specific (Unit 1, Cycle 14 and Unit 2, Cycle 11) Technical Specification change to Note 4 of Table 4.3-1 that permits continued operation of both Farley units without performing the required surveillance of the manual safety injection input to the reactor trip circuitry for the current operating cycle until the next unit shutdown, following which, this testing has to be performed prior to entering Mode 2.

Date of issuance: July 19, 1996

Effective date: July 19, 1996

Amendment Nos.: 120 and 112

Facility Operating License Nos. NPF-2 and NPF-8: The amendments revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: Yes. (61 FR 34880 dated July 3, 1996). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by August 2, 1996, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated July 19, 1996.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: January 2, 1996, as supplemented by letter dated April 12, 1996.

Brief description of amendment: The amendment would revise TS 3.9.4 and its associated Bases to allow the containment personnel airlock doors to be open during core alterations and movement of irradiated fuel in containment.

Date of issuance: July 15, 1996

Effective date: July 15, 1996, to be implemented within 30 days of the date of issuance.

Amendment No.: 114

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 14, 1996 (61 FR 5819). The April 12, 1996, supplemental letter provided clarifying information and did not change the original no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: April 4, 1996

Brief description of amendment: The amendment revises the Technical Specifications regarding secondary containment integrity including addition of required actions in the event secondary containment integrity is not maintained when required. It also requires surveillance of the secondary containment isolation valves under the licensee's in-service testing program.

Date of issuance: July 10, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 147

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 8, 1996 (61 FR 20859) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1996No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

Dated at Rockville, Maryland, this 24th day of July 1996.

For the Nuclear Regulatory Commission

Steven A. Varga, Director,

Division of Reactor Projects - I/II Office of Nuclear Reactor Regulation

[Doc. 96-19317 Filed 7-30-95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22097; File No. 812–9992]

Continental Assurance Company, et al.

July 25, 1996.

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

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Continental Assurance Company (''CAC''), Valley Forge Life Insurance Company (''VFL,'' together with CAC, the ''Companies''), Continental Assurance Company Variable Life Separate Account (''CAC Account''), Valley Forge Life Insurance Company Variable Life Separate Account (''VFL Account''), and CNA Investor Services, Inc.

RELEVANT 1940 ACT SECTIONS: Sections 6(c), 27(a)(3), 27(c)(2), and 27(e), and Rules 6e–3(T)(b)(13)(ii), 6e–3(T)(b)(13)(vii), 6e–3(T)(c)(4)(v), and 27e–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit them or any other variable life insurance separate account established in the future by the Companies (''Future Accounts,'' collectively with the CAC Account and the VFL Account, the ''Accounts'') to support certain flexible premium variable life insurance policies offered currently or in the future through the Accounts (collectively, ''Policies'') to: (1) deduct from premium payments received under the Policies a charge that is reasonable in relation to each Company's increased federal tax burden related to the receipt of such premium payments that results from the application of Section 848 of the Internal Revenue Code of 1986, as amended, (''Code''); (2) deduct sales charges from premium payments received in connection with Policies in a manner that results, in some instances, in sales charges on subsequent premium payments exceeding sales charges on prior premium payments; (3) compute sales surrender charges on such premium payments in a manner that results, in some instances, in sales surrender charges on subsequent premium payments exceeding sales surrender charges on prior premium payments; and (4) refrain from sending owners of Policies a written notice of certain refund and withdrawal rights.

FILING DATE: The application was filed on February 14, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1996 and should 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 who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549: Applicants. Donald M. Lowry, Esq., Senior Vice President and General Counsel, CNA Insurance Companies, CNA Plaza, 43 South, Chicago, Illinois 60685.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Wendy F. Friedlander, Deputy Chief, Division of Investment Management (Office of Insurance Products), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. CAC, a stock life insurance company organized under the laws of Illinois in 1911, has been a registered investment adviser since 1966. CAC is authorized to transact business in all 50 states, the District of Columbia, all provinces of Canada, Guam, Puerto Rico, and the U.S. Virgin Islands. CAC is a wholly-owned subsidiary of Continental Casualty Company, all of the voting securities of which are owned by CNA Financial Corporation, a Delaware corporation. Loews Corporation, a publicly traded Delaware corporation, owns a majority of the outstanding voting securities of CNA Financial Corporation.

2. VFL, a stock life insurance company organized under the laws of Pennsylvania in 1956, is authorized to transact business in the District of Columbia, Puerto Rico, Guam and all states except New York. Valley Forge is a wholly-owned subsidiary of CAC.

