3. Applicants request an order pursuant to Section 6(c) of the 1940 Act 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 the expense risk charge from the assets of the Separate Account and any Future Accounts in connection with the Contracts.

4. Applicants represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk charge under variable annuity contracts comparable to the Contracts currently being offered in the insurance industry, taking 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. Based upon this review, Applicants further represent that the mortality and expense risk charge under the Contracts is within the range of industry practice for comparable contracts. Great-West will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

5. Applicants represent that, prior to offering any Future Contracts through the Separate Account or Future Accounts, 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. Great-West will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

6. Applicants will cover the costs of distributing the Contracts from the assets of the general account, since no front-end or contingent deferred sales charges are imposed under the Contracts. This distribution expense paid from the assets of the general account of Great-West will include amounts derived from the mortality and expense risk charge. Great-West has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Separate Account and the Owners. Great-West will maintain at its administrative offices, available to the Commission, a memorandum setting forth the basis for this representation.

7. Applicants recognize that any additional cost for distributing Future Contracts will be derived from the general account of Great-West, which will include amounts derived from the mortality and expense risk charge imposed under such Future Contracts. Great-West will maintain at its administrative offices, available to the Commission, a memorandum setting forth the basis for a representation that the distribution financing arrangement for such Future Contracts will benefit the Separate Account, or Future Account, and the Owners.

8. Applicants represent that the Separate Account will invest only in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any such funds, and who would oversee the formulation and approval of any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

9. Applicants submit that their request for exemptive relief would promote competitiveness in the variable annuity contract market by eliminating the need for redundant exemptive applications, thereby reducing Applicants' administrative expenses and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair their ability effectively to take advantage of business opportunities as they arise. Further, if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and 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.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18174 Filed 7–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22066; No. 812–9944]

The Minnesota Mutual Life Insurance Company, et al.

July 11, 1996.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application of Exemptions pursuant to the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Minnesota Mutual Life Insurance Company (''Minnesota Mutual''), Minnesota Mutual Variable Life Separate Account (''Account'') and MIMLIC Sales Corporation (''MIMLIC Sales'').

RELEVANT ACT SECTIONS: Order requested pursuant to Sections 6(c) of the Act, granting exemptions from Sections 2(a)(35), 22(c), 22(d), 22(e), 26(a), 27(a), 27(c), 27(d) and 27(f) of the Act and from Rules 6e–2(b)(1), (b)(12)(i), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(v), (b)(13)(viii), (c)(1) and (c)(4), 22c–1 and 27f–1 thereunder. Order also requested pursuant to Section 11 approving an exchange offer.

SUMMARY OF APPLICATION: The relief requested would permit the offer and sale of certain scheduled premium variable life insurance policies (''Policies'') that provide for: (a) a cash option death benefit; (b) a scheduled decrease in the initial face amount and the subsequent adjustment of Policies to a face amount less than the initial face amount; (c) deduction of cost of insurance charges not to exceed the charges derived from the 1980 Commissioners Standard Ordinary Mortality Table for purposes of calculating ''sales load''; (d) deduction of a federal tax charge; (e) the anticipated joint life expectancy of the insureds to be determined on the basis of the 1980 Commissioners Standard Ordinary Mortality Table for purposes of calculating the period over which sales load may not exceed 9 percent; (f) assessment of a new first year sales load upon a policy adjustment involving an increase in base premium, which sales load may be in addition to a first year sales load being taken at the time the adjustment is made; (g) increase in the proportionate amount of sales load deducted from premiums following certain policy adjustments or the payment of nonrepeating premiums; (h) deduction from Account assets of the proposed charges for the cost of insurance and the face amount guarantee; (i) a right to convert to a fixed benefit adjustable life insurance policy with a death benefit equal to the Policy's then current face amount and with a plan of insurance which may be less than for the whole of life; and (j) personal delivery to Policy owners of free-look right notices which contain information comparable to that required by Form N–27I–2. The requested relief also would approve an exchange offer. The relief would extend to any variable life insurance policies that may be offered in the future that are substantially similar in all material respects to the Policies (''Future Policies'') that are funded by the Account or any other separate accounts established in the future by Minnesota Mutual (''Future Accounts'') and that may be offered by MIMLIC Sales or any other members of the National Association of Securities Dealers, Inc. (''NASD'') that may in the future serve as principal underwriters of the Policies or Future Policies (''Future Underwriters'').

FILING DATE: The application was filed on January 16, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 5, 1996, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o J. Sumner Jones, Esq., Jones & Blouch L.L.P., Suite 405 West, 1025 Thomas Jefferson Street, N.W., Washington, D.C. 20007–0805.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Wendy Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants, Representations

1. Minnesota Mutual is a mutual life insurance company organized under the laws of Minnesota in 1880. It is authorized to do life insurance business in the District of Columbia, certain Canadian provinces, Puerto Rico and all states of the United States except New York.

2. The Account is a separate account of Minnesota Mutual established by its Board of Trustees on October 21, 1985, to facilitate the issuance of scheduled premium variable life insurance policies. Under Minnesota law, assets of the Account equal to the reserves and other Account liabilities are not chargeable with liabilities arising out of any other business Minnesota Mutual may conduct, and the income, gains and losses, realized or unrealized, of the Account are credited to or charged against the Account without regard to other income, gains or losses of Minnesota Mutual.

3. MIMLIC Sales, an indirect wholly-owned subsidiary of Minnesota Mutual, is the principal underwriter for the Account. The Policies will be sold by life insurance agents of Minnesota Mutual who are associated persons of either MIMLIC Sales or other broker-dealers who have entered into selling agreements with MIMLIC Sales. MIMLIC Sales is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD.

4. Assets of the Account are invested in shares of MIMLIC Series Fund, Inc. (''Fund''), a diversified, management investment company registered under the Act. The Fund is a series company consisting of a number of separate portfolios. Shares of each portfolio are sold without a sales charge to the Account and to other separate accounts of Minnesota Mutual established for the purpose of funding variable annuity contracts and other variable life insurance policies issued by Minnesota Mutual.

5. The Policies are scheduled premium variable life insurance policies that pay a death benefit at the death of the second to die of two named insureds (''second death''). The Policies permit an owner to select a plan of insurance based on his or her insurance needs and the amount of premium the owner wishes to pay. Based on the owner's selection of any two of three components of a Policy—face amount, premium and plan of insurance—Minnesota Mutual will then calculate the third. The owner may change the face amount and premium level, and thus the plan of insurance, subject to certain limitations, so long as the Policy remains in force.

