSO Tables or the 1980 CSO Tables be permitted under proposed amendments to Rule 6e–2 for purposes of Rule 6e–2(b)(13)(i) and (c)(4), depending on which relates to the insurance rates guaranteed under a contract; and (c) the

[18] An assumed investment rate of 4% is specified in the Contract and used for purposes of determining the required Basic Scheduled Premiums. ''Assumed investment rate'' is defined by Rule 6e–2(c)(5) to be the net rate of investment return specified in the contract which would result in neither an increase nor a decrease in the variable death benefit of the contract above or below the guaranteed minimum death benefit. Applicants submit that this definition accurately describes the Contract's 4% assumed investment rate only so long as all other assumptions used in establishing Basic Scheduled Premiums holds true and only until the Death Benefit is increased in order for the Contract to qualify as life insurance for federal tax law purposes or the variable insurance amount is applicable. Applicants assert, however, the Rule 6e–2(c)(5) has never been interpreted to require that a contract's death benefit always vary in relation to performance above or below the assumed investment rate. Applicants believe it is appropriate to consider 4% to be the assumed investment rate for purposes of Rule 6e–2(c)(5) and, thus, seek no exemptive relief in this regard.

[19] Applicants state that the 1980 CSO Tables were adopted by the National Association of Insurance Commissioners subsequent to adoption of Rule 6e–2 by the Commission.

1980 CSO Tables must be used for all contracts that rely on Rule 6e–3(T).

3. Applicants further represent that: (a) Guardian uses the 1980 CSO Tables to establish Premium rates and determine reserve liabilities for the Contracts; (b) the guaranteed cost of insurance rates under the Contracts are based on the 1980 Tables; (c) the mortality rates reflected in the 1980 CSO Tables more nearly approach the mortality experience which Guardian believes will apply to the Contracts; and (d) for Contracts issued for insured at advance ages, appropriate adjustments have been made in the CDSC structure to ensure that, subject to the other exemptive relief requested herein, the 9% standard prescribed by Rule 6e–2(b)(13)(i) will be met over the expected lifetimes of such insureds, based on the 1980 CSO Tables.

E. Request for Exemptions Relating to Custodianship Arrangements

1. Applicants state that Section 26(a)(1) and Section 26(a)(2), in effect, prohibit Applicants from selling the Contracts unless the Contracts are issued pursuant to a trust indenture or other such instrument that designates one or more qualified trustees or custodians to have possession of all securities in which Guardian and the Separate Account invest. Applicants submit that Section 27(c)(2), in effect, could be read to prohibit Applicants from selling the Contracts unless the proceeds of all Premium Payments are deposited with a qualified trustee or custodian. Applicants further submit that Rule 6e–2(b)(13)(iii), in relevant part, provides an exemption from Sections 26(a)(1), 26(a)(2) and 27(c)(2), provided that Guardian complies with all other applicable provisions of Section 26 as though it were a trustee or custodian for the Separate Account and assuming it meets the other requirements set forth in the rule.

2. Applicants assert that the holding of Fund shares by Guardian and the Separate Account under an open account arrangement, without having possession of share certificates and without a trust indenture or other such instrument, may be deemed to be inconsistent with the foregoing provisions. Nevertheless, Applicants represent that current industry practice calls for separate accounts organized as UITs, such as the Separate Account, to hold shares of management investment companies in uncertificated form. This practice is believed to contribute to efficiency in the purchase and sale of such shares by separate accounts and to bring about cost savings generally. Therefore, Applicants submit that the requirements of the 1940 Act and Rule 6e–2 regarding share ownership are inconsistent with current industry practice and its rationale.

