

available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Wilson's attention no later than May 5, 2000, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scoping process for the supplement to the GEIS to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T-6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. To be considered in the scoping process, written comments should be postmarked by June 9, 2000. Electronic comments may be sent by the Internet to the NRC at hatcheis@nrc.gov. Electronic submissions should be sent no later than June 9, 2000, to be considered in the scoping process. Comments will be available electronically and accessible through the NRC's Public Electronic Reading Room (PERR) link <http://www.nrc.gov/NRC/ADAMS/index.html> at the NRC Homepage.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the PERR link. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and a separate public meeting. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Wilson at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 4th day of April 2000.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00-9058 Filed 4-11-00; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-1093 (which should be mentioned in all correspondence concerning this draft guide), is titled "Guidance and Examples for Identifying 10 CFR 50.2 Design Bases." This guide is being developed to provide a better understanding of the term "design bases" as defined in 10 CFR 50.2. This better understanding is to help the industry and the NRC staff implement the regulations that use the term design bases. This guide proposes the endorsement of the Nuclear Energy Institute document, Appendix B, "Guidelines and Examples for Identifying 10 CFR 50.2 Design Bases," to NEI 97-04, "Design Bases Program Guidelines."

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by June 15, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (<http://www.nrc.gov>). This site provides

the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905; e-mail CAG@NRC.GOV. Electronic copies of this draft guide, under Accession Number ML003691412, are available in NRC's Public Electronic Reading Room, which can also be accessed through NRC's web site, WWW.NRC.GOV. For information about the draft guide and the related documents, contact Mr. S.L. Magruder at (301) 415-3139; e-mail SLM1@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301)415-2289, or by e-mail to DISTRIBUTION@NRC.GOV. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of March 2000.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Program Management, Policy Development & Analysis Staff Office of Nuclear Regulatory Research.

[FR Doc. 00-9059 Filed 4-11-00; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24378; File No. 812-11884]

The Manufacturers Life Insurance Company of North America, et al., Notice of Application

April 5, 2000.

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

ACTION: Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 (the

“1940 Act” or “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, to permit the recapture of credits applied to purchase payments made under certain deferred variable annuity contracts.

SUMMARY OF APPLICATION: Applicants seek an order to permit the recovery of certain credits applied to purchase payments made under: (i) Certain deferred variable annuity contracts (“Contracts”) that The Manufacturers Life Insurance Company of North America (“Manulife North America”) issues through The Manufacturers Life Insurance Company of North America Separate Account A (“the Account”), and (ii) contracts that Manulife North America may issue in the future through the Account, any of its other separate accounts, or any separate accounts that it may establish in the future (“Manulife North America Future Accounts”) and that The Manufacturers Life Insurance Company of New York (“Manulife New York”) may issue in the future through The Manufacturers Life Insurance Company of New York Separate Account A (“the Variable Account”), any of its other separate accounts or any separate accounts that it may establish in the future (“Manulife New York Future Accounts”; collectively with the Manulife North America Future Accounts, the “Future Accounts”), which contracts are substantially similar in all material respects to the Contracts (“Future Contracts”). Applicants also request that the order extend to any other National Association of Securities Dealers, Inc. (“NASD”) member broker-dealer controlling, controlled by, or under common control with the Insurance Companies, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts or any Future Contracts offered through the Accounts or any Future Accounts (collectively, “Affiliated Broker-Dealers”).

APPLICANTS: The Manufacturers Life Insurance Company of North America, The Manufacturers Life Insurance Company of New York (collectively, “the Insurance Companies”), The Manufacturers Life Insurance Company of North America Separate Account A, The Manufacturers Life Insurance Company of New York Separate Account A (collectively, “the Accounts”), Manufacturers Securities Services, LLC (“MSS”), and any of the Insurance Companies’ other separate accounts or separate accounts that the Insurance Companies may establish in

the future (“Future Accounts”) to support Future Contracts issued by the Insurance Companies (collectively, “Applicants”).