6. The flexibility provided by the Policies results in a broad range of plans of insurance. ''Plan of insurance'' refers to the level of cash value accumulation assumed in the design of the Policy and, for whole life plans, the period of coverage over which premiums are required to be paid. There are two general categories of plans of insurance—whole life plans and protection plans. Whole life plans contemplate an eventual cash value accumulation, at or before the younger insured's age 100, equal to the net single premium require for the face amount of insurance. Premiums may be payable for a specified number of years or for the joint lives of the insured. Premiums payable for a specified number of years will cause a Policy to become paid-up prior to the younger insured's age 100. At issue, the maximum plan of insurance permitted under the Policies for a specific face amount is one in which the Policy will be paid up after the payment of ten annual premiums. A Policy is paid-up when is Policy value is such that no further premiums are required to provide the face amount of coverage until the second death of the two insureds.

7. Protection plans of insurance assume an eventual exhaustion of cash value at the end of a specified period. Under conventional adjustable life, insurance coverage would terminate at the end of the specified period. However, since premiums under the Policies are payable for the joint lives of two insureds, the Policies provide for a scheduled reduction in face amount at the end of the initial period of coverage to an amount which the continued payment of the scheduled premium will provide a whole life plan. The minimum plan of insurance for a specific face amount is one which will provide for no scheduled reduction in face amount for at least ten years, except where the age of the younger insured is over age 70, in which case the minimum plan will be less than ten years.

8. The scheduled reduction in face amount under a protection plan will occur at such time as the Policy's tabular cash value, i.e., the cash value which is assumed in designing the Policy and which would be guaranteed in a conventional fixed-benefit policy, is exhausted. If, at the time of a scheduled reduction in face amount, the actual cash value with the annual premium is sufficient to provide at least one year of protection at the then current face amount, the Policy will be adjusted to preserve the current face amount. The adjustment will result in a scheduled decrease in the current face amount at a later Policy anniversary, the elimination of the scheduled decrease in face amount, or the shortening of the premium payment period.

9. The Policies offer a choice of two death benefits—the ''cash option'' and the protection option. If neither death benefit option has been elected, the cash option will be in effect. The scheduled premium for a Policy is the same no matter which option is chosen. Under the cash option, the death benefit is the current face amount at the time of the

second death. The death benefit will not vary unless the Policy value exceeds the net single premium for the then current face amount. Under the protection option,the death benefit is the Policy value plus the greater of the then current face amount or the amount of insurance which could be purchased using the Policy values as a net single premium. The net single premium is the amount necessary to pay all future guaranteed cost of insurance charges for the lifetime of both insureds without the payment of additional premium. The protection option death benefit is available only until the Policy anniversary nearest the younger insured's age 70. At the Policy anniversary nearest the younger insured's age 70, the protection option is automatically converted to the cash option death benefit. At that time the Policy will be automatically adjusted so that the face amount will equal the death benefit in effect immediately prior to the adjustment.

10. One of the principal benefits of an adjustable policy such as the Policy is that it may be adjusted on any monthly anniversary of the policy date to reflect the changing personal and insurance needs of the owner. Unlike most traditional life insurance policies, there is no need to exchange the Policy or to purchase an additional policy as such needs change. The Policies allow the owner to make four types of adjustment: (a) an increase or decrease in the premium; (b) an increase or decrease in the face amount; (c) a partial surrender; and (d) an adjustment to stop premium, which is an adjustment made on the assumption that no further base premiums will be paid. There are also two automatic adjustments, one at the point that the face amount is scheduled to decrease and the other upon the change from protection option death benefit to the cash option death benefit at the Policy anniversary nearest the younger insured's age 70.

11. An adjustment usually will result in a change in the Policy's plan of insurance. Depending on the adjustment requested, for whole life plans the premium paying period may be lengthened or shortened or the plan may be changed from a whole life plan to protection plan by providing for a scheduled reduction in face amount at a future date. For Policies having a protection plan prior to an adjustment, and adjustment may change the Policy to a whole life plan by eliminating the scheduled decrease in face amount or it may change the duration of the plan by changing the time at which the decrease is scheduled to occur.

12. If an owner requests an increase in scheduled premium, the adjustment will result in either an increase in face amount or an improvement in plan, whichever the owner selects. If the owner requests a decrease in scheduled premium or makes a partial withdrawal, the opposite results occur—a decrease in face amount or reduction in plan. An improvement in plan is, in the case of protection plans of insurance, a postponement of the time at which a reduction in face amount is scheduled to occur and, in the case of whole life plans, a reduction in the premium payment period. Elimination of a scheduled decrease in face amount and reduction in the premium payment period will occur if the improvement in plan is sufficient to convert a protection plan of insurance to a plan greater than whole life.

13. Plan changes also will result from changes in face amount with or without changes in premium. Thus, an improvement in plan may be made by reducing the face amount while keeping the premium constant, and conversely, a reduction in plan may be made by increasing the face amount without a change in premium. If both face amount and premium are changed, the resulting plan will depend on the extent of the changes and whether the influence of the face amount or premium on the plan complements or contradicts the influence of the other. For example, if an owner requested a reduction in both face amount and premium, the effect of the reduction in face amount might more than offset the effect of a lower premium so as to result in an improved plan of insurance.

14. The plan of insurance also will be affected by an adjustment to stop premium. This type of adjustment may be viewed as a decrease in base premium to a zero amount. In the absence of an accompanying request to change the face amount, and adjustment to stop premium is in effect a redetermination of the plan of insurance on the assumption that no further base premiums will be paid. In view of the contemplated termination of base premium payments, the resulting plan will usually be substantially reduced.

15. When a Policy is adjusted, Minnesota Mutual will in effect reissue the Policy by computing a new plan of insurance, face amount and premium amount, if any. In addition, Minnesota Mutual will bring all Policy charges up to date, charge and credit loan interest and then calculate new tabular cash, actual cash and Policy values. In computing either a new face amount or new plan of insurance as a result of an adjustment, Minnesota Mutual will make the calculation on the basis of the higher of the Policy's Policy value or its tabular cash value at the time of the change. If the Policy value is higher than the tabular cash value, whether as the result of favorable investment performance, the payment of a nonrepeating premium or otherwise, a Policy adjustment will translate the excess value into enhanced insurance coverage in the form of either a higher face amount or an improved plan of insurance. If the Policy value is less than the tabular cash value, use of the tabular cash value insures that the Policy's guarantee of a minimum death benefit is not impaired by the adjustment.

16. An adjustment also will result in the computation of a new tabular cash value. The tabular cash value after adjustment will be equal to the greater of the Policy value or the tabular cash value prior to the adjustment, plus the amount of any nonrepeating premium credited to the Policy and minus the amount of any partial surrender made at the time of the adjustment. Although the payment of a nonrepeating premium is not an adjustment, any such payment will be reflected in the tabular cash value of the Policy at issue or upon later adjustment. Minnesota Mutual reserves the right in its discretion to impose restrictions on or to refuse to permit nonrepeating premiums.