3. The CAC Account was established by CAC as a separate account pursuant to Illinois insurance law on January 30, 1996, to be a funding medium for variable life insurance contracts. The CAC Account is registered as a unit investment trust with 18 subaccounts, each of which invests exclusively in the shares of a designated investment portfolio.

4. The VFL Account was established by VFL as a separate account under Pennsylvania insurance law on October 18, 1995, to be a funding medium for variable life insurance contracts. It is registered as a unit investment trust with 18 subaccounts each of which invest exclusively in the shares of a designated investment portfolio.

5. CNA Investor Services, Inc., an affiliate of the Companies, is the principal underwriter of the Policies. It is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

6. The Policies are flexible premium variable life insurance contracts. The Companies will deduct 1.25% from each premium payment of the Policies to cover each Company's federal income tax costs attributable to the amount of premium received.

7. The Companies will deduct a sales charge from each premium payment. For Policy years 1 through 10 the sales charge is 4% of premium payments made in that Policy year, up to the target premium payment[1] for the initial specified amount. For Policy years 11 and later, the sales charge is 2% of premium payments made in that Policy year, up to the target premium payment for the initial specified amount. The target premium payment is an amount of premium payments, computed separately for each increment of specified amount under a Policy, used to compute sales charges and surrender charges. Any premium payments received in excess of the target premium payment for the specified amount in any year are not subject to a sales charge.

8. If the Policy owner increases the specified amount, a target premium payment is established for the increase. Therefore, there is a target premium payment for each increment of specified amount and the Companies deduct the sales charge from premium payments attributable to an increase. For purposes of computing and deducting sales charges, all premium payments made after an increase in specified amount are apportioned to each increment of specified amount on the basis of the relative guideline annual premium payments, as defined in Rule 6e–3(T)(c)(8), for each such increment. For the first ten 12-month periods following an increase in specified amount, the charge is 4% of premium payments made in that 12-month period attributable to the increase, up to the target premium for the increase. For subsequent 12 Policy month periods, the sales charge is 2% of premium payments made during the 12 month period attributable to the increase up to the target premium for the increase.

9. If an owner surrenders the Policy, makes a withdrawal, decreases the specified amount, or if the Policy lapses, each Company may deduct a surrender charge from any Policy value. The surrender charge has two components: an administrative surrender charge and a contingent deferred sales charge (''CDSC'').

10. The CDSC in connection with the initial specified amount is calculated in Policy years 1 through 6 based on premium payments up to the target premium. Specifically, the CDSC is 34% of premium payments made in the first Policy year up to the target premium payment for the initial specified amount, and 33% of premium payments made in each of Policy years 2 through 6 up to the target premium payment for the initial specified amount in each such year until the total CDSC equals 100% of a single target premium payment of the initial specified amount.

11. The CDSC in connection with the initial specified amount during the first two Policy years will not exceed the sum of: (1) 26% of the first guideline annual premium payment for the initial specified amount, (2) 6% of the second guideline annual premium payment for the initial specific amount, and (3) 5% of all additional premium payments attributable to the initial specified amount.

12. After the first six Policy years, the total surrender charge in connection with the initial specified amount to which a Policy may be subject is reduced on a Policy year basis. The total surrender charge decrease 10% per year from 80% of total surrender charges in Policy year 7 to no charge in Policy years 15 and later.

13. If the initial specified amount is decreased during the first fourteen Policy years, the surrender charge imposed will equal the portion of the total surrender charge that corresponds to the percentage by which the initial specified amount is decreased. In the event of a decrease in the initial specified amount, the pro-rated surrender charge will be allocated to each subaccount and to the fixed account based on the proportion of Policy value in each subaccount and in the fixed account. A surrender charge imposed in connection with a reduction in the initial specified amount reduces the remaining surrender charge that may be imposed in connection with a surrender of a Policy.

14. The surrender charge is computed and assessed separately for the initial specified amount and for each increase in specified amount. Only the CDSC component of the surrender charge, however, is assessed in connection with an increase in specified amount. For purposes of computing and assessing the CDSC attributable to an increase in

[1] A target premium payment is an amount of premium shown in the Policy that is based on the insured's age sex, rate class, the specified amount under the Policy, and certain assumptions made by the Companies. It is never larger than the corresponding guideline annual premium payment under a Policy.

specified amount, all premiums made after an increase in specified amount are apportioned to each increment of specified amount on the basis of the relative guideline annual premium payments of each such increment. Likewise, Policy value is apportioned to each increment of specified amount on the basis of the relative guideline annual premium payments for each such increment.

