

The requested relief will not extend to a Subadviser that is an "affiliated person," as defined in section 2(a)(3) of the Act, of the Fund or the Adviser, other than by reason of serving as a Subadviser to one of more of the Funds (an "Affiliated Subadviser").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the Act, or from any rule thereunder, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Funds' shareholders rely on the Adviser to select Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in this application, the operation of the Fund in the manner described in this application will be approved by a majority of the Fund's outstanding voting securities (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-

account), as defined in the Act, or by its initial shareholder, provided that, in the case of approval by the initial shareholder, the pertinent Fund's shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight of the Board) to oversee Subadvisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board will be Independent Trustees, subject to the suspension of this requirement for the death, disqualification or bona fide resignation of trustees as provided in rule 10e-1 under the Act, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. The Adviser will not enter a Subadvisory Agreement with any Affiliated Subadviser, without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund (or if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account).

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees will make a separate finding, reflected in the affected Fund's Board minutes, that the change is in the best interests of the Fund and its shareholders (or if the Fund serves as a funding medium for any sub-account of a registered separate account, the best interests of the Fund and unitholders of any such sub-account), and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser for any Fund, the Fund shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account), will be furnished all information about the new Subadviser that would be contained in

a proxy statement, including any change in such disclosure caused by the addition of a new Subadviser. Each Fund will meet this condition by providing shareholders (or unitholders), within 90 days of the hiring of a Subadviser, with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's portfolio, and subject to review and approval by the Board, will: (i) Set the Fund's overall investment strategies; (ii) evaluate, select and recommend Subadviser(s) to manage all or part of a Fund's assets; (iii) monitor and evaluate the performance of Subadviser(s); (iv) ensure that Subadvisers comply with the Fund's investment objectives, policies and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance; and (v) allocate and, where appropriate, reallocate a Fund's assets among its Subadvisers when a Fund has more than one Subadviser.

8. No trustee or officer of any Fund or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such person) any interest in a Subadviser except for: (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

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

[Release No. IC-25511; File No. 812-12670]

Midland National Life Insurance Company, et. al.

April 5, 2002.

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

ACTION: Notice of an application for an order pursuant to section 6(c) of the Investment Company Act of 1940, as amended (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.

Applicants: Midland National Life Insurance Company ("Midland"), Midland National Life Separate Account C (the "Midland Account"), and Sammons Securities Company, LLC ("Sammons Securities") (all collectively, the "Applicants").

SUMMARY OF APPLICATION: The Applicants hereby apply for an order of the Commission exempting them with respect to variable annuity contracts described herein (the "Contracts") and other variable annuity contracts that are substantially similar in all material respects to the contracts described herein, that Midland may issue in the future ("Future Contracts"), and any other separate accounts of Midland and its successors in interest ("Future Accounts") that support Future Contracts, and certain National Association of Securities Dealers, Inc. ("NASD") member broker-dealers which in the future, may act as principal underwriter of such contracts ("Future Underwriters"), from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, pursuant to section 6(c) of the Act, to the extent necessary to permit the recapture of a bonus credit (previously applied to premium payments) where the contract owner ("Owner") exercises his or her "free look" right.

FILING DATE: The application was filed on October 23, 2001, and amended and restated on January 18, 2002 and March 15, 2002. An amendment substantially conforming to this notice will be filed during the pendency of the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 30, 2002, 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 a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

Applicants: c/o Jack L. Briggs, Esq. Midland National Life Insurance Company, One Midland Plaza, Sioux Falls, SD 57193. Copy to Frederick R. Bellamy, Esq. Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mark A. Cowan, Senior Counsel, or William Kotapish, Assistant Director, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch, 450 5th Street NW, Washington, DC 20549, (202) 942-8090.

Applicants' Representations

1. Midland is a stock life insurance company. Midland was organized in 1906, in South Dakota, as a mutual life insurance company at that time named The Dakota Mutual Life Insurance Company. It was reincorporated as a stock life insurance company in 1909. The name Midland was adopted in 1925. Midland was redomesticated to Iowa in 1999. It is licensed to do business in the District of Columbia, Puerto Rico, and in all states except New York. Midland is a subsidiary of Sammons Enterprises, Inc. which has controlling or substantial stock interests in a large number of other companies engaged in the areas of insurance, corporate services, and industrial distribution.

