

Applicants argue that when Nationwide recaptures a Credit, it is merely retrieving its own assets and the contract owner is not deprived of his or her proportionate share of separate account assets because his/her interest in the Credit has not vested.

6. Furthermore, Applicants state that permitting a contract owner to retain the Credit upon cancellation of the contract pursuant to the contractual free-look privilege would be unfair and would encourage individuals to purchase a contract with the intention of retaining the credited amount for an unjustified profit at Nationwide's expense. Furthermore, the recapture of the Credit is designed to protect Nationwide when a contract owner takes partial or full surrender of the contract shortly after the Credit is applied, leaving Nationwide insufficient time to recover the cost of the Credit.

7. Applicants assert that the Extra Value Option will be attractive to and in the interest of investors because it will permit owners to have an additional 3% or 4% of purchase payments remitted during the first twelve months invested in selected investment options from the date the purchase payment is received. Also, any earnings attributable to the Credit will be retained by the contract owner in addition to the principal amount of the Credit, provided the contingencies set forth in this Application are satisfied. Finally, Applicants believe that the Extra Value Option will be particularly attractive to and in the interest of long-term investors due to the elimination of the charge after 7 contract years for Contracts A, B, and C, and after 8 contract years for Contract D. Applicants assert that the elimination of the Extra Value Option charge will allow prospective purchasers to assess the value of the Extra Value Option, and elect or decline it, based on their particular circumstances, preferences and expectations.

8. Applicants submit that recapturing the Purchase Payment Credit will not deprive an owner of his or her proportionate share of VA-II's current net assets. Applicants state that an owner's interest in the Purchase Payment Credit allocated to his or her contract value is not entirely vested until the end of the contractual free-look period. Until the Purchase Payment Credit is vested, Applicants submit that Nationwide retains the right and interest in the Purchase Payment Credit, although not in any earnings attributable to the Purchase Payment Credit. Applicants argue that when Nationwide recaptures a Purchase Payment Credit, it is merely retrieving

its own assets, and the contract owner is not deprived of his or her proportionate share of separate account assets because his/her interest in the Purchase Payment Credit has not vested.

9. Furthermore, Applicants state that permitting a contract owner to retain the Purchase Payment Credit upon cancellation of the contract pursuant to the contractual free-look privilege would be unfair and would encourage individuals to purchase a contract with the intention of retaining the credited amount for an unjustified profit at Nationwide's expense.

10. Applicants assert that Purchase Payment Credits recognize the efficiencies associated with issuing and administering contracts with higher aggregate purchase payments, and are thus attractive to, and in the best interest of, certain purchasers.

11. Applicants submit that the provisions for recapture of the Credit and the Purchase Payment Credit under the contracts do not violate section 2(a)(32) and 27(i)(2)(A) of the 1940 Act. Nevertheless, to avoid any possible uncertainties, Applicants request an exemption from those sections, to the extent deemed necessary to permit the recapture of any Credit or Purchase Payment Credit under the circumstances described herein with respect to the New Contracts and any future contracts issued in conjunction with VA-II or any Other Separate Accounts without loss of the relief from section 27 provided by section 27(i).

12. Section 22(c) of the 1940 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 to accomplish the same purposes as contemplated by section 22(a). Rule 22c-1 thereunder 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.

13. It could be argued that Nationwide's recapture of the Credit and/or the Purchase Payment Credit constitutes a redemption of securities for a price other than one based on the current net asset value of the separate

accounts. Applicants contend, however, that recapture of these credits does not violate section 22(c) and Rule 22c-1. Applicants argue that such recapture does not involve either of the evils or harmful events that Rule 22c-1 was intended to eliminate or reduce, namely: (1) 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 or repurchase at a price above it, and (2) other unfair results including speculative trading practices. These evils were the result of backward pricing, the practice of pricing a mutual fund share based on the per share net asset value determined as of the close of the market on the previous day. Backward pricing diluted the value of outstanding mutual fund shares by allowing investors to take advantage of increases or decreases in net asset value that were not yet reflected in the mutual fund share price. Applicants submit that the recapture of Credits and Purchase Payment Credits described herein does not pose such a threat of dilution. To recapture any credit, Nationwide will redeem contract owners' interests in the sub-accounts at a price determined on the basis of current sub-account accumulation unit values. In no event will the amount recaptured be more than the amount of the Credit or Purchase Payment Credit that Nationwide paid out of its general account. Although Contract owners will be entitled to retain any investment gain attributable to a credit, the amount of such gain will be determined on the basis of the current net asset value of the respective sub-account. Thus, no dilution will occur upon the recapture of the Credit or Purchase Payment Credit.

14. Applicants also submit that the second harm that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit or Purchase Payment Credit.

15. To avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recapture the Credit and the Purchase Payment Credit under the contracts and any future contracts (that are substantially similar in all material respects to the contracts described herein) issued in conjunction with VA-II or any Other Separate Accounts.