15. The CDSC for an increase in specified amount is as follows: in the first 12 Policy months following the increase, the CDSC is 34% of premium payments received up to the first target premium payment for the increase in specified amount, and, in each of the five subsequent 12 Policy month periods following the increase, the charge is 33% of premium payments received up to the first target premium payment for the increase in specified amount in each such 12 month period until the total CDSC for the increase equals 100% of a single target premium payment for the increase in specified amount. Notwithstanding the foregoing, the CDSC during the first 24 Policy months following an increase in specified amount is never more than the sum of: (1) 26% of the first guideline annual premium payment for the increase in specified amount, (2) 6% of the second guideline annual premium payment for the increase in specified amount, and (3) 5% of all additional premium payments attributable to the increase in specified amount. Beginning with the 73rd Policy month following an increase in specified amount, the CDSC computed in connection with the increase grades off during the subsequent 96 Policy months in the same manner as does the surrender charge associated with the initial specified amount.

Deferred Acquisition Cost

16. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Code by, among other things, enacting Section 848 thereof which requires that life insurance companies capitalize and amortize over a period of ten years part of their general expenses for the current year. Upon prior law, these expenses were deductible in full from the current year's gross income. Section 848, in effect, accelerates the realization of income from specified insurance contracts for federal income tax purposes and, therefore, the payment of taxes on the income generated by those contracts. Taking into account the time value of money, Section 848 increases the tax burden borne by the insurance company because the amount of general deductions that must be capitalized and amortized is measured by premium payments received under specified contracts, such as the Policies (the ''DAC tax charge''). In this respect, the impact of Section 848 can be compared with that of a state premium tax.

17. The Policies to which the tax burden charge will apply fall into the category of life insurance contracts identified under Section 484 as those for which the percentage of net premiums that determines the amount of otherwise currently deductible general expenses to be capitalized and amortized is 7.7 percent.

18. The increased tax burden resulting from the applicability of Section 848 to every $10,000 of net premiums received may be qualified as follows. In the year when the premiums are received, each Company's general deductions are reduced by $731.50—i.e., an amount equal to (a) 7.7 percent of $10,000 ($770) minus (b) one-half year's portion of the ten-year amortization ($38.50). Using a 35 percent corporate tax rate, this computes to an increase in tax for the current year of $256.03 (i.e., $731.50 multiplied by .35). This increase in tax will be partially offset by increased deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770—$77 in each of the following nine years, and $38.50 in the tenth year.

19. Capital which must be used by each Company to satisfy its increased federal tax burden under Section 848 (resulting from the receipt of premiums) is not available to the Companies for investment. Because they seek an after tax rate of return of at least 10 percent on their invested capital,[2] each Company submits that a discount rate of at least 10 percent is appropriate for use in calculating the present value of its future tax deductions resulting from the amortization described above.

20. Using a corporate tax rate of 35 percent, and assuming a discount rate of 10 percent, the present value of the tax effect of the increased deductions allowable in the following ten years comes to $160.40. Because this amount partially offsets the increased tax burden, applying Section 848 to the specified contracts imposes an increased tax burden on each Company equal to a present value of $95.63 (i.e., $256.03 minus $160.40) for each $10,000 of net premiums.

21. Each Company does not incur incremental income tax when it passes on state premium taxes to Policy owners, because state premium taxes are deductible when computing federal income taxes. In contract, federal income taxes are not tax-deductible when computing each Company's federal income taxes. Therefore, to offset fully the impact of Section 848, each Company must impose an additional charge that would make it whole not only for the $95.63 additional tax burden attributable to Section 848, but also the tax on the additional $95.63 itself. This additional charge can be computed by dividing $95.63 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.

22. Tax deductions are of value to the Companies only to the extent that it has sufficient gross income to fully utilize the deductions. Based upon its prior experience, both Companies submit that it is reasonable to expect that virtually all future deductions will be fully taken.

