

will not in the aggregate exceed the cost of services to be provided over the life of the Contract defined in accordance with the applicable standards in Rule 26a-1 under the 1940 Act. The deductions for the administrative charge and annual maintenance fee represent reimbursement for the costs expected to be incurred by each Company over the life of the Contract for issuing and maintaining each Contract and the Company's Separate Account.

10. The Contract owner will pay premium taxes, where such taxes are imposed by state law, and which taxes currently range up to 3.5%. These taxes will be deducted from the account value or contributions, as incurred by each Company. Any other taxes levied by any government entity regarding the Contracts or the Separate Accounts will be paid by each of the Companies.

11. Each Company will impose a charge as compensation for bearing certain mortality and expense risks under the Contract. The annual charge is assessed daily and is based on the net asset value of each Separate Account. The annual mortality and expense risk charge will not exceed an effective annual rate of 0.50% of the net asset value of each Separate Account, where 0.40% is allocated to the mortality risk and 0.10% is allocated to the expense risk. Likewise, for Future Contracts, the annual mortality and expense risk charge will not exceed an effective annual rate of 0.50% of the net asset value of the Separate Account attributable to such contracts, where 0.40% is allocated to the mortality risk and 0.10% is allocated to the expense risk.

12. The mortality risk borne by each Company under the Contract arises from the Company's obligation to make annuity payments regardless of how long an annuitant may live. Each Company also assumes mortality risk as a result of death benefits which may be paid under the Contract and which guarantee a minimum payment in the event that the annuitant dies prior to the annuity date. The expense risk borne by each Company under the Contract is the risk that the charges for administrative expenses, which charges are guaranteed for the life of the Contract, may be insufficient to cover the actual costs of issuing and administering the Contract.

13. If the mortality and expense risk charges deducted are insufficient to cover the actual cost of the mortality and expense risk, each Company will bear the loss. Conversely, if the mortality and expense risk charges deducted exceed the costs, the excess will be added to each Company's surplus and will be used for any lawful

purpose, including any shortfalls on the costs of distributing the Contracts.<sup>1</sup>

#### Applicants' Legal Analysis and Conditions

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 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 policy and provisions of the 1940 Act.

2. Sections 26(a)(2) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust, and any depositor or underwriter thereof, from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and are held under arrangements which prohibit any payment to the depositor or principal underwriter except for a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants request an order under Section 6(e) exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account funding the Contracts and Future Contracts. Applicants also request that the order permit the deduction of a mortality and expense risk charge from the assets of any other separate account established by either of the Companies in the future to support variable annuity contracts which are materially similar to the Contracts, and for which any NASD member broker-dealer other than IFS may in the future serve as the principal underwriter. Any such future principal underwriter will be wholly-owned, directly or indirectly, by the ARM Financial Group, Inc., and be registered with the Commission under the Securities Exchange Act of 1934.

4. Applicants submit that the requested relief is appropriate in the public interest because such an order would promote competitiveness in the variable annuity contract market by eliminating the need for the Companies to file redundant exemptive applications, which reduces each Company's resources. Applicants further submit that investors would not

receive any benefit or additional protection by the Company being required repeatedly to seek exemptive relief regarding the same issues addressed in this application.

5. Applicants represent that the mortality and expense risk charges under the Contracts are within the range of industry practice for comparable variable annuity contracts. Applicants base this representation on their review of publicly available information regarding the aggregate level of the mortality and expense risk charges under variable annuity contracts currently being offered in the insurance industry which are comparable to the Contracts. In this regard, Applicants have taken into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge-level or annuity-rate guarantees, and the markets in which the Contracts will be offered. Applicants will maintain and make available to the Commission upon request a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey.

6. Similarly, prior to making available any Future Contracts and prior to making available any materially similar contracts through other separate accounts established by either of the Companies in the future, Applicants will represent that the mortality and expense risk charges under any such contracts will be within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission upon request a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey.

7. The Contracts do not provide for a sales charge to cover the costs incurred in distributing the Contracts, and there are no sales charges imposed upon surrender or partial withdrawal of a Contract. Applicants represent that the costs related to the distribution of the Contracts will be paid from the assets of the general account of the Company, which amounts will be derived in part from gains from operations regarding the Contracts and from the mortality and expense risk charge. Each Company has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts and the Future Contracts will benefit the Company's Separate Account and the Contract owners. The Companies will maintain and make available to the Commission upon request a

<sup>1</sup> Applicants represent that, during the notice period, the application will be amended to reflect this representation.