17. The Policies provide various limitations and conditions on the right to make adjustments. These limitations and conditions may be changed in the future or additional restrictions may be imposed.

18. Charges under the Policies are assessed against scheduled and nonrepeating premiums, the Policies' actual cash values and the assets of the Account. Premium charges vary depending on whether the premium is a scheduled premium or a nonrepeating premium. From scheduled premiums there is deducted any charge for sub-standard risks and any charge for additional benefits provided by rider to determine the base premium. From the base premium there is deducted a sales load, an underwriting charge, a premium tax charge and a federal tax charge.

19. A basic sales load of 7 percent will be deducted from each scheduled premium and a first year sales load not to exceed 23 percent also may be deducted. A first year sales load will be applied only against base premiums scheduled to be paid in the twelve month periods following the Policy data, any policy adjustment involving an increase in base premium or any policy adjustment occurring during a

period when a first year sales load is being assessed. It will also apply only to that portion of an annual base premium necessary for an original issue whole life plan of insurance. For base premiums greater than this whole life premium, the amount of the base premium in excess of the original issue whole life base premium will be subject only to the 7 percent basic sales load. In computing the first year sales load following a policy adjustment involving an increase in base premium, the charge will be applied only to the amount of the increase in base premium. However, if an adjustment occurs during a period when a first year sales load is being taken, the uncollected portion of such sales load—determined on the basis of the lesser of the base premium in effect prior to, or following, the adjustment—will also be assessed during the twelve month period following the adjustment. All of the sales load charges are designed to average not more than 9 percent of the base premiums over the lesser of: (a) the joint life expectancy of the insureds at policy issue or adjustment; (b) fifteen years from policy issue or adjustment; or (c) the premium paying period. Compliance with the 9 percent ceiling will be achieved by reducing the amount of the first year sales load, if necessary.

20. An underwriting charge currently in an amount not in excess of $10 per $1,000 of face amount of insurance will be deducted ratably from the premiums scheduled to be made during the first Policy year and during the twelve month period following certain policy adjustments. In the event of a policy adjustment which results in a face amount increase and no base premium, the Policy owner must remit the underwriting charge to Minnesota Mutual prior to the effective date of the adjustment or it will be assessed against the Policy's actual cash value as a transaction charge. The specific amount of the charge may vary depending on the ages of the insureds and the premium level for a given amount of insurance. The underwriting charge is designed to compensate Minnesota Mutual for the administrative costs associated with issuing and adjusting Policies, including the cost of processing applications and adjustment requests, conducting medical examinations, classifying risks, determining insurability and risk class and establishing or modifying Policy records. Although the charge is not expected to be a source of profit to Minnesota Mutual, the amount of the charge is not guaranteed so that on adjustment the then current underwriting charge will apply to any increase in face amount which requires new evidence of insurability.

21. A premium tax charge of 2.5 percent of each base premium will be deducted to cover the aggregate premium taxes payable by Minnesota Mutual to state and local governments for the Policies. The premium tax charge is not guaranteed and may be increased in the future, but only as necessary to cover premium tax expenses. Also, a federal tax charge of 1.25 percent of each base premium will be deducted to cover a federal tax related to premium payments. The federal tax charge is not guaranteed and may be increased in the future, but only as necessary to cover the federal tax related to premium payments.

22. Nonrepeating premiums will be subject only to the basic sales load of 7 percent, the 2.5 percent premium tax charge and the 1.25 percent federal tax charge. No underwriting charge will be assessed. Minnesota Mutual intends initially to waive the assessment of any sales charge against nonrepeating premiums, but reserves the right to impose the sales charge at a later date.

23. In addition to deductions from premiums, Minnesota Mutual deducts certain charges from a Policy's actual cash value, namely, an administration charge, a face amount guarantee charge, a cost of insurance charge and certain charges for specific Policy transactions. The administration charge is guaranteed not to exceed $15 per month and is currently set at $10 per month. It is designed to cover certain administrative expenses, including those attributable to maintaining Policy records. The charge is not expected to be a source of profit to Minnesota Mutual. The face amount guarantee charge is guaranteed not to exceed 3 cents per thousand dollars of face amount per month and is currently set at 2 cents per thousand. The charge is designed to compensate Minnesota Mutual for its guarantee that the death benefit under the Policy will always be at least equal to the current face amount in effect at the time of the second death regardless of the investment performance of the sub-accounts in which net premiums have been invested. The cost of insurance charge compensates Minnesota Mutual for providing the death benefit under a Policy. The charge is calculated by multiplying the net amount at risk under a Policy by a rate which is based on the age, gender, risk class and the smoking habits of each insured. The rate also reflects the plan of insurance and any policy adjustments since issue. The rate cannot exceed the maximum charges for mortality derived from the 1980 Commissioners Standard Ordinary Mortality Table. The transaction charges consist of a $95 charge for each policy adjustment, except for adjustments involving only partial withdrawals when the charge will be the lesser of $95 or 2 percent of the amount withdrawn, and a charge of up to $25 for each transfer of actual cash value among the guaranteed principal account and sub-accounts of the Account. Initially, the charge will be $10 for non-systematic transfers in excess of four per year. Establishing a systematic transfer program will be deemed to be a non-systematic transfer for purposes of determining the transfer charge. The above charges and restrictions will not apply to a transfer of all of the Policy value to the guaranteed principal account as a conversion privilege.

24. The administration, face amount guarantee and cost of insurance charges are deducted from a Policy's actual cash value on the same day each month as the Policy issue date. Such charges are also deducted on the occurrence of the second death, a surrender, lapse or policy adjustment. Transaction charges are assessed against the actual cash value of a Policy at the time of a policy adjustment or when a transfer is made. In the case of a transfer, the charge is assessed against the amount transferred.

25. The Policies also provide for charges against Account assets. Minnesota Mutual will deduct a mortality and expense risk charge on each valuation date at an annual rate of .50 percent of the Account's assets. In addition, Minnesota Mutual reserves the right to charge or make provision for any taxes payable by it with respect to the Account or the Policies by a charge or adjustment to Account assets.

26. The Policies provide for a ''free look'' right, which is available not only following issuance of the Policy, but also following any policy adjustments involving an increase in base premium. The owner may return his or her Policy to Minnesota Mutual or its agent by the later of: (a) 45 days after execution of the application or request for adjustment; (b) 10 days after receipt of the Policy or adjusted Policy from Minnesota Mutual; or (c) 10 days after Minnesota Mutual's mailing or delivery of a notice describing the right of withdrawal. On return of the Policy after issue, all premiums paid will be refunded. On return of an adjusted Policy, the requested adjustment, including the $95 transaction charge assessed for the adjustment, will be canceled and any increase in premium paid will be refunded.

