

Midland Account, which currently include daily mortality and expense risk fee; an annual maintenance fee (which may be waived if the Owner's net premium exceeds a certain amount or if the Owner's Contract is a qualified plan under Federal tax law); premium taxes, surrender charges (contingent deferred sales loads); transfer fees (if applicable although no such fees are currently charged); and fees for optional benefits or riders.

Applicants' Legal Analysis

1. Applicants respectfully request that the Commission, pursuant to section 6(c) of the Act, grant the exemptions set forth below to permit the Applicants to recapture the bonus credit applied to premium payments under the Premium Bonus Rider of the Contracts (subject to a vesting schedule) (i) upon exercise of the Free Look Right, or (ii) in the event of death, annuitization, or surrender (full or partial) before the eighth contract year.

2. Section 6(c) authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the contract and provisions of the Act. Applicants request exemptions for the Contracts described herein, and for Future Contracts, from sections 2(a)(32), 22(c) and 27(i)(2)(a) of the Act, and Rule 22c-1 thereunder, pursuant to section 6(c), to the extent necessary to recapture the bonus credit applied to a premium payment under the Premium Bonus Rider, as described above. Applicants seek exemptions therefrom in order to avoid any questions concerning the Contracts' compliance with the Act and rules thereunder.

3. For the reasons discussed below, Applicants assert that the recapture of some or all of the bonus credit under the Premium Bonus Rider in the circumstances described herein is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

4. Section 27(i) provides that section 27 does not apply to any registered separate account funding variable insurance contracts, nor to the sponsoring insurance company and principal underwriter of such account, except as provided for in section 27(i)(2)(A). Section 27(i)(2)(A) of the Act, in pertinent part, makes it unlawful

for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless such contract is a redeemable security.

5. Section 2(a)(32) of the Act defines "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

6. To the extent that the recapture of bonus credit under the Premium Bonus Rider might be seen as a discount from the net asset value, or might be viewed as resulting in the payment to an Owner of less than the proportionate share of the issuer's net assets, the bonus credit recapture would trigger the need for relief absent some exemption from the Act. Rule 6c-8 provides, in relevant part, that a registered separate account, and any depositor of such account, shall be exempt from sections 2(a)(32), 22(c), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c-1 thereunder to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account. However, the bonus credit recapture under the Premium Bonus Rider is not a sales load, but a recapture of a bonus credit Midland previously applied to an Owner's premium payments. Under the Premium Bonus Rider, Midland provides the bonus credit from its general account on a guaranteed basis. The Contracts are designed to be long-term investment vehicles. In undertaking this financial obligation, Midland contemplates that an Owner will retain a Contract over an extended period, consistent with the long-term nature of the Contracts. Midland designed its product so that it would recover its costs (including the bonus credit) over an anticipated duration while a Contract is in force. If an Owner withdraws his or her money from the Contract before this anticipated period, Midland must recapture the bonus credit under the Premium Bonus Rider in order to avoid a loss.

7. Applicants submit that the recapture of a bonus credit does not violate section 2(a)(32) of the Act. The Applicants submit that the bonus recapture under the Premium Bonus Rider of the Contracts does not deprive the Owner of his or her proportionate share of the issuer's current net assets. An Owner's right to the bonus credit under the Premium Bonus Rider will begin to vest in the first contract year, and will become fully vested after the seventh contract year. Until that time,

Midland retains the right and interest in the dollar amount of any unvested bonus credit amount. Thus, when Midland recaptures a bonus credit, it is only retrieving its own assets, and because an Owner's interest in the bonus credit is not vested, such Owner would not be deprived of a proportionate share of the Midland Account's assets (the issuer's current net assets) in violation of section 2(a)(32). Therefore, such recapture does not reduce the amount of the Midland Account's current net assets an Owner would otherwise be entitled to receive. However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the provisions of sections 2(a)(32) and 27(i)(2)(A) to the extent deemed necessary to permit them to recapture the bonus credit under the Premium Bonus Rider of the Contracts and Future Contracts.

8. Section 22(c) of the Act states that the Commission may 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 ends as contemplated by section 22(a). Rule 22c-1, promulgated under section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing a redeemable security (and a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, any such security) from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security.

9. As a result of the 6% bonus credit under the Premium Bonus Rider, an Owner who made a \$10,000 initial premium payment could be viewed as having an Accumulation Value of \$10,600 before any earnings accrued. Midland's addition of the bonus credit might arguably be viewed as resulting in an Owner purchasing a redeemable security for a price below the current net asset value. Further, by recapturing the bonus credit, Midland might arguably be redeeming a redeemable security for a price other than one based on the current net asset value of the Midland Account. The Applicants contend that these are not correct interpretations or applications of these statutory and regulatory provisions. The Applicants contend that the bonus credit under the Premium Bonus Rider of the Contracts does not violate section 22(c) and Rule 22c-1.