

Under Option Package I, the death benefit payable is the greater of (1), (2) and (4). Under Option Package II, the death benefit payable is the greatest of (1), (2), (3) and (4). Under Option Package III, the death benefit payable is the greatest of (1), (2), (3) and (4).

Under the Account B Contracts, the death benefit options available under the option packages include:

(1) The Standard Death Benefit which equals return of premium, less credits applied since or within 12 months prior to death, reduced pro rata for withdrawals;

(2) the contract value on the claim, less credits applied since or within 12 months prior to death;

(3) the Annual Ratchet death benefit which equals the maximum contract value on each contract anniversary occurring on or prior to attainment of age 90, adjusted for new premiums and credits and reduced pro rata for withdrawals, less credits applied since or within 12 months prior to death;

(4) the 5% Roll-Up death benefit which equals the lesser of premiums, plus credits, if applicable, adjusted for withdrawals and transfers, accumulated at 5% for Covered Funds or Excluded Funds and 0% for Special Funds until the earlier of attainment of age 90 or reaching the cap (equal to 3 times all premium payments and credits, if applicable, as reduced by adjustments for withdrawals) and thereafter at 0%, and the cap.

Under Option Package I, the death benefit payable is the greater of (1) and (2). Under Option Package II, the death benefit payable is the greatest of (1), (2) and (3). Under Option Package III, the death benefit payable is the greatest of (1), (2), (3) and (4).

12. RLNY and Golden American intend to offer a bonus credit provision under the Contracts. At the time of application, an owner may elect the bonus credit provision. Under the bonus credit provision, RLNY or Golden American, as applicable, credits contract value in the subaccounts and the fixed-interest allocations with an amount that is a percentage of the premium payment. The bonus credit applies upon issuance of the Contract and is based upon premium payments received within the first contract year ("first year premium payments"). RLNY or Golden American, as applicable, allocates the bonus credit among the subaccounts and fixed-interest allocations the owner selects in proportion to the premium payment in each investment option. The bonus credit equals 4% of the first year premium payments. The annual charge assessed for the premium credit rider (as

a percentage of contract value) is 0.50%. The charge is payable for the first seven contract years. The charge is deducted from the contract value in the subaccounts and is also deducted from amounts in fixed interest allocations by crediting a lower interest rate.

13. Under the bonus credit provision, RLNY or Golden American, as applicable, recaptures or retains the credited amount in the event that the owner exercises his or her cancellation right during the "free look" period. RLNY or Golden American, as applicable, recaptures bonus credits applied after or within twelve months of the date as of which a death benefit is computed. RLNY or Golden American, as applicable, also will recapture part or all of the credited amount upon surrender or withdrawal. The portion of the credit deducted is based on the percentage of first year premium withdrawn and the contract year of surrender or withdrawal. The amount recaptured is calculated separately and applied to each premium payment at any time that the payment (or part of the payment) is surrendered or withdrawn. The recapture percentage applicable to each premium payment is level for the first two contract years and diminishes to zero after the seventh contract year. The schedule is as follows:

Contract year of surrender or withdrawal	Percentage of premium credit forfeited (based on percentage of first year premium withdrawn)
Years 1-2	100
Years 3-4	75
Years 5-6	50
Year 7	25
Years 8+	0

14. No recapture percentage applies to contract value representing the annual free withdrawal amount or to contract value representing earnings. Because of the recapture provisions discussed above, the value of a credit only "vests" or belongs irrevocably to the owner as the recapture period for the credit expires. As to bonus credits resulting from premiums paid before the "free look" period ends, no part of the credit vests for the owner until the expiration of the "free look" period. After the expiration of the "free look" period, all bonus credits vest in full over the 7-year period after RLNY or Golden American, as applicable, grants them. Under the bonus credit provision, RLNY or Golden American, as applicable, credits amounts to an owner's contract value

either by "purchasing" accumulation units of an appropriate subaccount or adding to the owner's fixed interest allocation option values.

15. With regard to variable contract value, several consequences flow from the foregoing. First, increases in the value of accumulation units representing bonus credits accrue to the owner immediately, but the initial value of such units only belongs to the owner when, or to the extent that, each vests. Second, decreases in the value of accumulation units representing bonus credits do not diminish the dollar amount of contract value subject to recapture. Therefore, additional accumulation units must become subject to recapture as their value decreases. Stated differently, the proportionate share of any owner's variable contract value (or the owner's interest in the Account) that RLNY or Golden American, as applicable, can "recapture" increases as variable contract value (or the owner's interest in the Account) decreases. This dilutes somewhat the owner's interest in the Account vis-a-vis RLNY or Golden American, as applicable, and other owners, and in his or her variable contract value vis-a-vis RLNY or Golden American, as applicable. Lastly, because it is not administratively feasible to track the unvested value of bonus credits in the Account, RLNY or Golden American, as applicable, deducts the daily mortality and expense risk charge and the daily administrative charge from the entire net asset value of the Account. As a result, the daily mortality and expense risk charge and the daily administrative charge paid by any owner is greater than that which he or she would pay without the bonus credit.

16. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the Act, adding Additional Applicants as parties to the Existing Order, and granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit Additional Applicants to recapture bonuses under Contracts under the same circumstances covered by the Existing Order.

Legal Analysis

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