27. The Policy contains no specific provision for conversion to a fixed

benefit policy as contemplated by paragraph (b)(13)(v)(B) of Rule 6e–2; however, fixed insurance coverage providing the benefits contemplated by that paragraph may be obtained by transferring all of the Policy value, and allocating all premiums, to the guaranteed principal account. So long as both insureds are alive, the owner of a Policy may ask to exchange the Policy for two individual policies insuring each of the insureds separately. Minnesota Mutual will require evidence of insurability to make the exchange. The two new policies will be issued on a variable or fixed benefit basis using a policy form in use on the date of the exchange; each new policy will have one-half of the death benefit, cash value and loan, if any, of the Policy being exchanged.

Applicants' Legal Analysis

Non-Variable Death Benefit

1. Under the Policies the actual cash value will vary with the investment performance of the sub-accounts selected by the owner so long as the Policy has not been surrendered or lapsed. The death benefit also will vary with such investment performance if the owner has selected the protection option. All Policies permit the owner to select the protection option at the time of purchase or to subsequently change to the protection option provided there is satisfactory evidence of the insured's insurability. However, the protection option is available only until the Policy anniversary nearest the younger insured's age 70; at that anniversary the death benefit option will be changed to the cash option. Whenever the cash option death benefit is in effect under a Policy, that Policy will fail to satisfy the conditions of clause (i) of the definition of variable life insurance contract and clause (i) of Rule 6e–2(b)(12) unless and until the Policy value exceeds the net single premium for the then current face amount. Applicants request exemptions from Sections 22(c), 22(d), 22(e) and 27(c)(1) of the Act, Rule 22c–1 and paragraphs (b)(12)(i) and (c)(1)(i) of Rule 6e–2 to the extent necessary to permit provision in the Policies for the cash option death benefit.

2. Applicants submit that no purpose would be served in prohibiting the cash option death benefit under the Policies or the required change to the cash option death benefit at the younger insured's age 70. Except for the amount of the death benefit and the cost of insurance charges which reflect the amount at risk, a Policy with the cash option death benefit will operate in the same manner as one with the protection option in effect. The cash option death benefit may be viewed by some Policy owners as preferable, because the amounts at risk under the Policy will be smaller than under the protection option; as a result, the cost of insurance will be less, thereby permitting a more rapid increase in the actual cash value of the Policy. Applicants believe that a purchaser of a variable life insurance policy should not be compelled to have a death benefit which varies with the investment performance of the separate account. Further, prohibiting the change in death benefit to the cash option would preclude Minnesota Mutual's offering certain plans of insurance with the protection option, because the large amounts at risk in relation to the Policy values that may exist at older ages under the protection option are incompatible with the amount at risk to Policy value ratios contemplated, and inherent in the Policy's guarantees, for certain plans of insurance, including whole life plans.

Change in Face Amount

3. Although all Policies provide for a guaranteed death benefit at least equal to the initial face amount, any Policy with a protection plan of insurance will provide for a scheduled reduction in face amount at the end of the initial term. Moreover, any Policy, including a Policy with a whole life plan of insurance, may be adjusted to a new face amount, which may be less than the initial face amount, and the death benefit guarantee will thereafter be applicable to the face amount as adjusted. Applicants request exemption from clause (ii) of Rule 6e–2(c)(1) to the extent necessary to permit the issuance of Policies with a scheduled decrease in the initial face amount, and the subsequent adjustment of Policies to a face amount less than the initial face amount.

4. Applicants submit that there are no policy reasons for not permitting scheduled reductions in face amount. Policies with such reductions will require smaller premium payments than comparable whole life Policies, and therefore may be more affordable to many purchasers, particularly younger persons who may not have reached their maximum earnings potential at a time when their insurance needs may be greatest. The scheduled reduction in face amount will be fully disclosed so that a Policy owner may understand the nature of the insurance coverage provided by his or her Policy. Finally, the amount of reduced insurance is guaranteed regardless of the investment performance of the sub-accounts selected by the owner, so that the death benefit guarantee, although changed in amount, will continue until the second death.

5. Exemptive relief from clause (ii) of Rule 6e–2(c)(1) is also required to permit owners to adjust their Policies subsequent to issue, which adjustments may decrease the face amount of insurance. Applicants submit that it is in the best interests of purchasers of the Policies that they have the flexibility to increase or decrease the face amount of coverage of their Policies in light of their current insurance needs and economic circumstances. Since, in computing a new face amount, premium or plan in connection with an adjustment, Minnesota Mutual will use the greater of the Policy's then Policy value or its tabular cash value, the adjustment will not impair the face amount guarantee previously in effect.

Cost of Insurance Based on 1980 Commissioners Standard Ordinary Mortality Table (''1980 Table'')

6. In defining sales load, paragraph (c)(4) of Rule 6e–2 permits the exclusion of the cost of insurance based on the 1958 Commissioners Standard Ordinary Mortality Table (''1958 Table'') and the assumed investment rate specified in the contract. Under the Policies, the cost of insurance is guaranteed not to exceed the maximum charges for mortality derived from the 1980 Table. Applicants request exemption from Sections 2(a)(35) and 27(a)(1) of the Act and paragraphs (b)(1), (b)(13)(i) and (c)(4) of Rule 6e–2 to the extent necessary to permit the deduction of cost of insurance charges not to exceed the charges derived from the 1980 Table for purposes of calculating ''sales load.''

7. The 1980 Table reflects more current mortality experience. Moreover, except for young male insureds at certain ages, the table provides for lower cost of insurance charges. If Minnesota Mutual were to compute sales load on the basis of cost of insurance charges derived from the 1958 Table, it would be able to increase the amount of the gross premiums under most of the Policies it issues and to treat the increase as attributable to cost of insurance when in fact such would not be the case.

Deduction of Proposed Federal Tax Charge

8. Applicants requests an exemption from the provisions of Sections 2(a)(35), 27(a)(1) and 27(c)(2) of the Act an paragraphs (b)(1), (b)(13)(i) and (c)(4) of Rule 6e–2 to the extent necessary to permit deductions to be made from premium payments received under the Policies in an amount that is reasonable in relation to Minnesota Mutual's

increased federal income tax burden related to the receipt of such premiums and to treat such deductions as other than ''sales load'' for the purposes of the Act and Rule 6e–2.

9. The Policies provide for a deduction of a federal tax charge from each premium payment, including nonrepeating premiums. The current charge proposed to be deducted is 1.25 percent of the premium. Minnesota Mutual may increase the federal tax charge, but only to the extent necessary to cover the federal tax related to premium payments. Applicants submit that the proposed deduction to cover such charges is akin to a state premium tax charge in that it is an appropriate charge related to Minnesota Mutual's tax burden attributable to premiums received and therefore that the proposed deduction be treated as other than sales load, as is a state premium tax charge, for purposes of the Act.

