

Amended Contracts Order may offer Credits based on contributions as described in the Prior Applications Credits according to the following schedule:

| Contributions | | Credit rate (as a percentage of contribution) |
|------------------|------------------|--|
| At least | But less than | |
| Minimum | \$ 500,000 | 4.0 |
| \$ 500,000 | \$ 1,000,000 ... | 4.5 |
| \$ 1,000,000 ... | Maximum | 5.0 |

i. Fixed Investment Options

2001 Contracts covered by the Existing Order do not offer a "guaranteed interest account." Amended Contracts offer a "guaranteed interest account" that pays a guaranteed rate of interest and is not subject to a market value adjustment. Equitable will recapture Credits on a pro rata basis from the value in the variable investment options and the guaranteed interest account. If those amounts are insufficient, Equitable will deduct the balance from the fixed maturity options in order of the earliest maturity dates first.

j. Annuitization

Under 2001 Contracts covered by the Existing Order and Amended Contracts (except in Florida) annuity payments may not begin earlier than the fifth contract date anniversary. Under Amended Contracts issued in Florida, annuity payments may begin as early as the first contract date anniversary.

8. Applicants may recapture Credits of up to 6% under the Amended Contracts under the same circumstances covered by the Existing Order, described above. In addition, if an Amended Contract owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary, Equitable will recover the Credit that applies to any contribution made within such five-year period.

9. Applicants submit that their request for an order that applies to the Accounts or any Future Account, in connection with the issuance of Amended Contracts described herein and Future Contracts that are substantially similar in all material respects to the Amended Contracts and underwritten or distributed by AXA Advisors, LLC, AXA Distributors, LLC, or Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order.

Applicants' Legal Analysis

1. Section 6 (c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated 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.

2. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the Act, granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit Applicants to recapture Credits under Amended Contracts under the same circumstances covered by the Existing Order, and if an Amended Contract owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary, as described in paragraph 8 of Applicants' Representations, above.¹²

3. Applicants submit that the recapture of Credits under the Amended Contracts will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder for the same reasons given in support of the Existing Order. Applicants submit that when Equitable recaptures any Credit, it is simply retrieving its own assets. Applicants submit that a Contract owner's interest in any Credit allocated before an owner starts receiving annuity payments under a life contingent payout option within the first five contract years is not vested. Rather, Equitable retains the right to, and interest in, the Credit, although not any earnings attributable to the Credit.

4. Applicants state that because a Contract owner's interest in any recapturable Credit is not vested, the owner will not be deprived of a proportionate share of the applicable Account's assets, i.e., a share of the applicable Account's assets proportionate to the Contract owner's annuity account value (taking into account the investment experience attributable to any Credit). The amounts recaptured will never exceed the Credits provided by Equitable from its own general account assets, and Equitable will not recapture any gain attributable to the Credit.

¹² Pursuant to Rule 0-4 under the Act, Applicants incorporate by reference the legal analysis set out in the Prior Application.

5. Applicants submit that the recapture of Credits relating to contributions made prior to the date an owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary is designed to provide Equitable with a measure of protection against "anti-selection." The risk here is that rather than investing contributions over a number of years, a Contract owner could make an initial contribution, receive Credits, then annuitize under a life contingent annuity payout option within the first five contract years leaving Equitable less time to recover the cost of the Credits applied, to its financial detriment. Like the recapture of Credits permitted by the Existing Order, the amounts recaptured will equal the Credits provided by Equitable from its own general account assets, and any gain associated with the Credit will remain part of the Contract owner's Contract value.

6. For the foregoing reasons, Applicants submit that the provisions for recapture of any Credit under the Amended Contracts do not violate Section 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder, and that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are 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, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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