FILING DATE: The application was filed on December 14, 1999, and amended on March 29, 2000.

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 SEC’s Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 on April 27, 2000 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, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, c/o Betsy A. Seel, Esq., Manulife Financial, 73 Tremont Street, Boston, Massachusetts 02108; copy to John W. Blouch, Esq., Jones & Blouch L.L.P., 1025 Thomas Jefferson St., NW, Suite 410 East, Washington, DC 20007-0805.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Counsel, or Keith Carpenter, Branch 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 may be obtained for a fee from the SEC’s Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. (202) 942-8090).

Applicant’s Representations

1. Manulife North America is a stock life insurance company organized under the laws of Delaware in 1979. Its principal business is offering variable annuity contracts in 48 states (excluding New York), the District of Columbia and Puerto Rico. The ultimate parent of Manulife North America is The Manufacturers Life Insurance Company, a Canadian stock life insurance company (“Manulife”). Manulife Financial Corporation is the holding company of Manulife and its subsidiaries, collectively known as Manulife Financial.

2. Manulife New York is a stock life insurance company organized under the

laws of New York in 1992. Its principal business is offering variable annuity contracts in New York. Manulife New York is a wholly-owned subsidiary of Manulife North America.

3. The Account was established in 1984 by Manulife North America as a separate account under Delaware law and is registered with the Commission as a unit investment trust under the Act. The Account funds the variable benefits available under the Contracts and other variable annuity contracts issued by Manulife North America. The offering of the Contracts by Manulife North America is registered under the Securities Act of 1933. That portion of the assets of the Account that is equal to the reserves and other contract liabilities with respect to the Account is not chargeable with liabilities arising out of any other business of Manulife North America. Any income, gains or losses, realized or unrealized, from assets allocated to the Account are, in accordance with the various contracts, credited to or charged against the Account without regard to other income, gains or losses of Manulife North America.

4. The Variable Account was established in 1992 by Manulife New York as a separate account under New York law and is registered with the Commission as a unit investment trust under the Act. The Variable Account funds the variable benefits available under the contracts issued by Manulife New York. That portion of the assets of the Variable Account that is equal to the reserves and other contract liabilities with respect to the Variable Account is not chargeable with liabilities arising out of any other business of Manulife New York. Any income, gains or losses, realized or unrealized, from assets allocated to the Variable Account are, in accordance with the various contracts, credited to or charged against the Variable Account without regard to other income, gains or losses of Manulife New York.

5. MSS is a Delaware limited liability company controlled by Manulife North America and is the principal underwriter of the Contracts. MSS is also the principal underwriter of certain contracts issued by Manulife New York. MSS is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. Sales of the Contracts are made by registered representatives of broker-dealers authorized by MSS to sell the Contracts. Such registered representatives are also licensed insurance agents of Manulife North America.

6. The Contracts are flexible purchase payment individual deferred combination fixed and variable annuity contracts. They may be issued pursuant to either non-qualified retirement plans or plans qualifying for special income tax treatment such as individual retirement accounts and annuities, pension and profit-sharing plans for corporations and sole proprietorships or partnerships, tax sheltered annuities, and state and local government deferred compensation plans.

7. The minimum initial purchase payment for a Contract is \$10,000. The minimum subsequent purchase payment is \$30. Manulife North America may limit total Contract purchase payments to \$1,000,000.

8. Upon receipt of a purchase payment from a Contract owner, Manulife North America adds a payment enhancement or credit to the owner's Contract (the "Credit"). Manulife North America funds Credits from its general account assets and allocates Credits among investment

options in the same proportion as the applicable purchase payment. The Credit depends upon the cumulative amount of purchase payments and is payable as a percentage of specific purchase payments as set forth in the chart below. A higher Credit percentage may be applied to an initial purchase payment where the Contract owner has executed a letter of intent to make total purchase payments within 13 months of the Contract date sufficient to achieve one of the higher breakpoints shown below ("Letter of Intent").