10. In the Omnibus Budget Reconciliation Act of 1990 (''OBRA 1990''), Congress amended the Internal Revenue Code of 1986 (''Code'') by, among other things, enacting Section 848 thereof, Section 848 requires an insurance company to capitalize and amortize over a period of ten years part of the company's general expenses for the current year. Under prior law, these general expenses were deductible in full from the current year's gross income. The effect of Section 848 is to accelerate the realization of income from insurance contracts covered by that section and, accordingly, the payment of taxes on the income generated by those contracts. The amount of general deductions that must be capitalized and amortized over ten years, rather than deducted in the year incurred, is based solely upon ''net premiums'' received in connection with certain types of insurance contracts. The Policies fall into the category of life insurance contracts, and under Section 848, 7.7 percent of the year's net premiums received must be capitalized and amortized.

11. The increased tax burden on Minnesota Mutual resulting from Section 848 may be quantified as follows. For each $10,000 of net scheduled premiums received by Minnesota Mutual under the Policies in a given year, Section 848 requires Minnesota Mutual to capitalize $770 (7.7 percent of $10,000) and $38.50 of this $770 may be deducted in the current year. This leaves $731.50 ($770 minus $38.50) subject to taxation at the corporate tax rate of 35 percent, which results in Minnesota Mutual owing $256.03 (.35×$731.50) more in taxes for the current year than would have been owed by Minnesota Mutual prior to OBRA 1990. This current increase in federal income tax will be partially offset by deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $731.50 ($77 in each of the following nine years and $38.50 in year ten).

12. In the business judgment of Minnesota Mutual, a discount rate of at least 10 percent is appropriate for use in calculating the present value of Minnesota Mutual's future tax deductions resulting from the amortization described above. Minnesota Mutual seeks an after tax rate of return on the investment of its surplus of 10 percent. To the extent that surplus must be used by Minnesota Mutual to meet its increased federal tax burden under Section 848 resulting from the receipt of premiums, such surplus is not available to Minnesota Mutual for investment. Thus, the cost of ''capital'' used to satisfy Minnesota Mutual's increased federal income tax burden under Section 848 is, in essence, Minnesota Mutual's after-tax rate of return on surplus.

13. In determining the after-tax rate of return used in arriving at the 10 percent discount rate, Minnesota Mutual considered a number of factors, including market interest rates, Minnesota Mutual's anticipated long-term growth rate, the risk level for this type of business that is acceptable to Minnesota Mutual, inflation, and available information about the rates of return obtained by other mutual life insurance companies. Minnesota Mutual represents that these factors are appropriate factors to consider in determining its cost of capital. Minnesota Mutual first projects its future growth rate based on sales projections, current interest rates, the inflation rate, and the amount of surplus that it can provide to support such growth. It then uses the anticipated growth rate and the other factors cited above to set a rate of return on surplus that equals or exceeds this rate of growth. Of these other factors, market interest rates, the acceptable risk level and the inflation rate receive significantly more weight than information about the rates of return obtained by other companies.

14. Minnesota Mutual seeks to maintain a ratio of surplus to assets that it establishes based on its judgment of the risks represented by various components of its assets and liabilities. Consequently, Minnesota Mutual's surplus must grow at least at the same rate as its assets. On the basis of the foregoing, Applicants submit that Minnesota Mutual's after-tax rate of return on surplus is appropriate for use in the present value calculation of future tax benefits. Minnesota Mutual undertakes to monitor the tax burden imposed on it and to reduce the federal tax charge to the extent of any significant decrease in the tax burden.

15. If a corporate federal income tax rate of 35 percent and a discount rate of 10 percent are used, the present value of the federal income tax effect of the increased deductions allowable in the following ten years, which partially offsets the increased federal income tax burden is $160.40. The effect of Section 848 on Minnesota Mutual in connection with the Policies is, therefore, an increased federal income tax burden with a present value of $95.63 for each $10,000 of net premiums, *i.e.*, $256.03 minus $160.40. Federal income taxes are not deductible in computing Minnesota Mutual's federal income taxes. To compensate Minnesota Mutual fully for the impact of Section 848, therefore, it would be necessary to allow Minnesota Mutual to impose an additional charge that would compensate it not only for the $95.43 additional federal income tax burden attributable to Section 848 but also for the federal income tax on the additional $95.43 itself. This federal income tax can be determined by dividing $95.43 by the complement of the 35 percent federal corporate income tax rate, *i.e.*, 65 percent, resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.47 percent.

16. Based on prior experience, Minnesota Mutual expects that all of its current and future deductions will be fully taken. It is Minnesota Mutual's judgment that a charge of 1.25 percent would reimburse Minnesota Mutual in part for the impact of Section 848 on Minnesota Mutual's federal income tax liabilities. The charge to be deducted by Minnesota Mutual is reasonably related to Minnesota Mutual's increased federal income tax burden under Section 848, taking into account the benefit to Minnesota Mutual of the amortization permitted by Section 848 and the use by Minnesota Mutual of a discount rate of 10 percent in computing the future deductions resulting from such amortization.

17. While Minnesota Mutual believes that a charge of 1.25 percent of premiums would reimburse it in part for the impact of Section 848 as currently written on Minnesota Mutual's federal income tax liabilities, Minnesota Mutual also believes that it may have to increase this charge either to recover in full the impact of Section 848 as presently written or to recover any increased federal income tax burden resulting from a future change in

Section 848, or the interpretation thereof, or any successor or related provisions. Such an increase could result from, among other things, a change in the corporate federal income tax rate, a change in the 7.7 percent figure, or a change in the amortization period. Accordingly, Minnesota Mutual has reserved the right to increase the federal tax charge to the extent necessary to cover the federal tax related to premium payments.

18. The requested exemptions are necessary in connection with Applicants' reliance on certain provision of Rule 6e–2(b)(13), particularly paragraph (b)(13)(i), which provides as here pertinent an exemption from Section 27(a)(1). Issuers and their affiliates may rely on Rule 6e–2(b)(13)(i) only if they meet the Rule's limitations on ''sales load'' as defined in Rule 6e–2(c)(4). Depending upon the load structure of a particular Policy, these limitations may not be met if the deduction for the increase in Minnesota Mutual's federal tax burden is included in sales load. Although a deduction for an insurance company's increased federal tax burden does not fall squarely within any of the specified charges or other amounts which are excluded from the definition of sales load in Rule 6e–2(c)(4), applicants have found no public policy reasons for including them in ''sales load.''