3. Applicants further note that the Commission has adopted and proposed the following rules which would grant the requested exemptions: (a) Rules 6e–3(T)(b)(13)(iii)(B) and (C), in effect, grant the requested exemptions, but only for contracts covered by Rule 6e–3(T); (b) proposed Rule 6e–2(b)(13)(iii)(B) would permit a life insurer, such as Guardian, to hold the assets of a separate account without a trust indenture or other such instrument; (c) proposed Rule 6e–2(b)(13)(iii)(C) would permit a separate account organized as a UIT to hold the securities of registered investment companies, such as the Funds, that offer shares to the Separate Account in uncertificated form; and (d) Rule 26a–2, adopted by the Commission, affords exemption essentially similar to those requested here regarding variable annuity contracts. Applicants presume, based on information and belief, that the Commission adopted or proposed the foregoing exemptive rules based on a determination that safekeeping of separate account assets does not necessarily depend on the presence of a trustee, custodian or trust indenture or the issuance of share certificates, where state insurance law protects separate account assets, and open account arrangements foster administrative efficiency and cost savings.

4. The proposed exemptive provisions of Rule 6e–2(b)(13)(iii)(B) and (C) subject a life insurer to certain conditions. Guardian represents that it will: (a) comply with conditions of Rule 6e–2(b)(13)(iii)(B) and (C); (b) comply with all other applicable provision of Section 26 as if it were a trustee or custodian for the Separate Account (subject to the other exemptive relief requested in this application); and (c) will file with the insurance regulatory authority of Delaware an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it (i) has a combined capital and surplus of not less than $1 million, (ii) is examined from time-to-time by the insurance regulatory authority of Delaware as to its financial condition and other affairs, and (iii) is subject to supervision and inspection with respect to its separate account operations.

5. Applicants further believe that the Commission has determined that compliance with such conditions, which contemplate state protection of separate account assets, will help assure that the exemptions will be consistent with the public interest, the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

F. Request for Exemptions Relating to Waiver of Notice of Withdrawal and Refund Rights

1. Section 27(e) and Rules 27e–1 and 6e–2(b)(13)(vii),[20] in effect require a notice of right of withdrawal and refund on Form N–271–1 to be provided to Contract owners entitled to a refund of sales load in excess of the limits permitted by Rule 6e–2b(13)(v). The Contracts limit the amount of the CDSC that may be deducted by excess sales load limits consistent with those set forth in Rule 6e–2(b)(13)(v)(A). Thus, under the Contracts' sales load structure, no excess sales load will be paid by or refunded to a Contract owner surrendering, effecting a Face Amount reduction or lapsing in the first two Contract years.[21]

2. Rule 27e–1(a) specifies that no notice need be mailed when there is otherwise no entitlement to receive any refund of sales load. Rule 27e–1 and Rule 6e–2 were both adopted in the context of front-end loaded products only, and in the broader context of the companion requirements in Section 27 for the depositor or underwriter to maintain segregated funds as security to assure the refund of any excess sales load.

3. Applicants submit that requiring delivery of Form N–271–1 could confuse Contract owners and potentially encourage a Contract owner to surrender during the first two Contract Years against the Contract owner's best

[20] Section 27(e) requires, with respect to any periodic payment plan certificate sold subject to Section 27(d) (which requires the refund of any excess sales load paid during the first 18 months after issuance), written notification of the right to surrender and receive a refund of the excess sales load. Rule 27(e) establishes the requirements for the notice mandated by Section 27(e) and prescribes Form N–271–1 for that purpose. Rule 6e–2(b)(13), which modifies the requirements of Section 27 and the rules thereunder, adopts Form N–271–1 and requires it to be sent to a contract owner upon issuance of a contract and again during any lapse period in the first two contract years. The Form requires statements of (i) the contract owner's right to receive back excess sales load for a surrender during the first two contract years, (ii) the date that the right expires, and (iii) the circumstances in which the right may not apply upon lapse.

[21] Applicants submit that the application of the technical sales load computation provisions in Rule 6e–2 to a modified scheduled premium contract is unclear. Applicants state that the reduction of the CDSC during the first two Contract Years is intended to reflect the requirements of Rule 6e–2 and take into account the Contract's payment flexibility in a manner that is consistent with Rule 6e–3(T)(b)(13)(v)(A), which specifically addresses flexible premium variable life insurance products.

interest to do so. Further, an owner of a variable insurance contract with a declining deferred sales charge, unlike a front-ended contract, does not foreclose his or her opportunity at the end of the first two contract years to receive a refund of monies spent. Not only has such an owner not paid any excess load, but because the deferred charge declines over the life of the Contract, the Contract owner may never have to pay it. Applicants submit that encouraging a surrender during the first two Contracts years could cost a Contract owner more in total sales load (relative to total payments) than he or she otherwise would pay if the Contract, which is designed as a long-term investment vehicle, were held for the period originally intended.