23. Each Company submits that a DAC tax charge of 1.25 percent of premium payments would reimburse it for the impact of Section 848 on its federal tax liabilities. Each Company represents that a 1.25 percent charge is reasonably related to its increased tax burden under Section 848, taking into account the benefit to each Company of the amortization permitted by Section 848, and the use by each Company of a 10 percent discount rate in computing the future deductions resulting from such amortization, such rate being the equivalent of each Company's cost of capital.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC by order upon application, conditionally or unconditionally to exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision(s) of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of

[2] Both Companies have computed their cost of capital as the after tax rate of return that each seeks to earn on its surplus. The Companies took into account a number of factors in computing this rate. First, they identified the level of investment return that can be expected to be earned risk-free over the long term. This rate is based upon the expected yield on 30-year Treasury bonds. Then, this rate was increased by market risk premium that is demanded by equity investors to compensate such investors for the risks associated with equity investment. This premium is based on the average excess return earned by investing in equities as compared to that earned by investing in risk-free instruments (i.e., long-term Treasury bonds). Finally, the resulting rate was modified to reflect the relative volatility of portfolio investments. Both Companies represent that these are appropriate factors to consider in determining their cost of capital.

investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Exemption From Section 27(c)(2) of the 1940 Act and From Rule 6e–3(T)(c)(4)(v)

2. Section 2(a)(35) of the 1940 Act defines ''sales load'' as the difference between the price of a security offered to the public and that portion of the proceeds from its sale which is received and invested or held by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

3. Section 27(c)(2) of the 1940 Act prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from purchase payments made under periodic payment plan certificates other than a deduction for sales load.

4. Rule 6e–3(T)(b)(13)(iii), among other things, provides relief from Section 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of certain charges other than sales load, including ''[t]he deduction of premium or other taxes imposed by any state or other governmental entity.'' Applicants represent that the requested exemption is necessary if they are to rely on certain provisions of Rule 6e–3(T)(b)(13).

5. Rule 6e–3(T)(c)(4) defines ''sales load'' during a contract period as the excess of any payments made during that period over certain specified charges and adjustments, including ''[a] deduction for and approximately equal to state premium taxes.'' Applicants submit that the proposed DAC tax charge is akin to a state premium tax charge and, therefore, should be treated as other than sales load for purposes of the 1940 Act and the rules thereunder.

6. Applicants acknowledge that the proposed DAC tax charge does not fall squarely into any of the itemized categories of charges or adjustments set forth in Rule 6e–3(T)(c)(4); a literal reading of that rule arguably does not exclude such a ''tax burden charge'' from sales load. Applicants maintain, however, that there is no public policy reason why a tax burden charge designed to cover the expense of federal taxes should be treated as sales load. Applicant also assert that nothing in the administrative history of Rule 6e–3(T) suggests that the SEC intended to treat tax charges as sales load.

7. Applicants assert that the public policy that underlies Rule 6e–3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1), 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 tax burden charge attributable to the receipt of purchase payments as sales load would in no way further this legislative purpose because such a charge has no relation to the payment of sales commissions or other distribution expenses. Applicants further submit that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in Rule 6e–3(T)(c)(4).

8. applicants assert that the genesis of Rule 6e–3(T)(c)(4) supports this analysis. In this regard, Applicants note that Section 2(a)(35) of the 1940 Act provides a scale against which the percent limits of Sections 27(a)(1) and 27(h)(1) thereof may be measured. Applicants submit that the intent of the SEC in adopting Rule 6e–3(T)(c)(4) was to tailor the general terms of Section 2(a)(35) to flexible premium variable life insurance contracts in order, among other things, to facilitate verification by the SEC of compliance with the sales load limits set forth in Rule 6e–3(T)(b)(13)(i). Applicants submit that Rule 6e–3(T)(c)(4) does not depart, in principal, from Section 2(a)(35).

9. Applicants further assert that Section 2(a)(35) excludes from the definition of sales load under the 1940 Act deductions from premiums for ''issue taxes.'' Applicants submit that, by extension, the exclusion from ''sales load'' (as defined in Rule 6e–3(T) of charges to cover an insurer's expenses attributable to its federal tax obligations is consistent with the protection of investors and the purposes intended by the policies and provisions of the 1940 Act.

10. Applicants also submit that the reference in Section 2(a)(35) to administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' 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 DAC tax charge will be used to compensate each Company for its increased federal tax burden attributable to the receipt of premiums, and such deductions are not properly chargeable to sales or promotional activities. Applicants assert that the language of Section 2(a)(35) is another indication that not treating such deductions as sales load is consistent with the purposes intended by the policies of the 1940 Act.