2. Under the terms of the Contracts, the assets of the Midland Account equal to the reserves and other contract liabilities with respect to the Midland Account are not chargeable with liabilities arising out of any other business which the sponsoring company may conduct (except to the extent that assets in the Midland Account exceed the reserves and liabilities of the Midland Account). The Midland Account is comprised of investment divisions established to receive and invest net premium payments under the Contracts (the "Investment Divisions") and other annuity contracts. The income, gains and losses, realized or unrealized, from the assets allocated to each Investment Division will be credited to or charged against that Investment Division without regard to other income, gains or losses of any other Investment Division. The Midland Account meets the definition of a

"separate account" in Rule 0-1(e) under the Act.

3. The Board of Directors of Midland established the Midland Account under the insurance laws of the State of South Dakota in March 1991. The Midland Account is now governed by Iowa law. The Midland Account is registered under the Act as a unit investment trust (File No. 811-07772). The assets of the Midland Account support certain flexible premium variable annuity contracts, and interests in the Midland Account offered through such contracts have been registered under the Securities Act of 1933 ("1933 Act") on two Form N-4 Registration Statements (File Nos. 33-64016 and 333-71800).

4. Sammons Securities, an affiliate of Midland, is the principal underwriter of the Contracts. Sammons Securities is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD.

5. Each Investment Division will invest exclusively in a designated series of shares, representing an interest in a particular portfolio of one or more designated management investment companies of the series type ("Funds"). Midland reserves the right to designate the shares of another portfolio of the Funds or of other management investment companies ("Other Funds") as the exclusive investment vehicle for each new Investment Division that may be created in the future. Subject to Commission approval under section 26(c) of the Act, Applicants also reserve the right to substitute the shares of another portfolio of the Funds or of Other Funds for the portfolio previously designated as the exclusive investment vehicle for each Investment Division.

6. The Contracts are flexible premium variable annuity contracts issued by Midland through the Midland Account. Midland currently intends to market the Contract under the name "Variable Annuity III." The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both during the accumulation period, and may provide settlement or annuity payment plans on a variable basis, fixed basis, or both. The Contracts may be purchased on a non-qualified tax basis. The Contracts may also be purchased and used in connection with plans qualifying for favorable federal income tax treatment.

7. The Owner determines in the application or transmittal form for a Contract how the net premium payments will be allocated among the Investment Divisions of the Midland Account, the Fixed Account and any available dollar cost averaging options of the Fixed Account (the "Fixed

Account Options"). The Owner generally may allocate premium payments to each Investment Division and to each Fixed Account Option. The Accumulation Value will vary with the investment performance of the Investment Divisions selected, and the Owner bears the entire risk for amounts allocated to the Investment Divisions.

8. An Owner may return his or her Contract for a refund. This is called the "Free Look Right." The Free Look Right allows an Owner 10 days (or longer if required by state law) to return his or her Contract. Midland will generally return the Accumulation Value minus any premium bonus credit to the Owner, but may return the full premium payment (not including the bonus credit), if greater and required by state law. Midland will generally pay the refund within 7 days after it receives a written notification of cancellation and the returned Contract. The Contract will then be considered void.

9. An Owner may transfer Accumulation Value. Transfers out of an Investment Division generally must be for at least \$200, or the entire value of the Investment Division. Free transfers may be limited to twelve per contract year and a \$15 charge per transfer may then apply for any additional transfers.

10. The Owner may surrender the Contract or make a partial surrender from the Accumulation Value until the maturity date. If an Owner surrenders a Contract or takes a partial surrender, Midland may deduct a surrender charge to compensate it for expenses relating to sales, including commissions to registered representatives and other promotional expenses. An Owner is permitted to withdraw 10% of net premiums (premiums minus surrenders) once each Contract Year free of a surrender charge. The following chart shows the surrender charges that apply to the Contracts:

Number of years since premium payment date	Surrender charge (as a percentage of premium withdrawn)
1	7
2	7
3	6
4	5
5	4
6	3
7	2
8 or more	0

Midland currently will partially waive the surrender charge if an Owner withdraws money under the Terminal Illness or Charitable Remainder Trust riders.

11. Midland offers a Charitable Remainder Trust benefit which provides for a potential increase in the free surrender amount. Under this benefit, the free surrender amount is the greater of: (a) the Owner's Accumulation Value minus net premiums at the close of the prior business day; or (b) 10% of the Owner's net premiums at the time of the partial surrender. This benefit is only available if the Owner is a charitable remainder trust. There is no charge for this benefit.