4. Because of the absence of excess sales load, and therefore, the absence of an obligation to assure repayment of that amount, Applicants believe that the Contracts do not create the right in a Contract owner which Form N–271–1 was designed to highlight. In the absence of this right, Applicants submit that the notification contemplated by Form N–271–1 creates an unnecessary and counterproductive administrative burden the cost of which appears unjustified. Any other purpose potentially served by the Form would already be addressed by the required Form N–271–2 Notice of Withdrawal Right, generally describing the charges associated with a Contract, and prospectus disclosure detailing a Contract's sales load structure. Applicants assert that neither Congress, in enacting Section 27, nor the Commission, in adopting Rule 27e–1 and Rule 6e–2, could have contemplated the applicability of Form N–271–1 in the context of a Contract with a declining contingent deferred sales charge.

G. Deduction of Charge for Section 848 Deferred Acquisition Costs

1. Applicants request exemptive relief from Section 27(c)(2) of the 1940 Act to permit the deduction of the 1.0% charge from each Premium Payment received under the Contracts, and from premiums received under Other Contracts to be issued by Guardian through the Future Accounts to reimburse Guardian for its increased federal tax burden resulting from the application of Section 848 of the Code, as amended, to the receipt of those premiums. Applicants also request exemptions from subparagraph (c)(4)(v) of Rules 6e–2 and 6e–3(T) under the 1940 Act to permit the proposed deductions to be treated as other than ‘‘sales load,’’ as defined under Section 2(a)(35) of the 1940 Act, for purposes of Section 27 and the exemptions from various provisions of that Section found in Rules 6e–2 and 6e–3(T), respectively.

2. Applicants state that Section 848, as amended, requires life insurance companies to capitalize and amortize over ten years certain general expenses for the current year rather than deduct these expenses in full from the current year's gross income, as allowed under prior law. Section 848 effectively accelerates the realization of income from specified contracts and, consequently, the payment of taxes on that income. Taking into account the time value of money, Section 848 increases the insurance company's tax burden because the amount of general deductions that must be capitalized and amortized is measured by the premiums received under the Contracts.

3. Deductions subject to Section 848 equal a percentage of the current year's net premiums received (*i.e.*, gross premiums minus return premiums and reinsurance premiums) under life insurance or other contracts categorized under this Section. The Contracts will be categorized under Section 848 as life insurance contracts requiring 7.7% of the net premiums received to be capitalized and amortized under the schedule set forth in Section 848(c)(1).

4. The increased tax burden on every $10,000 of net premiums received under the Contracts is quantified by Applicants as follows. For each $10,000 of net premiums received in a given year, Guardian must capitalize $770 (*i.e.,* 7.7% of $10,000), and $38.50 of this amount may be deducted in the current year. The remaining $731.50 ($770 less $38.50) is subject to taxation at the corporate tax rate of 35% and results in $256.03 (.35% × $731.50) more in taxes for the current year than Guardian otherwise would have owned prior to OBRA 1990. However, the current tax increase will be offset partially by deductions allowed during the next ten years, which result from amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

5. It is Guardian's business judgement that it is appropriate to use a discount rate of 10% in evaluating the present value of its future tax deductions for the following reasons. Guardian has computed its cost of capital as the after-tax rate of return that it seeks to earn on its surplus, which is in excess of 10%. To the extent that surplus must be used by Guardian to pay its increased federal tax burden under Section 848, such surplus will be unavailable for investment. Thus, the cost of capital used to satisfy this increased tax burden essentially will be the after-tax rate of return Guardian seeks on its surplus, which is in excess of 10%. Accordingly, Applicants submit that the rate of return on surplus is appropriate for use in this present value calculation.

