

account or sponsoring insurance company to sell a variable annuity contract supported by the separate account unless the “* * * contract is a redeemable security; and * * * [t]he insurance company complies with Section 26(e) * * *”

2. Section 2(a)(32) defines a “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 proportionate share of the issuer’s current net assets, or the cash equivalent thereof.

3. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company. Rule 22c-1 thereunder imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time as of which such amount is calculated. Specifically, Rule 22c-1, in pertinent part, 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 which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security.

4. Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act and/or any rule under it 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.

5. Applicants submit that the recapture of bonus credits would not, at any time, deprive an owner of his or her proportionate share of the current net assets of an Account. Until the appropriate recapture period expires, RLNY and Golden American retain the right to and interest in each owner’s contract value representing the dollar amount of any unvested bonus credits. Therefore, if RLNY or Golden American recaptures any bonus credit or part of a bonus credit in the circumstances described above, it would merely be retrieving its own assets. RLNY and Golden American would grant bonus

credits out of their respective general account assets and the amount of the credits (although not the earnings on such amounts) would remain RLNY’s or Golden American’s until such amounts vest with the owner. Thus, to the extent that RLNY or Golden American may grant and recapture bonus credits in connection with variable contract value, it would not, at either time, deprive any owner of his or her then proportionate share of the Account’s assets. It is the nature of the bonus recapture provisions as they apply to variable contract value that an owner would obtain a benefit from a bonus credit in a rising market because any earnings on the bonus credit amount would vest with him or her immediately. Over time this would, of course, cause the owner’s share of both the Contract’s variable contract value and the Account’s net assets to be greater on a relative basis than it would have been without the bonus credit. Conversely, in a falling market an owner would suffer a detriment from a bonus credit because losses on the bonus credit amount also would “vest” with him or her immediately. As explained above, over time this would cause the owner’s share of both the Contract’s variable contract value and the Account’s net assets to decrease on a relative basis.

6. Applicants do not believe that the dynamics of RLNY’s or Golden American’s proposed bonus credit provisions would violate Sections 2(a)(32) or 27(i)(2)(A) of the Act. To begin with, Section 2(a)(32) defines a redeemable security as one “under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer’s current net asset value.” Taken together, these two sections of the Act do not require that the holder receive the exact proportionate share that his or her security represented at a prior time. Therefore, the fact that the proposed bonus credit provisions have a dynamic element that may cause the relative ownership positions of RLNY or Golden American and a Contract owner to shift due to Account performance and the vesting schedule of such credits, would not cause the provisions to conflict with Sections 2(a)(32) or 27(i)(2)(A). Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek exemptions from these two sections.

7. RLNY’s or Golden American’s granting of a bonus credit would have the result of increasing an owner’s contract value in a way that could be viewed as the purchase of an interest in the Account at a price below net asset

value. Similarly, RLNY’s or Golden American’s recapture of any bonus credit could be viewed as the redemption of such an interest at a price above net asset value. If such is the case, then the bonus credit provisions could be viewed as conflicting with Rule 22c-1 under the Act. Applicants contend, however, that the bonus credits do not violate Rule 22c-1 under the Act. The bonus credit provisions do not give rise to either of the evils that Rule 22c-1 was designed to address. The Rule was intended to eliminate or reduce, as far as was reasonably practicable, the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption at a price above net asset value, or other unfair results, including speculative trading practices.”

8. Applicants argue that the evils prompting the adoption of Rule 22c-1 were primarily the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing permitted certain investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding shares. The proposed bonus credit provisions pose no such threat of dilution. An owner’s interest in his or her contract value or in the Account would always be offered under the Contracts at a price determined on the basis of net asset value. The granting of a bonus credit does not reflect a reduction of that price. Instead, RLNY or Golden American will purchase with their own money on behalf of the owner, an interest in the Account equal to the bonus credit. Because any bonus credit will be paid from RLNY’s or Golden American’s general account and not from the assets of the Account, no dilution will occur as a result of the credit. Likewise, because RLNY or Golden American will use general account assets to increase an owner’s total contract value, no dilution will occur from such an increase.

9. Recaptures of bonus credits result in a redemption of RLNY’s interest in an owner’s contract value or in the Account at a price determined on the basis of the Account’s current net asset value and not at an inflated price. Moreover, the amount recaptured will always equal the amount that RLNY or Golden American paid from its general account for the credits. Similarly, although owners are entitled to retain any investment gains attributable to the