19. The public policy that underlies Rule 6e–2(b)(13)(i), like that which underlies Section 27(a)(1) of the Act, is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a federal income tax charge attributable to premium payments as sales load would not in any way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission appears to have concurred with this rationale by excluding deductions for state premium taxes from the definition of sales load in Rule 6e–2(c)(4). The source for the definition of sales load found in the Rule supports this analysis. The Commission's intent in adopting paragraph (c)(4) of rule 6e–2 was to tailor the general terms of Section 2(a)(35) of the Act to variable life insurance contracts. Section 2(a)(35) excludes deductions from premiums for ''issue taxes'' from the definition of sales load in the Act. This suggests, Applicants argue, that it is consistent with the policies of the Act to exclude from the definition of sales load in Rule 6e–2(c)(4) deductions made to pay an insurance company's costs attributable to its tax obligations. Section 2(a)(35) also excludes administrative expenses or fees that are ''not properly chargeable to sales or promotional activities.'' This suggests that the only deductions intended to fall within the definition of sales load are those that are properly chargeable to such activities. Because the proposed deductions will be used to compensate Minnesota Mutual for its increased federal income tax burden attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, the deductions should not be treated as sales load for purposes of the Act and Rule 6e–2.

20. Applicants agree that if the requested order is granted, such order may be expressly conditioned on Applicants' compliance with the following undertakings:

(a) Minnesota Mutual will monitor the federal tax burden attributable to its receipt of premiums under the Policies and will reduce the federal tax charge to the extent of any significant decrease in the tax burden;

(b) the registration statement for the Policies will: (1) disclose the federal tax charge; (2) explain the purpose of the charge; and (3) state that the charge is reasonable in relation to Minnesota Mutual's increased federal income tax burden under Section 848 of the Code resulting from the receipt of premiums; and

(c) the registration statement for the Policies will contain as an exhibit an actuarial opinion as to: (1) the reasonableness of the charge in relation to Minnesota Mutual's increased federal income tax burden under Section 848 resulting from the receipt of premiums; (2) the reasonableness of the after-tax rate of return that is used in calculating such charge and the relationship that such charge has to Minnesota Mutual's cost of capital; and (3) the appropriateness of the factors taken into account by Minnesota Mutual in determining the after-tax rate of return.

Anticipated Life Expectancy Based on 1980 Table

21. Under the Policies, there is a basic sales load of seven percent and a first year sales load of up to 23 percent. The first year sales load is adjusted so that all sales load charges will average not more than nine percent of the base premiums scheduled to be paid over the lesser of: (a) 15 years from the date of Policy issue or adjustment; or (b) the anticipated joint life expectancy of the insureds at Policy issue or adjustment based on the 1980 Table. Since longevity is generally greater under the 1980 Table, the period for compliance with the nine percent sales load limitation contained in the Policies could be longer than the period contemplated by paragraph (b)(13)(i). Applicants request exemption from Section 27(a)(1) of the Act and paragraph (b)(13)(i) of Rule 6e–2 to the extent necessary to permit the anticipated joint life expectancy of the insureds to be determined on the basis of the 1980 Table for purposes of calculating the period over which sales loads may not exceed 9 percent.

22. The Policies have been designed on the basis of the 1980 Table for all purposes. Presumably, the purpose of the life expectancy provision in paragraph (b)(13)(i) of the Rule is to provide a realistic limitation on the number of payments that can reasonably be anticipated under a scheduled premium contract issued for an older insured. Applicants submit that the more current 1980 Table is appropriate for this purpose.

First Year Sales Load on Policy Adjustments

23. Applicants propose to assess a new first year sales load upon any adjustment of a Policy involving an increase in the base premium and to continue to assess a first year sales load if an adjustment is made during a period when a first year sales load is currently being taken. A policy adjustment is essentially the issuance of a new Policy in exchange for an old Policy with the higher of the tabular cash value or the Policy value of the old Policy being transferred to the new Policy at no load except for a charge of $95 (the lesser of $95 or 2 percent in the case of a partial withdrawal) to cover administrative expenses associated with the reissue.

24. If a policy adjustment is reviewed as an exchange, the exchange would be permitted under the terms of Rule 11a–2 under the Act, and a new first year sales load could be assessed without need for exemptive relief. However, since an adjustment is made in accordance with the terms of the Policies, the adjusted Policy could be viewed as a continuation of the old Policy, and a new first year sales load assessed as a result of an adjustment involving an increase in base premium might result in the aggregate sales loads exceeding nine percent if the 20 year period in which to comply with the nine percent ceiling were measured from the date of issue as opposed to the date of adjustment. In order to resolve the uncertainty of whether, for sales load purposes, an adjustment can be viewed as an exchange, Applicants request exemption from Section 27(a)(1)

of the Act and Rule 6e–2(b)(13)(i) to the extent necessary to permit the assessment of a new first year sales load upon an adjustment of a Policy involving an increase in base premium, which sales load may be in addition to a first year sales load being taken at the time the adjustment is made.

25. Applicants submit that collection of a new first year sales load upon an adjustment involving an increase in base premium is appropriate in view of the fact that such an adjustment is not expected to occur in typical cases without substantial sales effort for which first year sales compensation from Minnesota Mutual will be required. Applicants assert that, in adopting Rule 6e–3(T) under the Act, the commission appears to have recognized that a first year sales load should be allowed for an increase in face amount provided the free look and conversion rights applicable upon issuance of a contract are available for the incremental insurance coverage. Applicants submit that under the Policies an improvement in plan is comparable to an increase in face amount and that a new first year sales load is appropriate regardless of the form in which the enhanced insurance coverage resulting from the increase in premium is taken. The terms of the Policies permit an owner to obtain at any time the equivalent of a fixed dollar adjustable life insurance policy, and Minnesota Mutual will provide a free look right with respect to any adjustment involving an increase in base premium.

26. Applicants further submit that the continued assessment of an existing first year sales load in addition to a new first year sales load is appropriate in the circumstances where it arises. If an adjustment is made when a first year sales load is being taken—during the twelve month period following issuance of the Policy or a prior policy adjustment—the uncollected portion of such sales load will be assessed during the twelve month period following the adjustment. The continued assessment of such first year sales load is warranted in this circumstance as it permits Minnesota Mutual to recover as a sales load no more than what it would have received had the adjustment not occurred. Where the adjustment made is one resulting in an increase in base premium, the only change in the first year sales load applicable to the base premium previously in effect is that its assessment is made over a new twelve month period. Assessing the uncollected portion of the first year sales load applicable to the premium previously in effect over a new twelve month period is to the advantage of the Policy owner because it results in a greater portion of the base premium being available for investment and an earlier increase in Policy value.

27. Where an adjustment results in the assessment of a new first year sales load or the continued assessment of an existing first year sales load, the aggregate sales loads thereafter will not exceed nine percent of the base premiums scheduled to be made over the lesser of 15 years, the premium paying period or the anticipated joint life expectancy of the insureds. Moreover, the aggregate sales loads assessed under the Policies will not exceed the sum of the sales loads that would have been assessed if the increase in face amount or improvement in plan of insurance resulting from the increase in premium were provided under a separate Policy. Applicants submit that the proposed sales load pattern is consistent with the purposes of Section 27(a)(1) of the Act and Rule 6e–(b)(13)(i).