6. To the extent that the 10% discount rate is lower than Guardian's actual rate of return on surplus, the calculation of this increased tax burden will continue to be reasonable over time, even if the corporate tax rate applicable to Guardian is reduced, or its targeted rate of return is lowered.

7. In determining the after-tax rate of return used in arriving at the discount rate, Guardian considered a number of factors that apply to itself and to its parent, including market interest rates, anticipated long-term growth rates, the risk level for this type of business that is acceptable, inflation, and available information about the rate of return obtained by other life insurance companies. Guardian represents that these are appropriate factors to consider.

8. First, Guardian projects its future growth rate, including the future growth rate of its parent, based on sales projections, current interest rates, inflation rate and amount of surplus that can be provided to support such growth. Guardian then uses the anticipated growth rate and the other factors to set a rate of return on surplus that equals or exceeds this rate of growth. Of these other factors, market interest rates, acceptable risk level and inflation rate receive significantly more weight than information about the rates of return obtained by other companies.

9. Guardian and its parent seek to maintain a ratio of surplus to assets that is established based on its judgment of the risks represented by various components of its assets and liabilities. Maintaining the ratio of surplus to assets is critical to offering competitively priced products and to maintaining the superior ratings now assigned to Guardian and its parent by various rating agencies. Consequently, Guardian's surplus should grow at least at the same rate as its assets.

10. Using a federal corporate tax rate of 35%, and assuming a discount rate of 10%, the present value of the tax effect of the increased deductions allowable in the following ten years, which partially offsets the increased tax burden, comes to $152.96. The effect of Section 848 on the Contracts is therefore an increased tax burden with a present value of $91.15 for each $10,000 of net premiums (*i.e.*, $244.11 less $152.96).

11. Guardian does not incur incremental federal income tax when it passes on state premium taxes to Contract Owners because state premium

taxes are deductible in computing federal income taxes. Conversely, federal income taxes are not deductible in computing Guardian's federal income taxes. To compensate Guardian fully for the impact of Section 848, Guardian must impose an additional charge to make it whole for the $91.15 additional tax burden attributable to Section 848, as well as the tax on the additional $91.15 itself, which can be determined by dividing $91.15 by the complement of 35% federal corporate income tax rate (*i.e.*, 65%), resulting in an additional charge of $140.23 for each $10,000 of net premiums, or 1.40%.

12. Based on its prior experience, Guardian reasonably expects to fully take almost all future deductions. It is Guardian's judgment that a charge of 1.00% of Basic Scheduled Premiums and unscheduled Premium Payments would reimburse it for the increased federal income tax liabilities under Section 848. Applicants represent that the 1.00% charge will be reasonably related to Guardian's increased federal income tax burden under Section 848. This representation takes into account the benefit to Guardian of the amortization permitted by Section 848 and the use of a 10% discount rate (which is equivalent to Guardian's rate of return on surplus) in computing the future deductions resulting from such amortization.

13. Guardian believes, however, that the 1.00% charge would have to be increased if future changes in, or interpretations of, Section 848 or any successor provision result in a further increased tax burden due to receipt of premiums. The increase could be caused by a change in the corporate tax rate, or in the 7.7% figure, or in the amortization period. The Contracts will reserve the right to increase the 1.00% charge in response to future changes in, or interpretations of, Section 848 or any successor provisions that increase Guardian's tax burden.

14. Applicants assert that it is appropriate to deduct this charge, and to exclude the deduction of this charge from sales load, because it is a legitimate expense of the company and not for sales and distribution expenses. Applicants represent that this charge will be reasonably related to Guardian's increased federal tax burden.

15. The Separate Account is, and the Future Accounts will be, regulated under the 1940 Act as issuers of periodic payment plan certificates. Accordingly, the Separate Account, the Future Accounts, Guardian (as depositor), and Guardian Services (as principal underwriter) are deemed to be subject to Section 27 of the 1940 Act.