12. Under the Contracts, Midland will pay a death benefit under certain circumstances. Midland's death benefit equals the greatest of: (a) The Accumulation Value; (b) 100% of the total net premium payments, or (c) if elected, the guaranteed minimum death benefit. The guaranteed minimum death benefit equals the greater of total premiums paid minus any surrenders accumulated at 7% per annum (limited to an additional 100% of premiums minus surrenders) or the Accumulation Value. Future Contracts may provide different death benefits. The Accumulation Value for purposes of the death benefit is calculated on the date Midland receives the later of due proof of death or the election form of how the death benefit is to be paid, or 90 days after receipt of due proof of death.

13. If an Owner elects the Bonus Credit Rider under the Contracts, then Midland will add a 4% bonus credit to each premium payment made during the first contract year. Midland will assess a daily charge during the first 7 contract years against the Owner's Accumulation Value in the Midland Account as a charge for the optional bonus credit rider. The current charge for this rider is at an annual rate of 0.60% of the Separate Account accumulation value. The guaranteed maximum level of this charge is 0.70% annually.

14. On the maturity date the Owner may take the surrender value in one lump sum or convert the surrender value into an annuity. The Owner may elect or change an annuity payment option up until thirty days before the maturity date. The first annuity payment will be made within one month after the maturity date. The Owner generally may change the maturity date, subject to limits specified in the prospectus.

15. The amount of each annuity payment under the annuity payment plans will depend on the sex (if allowed) and age of the annuitant (or annuitants) at the time the first payment is due and the payment option.

16. Midland may offer Owners dollar cost averaging programs, where Midland

will automatically transfer money from one investment option into any of the other Investment Divisions; a portfolio rebalancing program, where Midland will automatically rebalance, on a quarterly, semi-annual or annual basis, the amounts in an Owner's Investment Divisions according to his or her desired asset allocation; a fixed account earnings sweep program, where Midland will transfer, on a monthly or quarterly basis, Fixed Account interest earnings to one or more of the Investment Divisions; and a systematic withdrawal option, where an Owner may receive regular payments from his or her Contract, subject to certain limitations; or other programs.

17. Midland deducts various fees and charges from the Contracts or the Midland Account, which currently include a daily mortality and expense risk fee; an annual maintenance fee (which may be waived if the Owner's net premium exceeds a certain level); premium taxes; surrender charges (contingent deferred sales loads); and fees for optional benefits or riders.

Applicants' Legal Analysis

1. Applicants respectfully request that the Commission, pursuant to section 6(c) of the Act, grant the exemptions set forth below to permit the Applicants to recapture the bonus credit applied to premium payments when the Owner exercises his or her free look right.

2. Section 6(c) authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the contract and provisions of the Act. Because the provisions described below may be inconsistent with a recapture of a bonus credit, Applicants request exemptions for the Contracts described herein, and for Future Contracts, from sections 2(a)(32), 22(c) and 27(i)(2)(a) of the Act, and Rule 22c-1 thereunder, pursuant to Section 6(c), to the extent necessary to recapture the bonus credit applied to a premium payment in the instance described above. Applicants do not agree or concede that the proposed recapture would violate any provision of the Act or rules thereunder. Applicants seek exemptions therefrom in order to avoid any questions concerning the Contracts' compliance with the Act and rules thereunder.

3. For the reasons discussed below, Applicants assert that the recapture of the bonus credit in the circumstances

described herein is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

4. Section 27(i) provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, nor to the sponsoring insurance company and principal underwriter of such account, except as provided for in Section 27(i)(2)(A). Section 27(i)(2)(A) of the Act, in pertinent part, makes it unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless such contract is a redeemable security.

5. Section 2(a)(32) of the Act defines "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

6. To the extent that the bonus credit recapture might be seen as a discount from the net asset value, or might be viewed as resulting in the payment to an Owner of less than the proportionate share of the issuer's net assets, the bonus credit recapture would trigger the need for relief absent some exemption from the Act. Rule 6c-8 provides, in relevant part, that a registered separate account, and any depositor of such account, shall be exempt from sections 2(a)(32), 22(c), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c-1 thereunder to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account. However, the bonus credit recapture is not a sales load, but a recapture of a bonus credit Midland previously applied to an Owner's premium payments. Midland provides the bonus credits from its general account on a guaranteed basis. The Contracts are designed to be long-term investment vehicles. In undertaking this financial obligation, Midland contemplates that an Owner will retain a Contract over an extended period, consistent with the long-term nature of the Contracts. Midland designed its product so that it would recover its costs (including the bonus credit) over an anticipated duration while a Contract is in force. If an Owner withdraws his or her money from the Contract before this anticipated period, Midland must recapture the bonus credit in order to avoid a loss.