[In percent]

Cumulative purchase payments	Credit rates		
	Guaranteed rate (contracts issued prior to January 1, 1999)	Promotional rate* (contracts issued on or after January 1, 1999 but prior to June 21, 1999)	Promotional rate* (contracts issued on or after June 21, 1999)
Less than \$500,000	3.0	4.0	5.0
\$500,000 or more but less than \$2,500,000	4.0	5.0	5.5
\$2,500,000 or more	5.0	6.0	6.0

*Promotional Credit rates are being offered for initial and subsequent purchase payments with respect to all Contracts issued on or after January 1, 1999, with the higher promotional rates applicable to Contracts issued after June 21, 1999. The promotional Credits may be terminated at any time and, if terminated, will not be applied to initial or subsequent purchase payments made after the date of termination except in the context of a Letter of Intent. The promotional rates applicable to the initial purchase payment under a Letter of Intent will continue in effect for the 13-month Letter of Intent completion period regardless of a termination generally of the promotional rates during such period.

9. Manulife North America recovers certain Credits from a Contract owner under the following circumstances: (i) Any Credit applied if the owner returns the Contract for a refund during the 10-day "free look" period; (ii) any Credits applied within 12 months preceding the date of death that results in payment of a death benefit; and (iii) any "Excess Credits" (defined below) applied to purchase payments made pursuant to a Letter of Intent where total purchase payments received within 13 months from the Contract date do not equal or exceed the applicable breakpoint for the Credits applied. In the event of such recovery, the Contract owner retains any earnings attributable to the Credit or Excess Credit allocated to his or her account value. If there is a decline in the value of accumulation units for an investment to which a Credit or Excess Credit has been allocated, Manulife North America retains the right to recover the original amount of the Credit or Excess Credit. The recovery of Credits or Excess Credits will be effected by canceling accumulation units equal in value to the full amounts to be recovered, the number of such units to be calculated at the accumulation unit value next determined. Amounts recovered will be withdrawn from each investment option in the same proportion that the value of

the investment account of each investment option bears to the Contract value.

10. The free look period is the 10-day period during which an owner may return a Contract after it has been delivered. Upon such return, the owner receives a full refund of the Contract value, less any debt and any Credit. No withdrawal charge applies to the refund. The refund amount may be more or less than the owner's purchase payment, unless the applicable state law requires that the full amount of the purchase payment be refunded.

11. The Contract's death benefit provision states that a death benefit will be paid to the Contract owner's specified beneficiary (or a surviving Contract owner, if any) if the Contract owner dies before annuity payments begin. The death benefit during the first nine Contract years will be the greater of: (a) The Contract value less any Credits applied in the 12-month period prior to the date of death, or (b) the excess of (i) the sum of all purchase payments over (ii) the sum of any partial withdrawals. After the ninth Contract year, the death benefit will be the greater of: (a) The Contract value less any Credits applied in the 12-month period prior to the date of death; (b) the excess of (i) the sum of all purchase payments over (ii) the sum of any

amounts deducted in connection with partial withdrawals; or (c) the death benefit on the last day of the ninth Contract year, plus the sum of all purchase payments made and any amount deducted in connection with partial withdrawals since then. If there is any debt under the Contract, the death benefit equals the death benefit as described above less such debt.

12. Manulife North America applies a higher Credit percentage to an initial purchase payment where the Contract owner has executed a Letter of Intent to make total purchase payments within 13 months of the Contract date sufficient to achieve such higher Credit percentage. If the total purchase payments received within such 13-month period do not equal or exceed the amount of the breakpoint for such higher Credit percentage, Manulife North America may recover the "Excess Credit," that is, the amount by which the Credit applied to the Contract exceeds the Credit that would have been applied to the actual purchase payments made had the Contract owner not submitted a Letter of Intent. The Contract owner bears the risk that, if the Letter of Intent is not fulfilled, the value of the Contract may be less than it would have been if the owner had not executed a Letter of Intent. If the amount recovered exceeds the Contract value, Manulife North

America will terminate the Contract without value.

13. Contract owners may allocate their purchase payments among a number of sub-accounts of the Account. Each sub-account invests in shares of a corresponding portfolio of Manufacturers Investment Trust (the "Trust"), an open-end management investment company registered under the Act. Manulife North America may, subject to compliance with applicable law, add other sub-accounts, eliminate or combine existing sub-accounts or transfer assets in one sub-account to another sub-account established by Manulife North America or an affiliated company.

14. The Contracts provide for various withdrawal and annuity payout options, as well as transfer privileges among sub-accounts, dollar cost averaging, and other features. The Contracts provide for the following charges: (i) a withdrawal or contingent deferred sales charge ("CDSC") as a percentage of amounts withdrawn attributable to purchase payments that have been in the Contract less than ten complete years, with the applicable percentage charge declining from a maximum of 8.5% in years one and two to 0.0% in year ten and thereafter; (ii) a \$40 annual administration fee; (iii) a daily administration fee in an amount equal on an annual basis to 0.30% of the value of each variable investment account, deducted from each sub-account; (iv) a daily mortality and expense risks charge in an amount equal on an annual basis to 1.25% of the value of each variable investment account, deducted from each sub-account; and (v) any applicable state or local premium taxes up to 3.5%, depending on the owner's state of residence or the state in which the Contract was sold. In addition, assets invested in portfolios of the Trust are charged with the annual operating expenses of those portfolios. The CDSC is not applied against Credits or Excess Credits.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of 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. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions requested below with

respect to the Contracts, and any Future Contracts funded by the Accounts or Future Accounts, that are issued by the Insurance Companies and underwritten or distributed by MSS or Affiliated Broker-Dealers. Applicants undertake that Future Contracts will be substantially similar in all material respects to the Contracts. 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.

2. Applicants seek exemption 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 Manulife North America to issue Contracts and Future Contracts, and Manulife New York to issue Future Contracts, that provide for the issuance of Credits upon the receipt of purchase payments and the subsequent recovery of: (i) Any Credit applied if an owner returns a Contract or a Future Contract for a refund during the free look period; (ii) any Credits applied within 12 months preceding the date of death that results in payment of a death benefit; and (iii) any Excess Credits applied to purchase payments made pursuant to a Letter of Intent where total purchase payments received within 13 months from the Contract or Future Contract date do not equal or exceed the amount of the applicable breakpoint for the Credit applied.

3. Applicants represent that it is not administratively feasible to track asset-based charges against Credits in the Accounts after the Credits have been applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amounts held in the Accounts, including Credits, during the free look period, the 12-month recovery periods with respect to death benefits, and the 13-month period for fulfillment of a Letter of Intent. As a result, during such period, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than they would have been if the owner's annuity account value did not include any Credits.

4. Subsection (i) of Section 27 of the Act provides that Section 7 does not apply to any registered separate account 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) 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 a "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.

5. Applicants submit that the recovery of Credits and Excess Credits in the circumstances set forth in the Application do not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the Credit allocated to his or her annuity account value upon receipt of an initial purchase payment is not vested until the applicable free look period has expired without return of the Contract. Similarly, Applicants state that an owner's interest in Credits allocated to his or her annuity account within 12 months preceding the date of death resulting in payment of a death benefit, or in the Excess Credit allocated to such account within 13 months preceding the fulfillment of a Letter of Intent, also is not vested. Until the right to recovery has expired and any Credit or Excess Credit has vested, Applicants submit that Manulife North America retains the right and interest therein. Thus, Applicants argue that when Manulife North America recovers any Credit or Excess Credit, it is merely retrieving its own assets. The owner is not deprived of a proportionate share of the Account's assets because the owner's interest in such Credit or Excess Credit has not vested. Moreover, according to Applicants, Manulife North America does not recover any earnings attributable to Credits or Excess Credits.

6. Applicants further submit that permitting an owner to retain a Credit upon the exercise of the free look return provision, or a Credit allocated within 12 months of the date of death, or an Excess Credit under circumstances of non-fulfillment of a Letter of Credit, would be unfair and would deny the Insurance Companies a reasonable measure of protection against anti-selection. Anti-selection can generally be described as a risk that Contract owners obtain an undue advantage based on elements of fairness to the Insurance Companies and the actuarial and other factors they take into account in designing the Contracts. The risk here is that, rather than spreading purchase payments over a number of years, an owner might seek to manipulate Contract provisions in a manner that

leaves the Insurance Companies little time to recover the cost of the Credit or Excess Credit. For example, permitting an owner to retain a Credit upon the exercise of the free look return would encourage the purchase of Contracts for a quick profit upon return rather than with the intention of making a long-term investment. Similarly, an owner would have an incentive to make a very large purchase payment shortly before death or to execute a Letter of Intent with no intention of fulfilling it in order to obtain Credits or Excess Credits the cost of which the Insurance Companies would be unable to recover. As stated above, the amounts recovered will equal the Credits or Excess Credits provided by the Insurance Companies from general account assets, and any gains attributable thereto will remain a part of the owner's Contract value. For the foregoing reasons, Applicants submit that the provisions for recovery of Credits and Excess Credits under the Contracts do not violate Section 2(a)(32) and 27(i)(2)(A) of the 1940 Act. 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 issuance and subsequent recovery of Credits and Excess Credits under the circumstances described in the Application with respect to Contracts and Future Contracts, without the loss of relief from Section 27 provided by Section 27(i).

7. 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 thereunder 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 which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. The Insurance Companies' recovery of Credits and Excess Credits as described in the Application might arguably be viewed as involving the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts.

8. Applicants believe that the recovery of the Credits and Excess Credits does not violate Section 22(c) of the Act or Rule 22c-1. Such recovery does not involve either of the harms that Rule 22c-1 was intended to eliminate or reduce, namely: (i) 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 (ii) other unfair results, including speculative trading practices.

9. Applicants submit that the recovery of Credits and Excess Credits does not pose such a threat of dilution. In effecting recoveries, the Insurance Companies will redeem interests in an owner's Contract at a price determined on the basis of the current net asset value of the sub-accounts(s) to which the owner's Contract value is allocated. The amounts recovered will equal the Credits or Excess Credits that the Insurance Companies have paid out of general account assets. The owners will be entitled to retain any investment gains attributable to the Credits or Excess Credits, and the amounts of such gains will be determined on the basis of the current net asset values of the applicable sub-accounts. Under these circumstances, in Applicants' view, the recovery of the Credits or Excess Credits does not involve dilution. Applicants further submit 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 recovery of Credits or Excess Credits.

10. Applicants contend that, because neither of the harms that Rule 22c-1 was meant to address are found in the recovery of Credits or Excess Credits, Rule 22c-1 and Section 22(c) should not be construed as applicable thereto. However, to avoid any uncertainty in this regard, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recover Credits and Excess Credits under the Contracts and Future Contracts as described in the Application.

11. Applicants submit that their request for an order that applies to Future Accounts and Future Contracts that are substantially similar in all material respects to the Contracts and underwritten or distributed by MSS or Affiliated Broker-Dealers 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 will not receive any benefit or additional protection if Applicants are required repeatedly to seek exemptive relief presenting no issue under the Act that has not already been addressed in the Application. Having Applicants file additional applications would impair Applicants' ability effectively to take advantage of business opportunities as they arise. Applicants undertake that Future Contracts funded by the Accounts or by Future Accounts which seek to rely on the order issued pursuant to this Application will be substantially similar in all material respects to the Contracts.

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the Act, and that, therefore, the Commission should grant the requested order.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-9037 Filed 4-11-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42621; File No. SR-DTC-00-6]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Revising the By-Laws

April 5, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 31, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been primarily prepared by DTC. The Commission is publishing this notice and order to solicit comments on the proposed rule

¹ 15 U.S.C. 78s(b)(1).