16. Section 27(c)(2) prohibits the sale of periodic payment plan certificates unless the following conditions are met. The proceeds of all payments (except amounts deducted for ''sales load'' must be held by a trustee or custodian having the qualifications established under Section 26(a)(1) for the trustees of UITs. Sales loads, as defined under Section 2(a)(35), are limited by Sections 27(a)(1) and 27(h)(1) to a maximum of 9% of total payments on periodic payment plan certificates. These proceeds also must be held under an indenture or agreement that conforms with the provisions of Section 26(a)(2) and Section 26(a)(3) of the 1940 Act.

17. Certain provisions of Rules 6e–2 and 6e–3(T) provide a range of exemptive relief. Rule 6e–2 provides exemptive relief if the separate account issues scheduled variable life insurance contracts as defined in Rule 6e–2(c)(1). Rule 6e–3(T) provides exemptive relief if the separate account issues flexible premium variable life insurance contracts, as defined in subparagraph (c)(1) of that Rule.

18. Applicants state that paragraph (b)(13)(iii) of Rule 6e–2 implicitly provides, and paragraph (b)(13)(iii) of Rule 6e–3(T) explicitly provides, exemptive relief from Section 27(c)(2) to permit an insurer to make certain deductions, other than sales load, including the insurer's tax liabilities from receipt of premium payments imposed by states or by other governmental entities. Applicants assert that the proposed deduction with respect to Section 848 of the Code arguably is covered by subparagraph (b)(13)(iii) of each Rule. Applicants note, however, that the language of paragraph (c)(4) of the Rules appears to require that deductions for federal tax obligations from receipt of premium payments be treated as ''sales load.''

19. Applicants state that paragraph (b)(1), together with paragraph (c)(4), of each Rule provides an exemption from the Section 2(a)(35) definition of ''sales load'' by substituting a new definition to be used for purposes of each respective Rule. Rule 6e–2(c)(4) defines ''sales load'' charged on any payment as the excess of the payment over certain specified charges and adjustments, including a deduction for state premium taxes. Rules 6e–3(T)(c)(4) defines ''sales load'' during a period as the excess of any payments made during that period over certain specified charges and adjustments, including a deduction for state premium taxes. Under a literal reading of paragraph (c)(4) of the Rules, a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions, arguably causing the deduction to be treated as part of ''sales load.''

20. Applicants state that the public policy that underlies paragraph (b)(13) of each Rule, and particularly subparagraph (b)(13)(i), like that which underlies paragraphs (a)(1) and (h)(1) of Section 27, is to prevent excessive sales loads from being charged for the sale of periodic payment plan certificates. Applicants submit that this legislative purpose is not furthered by treating a federal income tax charge based on premium payments as a sales load because the deduction is not related to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in paragraph (c)(4) of each Rule.

21. Applicants submit that the source for the definition of ''sales load'' found in paragraph (c)(4) of each Rule supports this analysis. Applicants believe that, in adopting paragraph (c)(4) of each Rule, the Commission intended to tailor the general terms of Section 2(a)(35) to variable life insurance contracts to ease verification by the Commission of compliance with the sales load limits of subparagraph (b)(13)(i) of each Rule. Just as the percentage limits of Section 27(a)(1) and 27(h)(1) depend on the definition of sales load in Section 2(a)(35) for their efficacy, Applicants assert that the percentage limits in subparagraph (b)(13)(i) of each Rule depend on paragraph (c)(4) of each Rule, which does not depart, in principal, from Section 2(a)(35).

22. Applicants submit that the exclusion from the definition of ''sales load'' under Section 2(a)(35) of deductions from premiums for ''issue taxes'' suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of ''sales load'' in Rules 6e–2 and 6e–3(T) deductions made to pay an insurer's costs attributable to its federal tax obligations. Additionally, the exclusion of administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' also suggests that the only deductions intended to fall within the definition of ''sales load'' are those that are properly chargeable to sales or promotional activities. Applicants state that the proposed deductions will be used to compensate Guardian for its increased federal tax burden attributable to the receipt of premiums and not for sales or promotional activities. Therefore, Applicants believe the language in

Section 2(a)(35) further indicates that not treating such deductions as sales load is consistent with the policies of the 1940 Act.