Increase in Proportionate Amount of Sales Load After Policy Adjustments or Payment of Nonrepeating Premiums

28. As noted above, Applicants propose to impose a new first year sales load whenever the owner of a Policy requests an adjustment involving an increase in base premium. The collection of a new first year sales load against the increase in the base premium will result in an increase in the percentage sales load deducted from the total base premium in violation of the Act and Rule, except in the unusual circumstance where a sales load in the same proportionate amount was deducted from the immediately preceding payment. An increase in the percentage sales load deducted from the total base premium also may occur as a result of the payment of a nonrepeating premium or a policy adjustment involving a decrease in premium. For example, if the 7 percent basic sales load were to be deducted from the nonrepeating premium, the payment of such a premium during the first year following issuance of the Policy or a policy adjustment would result in an increase in percentage sales load, since the nonrepeating premium would be subject only to the basic sales load of 7 percent while the next scheduled premium would be subject to a new first year sales load. If, at the time of payment of the nonrepeating premium, the waiver of the basic sales charge, presently contemplated, were in effect, the payment of such premium at any time would result in an increase in the percentage sales load, since the next scheduled payment would be subject to a sales load. Finally, an adjustment during the first Policy year which reduces the amount of the premium from a greater than whole life premium will result in an increase in percentage sales load, since the portion of any premium in excess of the whole life premium is subject to the basic sales load only. Applicants request exemption from Section 27(a)(3) of the Act and paragraph (b)(13)(ii) of Rule 6e–2 to the extent necessary to permit increases in the proportionate amount of sales load deducted from premiums following certain policy adjustments or the payment of nonrepeating premiums.

29. The reasons for allowing a new first year sales load following policy adjustments involving an increase in base premium apply also to this requested ‘‘stair-step’’ relief. Applicants assert that exemptive relief to permit an increase in percentage sales load after the payment of a nonrepeating premium is appropriate in order to encourage the payment of such premiums and to avoid assessing a sales load in excess of the charge Minnesota Mutual considers necessary to provide for its anticipated sales expenses. Similarly, exemptive relief to permit a percentage increase in sales load upon a reduction in premium under plans which are greater than whole life is justified by the advantage to Policy owners in having a sales load schedule in which the first year sales load is confined to the whole life premium. Applicants submit that it is not in the interest of investors to require the imposition of sales loads in excess of those deemed necessary by investment companies and their sponsors.

Deduction of Charges From Account Assets

30. Applicants propose to deduct certain charges from assets of the Account other than for administrative services, such as charges for the cost of insurance and charges for the face amount guarantee. Applicants request exemption from Sections 26(a) (1) and (2) and 27(c)(2) of the Act and paragraph (b)(13)(iii) of Rule 6e–2 to the extent necessary to permit the deduction from Account assets of the charges it proposes to make under the Policies for the cost of insurance and the face amount guarantee.

31. Applicants argue that the Commission appears to have recognized the appropriateness of deducting cost of insurance charges and charges for guaranteed death benefit risks from separate account assets. Paragraphs (b)(13)(iii) (E) and (F) of Rule 6e–3(T) provide exemptive relief to permit the

deduction of cost of insurance charges and charges for guaranteed death benefit risks, respectively, for flexible premium variable life policies, and the Commission's proposed amendments to Rule 6e–2 would also expressly provide such relief. Here, Minnesota Mutual's charge for the cost of insurance is in an amount not in excess of the cost of insurance derived from the 1980 Table, and its charge for the face amount guarantee at a maximum rate of 3 cents per thousand dollars of face amount per month, a charge for the risks associated with the guaranteed death benefit, is reasonable in light of the risks assumed. Minnesota Mutual has prepared a memorandum setting forth the basis for its conclusion as to the face amount guarantee charge, including the methodology it used to support that conclusion, which is based on an analysis of the pricing structure of the Policies and an analysis of the various risks associated with the Policies, including the special risks arising from the ability to adjust a Policy using the higher of its tabular cash value and the Policy value. Minnesota Mutual will keep and make available to the Commission upon request a copy of such memorandum. Minnesota Mutual also represents that the sales charges under the Policies are excepted to cover the costs of distributing the Policies.

Conversion to Fixed Benefit Adjustable Life Policy

32. A principal feature of the Policies is that the initial face amount of insurance may change either automatically or at the initiative of the Policy owner. As has been noted, Policies may be issued with a scheduled reduction in face amount. They may also be issued with a scheduled increase in face amount if they are projected to become paid-up on a date other than a Policy anniversary. In addition, when a Policy becomes paid-up, Minnesota Mutual will determine a new face amount, which will be at least equal to the face amount previously in effect. Finally, an owner may increase or decrease the face amount of a Policy, subject to certain limitations, as part of a Policy adjustment, and a change in face amount will occur in connection with the automatic conversion from the protection option death benefit to the cash option death benefit at the Policy anniversary nearest the younger insured's age 70.

33. Applicants assert that the conversion right required by the Rule is satisfied by the owner's right under the Policy to transfer all of the Policy value to the guaranteed principal account without charge, and to thereafter allocate all new premiums to the guaranteed principal account. Since a Policy, the benefits of which are based exclusively on the guaranteed principal account, may have a plan of insurance other than for the whole life, and have a face amount at the time the owner exercises this ''conversion'' right either greater or less than the initial face amount of the Policy, the conversion right provided by the Policies may not satisfy the requirements of paragraph (b)(13)(v)(B). Applicants request exemption from Section 27(d) of the Act and paragraph (b)(13)(v)(B) of Rule 6e–2 to the extent necessary to permit the conversion right provided by the Policies to have a death benefit equal to the Policy's then current face amount and a plan of insurance which may be less than for the whole of life.

34. The conversion right to the Policies in essence provides a Policy owner with the right to obtain fixed benefit coverage that most closely corresponds to the owner's then current variable life insurance coverage. This right is not confined to the two year period contemplated by the Rule, but is available so long as a Policy is in force and all scheduled premiums have been paid. In view of the adjustable features of the Policies, the current face amount and plan of insurance presumably reflect the owner's judgment as to the type and amount of insurance coverage most appropriate in view of his or her current circumstances. In Applicants' opinion, the same type and amount of fixed benefit coverage should be available upon conversion. Moreover, to require the owner of a Policy having a term plan of insurance to take a whole life policy upon exercise of the conversion right could well discourage exercise of the right, as it would force the owner to accept a policy design differing substantially from the one he or she has.

