

thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission pursuant to section 6(c) of the Act grant the exemptions requested below with respect to the Contracts and any Future Contracts issued by the Companies, funded by the Accounts or Other Accounts, and underwritten or distributed by Touchstone or Affiliated Broker-Dealers. Applicants undertake that Future Contracts will be substantially similar to the Contracts in all material respects. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants represent that it is not administratively feasible to track a Credit in the Accounts after the Credit is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amount held in the Accounts, including the Credit, during the recapture periods. As a result, during such periods, the aggregate asset-based charges assessed against an owner's account value will be higher than those that would be charged if the owner's account value did not include the Credit. The account value includes all assets in the Accounts and the fixed accounts, including any Credit.

3. Subsection (i) of section 27 of the Act provides that section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such 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.

4. Applicants submit that the recapture of the Credit in the circumstances set forth in this application would not deprive an owner of his or her proportionate share of the issuer's current net assets. An owner's

interest in the Credit allocated to his or her account value is not fully vested until the sixth Contract year for Contracts issued by Integrity and the third Contract year for Contracts issued by National Integrity. Until the right to recapture has expired and any applicable Credit is vested, the Companies retain the right and interest in the Credit, although not in the earnings attributable to that amount. Thus, when the Companies recapture any Credit, they are merely retrieving their own assets, and the owner has not been deprived of a proportionate share of the applicable Accounts' assets because his or her interest in the Credit has not vested.

5. In addition, Applicants state that permitting an 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 any Credit applied to contributions made within the first twelve months after issuance is designed to provide the Companies with a measure of protection against anti-selection. The anti-selection risk is that an owner can collect a Credit shortly before death, a free withdrawal, or annuitization, thereby leaving the Companies little time to recover the cost of the Credit. As noted earlier, the amount recaptured equals the Credits provided by the Companies from their general account assets, and any gain would remain part of the owner's account value.

6. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put up to 108% of their contributions to work for them in the selected investment options. In addition, the owner will retain any earnings attributable to the Credit, as well as the principal amount of the Credit once vested.

7. Applicants further submit that the recapture of any Credit only applies in relation to the risk of anti-selection against the Companies. Anti-selection can generally be described as a risk that owners obtain an undue advantage. This undue advantage is based on elements of fairness to the Companies and the actuarial and other factors taken into account in designing the Contracts and Future Contracts. The Companies provide the Credit from their general account assets on a guaranteed basis. Thus, they undertake a financial obligation that contemplates the retention of the Contracts and Future Contracts by their owners over an

extended period, consistent with the long-term nature of retirement planning. The Companies generally expect to recover their costs, including the amount of the Credit, over an anticipated duration while a Contract or Future Contract is in force. The right to recapture Credits applied to contributions made within the first twelve months after issuance protects the Companies against the risk that an owner will purchase a Contract or Future Contract or make larger or additional contributions with the knowledge that the contingency that triggers payment of a benefit is likely or about to occur. With respect to refunds paid upon the return of the Contracts or Future Contracts within the free look period, the amount payable by the Companies must be reduced by the amount of the Credit. Otherwise, investors could purchase a Contract or Future Contract for the sole purpose of exercising the free look provision and making a quick profit.

8. Applicants submit that the provisions for recapture of Credits under the Contracts and Future Contracts do not violate sections 2(a)(32) and 27(i)(2)(A) of the Act. Sections 26(e) and 27(i) were added to the Act to implement the purposes of the National Securities Markets Improvement Act of 1996 and Congressional intent. The application of a Credit to contributions made under the Contracts should not raise any questions as to the Companies' compliance with the provisions of section 27(i). However, to avoid any uncertainty as to full compliance with the 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).

9. Rule 22c-1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. The Companies' recapture of a Credit might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current