23. Finally, Applicants submit that it is probably an historical accident that the exclusion of premium tax in subparagraph (c)(4)(v) of Rules 6e–2 and 6e–3(T) from the definition of ''sales load'' is limited to state premium taxes. When these Rules were each adopted and, in the case of Rule 6e–3(T), later amended, the additional Section 848 tax burden attributable to the receipt of premiums did not yet exist.

24. Applicants submit that the terms of the relief requested with respect to Other Contracts to be issued through Future Accounts are also consistent with the standards of Section 6(c). Without the requested relief, Guardian would have to request and obtain such exemptive relief for each Other Contract to be issued through a Future Account. Such additional requests for expensive relief would present no issues under the 1940 Act that have not already been addressed in this Application.

25. The requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for Guardian to file redundant exemptive applications regarding the federal tax charge, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek exemptive relief would impair Guardian's ability to effectively take advantage of business opportunities as they arise.

26. The requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Guardian were required to repeatedly seek exemptive relief with respect to the same issues regarding the federal tax charge addressed in this Application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of Guardian's increased overhead expenses.

27. Conditions for Relief:

a. Guardian will monitor the reasonableness of the charge to be deducted pursuant to the requested exemptive relief.

b. The registration statement for the Contracts, and for any Other Contracts under which the above-referenced federal tax charge is deducted, will: (a) disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to Guardian's increased federal tax burden under Section 848 of the Code.

c. The registration statement for the Contracts, and for such Other Contracts, providing for the above-referenced deduction will contain as an exhibit an actuarial opinion as to: (1) The reasonableness of the charge in relation to Guardian's increased federal tax burden under Section 848 of the Code resulting from the receipt of premiums; (2) the reasonableness of the rate of return on surplus that is used in calculating such charge; and (3) the appropriateness of the factors taken into account by Guardian in determining such targeted rate of return.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2), 27(d), and 27(e) of the 1940 Act and paragraphs (b)(1), (b)(12), (b)(13)(i), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(vii), (c)(1), (c)(4) of Rule 6e–2, and Rules 6e–3(T)(c)(4)(v), 22c–1 and 27e–1 thereunder, are necessary and 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 and, therefore, satisfy the standards set forth in Section 6(c) of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13893 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2214]

Determination Under Section 620(f) of the Foreign Assistance Act of 1961, As Amended

Pursuant to section 620(f)(2) of the Foreign Assistance Act (FAA) of 1961, as amended (22 U.S.C. 2370(f)(2)), and section 1–201(a)(12) of Executive Order No. 12163, as amended, I hereby determine that the removal of Laos from the application of section 620(f) of the FAA is important to the national interest of the United States. I therefore direct that Laos be henceforth removed, for an indefinite period, from the application of section 620(f) of the FAA, as amended.

This determination shall be reported to the Congress immediately and published in the **Federal Register**.

Dated: May 12, 1995.

Peter Tarnoff,

Acting Secretary of State.

[FR Doc. 95–13837 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–10–M

Bureau of Political-Military Affairs

[Public Notice 2217]

Imposition of Chemical and Biological Weapons Proliferation Sanctions On Foreign Persons

AGENCY: Bureau of Political-Military Affairs, Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that two companies have engaged in chemical weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authorities of which were most recently continued by Executive Order 12924 of August 19, 1994), as amended by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State (202–647–4930).

SUPPLEMENTARY INFORMATION: Pursuant to Sections 81(a) and 81(b) of the Arms Export Control Act (22 U.S.C. 2798(a), 2798(b)), Sections 11C(a) and 11C(b) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(a), 2410c(b)), Section 305 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (P.L. 102–182), Executive Order 12851 of June 11, 1993, and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the United States Government determined that the following foreign persons have engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in Section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and Section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(c)):

1. GE Plan (Austria)
2. Mainway Limited (Germany)

Accordingly, the following sanctions are being imposed: