

all eligible categories of its billed and unbilled accounts received ("Receivables") and related assets ("Related Assets") to CRC. The purchase price paid by CRC for any Receivables and Related Assets takes into account historical loss statistics on CL&P's receivables pool and the purchaser's ("Purchaser") cost of funds. Under the second agreement ("CRC Agreement"), CRC sells fractional undivided interests ("Receivable Interests") in the Receivables to the Purchaser from time to time.

The availability of Receivables and Related Assets varies from time to time in accordance with electric energy use by CL&P's customers. As a result of this and certain other factors, the funds CRC has available to make a purchase at any time may not match the cost of Receivables and Related Assets available. The Program includes certain mechanisms to accommodate this mismatch. When the amount of Receivables and Related Assets originated by CL&P exceeds the amount of cash CRC has available, either CRC will make the purchase and owe the balance of the purchase price to CL&P on a deferred basis (the unpaid portion will accrue interest or the purchase price will involve a discount to reflect the deferral), or CL&P will make a capital contribution to CRC in the form of the Receivables and Related Assets for which CRC lacks purchase price funds at that time. Conversely, if CRC develops a substantial cash balance (due to collections of previously transferred Receivables exceeding the balance of newly created Receivable available for purchase), CRC will likely dividend the excess cash to CL&P. These dividends may represent a return of previous capital contributions of CL&P to CRC. Through these mechanisms, CRC does not itself retain substantial cash balances at any time and substantially all cash realized from the collection of the Receivables (net of the costs of the program and any reductions in the outstanding balance of Receivable Interests) is made available to CL&P.

CL&P and CRC will continue to be obligated to reimburse the Purchaser and its agent ("Agent") for various costs and expenses associated with the Company Agreement and the CRC Agreement upon extension of the Program. CRC will also continue to be required to pay to the Agent certain fees for services in connection with these agreements.

CL&P is working with the parties to the agreements to extend the Program through July 8, 2004. CRC may, following written notice to the Agent, terminate in whole or reduce in part the

unused portion of its purchase limit in accordance with the terms and conditions of the CRC Agreement. The CRC Agreement allows the Purchaser to assign all of its rights and obligations under the CRC Agreement (including its Receivable Interests and the obligation to fund Receivable Interests) to other persons. However, any such assignments will not change the nature of the obligations of CL&P or CRC under the Company Agreement and the CRC Agreement.

As described in the declaration, CL&P intends that the above-described transactions will continue to accelerate the receipt of cash collections from accounts receivable in order to meet its short term cash needs.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-25140; File No. 812-12470]

United of Omaha Life Insurance Company, et al

August 24, 2001.

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

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order of exemption pursuant to Section 6(c) of the Act to the extent necessary to permit the recapture, under specified circumstances, of credits applied to purchase payments made under certain flexible premium variable annuity contracts that the Companies (defined below) will issue through the Accounts (the "Policies"), as well as other policies that the Companies may issue in the future through their existing or future separate accounts ("Other Accounts") that are substantially similar to the Policies in all material respects ("Future Policies"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled, by or under common control or affiliated with MOIS

(defined below), whether existing or created in the future, that serves as distributor or principal underwriter for the Policies or Future Policies ("Affiliated Broker-Dealers").

APPLICANTS: United of Omaha Life Insurance Company ("United"), Companion Life Insurance Company ("Companion," together with United, the "Companies"), United of Omaha Separate Account C, Companion Life Separate Account C (together with United of Omaha Separate Account C, the "Accounts"), and Mutual of Omaha Investor Services, Inc. ("MOIS").

FILING DATE: The application was filed on March 5, 2001 and amended and restated on April 27, 2001, August 20, 2001 and August 23, 2001.

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 SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on September 18, 2001, and should be accompanied by proof of service on the 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 the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, *in care of* Michael E. Huss, Esq., Senior Counsel, United of Omaha Life Insurance Company, Mutual of Omaha Plaza, Omaha, NE 68175.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Keith E. Carpenter, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch at 450 Fifth Street, NW., Washington, DC 20549-0102 [tel. (202) 942-8090].

Applicants' Representations

1. United is a stock life insurance company organized under the laws of the State of Nebraska in 1926. It is authorized to sell life insurance and annuities in all states (except New York) and the District of Columbia. United is a wholly owned subsidiary of Mutual of Omaha Insurance Company ("Mutual"),

a mutual life insurance company organized under the laws of the State of Nebraska.

2. Companion is a stock life insurance company organized under the laws of the State of New York. It is authorized to sell life insurance and annuities in Connecticut, New Jersey and New York. Companion is a direct subsidiary of United and an indirect subsidiary of Mutual.

3. United of Omaha Separate Account C was established on December 1, 1993 as a separate account under Nebraska law for the purpose of funding variable annuity policies issued by United. It is a segregated asset account of United and is registered with the Commission as a unit investment trust under the Act.

4. Companion Life Separate Account C was established on February 18, 1994 as a separate account under New York law for the purpose of funding variable annuity policies issued by Companion. It is a segregated asset account of Companion and is registered with the Commission as a unit investment trust under the Act.

5. MOIS is the principal underwriter of the Policies. MOIS is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. The Policies are sold by registered representatives of broker-dealers that have entered into distribution agreements with MOIS, and by registered representatives of MOIS. MOIS is an indirect wholly owned subsidiary of Mutual.

6. The minimum initial purchase payment is \$10,000. A Policy owner may make additional purchase payments of at least \$500 at any time (\$100 if the purchase payment is made by an electronic funds transfer). Additional purchase payments may be made at any time until the Policy anniversary following the Policy owner's 95th birthday.

7. Policy owners can elect an enhanced credit rider to the Policy. If elected, this rider will add the Enhanced Credit, which is equal to the following percentage of purchase payments made during the first seven Policy years.

| Policy year of purchase payment | Percentage of purchase payment |
|---------------------------------|--------------------------------|
| 1 | 4 |
| 2 | 3.5 |
| 3 | 3 |
| 4 | 2.5 |
| 5 | 2 |
| 6 | 1.5 |
| 7 | 1 |
| 8+ | 0 |

8. The Companies will allocate Enhanced Credits pro rata among the fixed and variable investment options available under the Policy in the same ratio as the related purchase payment is allocated. The Companies will fund Enhanced Credits from their general account assets.

9. The annual charge for the enhanced credit rider is .50% of the Policy owner's total accumulation value in the variable and fixed accounts of the Policy. The Companies assess the charge daily on the assets in the investment options to which a Policy owner's purchase payments are allocated. The Companies will discontinue deducting the charge eight years from the date the Policy is issued.

10. The enhanced credit rider can only be elected on the Policy application, and cannot be elected after the Policy is issued. Once the enhanced credit rider is elected, it cannot be cancelled, and will only terminate (i) at the end of the first eight Policy years or (ii) the date the Policy terminates.

11. The Enhanced Credit will be recaptured if the Policy owner exercises the free look provision available under the Policy. In addition, unless prohibited by state law, all or part of the Enhanced Credit will be recaptured if the Policy owner makes a cash surrender or a partial withdrawal in excess of the annual 10% free withdrawal amount during the first seven Policy years. The 10% free withdrawal provision allows a Policy owner to withdraw up to 10% annually of the accumulation value of the Policy without a withdrawal charge or interest adjustment being assessed. The amount of the bonus forfeited will equal the amount of the bonus, multiplied by the amount of the cash surrender or partial withdrawal in excess of the 10% free withdrawal amount, divided by the sum of all purchase payments made under the Policy, multiplied by the percentage of the Enhanced Credit which is not vested. Enhanced Credits that are not vested will be recaptured according to the following schedule:

| Policy year | Percentage of enhanced credit recaptured |
|-------------|--|
| 1 | 100 |
| 2 | 100 |
| 3 | 75 |
| 4 | 75 |
| 5 | 50 |
| 6 | 50 |
| 7 | 25 |

12. The amount of any account value, step-up value or roll-up value death

benefit will not include any Enhanced Credits given within the twelve months prior to the date of a Policy owner's death.

13. Regardless of whether or not the Enhanced Credit is recaptured, all gains attributable to such Enhanced Credit are part of the Policy owner's Policy value and will not be recaptured.

14. Policy owners can elect to receive a renewal credit to the accumulation value of their Policy at any time after the end of the eighth Policy year and at the end of each renewal credit period thereafter. A renewal credit period is a five-year term that begins on the day a Policy owner elects to receive a renewal credit. The Companies will allocate the renewal credit pro rata among the fixed and variable investment options available under the Policy in same ratio as accumulation value of the Policy is allocated. The Companies will fund the renewal credit from their general account assets.

15. There is no charge for the renewal credit and the Companies will not recapture the renewal credit.

16. The free look period is the 10-day period (or longer if required by state law) during which a Policy owner may return a Policy after it has been delivered and receive a full refund of the Policy accumulation value, less any Enhanced Credits applied. Unless the law requires that the full amount of the purchase payment be refunded, less any withdrawals, the Policy owner bears the investment risk from the time of purchase until he or she returns the Policy and the refund amount may be more or less than the purchase payment the Policy owner made. The Enhanced Credit will be recaptured if the free look provision is exercised.

17. A Policy owner may make withdrawals from the Policy before annuitization. The minimum withdrawal amount is \$500. If the enhanced credit rider is elected, any withdrawal in excess of the annual 10% free withdrawal amount during the first seven Policy years will be subject to the recapture of some or all Enhanced Credits applied to the Policy and also may be subject to withdrawal charges and interest adjustments.

18. The withdrawal charge applied to a partial withdrawal or cash surrender will be the applicable withdrawal charge percentage listed below, subject to a maximum of 9% of the sum of all purchases made by the Policy owner. The withdrawal charge percentages for the first eight Policy years are as follows:

| Policy year | Percentage of amount withdrawn |
|-------------|--------------------------------|
| 1 | 8 |
| 2 | 8 |
| 3 | 8 |
| 4 | 7 |
| 5 | 7 |
| 6 | 6 |
| 7 | 6 |
| 8 | 5 |

The withdrawal charges for all Policy years following the eighth Policy year will be 5% during any renewal credit period (which is the five-year term following the date the Policy owner elects to receive the renewal credit). Otherwise, no withdrawal charge is applicable after the eighth Policy year.

19. The interest adjustment may be applied to a cash surrender or partial withdrawal from the Policy's 5-Year Fixed Account or 8-Year Fixed Accounts for amounts in excess of the annual 10% free withdrawal amount. This adjustment is intended to adjust the interest received in these accounts to a market rate of interest. The adjustment will never result in a credited interest rate that will yield less than 3% per annum.

20. Withdrawal charges and interest adjustments will no longer apply as of the first policy anniversary following the annuitant's 90th birthday. In addition, the withdrawal charges and interest adjustments do not apply to (a) any death benefit received under the Policy, (b) when the waiver of withdrawal charges provision of the Policy is exercised and (c) in certain other very limited circumstances set forth in the Policy.

21. The Policy provides for a basic death benefit. An enhanced death benefit is also available. Any Enhanced Credits to the Policy given within the twelve months prior to the date of a Policy owner's death will be recaptured when the death benefit is based on account value, step-up value or roll-up value. However, the accumulation value of the Policy will reflect all gains and losses attributed to all Enhanced Credits to the Policy, including those recaptured.

22. Owners of the Policies may allocate their purchase payments among thirty-one variable investment options and four fixed investment options. Each sub-account of the Accounts is a variable investment option that will invest in shares of a corresponding portfolio of The Alger American Fund, Deutsche Asset Management VIT Funds, Federated Insurance Series, Fidelity Variable Insurance Products Fund, MFS Variable Insurance Trust, Morgan

Stanley Universal Institutional Funds, Inc., Pioneer Variable Contracts Trust, Scudder Variable Life Investment Fund, T. Rowe Price Equity Series, Inc., T. Rowe Price Fixed Income Series, Inc. and T. Rowe Price International Series, Inc. or other investment companies.

23. The Companies, at a later day, may decide to create additional subaccounts to invest in any additional funding media as may now or in the future be available. The Companies, from time to time, also may combine or eliminate subaccounts or transfer assets to and from subaccounts.

24. The Policy provides for a death benefit, enhanced death benefit options, annuity benefits and annuity payout options, as well as transfer privileges, dollar cost averaging, asset allocation and other features. In addition to the withdrawal charge and interest adjustment discussed above, the Policy has the following charges: (a) For Policies that have an accumulation value of less than \$100,000, an administrative expense charge equal to .15% per annum of the Policy's investment in the subaccounts, deducted on a daily basis; (b) an annual policy fee of \$40 for Policies that have an accumulation value of less than \$50,000; (c) a mortality and expense risk charge equal to 1.25% per annum of Policy's accumulation value, deducted on a daily basis; (d) a transfer fee of \$20 for each transfer after twelve transfers made during a Policy year; (e) if elected, the charge for the enhanced credit rider which is equal to 0.50% per annum of accumulation value of the Policy, deducted on a daily basis for the first eight Policy years; (f) if elected, the charge for the enhanced death benefit rider which is equal to 0.30% per annum of the accumulation value in the subaccounts, deducted on a daily basis; and (g) any applicable state premium tax. In addition, assets invested in the subaccounts are charged with the annual operating expenses of the underlying portfolios.

Applicants' Legal Analysis and Condition

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes or persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants request that the Commission pursuant to Section 6(c) of

the Act grant the exemptions requested below with respect to the Policy and any Future Policies issued by the Companies, funded by the Accounts or Other Accounts, and underwritten or distributed by MOIS or Affiliated Broker-Dealers. Applicants undertake that Future Policies will be substantially similar to the Policies in all material respects. Applicants believe that the requested exemptions are 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.

3. Applicants seek exemptions pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent deemed necessary to permit the Companies to recapture that portion of an Enhanced Credit which is not vested, as described above, in the following instances: (a) When a Policy owner exercises the Policy's free look provision; (b) when a Policy owner makes a cash surrender or a withdrawal in excess of the annual 10% free withdrawal amount within the first seven Policy years; and (c) any Enhanced Credits received within twelve months of the date of death of a Policy owner when the death benefit is based on account value, step-up value or roll-up value.

4. Applicants represent that it is not administratively feasible to track an Enhanced Credit in the Accounts after the Enhanced Credit is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amount held in the Accounts, including the Enhanced Credit, during the free look period and the recapture period. As a result during such periods, the aggregate asset-based charges assessed against a Policy owner's accumulation value, which includes all assets in the sub-accounts and the fixed accounts, including any Enhanced Credit, will be higher than those that would be charged if the Policy owner's accumulation value did not include the Enhanced Credit.

5. Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2)(A) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32)

defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

6. Applicants assert that the recapture of an Enhanced Credit in the circumstances set forth above would not deprive a Policy owner of his or her proportionate share of the issuer's current net assets. According to the Applicants, a Policy owner's interest in an Enhanced Credit allocated to his or her Policy value upon receipt of a purchase payment made during the seven years of the Policy is not fully vested until the end of the seventh Policy year. Unless and until the full amount of an Enhanced Credit is vested, the Companies retain at least a partial right and interest in the Enhanced Credit, although not in the earnings attributable to that amount. Thus, when the Companies recapture an Enhanced Credit, they are merely retrieving their own assets and the Policy owner has not been deprived of a proportionate share of the applicable Accounts' assets because his or her interest in the Enhanced Credit has not vested.