7. Applicants submit that the recapture of a bonus credit does not

violate section 2(a)(32) of the Act. The Applicants submit that the bonus recapture provision in the Contracts does not deprive the Owner of his or her proportionate share of the issuer's current net assets. An Owner's right to the bonus credit will vest after the free-look period has expired. Until that time, Midland retains the right and interest in the dollar amount of any unvested bonus credit amount. Thus, when Midland recaptures a bonus credit, it is only retrieving its own assets, and because an Owner's interest in the bonus credit is not vested, such Owner would not be deprived of a proportionate share of the Midland Account's assets (the issuer's current net assets) in violation of Section 2(a)(32). Therefore, such recapture does not reduce the amount of the Midland Account's current net assets an Owner would otherwise be entitled to receive. However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the provisions of Sections 2(a)(32) and 27(i)(2)(A) to the extent deemed necessary to permit them to recapture the bonus credit under the Contracts and Future Contracts.

8. Section 22(c) of the Act states that the Commission may 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 ends as contemplated by Section 22(a). Rule 22c-1, promulgated under section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing a redeemable security (and a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, any such security) from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security.

9. As a result of a 4% bonus credit, an Owner who made a \$10,000 initial premium payment could be viewed as having an Accumulation Value of \$10,400 before any earnings accrued. Midland's addition of the bonus credit might arguably be viewed as resulting in an Owner purchasing a redeemable security for a price below the current net asset value. Further, by recapturing the bonus credit, Midland might arguably be redeeming a redeemable security for a price other than one based on the current net asset value of the Midland Account. The Applicants contend that these are not correct interpretations or applications of these

statutory and regulatory provisions. The Applicants contend that the bonus credit does not violate Section 22(c) and Rule 22c-1.

10. An Owner's interest in his or her Accumulation Value or in the Midland Account would always be offered at a price based on the net asset value next calculated after receipt of the order. The granting of a bonus credit does not reflect a reduction of that price. Instead, Midland will purchase with its own general account assets an interest in the Midland Account equal to the bonus credit. Because the bonus credit will be paid out of Midland's assets, not the Midland Account's assets, no dilution will occur as a result of the credit.

11. The recapture of the bonus credit does not involve either of the evils that the Commission intended to eliminate or reduce with Rule 22c-1. The Commission's stated purposes in adopting Rule 22c-1 were to avoid or minimize (a) dilution of the interests of other security holders and (b) speculative trading practices that are unfair to such holders. These evils 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, and thereby the values of outstanding mutual fund shares were diluted.

12. The proposed recapture of the bonus credit does not pose such threat of dilution. The bonus credit recapture will not alter an Owner's net asset value. Midland will determine an Owner's surrender value under a Contract in accordance with Rule 22c-1 on a basis next computed after receipt of an Owner's request for surrender (likewise, the calculation of death benefits and annuity payment amounts will be in full compliance with the forward pricing requirement of Rule 22c-1). The amount recaptured will equal the amount of the bonus credit that Midland paid out of its general account assets. The Applicants represent that it is not administratively feasible to track the bonus credit in the Midland Account after Midland applies the credit. As a result, the asset-based charges applicable to the Midland Account will be assessed against the entire amount held in the Midland Account, including the bonus credit amount, during the time the bonus credit has not vested (during the "free look" period). Applicants state that during the free look period, the aggregate asset-based charges assessed

against an Owner's Accumulation Value will be higher than those that would be charged if the Owner's Accumulation Value did not include the bonus credit, but the increment will obviously be only a small percentage of the credit amount. On the other hand, an Owner will retain the investment benefit from the bonus credit. Although an Owner will retain any investment gain attributable to the bonus credit, Midland will determine the amount of such gain on the basis of the current net asset value of the Investment Division. Thus, no dilution will occur upon the recapture of the bonus credit.

13. Further, Applicants submit that the other harm that Rule 22c-1 was designed to address (speculative trading practices calculated to take advantage of backward pricing) will not occur as a result of Midland's recapture of the bonus credit. Variable annuities are designed for long-term investment, and by their nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c-1 was designed to prevent. More to the point, the credit recapture simply does not create the opportunity for speculative trading.

14. Rule 22c-1 and Section 22(c) should have no application to the bonus credit, as neither of the harms that Rule 22c-1 was designed to address are present in the recapture of the bonus credit. However, to avoid uncertainty as to full compliance with the Act, the 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 bonus credit under the Contracts and Future Contracts.

15. The Applicants submit that the Commission should grant the exemptions requested in this Application, even if the bonus credit described herein arguably conflicts with sections 2(a)(32), 22(c), or 27(i)(2)(A) of the Act or Rule 22c-1 thereunder. The bonus credit provisions are generally very favorable and very beneficial to Owners. The recapture provisions temper this benefit somewhat, but only if an Owner withdraws his or her money under the circumstance described herein. While there would be a small downside in a declining market where an Owner would bear any losses attributable to the bonus credit, it is the converse of the benefits an Owner would receive on the bonus credit in a rising market. As any earnings on a bonus credit applied would vest immediately with an Owner, likewise any losses on the bonus credit would also vest immediately with an Owner. The bonus credit recapture provision

does not diminish the overall value of the bonus credit.

16. Midland's recapture of the bonus credit is designed to prevent anti-selection against it. The risk of anti-selection would be that an Owner could make significant premium payments into the Contract solely in order to receive a quick profit from the credit. By recapturing a bonus credit, Midland protects itself against the risk that an Owner will make such large premium payments, receive a bonus credit, and then withdraw his or her money from the Contract under the free look provision. Midland generally protects itself from this kind of anti-selection, and recovers its costs in situations where an Owner withdraws his or her money early in the life of a Contract, by imposing a surrender charge of up to 7%. However, where an Owner withdraws his money pursuant to a "free-look" provision, Midland does not apply this charge. Midland is only seeking to recapture the bonus credit in this circumstance where it does not apply the surrender charge.

17. Midland contends that it would be inherently unfair to allow an Owner exercising the free-look privilege in a Contract to retain the bonus credit when returning the Contract for a refund after a period of only a few days (usually 10 or less). If Midland could not recapture the bonus credit, individuals might purchase a Contract with no intention of retaining it, and simply return it for a quick profit. By recapturing the bonus credit, Midland can and must prevent such individuals from doing so.

Conclusion

1. For the reasons discussed above, the Applicants submit that the bonus credit involves none of the abuses to which provisions of the Act and the rules thereunder are directed. The Owner will always retain the investment experience attributable to the bonus credit, and will retain the principal amount in all cases except under the single circumstance described herein. Further, Midland should be able to recapture such bonus credit to protect itself from investors wishing to use the Contract as a vehicle for a quick profit at Midland's expense, and to enable Midland to limit potential losses associated with such bonus credit.

2. Accordingly, Applicants request exemptions from sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the Applicants to recapture the bonus credit applied to a premium payment in the circumstance described above. For the reasons set forth above, Applicants believe that the exemptions

requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and consistent with and supported by Commission precedent.

3. Applicants seek relief herein not only for themselves with respect to the support of the Contracts, but also with respect to Future Accounts or Future Contracts described herein. Applicants represent that the terms of the relief requested with respect to any Contracts or Future Contracts funded by the Midland Account or Future Accounts are consistent with the standards set forth in section 6(c) of the Act and Commission precedent. The Commission has previously granted class relief (from certain specified provisions of the Act for separate accounts that support variable annuity contracts) that is materially similar to the relief described in this Application.

4. In addition, Applicants seek relief herein with respect to Future Underwriters (*i.e.*, a class consisting of NASD member broker-dealers which may also act as principal underwriter of the Contracts and Future Contracts). The Commission has regularly granted relief to "future underwriters" that are not named, and are not affiliates of the Applicants. Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in section 6(c) of the Act and Commission precedent.

5. Applicants state that, without the requested class relief, exemptive relief for any Future Account, Future Contract, or Future Underwriter would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no issues under the Act not already addressed herein. Applicants state that if the Applicants were to repeatedly seek exemptive relief with respect to the same issues addressed herein, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. Applicants argue that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for Midland to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would, Applicants

opine, enhance Applicants' ability to effectively take advantage of business opportunities as such opportunities arise. Applicants submit, for all the reasons stated herein, that their request for class exemptions 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, and that an order of the Commission including such class relief, should, therefore, be granted. Any entity that currently intends to rely on the requested exemptive order is named as an applicant. Any entity that relies upon the requested order in the future will comply with the terms and conditions contained in this Application.

6. Applicants represent that the requested exemptions are necessary and appropriate in the public interest and consistent with 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.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-8931 Filed 4-11-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45698; File No. SR-Amex-2001-107]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Relating to the Allocation to Specialists of Securities Admitted to Dealings on an Unlisted Trading Privileges Basis

April 5, 2002.

I. Introduction and Description of the Proposal

On December 17, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change regarding the allocation of securities admitted to dealings on an unlisted trading privileges ("UTP") basis to

Amex specialists. On February 1, 2002, the Amex filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended by Amendment No. 1, was published in the **Federal Register** on March 7, 2002.⁴ The Commission received no comments on the proposed rule change. On April 4, 2002, the Amex filed Amendment No. 2 to the proposed rule change.⁵ This order approves the proposed rule change, as amended, on an accelerated basis through April 5, 2003. In addition, the Commission is publishing notice to solicit comment on and is simultaneously approving, on an accelerated basis, Amendment No. 2 to the proposal.

II. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).⁶ Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5)⁷ of the Act because it is designed to promote just and equitable principles of trade, to remove impediments to, and, perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specialists play a crucial role in providing stability, liquidity, and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets

in their designated securities.⁸ To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain stock allocation procedures and policies that provide specialists with an initiative to strive for optimal performance. The Exchange now proposes to amend its rules to account for the allocation of securities traded pursuant to UTP.⁹

The Commission notes that the Exchange proposes to establish a special committee to allocate securities traded on a UTP basis. The special committee will consist of the Chief Executive Officer of the Exchange who shall serve as Chairman of the Committee, three members (selected from among Exchange Officials, Senior Floor Officials and Floor Governors), and three members of the Exchange's senior management as designated by the Chief Executive Officer of the Exchange. The Committee shall make its decisions by majority vote. The Chairman of the Committee may only vote to create or break a tie. The Commission believes that it is appropriate to establish a new allocation committee for securities admitted to dealings pursuant to UTP because of the unique characteristics of these securities, which should be considered in the allocation process. Further the Commission believes that the factors the allocation committee will consider in making allocation decisions should ensure that qualified firms are selected to act as specialists for securities traded pursuant to UTP.

Because the proposed rule change, as amended, institutes a new process for allocating securities that will trade pursuant to UTP to Amex specialist units and because the Commission is adopting the proposal on an accelerated basis, the Commission believes that the proposal should be approved on a pilot basis, for a one-year period ending on April 5, 2003, to ensure that the process is effective and fair. The Commission expects the Amex to report to the Commission about its experience with the new allocation process in any future proposal it files to extend the effectiveness of the proposed rule or approve it on a permanent basis.

The Commission, pursuant to section 19(b)(2) of the Act,¹⁰ finds good cause for approving the proposed rule change, as amended, on a one-year pilot basis through April 5, 2003, prior to the thirtieth day after the date of

³ See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 30, 2002 ("Amendment No. 1").

⁴ Exchange Act Release No. 45488 (February 28, 2002), 67 FR 10460.

⁵ See letter from Bill Floyd-Jones, Assistant General Counsel, Amex, to Kelly McCormick-Riley, Assistant Director, Division, Commission, dated April 3, 2002 ("Amendment No. 2"). In Amendment No. 2, the Exchange deleted paragraph (e) to proposed Rule 28 because it was no longer necessary in light of Amex filing SR-Amex-2002-21, which proposes to amend Amex Rule 175(c) to permit specialists in UTP stocks to be affiliated with specialists in options overlying the same UTP stock, so long as information barriers are established and maintained between the stock and options specialist units. The Commission notes that Amex Rule 175(c) currently prohibits Amex specialists from acting as a specialist or market maker in an option overlying the stock in which the specialist is registered.

⁶ 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See 17 CFR 240.11b-1.

⁹ The Commission notes that Amex has filed a proposed rule change relating to specialists' performance evaluation and reallocation procedures for securities admitted to dealings on an unlisted basis. See File No. Amex-2002-19.

¹⁰ 15 U.S.C. 78s(b)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.