35. The proposed amendments to Rule 6e–2 would revise paragraph (b)(13)(v)(B) so as to permit conversion to a fixed benefit policy other than for the whole of life. The amendment would permit the life insurer ''to convert to any type of life insurance policy other than a flexible or scheduled contract, rather than to covert only to a whole life insurance policy * * *.'' Similar flexibility is presently available for flexible premium contracts under the comparable provisions of paragraph (b)(13)(v)(B) of Rule 6e–3(T). In addition, Rule 6e–3(T) allows conversion to a policy with either the same death benefit or net amount at risk as the flexible premium contract at the time of conversion as opposed to the date of issue. The absence of a similar provision in Rule 6e–2 may reflect, not only the fact that Rule 6e–2, unlike Rule 6e–3(T) does not contemplate increases in insurance benefits at the request of the contract holder, but also a determination that the conversion right should not be impaired by poor investment performance. As the changes in face amount under the Policies will never be as a result of poor investment performance, there is no valid reason for restricting the conversion right to the death benefit selected at issue.

Modified Free Look Right Procedures

36. Applicants request relief from Section 27(f) of the Act and Rules 27f–1 and 6e–2(b)(13)(viii)(C) thereunder to the extent necessary to permit personal delivery to policy owners of free look right notices which contain information comparable to that required by Form N–27I–2, but which are not in the format required by that Form. Rule 6e–3(T)(b)(13)(viii) provides an exemption from Section 27(f) and Rule 27f–1 with respect to flexible premium variable life insurance contracts conditioned on the provision of free look rights substantially identical to those prescribed in rule 6e–2. Rule 6e–3(T)(13)(viii)(C), however, permits those involved with issuing and selling flexible premium variable life insurance policies: (a) to modify the free look notice format provided in Form N–27I–2, provided that the information presented in the modified notice is comparable to that required by Form N27I–2; and (b) send the free look notice either by personal delivery or first class mail.

37. Applicants submit that whether a life insurance policy has a scheduled premium structure or a flexible premium structure is irrelevant to the design or method of delivery appropriate for free look right notices associated with the policy. In either case, the free look right and the notices thereof are occasioned by a sales load structure that imposes on some payments a sales load of greater than 9 percent of the payment. So long as an adequate free look right and reliable means of providing policy owners specific notice of that right are present, the particular design of the notice or the mode of delivery selected should be of no consequence. Applicants assert that the Commission appears to have recognized this by proposing to amend paragraph (b)(13)(viii)(C) of Rule 6e–2 to afford persons involved with issuing and selling scheduled premium policies the same degree of free look notice format and delivery flexibility as presently afforded in connection with flexible premium policies.

Offer of Exchange

38. The owners of a Policy may ask, so long as both insureds are alive, to exchange the Policy for two individual policies insuring each of the insureds separately. Since the individual policies may be variable life policies issued by a separate account of Minnesota Mutual, including the Account, which is registered under the Act as a unit investment trust, the exchange provision may be viewed as an offer of exchange within the prohibition of Sections 11 (a) and (c). Applicants request an order pursuant to Section 11 of the Act permitting the exchange of a Policy for two individual variable insurance policies in accordance with the provision described above.

39. An exchange pursuant to the Policy provision is subject to satisfactory evidence of insurability of both insureds. If the exchange is permitted by Minnesota Mutual, each of the new individual policies issued will have one-half of the death benefit, Policy value and Policy loan of the Policy surrendered, and the scheduled premiums to be paid to the new policies will be based on the age, gender and risk class of each insured on the date of exchange. The purpose of Section 11 is to prevent ''switching.'' ''Switching'' is a term of art that refers to the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges. Because the new policies together will have a policy value equal to the policy value of the surrendered security, the exchange will be made on the basis of the relative net asset values of the policies involved. Furthermore, no charge, administrative or otherwise, will be made in connection with the exchange, and no sales charge will be imposed under the new policies on policy values transferred to the new policies in connection with the exchange. Applicants conclude that the terms of the proposed offer of exchange do not involve any of the switching abuses that led to the adoption of Section 11 of the Act.

Class Relief

40. Extending the relief herein requested to Future Contracts, Future Accounts and Future Underwriters is appropriate in the public interest. An order so providing should promote competitiveness in the variable life insurance market by eliminating the need for filing redundant exemptive applications, thereby reducing Minnesota Mutual's costs. The delay and expense of repeatedly seeking exemptive relief for substantially similar contracts, new separate accounts or new principal underwriters could impair Minnesota Mutual's ability to take effective advantage of business opportunities that might arise. There is no benefit or additional protection afforded to investors by requiring Applicants to repeatedly seek exemptive relief with respect to the same issues addressed in this application.

Conclusion

For the reasons summarized above, Applicant represent that the exemptions requested are necessary and 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.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18173 Filed 7–17–96; 8:45 am]

BILLING CODE 8010–01–M

Agency Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [61 FR 36944, July 15, 1996].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: July 15, 1996.

CHANGE IN THE MEETING: Cancellation.

The closed meeting scheduled for Wednesday, July 17, 1996, at 10:00 a.m., has been cancelled.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

July 15, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–18300 Filed 7–15–96; 4:41 pm]

BILLING CODE 8010–01–M

[Release No. 34–37421; File No. SR–CBOE–96–02]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Liability of the Exchange and its Directors, Officers, Employees, and Agents, Precluding Certain Types of Legal Actions by Members Against Such Persons, and Requiring Members to Pay the Exchange's Costs of Litigation Under Specified Circumstances

July 11, 1996.

I. Introduction

On January 18, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend various Exchange rules pertaining to the liability of the Exchange, to adopt new Rule 6.7A prohibiting a member from instituting certain types of legal proceedings against Exchange officials, and to adopt new Rule 2.24 requiring a member to pay the Exchange's costs of litigation under specified circumstances.

Notice of the proposed rule change appeared in the Federal Register on February 27, 1996.[3] No comments were received on the proposed rule change.[4] This order approves the CBOE's proposal.

II Background and Description

A. Exchange Liability

The principal rule concerning Exchange liability is Rule 6.7(a), which currently provides that the Exchange shall not be liable to members, member organizations, or to associated persons for loss, damages, or claims arising out of the use or enjoyment of the facilities afforded by the Exchange, whether the loss, damages, or claims resulted from negligence or other unintentional errors or omissions, or from a cause not within the control of the Exchange. The proposed amendment to Rule 6.7(a) clarifies that, except as otherwise specifically provided in the rules of the Exchange, neither the Exchange nor its

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 36863 (February 20, 1996), 61 FR 7285 (February 27, 1996).

[4] The CBOE submitted a letter regarding the enforceability of the proposed rules under state law. *See* letter from Michael L. Meyer, Schiff Hardin & Waite, to Matthew Morris, Division of Market Regulation, Commission, dated June 27, 1996.