7. In addition, Applicants assert that permitting a Policy owner to retain an Enhanced Credit under a Policy upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Policy, with no intention of keeping it, and return it for a quick profit. Furthermore, the recapture of Enhanced Credits applied to purchase payments made within the first seven Policy years is designed to provide the Companies with a measure of protection against anti-selection. The anti-selection risk is that a Policy owner could collect the Enhanced Credit and then cancel the Policy soon thereafter, thereby leaving the Companies little time to recover the cost of the Enhanced Credit. As noted earlier, the amounts recaptured equal the Enhanced Credits provided by the Companies from their general account assets, and any gain would remain a part of the Policy owner's accumulation value.

8. For the foregoing reasons, Applicants submit that the provisions for recapture of Enhanced Credits under the Policies and Future Policies do not violate Sections 2(a)(32) and 27(i)(2)(A) of the Act. The application of an Enhanced Credit to purchase payments made under the Policies should not raise any questions as to the Companies' compliance with the provisions of Section 27(i). However, to avoid any

uncertainty as to full compliance with the Act, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Enhanced Credit under the circumstances described in this application without the loss of relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c-1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. The Companies' recapture of an Enhanced Credit might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current accumulation unit value of the Accounts. Applicants contend, however, that the recapture of the Enhanced Credit does not violate Section 22(c) or Rule 22c-1.

11. Applicants argue that the recapture of the Enhanced Credit does not involve either of the problems that Rule 22c-1 was intended to eliminate or reduce, namely (a) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (b) other unfair results, including speculative trading practices. These problems were the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding mutual fund shares.

12. Applicants state that the proposed recapture of the Enhanced Credit does not pose such a threat of dilution. To effect a recapture of an Enhanced Credit, the Companies will redeem interests in

a Policy at a price determined on the basis of the current accumulation unit value(s) of the sub-account(s) to which the Policy owner's accumulation value is allocated. The amount recaptured will never exceed the amount of the Enhanced Credit paid out of the Companies' general account assets. Although the Policy owner will be entitled to retain any investment gain attributable to the Enhanced Credit, the amount of that gain will be determined on the basis of the current accumulation unit values of the applicable subaccounts. Thus, no dilution will occur upon the recapture of the Enhanced Credit. Applicants also state that the second harm that Rule 22c-1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Enhanced Credit.

13. Applicants submit that because neither of the harms that Rule 22c-1 was meant to address is found in the recapture of the Enhanced Credit, Rule 22c-1 and Section 22(c) should not apply to any Enhanced Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recapture the Enhanced Credit under the Policies and Future Policies.

14. Applicants represent that the Companies will offer the renewal credit subject to the following conditions:

a. *Election Letter.* In connection with the renewal credit, the Companies will send a letter (the "Letter") that prominently discloses in concise plain English that (a) the renewal credit is most suitable for Policy owners who expect to continue their Policies for five or more years, and (b) if he Policy is surrendered or if accumulation value is withdrawn during the five-year renewal credit period, then the Policy owner may be worse off in certain circumstances than if the or she had not elected the renewal credit. The Letter will disclose exactly how a Policy owner who surrenders a Policy or makes a withdrawal during the renewal credit period could be worse off as a result of poor separate account investment performance than if he or she had not elected the renewal credit.

b. *Written Election.* The Companies will send the Letter directly to Policy owners eligible to elect the renewal credit and elections to receive the renewal credit will only be effective upon receipt by the Companies of an election signed by the Policy owner on a duplicate copy of the Letter. The

Companies will distribute such duplicate Letters with election signature forms along with the Letter. If the Letter is more than two pages in length, the Companies will use a separate document to obtain the Policy owner's elections of the renewal credit, which document will prominently disclose in concise plain English the statements required in condition 1 above.

