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September 19, 1990

BY TELECOPY

Mr. Jeff Dahnke  
Pre-Merger Notification Office  
Federal Trade Commission

Dear Mr. Dahnke:

This letter is to follow-up on our telephone conversation

assets" for purposes of the size-of-person test.

As I explained to you during our telephone conversation, "separate account assets" are reflected on the balance sheet of a life insurance company or on the consolidated balance sheet of a life insurance holding company as a separate item with an offsetting entry for separate account liabilities. Separate

Although a separate account may or may not be registered

registered as unit investment trusts, invest the assets from the

By law and for statutory accounting purposes, the assets and liabilities of the separate accounts are clearly identified and distinguished from other assets and liabilities of the insurance company. For your information we have enclosed a copy of Section

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2002 of the Delaware Insurance Code which authorizes separate

SECTION 2002 OF THE DELAWARE INSURANCE CODE WHICH AUTHORIZES SEPARATE

approximates market value, and generally represent policyowner  
and contractowner funds maintained in the accounts to meet

policyowners and contractowners over a specified period. Net investment income and realized and unrealized capital gains and losses related to the separate account assets are not reflected in the statements of operations of an insurance company or insurance holding company.

We understand that the Commission has changed its position as stated in Interpretive Letter No. 98, permitting the "netting" of an asset and a liability in applying the size-of-person test, where an asset has an identical offsetting liability specifically related to the asset. However, we believe the facts with respect to ~~separate accounts are significantly different than~~

those dealt with in Interpretive Letter No. 98. Unlike the advertising monies dealt with in Interpretive Letter No. 98, ~~separate accounts constitute specific assets segregated pursuant~~

~~to separate accounts~~ allocable to policies and contract obligations are not subject to the general liabilities of the insurance company and must be ~~separately identified and the income, gains and losses thereon~~ separate fund and the contractholders look to the separate ~~account to satisfy their contract rights as one also including~~

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company have any rights against the funds in the separate accounts allocable to such contract liabilities. In effect, the separate accounts represent separate mutual funds established by the insurance company. Each of the separate accounts assets as

Interpretive Letter No. 96 states that this language that  
ASSOCIATION OF INSURANCE COMMISSIONERS (AIC), ANNUAL STATEMENT  
Blank for Title Insurance (Form 9) may use "admitted value" on

NAIC ANNUAL STATEMENT BLANK FOR LIFE AND ACCIDENT AND HEALTH

satisfy the claims of other policyholders and other creditors.

Interpretive Letter No. 96 provides that life insurance companies that in their last regularly prepared annual report of operations used the format of Form 1 should refer to "total net premiums written" (i.e., net of reinsurance ceded) as their "annual net sales" within the meaning of §801.11(c)(1). "Total net premiums written" is reflected on line 20(d) of "Exhibit 1-Part 1, Premiums and Annuity Considerations" and carried over to line 1 of the "Summary of Operations" on Form 1.

"Annuity and other fund deposits" are amounts paid by contract owners to the insurance company under an annuity contract or other insurance policy. A contractually determined portion of "annuity and other fund deposits" received by the insurance company must be deposited in the separate accounts.

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Unlike premiums, the "annuity and other fund deposits" and "transfers to separate accounts" items are reflected separately on the Summary of Operations section of Form 1 at line 1A and ~~line 2A. However, under generally accepted accounting~~ principals they are "netted" in reporting revenue. Since Interpretive Letter No. 96 permits the insurance company to "net"

insurance company would also "net" the amount of "transfers to separate accounts" against "annuity and other fund deposits". ~~to the treatment of reinsurance provided~~

economic reality (i.e., a portion of the economic risks associated with the contract are transferred to the separate ~~account. In some cases reinsurance transfers certain risks to~~

We request that the Commission concur in our analysis that

sales" under §801.11(c)(1) and that "separate account assets" of a life insurance company should not be included in determining ~~the amount of gross premiums for purposes of §801(c)(2).~~

~~\_\_\_\_\_~~  
and §801.11(c)(7) requires insurance company to

9/20/90

right or absence of right of participation is reasonably related to the premium observed and the insurer is otherwise not in

health and annuity contracts) of this title.

§ 2933. Pension, profit sharing, annuity agreements; separate accounts

(a) A domestic life insurer may establish one or more sep-

paid to the insurer in connection with a pension, retirement or profit sharing plan or an annuity which are to be applied to provide benefits payable in fixed or in variable dollar

(b) The amounts allocated to each such account and accu-

sharing or annuity funds) of this title.

(c) The income, if any, and gains and losses, realized or unrealized, on each such account shall be credited to or charged

liabilities with respect to such account. That portion of the assets of each such account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business

if there is no readily available market, then in accordance with the terms of the applicable contract or agreement; except, that the portion of the assets of such separate account at least

otherwise applicable to the insurer's assets.

(e) If the contract or agreement provides for payment of benefits in variable amounts, it shall state the essential features of the procedure to be followed by the insurer in determining the dollar amount of such variable benefits. Any such contract or agreement and any certificate issued thereunder shall state that such dollar amount may decrease or increase and shall state in its first page that the benefits there-

shall state any such contract or agreement providing benefits in variable amounts until the insurer has satisfied the Commissioner that its condition or methods of operation in connection with the issuance of such contracts or agreement will not render its operation hazardous to the public or its policyholders in this State. In determining the qualification of an insurer requesting such authority the Commissioner shall consider among other things,

(1) The history and financial condition of the insurer:

THE OFFICERS AND DIRECTORS OF THE INSURER, AND

(3) In the case of an insurer other than a domestic insurer, whether the statutes or regulations of the jurisdiction

holdings and the public substantially equal to that provided in

separate accounts pursuant to subsection (a) above, may amend its charter to provide for special voting rights and procedures for such separate account contract owners giving them jurisdiction over matters relating to investment policy, investment advisory services and selection of certified public accountants, in relation to the administration of the assets in any such separate account. This provision shall not in any way affect existing laws pertaining to the voting rights of the

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