

recaptured in proportion to the amount in excess of the free withdrawal amount.

After the withdrawal, the first year premium amount from which non-vested Credit amounts may be recaptured and upon which a withdrawal charge may be assessed in the future, is reduced by the total amount of the withdrawal, which includes the free withdrawal amount. In other words, while a withdrawal charge will be assessed and credit recaptured only on the amount in excess of the free withdrawal amount, the premium upon which future recaptures and withdrawals may be assessed is reduced by the total amount of the withdrawal. Once the remaining premium is reduced to zero, no further withdrawal charges may be assessed and no further credits may be recaptured, since withdrawal charges and recaptures are based on first year premium, and the first year premium has been exhausted.

10. The Six Year Contract Withdrawal Charge Rider will reduce the withdrawal charge period by two years. The final two years of the withdrawal charge will be dropped, and the withdrawal charges assessed during the previous years are consistent with the Withdrawal Charge schedule listed above. The annual charge for this rider will be initially set at 0.30% of average Value. The 3% optional Extra Credit Premium Rider must be selected with the Six Year Contract Withdrawal Charge Rider. No other Extra Credit Premium Rider is available with this rider.

11. The Long Term Care Facility and Terminal Illness Rider provides a waiver of both withdrawal charges and recapture of Credits if the Extra Credit Premium Rider is selected, on withdrawals that qualify under the Rider. Therefore, under the rider, if a Contract owner is confined for a continuous 90-day period to a long-term care facility or for a 30-day period to a hospital, as defined by the rider provisions, Withdrawal charges will not apply and Credits will not be recaptured, if the Extra Credit Premium Rider is selected. In addition, if the Contract owner has been diagnosed by a physician to have a terminal illness, as defined by the rider, and AUL has received a physician's letter at its home office, no withdrawal charges will be deducted upon withdrawal, and no Credits will be recaptured, if the Extra Credit Premium Rider is chosen. The charge for this benefit is included in the base mortality and expense risk charge.

#### Applicants' Legal Analysis

1. Section 27(i) of the 1940 Act was added to the Act to implement the

purpose of the National Securities Markets Improvement Act of 1996. Section 27(i)(2)(A) of the 1940 Act provides that it shall be unlawful for a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

2. Applicants assert that the recapture of the Credit in the circumstances set forth in this application would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the Credit allocated to his or her Contract value upon receipt of a contribution is not fully vested until the eighth contract year. Until the right to recapture has expired and any Credit amount is vested, AUL retains the right and interest in the Credit, although not in the earnings attributable to that amount. Thus, Applicants assert, when AUL recaptures any Credit, it is merely retrieving its own assets, and the Contract owner has not been deprived of a proportionate share of the applicable Separate Account's assets because his or her interest in the Credit has not vested.

3. Applicants additionally represent that permitting a Contract owner to retain a Credit under a Contract upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it and to return it for a quick profit. Furthermore, the recapture of the full amount of Credits applied to premium payments made within the first twelve months after issuance is designed to provide AUL with a measure of protection against anti-selection. The risk here is that, rather than spreading contributions over a number of years, a Contract owner might make very large contributions during the first Contract year, the Credits vest, the Contract owner then returns the Contract and is permitted to keep the Credit amounts, thereby leaving AUL little time to recover the cost of the Credits.

4. For the foregoing reasons, Applicants submit that the provisions for recapture of Credits under the Contracts and other variable annuity contracts that are substantially similar in all material respects to the contracts described in the application, that AUL, its affiliates and successors in interest

may issue in the future ("Future Contracts"), do not violate Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act because the recapture would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets.

5. Applicants further assert that a Contract owner's interest in the Credit allocated to his or her Contract value upon receipt of a contribution is not fully vested until the eighth contract year, when the right to recapture has expired and any Credit amount has vested. Until that time, Applicants state, AUL retains the right and interest in the Credit, although not in the earnings attributable to that amount. Thus, when AUL recaptures any Credit, it is merely retrieving its own assets, and the Contract owner has not been deprived of a proportionate share of the applicable Separate Account's assets because his or her interest in the Credit has not vested.

6. In addition Applicants state, permitting a Contract owner to retain a Credit under a Contract upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it and to return it for a quick profit. On the other hand, Applicants assert, the recapture of the full amount of Credits applied to premium payments made within the first twelve months after issuance is designed to provide AUL with a measure of protection against such anti-selection.

7. Applicants submit that the application of a Credit to premium payments made under the Contracts should not raise any questions as to AUL's compliance with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from Section 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described in this application without the loss of relief from Section 27 provided by Section 27(i).

8. Rule 22c-1, promulgated under Section 22(c) of the 1940 Act, prohibits a registered investment company issuing any redeemable security from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 22c-1 is intended to avoid the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price