

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

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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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2933 of the Delaware Ingurance Code which authorized separate

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approximates market value, and generally represent policyowner

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 those dealt with in Interpretive Letter No. 98. Unlike the advertising monies dealt with in Interpretive Letter No. 98,

allocable to policies and contract obligations are not subject to the general liabilities of the insurance company and must be

separate fund and the contractholders look to the separate

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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

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Absoling of insurance (Form 9) may use "admitted value" on

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satisfy the claims of other policyholders and other creditors.

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Interpretive Letter No. 96 provides that life insurance companies that in their last regularly prepared annual report of 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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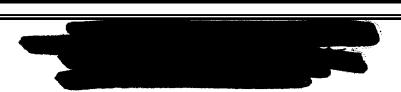
Unlike premiums, the "annuity and other fund deposits" and "transfers to separate accounts" items are reflected separately on the Summary of Operations section of Form 1 at line 1A and the Summary of Operations section of Form 1 at line 1A and on the Summary of Operations section of Form 1 at line 1A and on the Summary of Operations section of Form 1 at line 1A and on the Summary of Operations 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 "transiers to separate accounts" against "annuity and other fund deposits".

economic reality (i.e., a portion of the economic risks associated with the contract are transferred to the separate

We mercet that the Commission concur in our analysis that

sales" under \$801.11(c)(1) and that "separate account assets" or a life insurance company should not be included in determining



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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

\_(8)\_A\_domestic life\_ingurar may establish one or more sen-

paid to the insurer in connection with a pension, retirement or profit sharing plan or an annuity which are to be applied to provide hemsits parely in fixed or in wardale 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

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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 hasiness

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 therefore that the bonefits that and advantage and increase and shall state in its first now that the bonefits that

variable amounts until the insurer has satisfied the Commissioner that its condition or methods of operation in connection with the issuence of such contacts or operation in connection der 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:

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

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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

Ravised, December 1969