11. Applicants agree to comply with the following conditions for relief: (a) Each Company will monitor the reasonableness of the 1.25 percent proposed DAC tax charge; (b) the registration statement for the Policies under which the 1.25 percent charge is deducted will: (i) Disclose the charge; (ii) explain the purposes of the charge; and (iii) state that the charge is reasonable in relation to each Company's increased federal tax burden resulting from the application of Section 848 of the Code; and (c) the registration statement for the Policies under which the 1.25 percent charge is deducted will contain as an exhibit an actuarial opinion as to: (a) The reasonableness of the charge in relation to each Company's increased federal tax burden resulting from the application of Section 848 of the Code; (ii) the reasonableness of the targeted rate of return that is used in calculating such charge; and (iii) the appropriateness of the factors taken into account by each Company in determining such targeted rate of return.

12. Applicants also request exemptions for any Future Account that either Company may establish to support flexible premium variable life insurance contracts as defined in Rule 6e–3(T)(c)(1). Applicants believe that the terms of any exemption sought for Future Accounts to permit the deduction of a tax burden charge would be substantially identical to those in this application. Applicants assert that any additional requests for exemptive relief for such Future Accounts would present no issues under the 1940 Act that have not already been addressed in this application. Nevertheless, unless such relief were granted, the Companies would have to obtain exemptions for each Future Account that either establishes unless that relief is granted in response to this application.

13. The requested exemptions are appropriate in the public interest because they would promote competitiveness in the variable life insurance market by eliminating the need for the Companies to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek the same exemptions would impair both Companies' ability to effectively take advantage of business opportunities as they arise. Likewise, the requested exemptions are consistent with the protection of investors and the purposes intended by the policy and provisions of the 1940 Act for the same

reasons. Investors would receive no benefit or additional protection if each Company were required to repeatedly seek Commission orders with respect to the same issues. In fact they might be disadvantaged as a result of the Companies' increased overhead expenses.

Exemption From Section 27(a)(3) of the 1940 Act and From Rule 6e–3(T)(b)(13)(ii)

14. Section 27(a)(3) provides that the amount of sales charge deducted from any of the first twelve monthly purchase payments on a periodic payment plan certificate by any registered investment company issuing such certificates or any depositor or underwriter for such company may not exceed proportionately the amount deducted from any other such payment, and that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment.

15. Rule 6e–3(T)(b)(13)(ii) provides an exemption from Section 27(a)(3) in connection with flexible premium variable life insurance contracts, provided that the proportionate amount of sales charge deducted from any premium payment for such a contract does not exceed the proportionate amount deducted from any prior premium payment, unless an increase is caused by reductions in the annual cost of insurance or reductions in sales load for amounts transferred to a variable life insurance contract from another plan of insurance.

16. The Policies have both a sales charge deducted from certain premium payments and a CDSC that is computed as a percentage of certain premium payments. For any increment of specified amount, the sales charge deducted from any premium payments is a percentage of the payments made in a Policy year up to the target premium for that increment in that Policy year. No sales charge is deducted from premium payments made in a Policy year in excess of that target premium. Thus, where an owner of a Policy makes premium payments in any Policy year in excess of the target premium and makes any premium payment during the next Policy year, the sales charge on the first dollar paid in the next Policy year will always exceed that paid on the last dollar paid in the prior Policy year.

17. Likewise for any increment of specified amount, the CDSC is computed as a percentage of premium payments made in a Policy year up to the target premium for that increment and no CDSC is associated with premium payments made in a policy year in excess of that target premium. Thus, where an owner of a Policy makes premium payments in excess of the target premium during any of the first five Policy years and makes any premium payment during the next Policy year, the CDSC associated with the first dollar paid in the next Policy year will always exceed that associated with the last dollar paid in the prior Policy year. Applicants state that this sales charge structure appears to violate the ''stair-step'' provisions in Section 27(a)(3) of the Act. Moreover, the exemption provided by Rule 6e–3(T)(b)(13)(ii) does not appear to cover this type of charge structure.

18. Because Section 27(a)(3) and Rule 6e–3(T)(b)(13)(ii) appear to prohibit this structure, Applicants apply for an order under Section 6(c) of the Act exempting them and any Future Accounts from these provisions to the extent necessary to: (1) Permit the deduction of sales charges from premium payments up to one target premium paid during any Policy year (or, in connection with an increase in specified amount, any 12 month period) to exceed the sales charge deducted on premium payments made in excess of one target premium in any prior Policy year (or 12 month period), and (2) to permit the deduction of the CDSC computed on the same basis with a similar result.