c. *Records.* The Companies will maintain the following separately identifiable records in an easily accessible place for review by the Commission staff: (a) copies of any form of the Letter and any other written materials or scripts for presentations by representatives regarding the renewal credit, including the dates used, (b) records showing the number and percentage (on a calendar quarter basis) of eligible Policy owners that elect the renewal credit, (c) records showing the name and Policy number of each Policy owner who elects a renewal credit, the amount of the Policy owner's accumulation value at the time the renewal credit is elected, the amount of the renewal credit, the Policy owner's name, address, telephone number and date of birth, the date the Policy owner signed the Letter or election form, the signed Letters or separate documents that reflect the Policy owner's election of the renewal credit, and where a commission (or other compensation) is paid to a registered representative on or after the date of the election of the renewal credit, the amount of the commission (or other compensation), and the name of any sales representative involved with the solicitation of the election of the renewal credit or who receives any compensation in connection with the Policy after the date of the election of the renewal credit and her or his CRD number, firm affiliation, telephone number, and branch office address, (d) records of persistency information for Policies whose Policy owners have elected the renewal credit, including the date(s) of any subsequent surrender or withdrawal of accumulation value and the amount of any withdrawal charge, and (e) logs recording any Policy owner complaints about the renewal credit, state insurance department inquiries about the same, or litigation, arbitration or other proceedings regarding the renewal credit. The logs will include the date of the complaint (or of commencement of any proceeding), the name and address of the person making the complaint or commencing the proceeding, the nature of the complaint or proceeding and the persons involved in the complaint or proceeding. The forgoing records will be

retained for the longer of: (1) six years after the later of their creation or their last use, or (2) two years after the end of the relevant renewal credit period.

15. Applicants request an order pursuant to Section 6(c) for an exemption from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent deemed necessary to permit the Companies to recapture Enhanced Credits as described herein. Applicants represent that the Enhanced Credit will be attractive to and in the interest of investors because it will permit Policy owners to put from 104% to 101% of each of their purchase payments in the first seven years of the Policy to work for them in the selected investment options. In addition, the Policy owners will retain any earnings attributable to the Enhanced Credit, as well as the principal amount of the Enhanced Credit once vested.

16. Applicants further submit that the recapture of any Enhanced Credit only applies in relation to the risk of anti-selection against the Companies. Anti-selection can generally be described as a risk that Policy owners obtain an undue advantage. This undue advantage is based on elements of fairness to the Companies and the actuarial and other factors taken into account in designing the Policies and Future Policies. The Companies provide the Enhanced Credit from their general account assets on a guaranteed basis. Thus, they undertake a financial obligation that contemplates the retention of the Policies and Future Policies by their owners over an extended period, consistent with the long-term nature of retirement planning. The Companies generally expect to recover their costs, including Enhanced Credits, over an anticipated duration while a Policy or Future Policy is in force. The right to recapture Enhanced Credits applied to purchase payments made within the first seven Policy years protects the Companies against the risk that a Policy owner will purchase a Policy or Future Policy or make larger or additional payments with the intent to hold the Policy or Future Policy for speculative purposes or for a short period of time.

17. With respect to refunds paid upon the return of a Policy or Future Policy within the free look period, Applicants assert that the amount payable by the Companies must be reduced by the amount of the Enhanced Credit. Otherwise, investors, purchase a Policy or Future Policy for the sole purpose of exercising the free look provision and making a quick profit equal to 4% of their investment.

18. Applicants submit that their request for an order that applies to the

Accounts and any Other Accounts established by the Companies, in connection with the issuance of the Policies and Future Policies, is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in this application. Having Applicants file additional applications would impair Applicants' ability 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 thereby.

19. Applicants undertake that Future Policies funded by the Accounts or by Other Accounts, which seek to rely on the order issued pursuant to this application, will be substantially similar to the Policies in all material respects.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions 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. 01-22015 Filed 8-30-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44735; File No. SR-MSRB-2001-06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases, Pursuant to Rule G-14

August 22, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934