19. Applicants state that the Policies could continue to comply with all of the other sales charge limitations and requirements in Rule 6e–3(T), if the sales charges were deducted from, and the CDSC were computed on the basis of, all premium payments. Applicants assert that such charges, however, would be less favorable to Policy owners than that provided under the Policies. Under such a sales charge structure Applicants argue, sales charges would be recovered by the companies earlier than is the case under the Policies' sales charge structure. Under such a surrender charge structure, CDSCs could be greater than under the Policies' CDSC. Applicants submit that the sales charge structure under the Policies benefits Policy owners by spreading the sales charges over a longer period of time, thereby permitting a greater portion of a Policy owner's premium payments in excess of a target premium to be invested in the Policy.

20. Applicants assert that the imposition of a sales charge only on premiums paid up to the target premium in any Policy year in part reflects the fact that the Companies will usually incur lower overall distribution costs in connection with premium payments in excess of the targets over the life of the Policies. Applicants argue that to impose the sales charge on such ''excess'' premium payments could generate more revenue than the Companies believe is necessary to cover such costs. Thus, the sales charge design provides a significant benefit to Policy owners by passing through to them a portion of the Companies' lower distribution costs with respect to ''excess'' premiums. The same can generally be said of the CDSC. Applicants submit that it would not be in the best interest of Policy owners to require the imposition of a sales charge on ''excess'' premiums that is higher than Applicants consider necessary.

21. Applicants further argue that Section 27(a)(3) was designed to address the perceived abuse of periodic payment certificates that deducted large amounts of front-end sales charges so early in the life of the plan that an investor redeeming in the early period would recoup little of his or her investment. Applicants assert that, by imposing no sales charge on ''excess'' premium payments made in any Policy year, the Company will cause a greater proportion of total sales charges to be deducted later than otherwise would be the case under the Policies. Likewise, by assessing no CDSC in connection with ''excess'' premium payments, the CDSC would, in certain circumstances, be less than otherwise would be the case under the Policies.

22. Applicants argue that one purpose behind Section 27(h)(3) of the 1940 Act, as provision similar to Section 27(a)(3), is to discourage unduly complicated sales charges. This purpose also may be deemed to be a purpose of Section 27(a)(3) and Rule 6e–3(T)(b)(13)(ii). Therefore, Applicants submit that the sales charge structure under the Policies is straightforward, easily understood, and less complicated than that of any many variable life insurance products that currently are being offered and sold.

23. Applicants submit that, under the Policies, premium payments up to the target premium have higher levels of actual sales expenses associated with them than premium payments made in excess of such a target premium. Because the ''excess'' premium payments have a lower level of sales expenses, Applicants argue that it is entirely appropriate that the sales charge structures for the two types of payments be analyzed separately, the sales charge or CDSC related to premium payments up to the target premium each year will comply with Rule 6e–3(T)(b)(13)(ii), and the sales charge or CDSC related to ''excess'' premium payments will remain level at

zero and therefore never increase from one excess premium payment to the next.

24. Moreover, Applicants concede that the Companies could avoid the potential ''stair-step'' issue simply by imposing the higher sales charges equally on premium payments in any Policy year, subject to the overall sales charge limits under the 1940 Act; Applicants argue, however, that Policy owners benefit from the lower sales charge imposed in connection with ''excess'' premium payments under the sales charge structure of the Policy.

Exemption From Section 27(e) of the 1940 Act and Rule 27e–1 Thereunder, and From Rule 6e–3(T)(b)(13)(vii)

25. Section 27(e) requires, with respect to any periodic payment plan certificate sold subject to Section 27(d), written notification of the right to surrender and receive a refund of the excess sales load. Rule 27e–1 establishes the requirements for the notice mandated by Section 27(e) and prescribes from N–27E–1 for that purpose. Rule 6e–3(T)(b)(13) in essence modifies the requirements of Section 27 of the 1940 Act and the rules thereunder. Rule 6e–3(T)(b)(13)(vii) adopts Form N–27I–1 and requires it to be sent to a Policy owner upon issuance of the Policy and again during any lapse period in the first two Policy years. The Form requires statements of: (a) the Policy owner's right to receive back the excess sales load for a surrender during the first two Policy years, (b) the date that the right expires, and (c) the circumstances in which the right may not apply upon lapse. Thus Section 27(e) of the 1940 Act, and Rules 27e–1 and 6e–3(T)(b)(13)(vii) thereunder, require a notice of right of withdrawal, and refund on Form N–27I–1 to be provided to owners of the Policies entitled to a refund of sales load in excess of the limits stated in paragraph (b)(13)(v)(A) of Rule 6e–3(T).

26. The Policies have a sales charge and a CDSC that does not, during the first two Policy years (or, as to an increase in specified amount, during the first twenty-four months after the increase), exceed the limits described by paragraph (b)(13)(v)(A) of Rule 6e–3(T) beyond which sales charges are characterized as ''excess sales charge'' is ever paid by an owner surrendering, withdrawing, reducing his or her specified amount, or lapsing in the first two Policy years (or, as to an increase in specified amount, during the first twenty-four months after the increase).

27. Applicants represent that the sales charge and the CDSC on premium payments (and with respect to the CDSC applicable to an increase in specified amount, after the first twenty-four months following that increase) may exceed the limits described by paragraph (b)(13)(v)(A) of Rule 6e–3(T). Therefore, Applicants are requesting the relief sought in this application.

28. Rule 27e–1, pursuant to which Form N–27I–1 was first prescribed, specifies in paragraph (e) that no notice need be mailed when there is otherwise no entitlement to receive any refund of sales charges. Applicants stat that Rules 27e–1 and 6e–2 (from which Rule 6e–3(T) was derived) were adopted in the context of front-end loaded products only and in the broader context of the companion requirements in Section 27 for the depositor or underwriter to maintain segregated funds as security to assure the refund of any excess sales charges.

29. Applicants assert that requiring delivery of a Form N–27I–1 could confuse Policy owners at best, and, at worst, encourage them to surrender during the first two Policy years (or surrender or decrease to specified amount of their Policies during the first twenty-four Policy months following a specified amount increase) when it may not be in their best interests to do so. Applicants submit that an owner of a Policy with a declining CDSC, unlike a policy with a front-end sales charge, does not foreclose his or her opportunity, at the end of the first two Policy years (or twenty-four Policy months following a specified amount increase), to receive a refund of most monies spent. Not only has such an owner not paid any excess sales charges, but because the deferred charge declines over the life of the policy, the owner may never have to pay the deferred charge. Applicants thus assert that encouraging a surrender during the first two Policy years could, in the end, cost such an owner more in total sales charges (relative to total premium payments) than he or she would otherwise pay if the Policy, which is designed as a long-term investment vehicle, were held for the period originally intended.

30. Applicants submit that the absence of ''excess sales charges,'' and, therefore, the absence of an obligation to assure repayment of that amount, do not create a right in an owner which Form N–27I–1 was designed to highlight. In the absence of this right, Applicant's argue that the notification contemplated by Form N–27I–1 is an unnecessary and counter-productive administrative burden the cost of which appears unjustified, and any other purpose potentially served by the Form N–27I–1 would already be addressed by the required Form N–27I–2 Notice of Withdrawal Right, generally describing the charges associated with the Policy, and prospectus disclosure detailing the sales charge design. Applicant's submit that neither Congress, in enacting Section 27, nor the Commission, in adopting Rule 27e–1, could have contemplated the applicability of Form N–27I–1 in the context of an insurance policy with a declining contingent deferred sales charge.

Conclusion

For the reasons summarized above, the Applicants represent that the requested relief from Sections 27(a)(3), 27(c)(2), and 27(e) of the 1940 Act, paragraphs (b)(13)(ii), (b)(13)(vii), and (c)(4)(v) of Rule 6e–3(T) thereunder, and 27e–1 thereunder, is necessary or appropriate in the public interest and otherwise meets the standards of Section 6(c) of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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[Rel. No. IC–22096; No. 812–9996]

Keyport Life Insurance Company, et al.

July 25, 1996.

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

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

APPLICANTS: Keyport Life Insurance Company (''Keyport''), KMA Variable Account (''KMA Account''), Variable Account A (''Account A''), Independence Life and Annuity Company (''Independence life''), Independence Variable Annuity Separate Account (''VA Account''), Liberty Life Assurance Company of Boston (''Liberty Life,'' together with Keyport and Independence Life, the ''Insurance Companies''), Variable Account K (''Account K,'' together with KMA Account, Account A and VA Account, the ''Separate Accounts''), and Keyport Financial Services Corporation (''KFSC'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges