investment company that has adopted a plan pursuant to rule 12b–1 under the Act only if that Company has undertaken to have such plan formulated and approved by its board of directors, a majority of whom are not ''interested persons'' of the company within the meaning of section 2(a)(19) of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23090 Filed 9–15–95; 8:45 am]

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[Rel. No. IC–21344; File No. 812–9472]

The Northwestern Mutual Life Insurance Company, et. al.

September 11, 1995.

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

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

APPLICANTS: The Northwestern Mutual Life Insurance Company (''Northwestern''), Northwestern Mutual Variable Life Account (''Account'') and Northwestern Mutual Investment Services, Inc. (''NMIS'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from: the provisions of, and the rules under, the 1940 Act—other than Sections 7 and 8(a)—specified in Rule 6e–2(b) thereunder; and the provisions of Sections 2(a)(32), 2(a)(35), 12(b), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act, subparagraphs (b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (c)(1) and (c)(4) of Rule 6e–2, and Rules 12b–1(a)(1) and 22c–1 under the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order permitting them to offer and sell certain scheduled premium variable life insurance policies (''Policies'') that provide for the following: a death benefit which may include a portion which is not guaranteed for the lifetime of the insured; premiums, the payment of which may be suspended in defined circumstances; optional unscheduled additional premiums; both a contingent deferred sales charge and a sales charge deducted from premiums, neither of which is subject to refunds; deduction of an administrative surrender charge on lapse or surrender; deduction from the Policy's account value of cost of insurance charges, charges for substandard risks and incidental insurance benefits, and minimum death benefit guarantee risk charges; values and charges based on the Commissioners 1980 Standard Ordinary Mortality Tables (the ''1980 CSO Tables''); the deduction from premium payments of an amount that is reasonably related to Northwestern's increased federal tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended; the holding of mutual fund shares funding the Account in an open account arrangement, without a trust indenture or use of a trustee; and the sale of mutual fund shares to the Account without the use of an underwriter for the mutual fund.

FILING DATE: The application was filed originally on February 8, 1995. An amended and restated application was filed on September 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the exemption will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 6, 1995, 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 may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202, Attn: John M. Bremer, Senior Vice President, General Counsel and Secretary.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Special Counsel, or Wendy Finck Friedlander, Deputy Chief, 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 Public Reference Branch of the SEC.

Applicants' Representations

1. Northwestern, a mutual life insurance company organized under the laws of Wisconsin, is licensed to do business in all of the states and the District of Columbia.

2. In 1983, Northwestern established the Account to fund the Policies. The Account is organized as a separate account under Wisconsin law, and is registered as a unit investment trust under the 1940 Act.

3. The Account has nine separate divisions (''Divisions''), each of which invests solely in a corresponding portfolio (''Portfolio'') of Northwestern Mutual Series Fund, Inc. (''Fund''), an open-end management company registered under the 1940 Act. Shares of each portfolio are purchased by Northwestern for the corresponding Account Division at net asset value.

4. NMIS, a wholly owned subsidiary of Northwestern, serves as investment adviser to the Fund and underwriter for the Policies. NMIS is registered as a broker-dealer under the Securities Exchange Act of 1934, and is registered as an investment advisor under the Investment Advisers Act of 1940.

5. The Policy incorporates certain fundamental features characteristic of scheduled premium variable life insurance policies contemplated by Rule 6e–2, including a guarantee against lapse if specified required premiums are paid by their due dates. In addition, Policy owners will have the options of: (i) Making premium payments in excess of the required premiums, either to increase the Policy value which supports the guaranteed face amount or to purchase variable paid-up additional insurance, or (ii) suspending premium payments when the Policy value already is sufficient to pay future premiums.

6. The death benefit under a Policy will vary based upon investment performance of the Fund's Portfolios, subject to the minimum guarantee as provided by the Policy. The minimum guaranteed death benefit available under every Policy corresponds to the guaranteed minimum face amount of a traditional scheduled premium variable life insurance policy, and will neither increase nor decrease as long as premiums are paid when due and no Policy debt is outstanding. In addition to the minimum guaranteed feature, the death benefit may include one or more other parts: ''Additional Protection'' which is guaranteed for only a specified period, depending on the age and risk classification of the insured; ''Variable paid-up additional insurance'' which may be purchased by either paying additional premium or by applying any dividends to purchase paid-up additions; and ''Excess Amount''—the amount by which Policy value exceeds what is required to support the minimum guaranteed death benefit and

Additional Protection—which reflects the payment of additional premiums or Policy dividends, or favorable investment performance. Each of these death benefit features may vary, to some degree, to reflect investment performance.

7. Partial surrenders of the Policies will be permitted so long as the Policy that remains meets the regular minimum size requirements. A partial surrender will cause the Policy to be split into two; one Policy will be surrendered, the other will continue in force on the same terms as the original Policy except that the premiums will be based on the reduced amount of insurance. The owner will receive a new Policy document. The cash value and death benefit will be proportionately reduced.

8. Premiums, dividends and most charges for the Policies follow an annualized structure, based on the Policy anniversary, with adjustment to reflect the dates on which events take place during a Policy year. The Policies permit payment of premiums as often as monthly, but Northwestern places the scheduled net annual premium in the Account on the anniversary date at the beginning of each Policy year regardless of the frequency on which premiums are being paid. Northwestern advances this amount on that date (unless the entire annual premium already has been paid), and Northwestern is reimbursed as premium payments are thereafter received from the Policy owner. Premiums paid on other than an annual basis are increased to: (i) reflect the time value of money, based on an 8% interest rate; and (ii) cover the administrative costs to process the additional premium payments.

A. Deductions and Charges From Premiums

1. Northwestern will deduct from premiums 8% of each premium paid. This deduction is for sales expenses (4.5%), state premium taxes (2.25%), and a federal deferred acquisition cost tax charge (1.25%).

2. An annual Policy fee of up to $84.00 is deducted; Northwestern expects to reduce the deduction to $60.00 after the first ten years.

3. For the minimum guaranteed death benefit there is an annual charge of $0.12 per $1,000 of insurance, for the guarantee that the amount of the death benefit will not be reduced if the net rate of return is less than the 4% rate assumed.

4. An annual administrative expense charge of $0.12 per $1,000 of minimum guaranteed death benefit and Additional Protection will be deducted for the first ten years. Northwestern expects to waive the charge thereafter. This charge is for issuance expenses (other than sales expenses) which tend to vary with Policy amount.

5. Any extra premium charged for insureds who do not qualify for one of the three best underwriting classifications, and any premium for additional benefits, also are deducted before determining the net premium to be placed in the Account.

B. Deductions and Charges From Policy Value

1. While payment of premiums is suspended,[1] a portion of the annual charges which ordinarily would be deducted from premiums will be deducted instead from Policy value. This deduction also will be made each year on the Policy anniversary.

2. Northwestern will deduct cost of insurance charges from the Policy value and from the value of any paid-up additional insurance. Generally, these charges are assessed on each Policy anniversary at rates that do not exceed those prescribed in the 1980 CSO Tables.

3. The Policy value also will be reduced by any surrender charges, administrative charges, or decrease in Policy debt that may result from a withdrawal, a decrease in the face amount of insurance, or a change to variable benefit paid-up insurance.

C. Deductions and Charges From Assets of the Account and the Fund

1. Northwestern will assess the daily mortality and expense risk charge at an effective rate of 0.6% per annum of the Account assets attributable to the Policy. This charge is for the (mortality) risk that insureds may live for shorter periods of time than estimated, and for the (expense) risk that costs of issuing and administering the Policies may be higher than estimated.

2. Total Fund expenses for investment advisory and other services provided to the Fund will be assessed on a daily basis. These expenses will vary by portfolio, and currently fall in the approximate range of 0.22% to 1.0% of assets, on an annual basis.

D. Transaction Charges

1. Twenty-five dollars ($25.00) may be deducted from the Policy value upon each withdrawal of excess value or each transfer of invested amounts among the Account Divisions. These charges are designed to defray only the estimated costs of effecting the transactions. Currently, Northwestern is waiving these charges.

2. Northwestern will assess a charge for the administrative costs incurred in processing a partial surrender. Current estimates place this charge at $250.

E. Surrender Charges

1. Surrender charges are deducted from the Policy value and will reduce the Policy proceeds if a Policy is surrendered before the premium due at the beginning of the fifteenth Policy year has been paid. These charges include the administrative surrender charge for issue expenses, and the premium surrender charge for sales expenses. Both of these surrender charges are based on the minimum annual premium for the minimum guaranteed death benefit and the Additional Protection, excluding any amount for extra mortality benefits or for additional Policy benefits.

2. An administrative surrender charge may be deducted if the Policy is surrendered or lapses in the first ten (10) Policy years. This charge provides partial compensation for estimated administrative expenses, such as the cost of collecting and processing premiums, processing applications, conducting medical examinations, establishing Policy records, determining insurability and assigning the insured to a risk classification, and issuing the Policy. These expenses exclude any costs properly attributable to sales or distribution activity. The maximum administrative surrender charge is $216, plus $1.08 per $1,000 of the face amount of insurance. This charge decreases to zero after the first ten (10) Policy years.

3. Northwestern will deduct a premium surrender charge, for sales expenses, upon surrender or lapse of a Policy during the first fifteen (15) Policy years. The premium surrender charge is a percentage of the annual premium for the Policy face amount (including a term insurance premium for the portion which is not guaranteed for the lifetime of the insured), reduced proportionately if total premiums actually paid are less than those annual premiums due during the first five (5) Policy years.

4. A deduction from the Policy proceeds for a proportionate part of the surrender charges will be made if a partial surrender takes place before the premium due at the beginning of the fifteenth Policy year has been paid.

F. Deduction of Charge for Section 848 Deferred Acquisition Costs

1. Northwestern will deduct a charge equal to 1.25% of each premium payment to cover the estimated cost of

[1] Payment of premiums may be suspended, at the Policyowner's option, when certain conditions are met.

its increased federal tax burden related to receipt of premiums in connection with the Policies. This increased federal tax burden results from Section 848 of the Internal Revenue Code of 1986 (as amended), which was enacted in 1990 to modify the federal income taxation of life insurance companies. Section 848 requires life insurance companies to capitalize and amortize, over a period of ten years, part of their general expenses for the current year. Under prior law, these expenses were deductible in full from the current year's gross income.

2. The amount of deductions that would have to be amortized over ten years rather than deducted in the year incurred is a percentage of the current year's net premiums received in connection with certain types of insurance contracts. The percentage varies, depending on the type of insurance contract involved, according to a schedule set forth in Section 848(c)(1).

3. In effect, Section 848 accelerates the realization of income from insurance contracts covered by that section and, accordingly, accelerates the payment of taxes on the income generated by those contracts. Consequently, taking into account the time value of money, the tax burden of the insurance company related to those contracts is increased. Because the amount of general deductions that must be capitalized and amortized is measured by premiums paid, an increased federal tax burden results from the receipt of those premiums. Applicants state that, in this respect, the impact of Section 848 can be compared to that of a state premium tax.

4. The Policies fall under the category of ''specified contracts'' under Section 848, so that 7.7% of the net premiums received under the Policies must be capitalized and amortized. The increased tax burden on Northwestern resulting from this requirement can be quantified as follows. For every $10,000 of new premiums received by Northwestern under the Policies in a given year, the general deductions of Northwestern are reduced by $731.50, or (a) $770 (7.7% of $10,000) minus (b) $38.50 (one-half year's portion of the ten-year amortization). Using a 35% corporate tax rate, this results in an increase in tax for the current year of $256.03. This increase in tax will be partially offset by increased deductions which will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in the tenth).

5. To the extent that capital must be used by Northwestern to satisfy its increased federal tax burden under Section 848 resulting from the receipt of premiums, such capital is not available for investment. Because the targeted rate of return for Northwestern (*i.e.*, the return Northwestern seeks on invested capital) exceeds 11%,[2] Northwestern submits that a discount rate of 11% is appropriate when calculating the present value of its future tax deductions resulting from the amortization described above. To the extent that the 11% discount rate is lower than Northwestern's actual targeted rate of return, a measure of comfort is provided that the calculation of Northwestern's increased tax burden attributable to receipt of premiums will continue to be reasonable over time, even if the corporate tax rate applicable to Northwestern is reduced, or its targeted rate of return is lowered.

6. Applying this 11% discount rate, and assuming a 35% corporate tax rate, the present value of the increased deductions amounts to a tax savings of $153.97. Thus, the present value of the increased tax burden resulting from the effect of Section 848 of each $10,000 of net premiums received under the policies is $102.06 ($256.03 minus $153.97).

7. Because state premium taxes are deductible when computing an insurance company's federal income taxes, Northwestern does not incur incremental income tax when it passes on state premium taxes to its policy owners. In contrast, federal income taxes are not deductible in computing a company's federal income taxes. Therefore, to compensate Northwestern fully for the impact of Section 848, it would be necessary to allow Northwestern to impose an additional charge which would make it whole not only for the $102.06 additional tax burden attributable to Section 848, but also for the tax on the additional $102.06 itself. This additional charge can be determined by dividing $102.06 by the complement of the 35% federal corporate income tax rate (*i.e.*, 65%) resulting in an additional charge of $157.01 for each $10,000 of net premiums, or 1.57%.

8. Tax deductions are of value to a company only to the extent that a company has sufficient gross income to take the deductions fully. Based on prior experience, Northwestern believes that it is reasonable to expect that future federal income tax deductions will be taken fully.

9. It is the judgment of Northwestern that a charge of 1.25% would reimburse it appropriately for the impact of Section 848 on its federal tax liabilities. Applicants represent that the proposed ''DAC tax'' charge is reasonably related to Northwestern's increased federal tax burden under Section 848, taking into account the benefit to Northwestern of the amortization permitted by Section 848 and the use of an 11% discount rate in computing the future deductions resulting from such amortization, such rate being no greater than Northwestern's targeted rate of return.

Applicants' Legal Analysis and Conclusions

Applicants request exemptions pursuant to Section 6(c) of the 1940 Act from: the provisions of, and those rules under, the 1940 Act—other than Sections 7 and 8(a)—specified in Rule 6e–2(b) thereunder; Sections 2(a)(32), 2(a)(35), 12(b), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act; and subparagraphs (b)(1), (b)(12), (b)(13)(i), (b)(12)(ii), (b)(13)(iii), (b)(13(iv), (b)(13)(v), (c)(1) and (c)(4) of Rule 6e–2, and Rules 12b–1(a)(1) and 22c–1, under the 1940 Act. Applicants seek these exemptions to the extent necessary to permit them to offer and sell the Policies.

A. Request for Exemptions Relating to Definition of ''Variable Life Insurance Contract''

1. Rule 6c–3 under the 1940 Act grants exemptions from numerous provisions of the 1940 Act to separate accounts of life insurance companies that support variable life insurance policies. The exemptions provided by Rule 6c–3 are available only to registered separate accounts whose assets are derived solely from the sale of ''variable life insurance contracts'' which meet the definitions set forth in Rule 6e–2(c)(1) or ''flexible premium variable life insurance contracts'' which meet the definition set forth in Rule 6e–3(T)(c)(1) under the 1940 Act, and from certain advances made by the insurer.

2. A ''variable life insurance contract'' is defined in Rule 6e–2(c)(1) to include only life insurance policies which provide both a death benefit and a cash surrender value which vary to reflect the investment experience of the separate account, and which guarantee that the death benefit will not be less than an amount stated in the policy. The required guaranteed minimum death benefit need be provided only so long as

[2] In determining the targeted rate of return used in arriving at this discount rate, Northwestern first identified a reasonable risk-free rate of return that it could expect to earn over the long term. Northwestern then determined the premium it must earn over that risk-free rate of return given the inherently risky nature of the insurance products it sells. Applicants represent that such factors are appropriate to consider in determining the targeted rate of return.

premiums are duly paid in accordance with the terms of the policy.

3. The death benefit will vary with investment performance when the value is sufficiently large that, in order to qualify the Policy as life insurance for federal income tax purposes, the death benefit must be increased. This could happen, for example, because of very favorable investment performance, the payment of additional premiums, or both. In addition, to some degree, each of the possible additional components of the death benefit—*i.e.*, the Additional Protection, the Variable paid-up additional insurance, and Excess Amount—also will vary to reflect investment performance.

4. Applicants submit that the death benefit under the Policy varies to reflect investment experience within the meaning of Rule 6e–2(c)(1). Applicants concede, however, that the death benefit under the Policy is not precisely the type of variable death benefit contemplated when Rule 6e–2 was adopted, and that the Policy contains other provisions that are not specifically addressed in Rule 6e–2. Accordingly, Applicants request exemptions from the definition of ''variable life insurance contract'' in Rule 6e–2(c)(1) and from all sections of and rules under the 1940 Act—other than Sections 7 and 8(a)—specified in Rule 6e–2(b), under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2(a), and to the extent necessary to permit the offer and sale of the Policy in reliance on Rule 6e–2, except as otherwise set forth in the application.

5. Applicants submit that the definition of ''variable life insurance contract'' in Rule 6e–2(c)(1) was drafted at a time when less flexibility regarding premium payments and other policy features were offered than subsequently have been permitted. The Policy provides considerable latitude for the purchaser to select the desired combination of minimum guaranteed death benefit, Additional Protection, and Variable paid-up additional insurance. While such a choice may not have been contemplated when Rule 6e–2 was drafted, Applicants submit that purchasers are well served by the opportunity to choose a combination of features which they believe suits their own need with respect to the relationship of cash value, death benefit and investment performance.

6. Applicants further submit that the considerations that led the Commission to adopt Rules 6c–3 and 6e–2 apply equally to the Account and the Policy, and that the exemptions provided by those rules should be granted to Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested.

B. Request for Exemptions Relating to Sales Charges

1. Sections 26(a)(2) and 27(c)(2) may be construed to require that the proceeds of all payments under a Policy be deposited in the Account and that no payment be made from the Account to Northwestern or any affiliated person of Northwestern, except for bookkeeping and other administrative services. The premium surrender charge (for sales expenses) may be deemed inconsistent with the foregoing provisions, to the extent that the deduction from the Policy value would constitute payment for an expense not specifically permitted. Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the premium surrender charge to be deducted upon surrender or lapse of a Policy, as described in the application.

2. Section 2(a)(35) and Rules 6e–2(b)(1) and 6e–2(c)(4) may be construed to contemplate that the sales charge for a variable life insurance policy will be deducted from premiums. The deduction of a premium surrender charge under the Policies may be deemed inconsistent with those provisions. Applicants request exemptions from Section 2(a)(35) and Rules 6e–2(b)(1) and 6e–2(c)(4), to the extent necessary to permit part of the Policy's sales charge to be deducted from premium payments, and part as a surrender charge.

3. Applicants submit that Rule 6e–2(c)(4) may be construed to comprehend a sales charge imposed on other than premiums. This is because the definition is an intellectual construct rather than a reflection of the actual methodology of administering variable life insurance policies, referring in paragraphs (i) and (ii), for example, to other amounts that are *not* deducted from premiums.

4. Section 27(a)(1) and Rule 6e–2(b)(13)(i) may be construed to contemplate that the sales charge under a policy will be deducted from premiums. Northwestern's deduction of part of its sales charge on a contingent deferred basis may be deemed inconsistent with the foregoing provisions, to the extent that the sales charge is deducted from other than premiums. Applicants request an exemption from those provisions to the extent necessary to permit part of the Policy's sales charge to be deducted from premium payments, and part to be deducted as a surrender charge.

5. In pertinent part, Sections 2(a)(32), 27(c)(1), and 27(d) prohibit Applicants from selling the Policy unless it is a ''redeemable security.'' [3] Subparagraphs (b)(12), (b)(13)(iv), and (b)(13)(v) of Rule 6e–2 afford exemptions from Section 27(c)(1), and subparagraphs (b)(13)(iv) and (b)(13)(v) of Rule 6e–2 afford exemptions from Section 27(d), to the extent necessary for cash value to be regarded as satisfying the redemption and sales charge refund requirements of the 1940 Act. However, the exemptions afforded by subparagraphs (b)(12), (b)(13)(iv), and (b)(13)(v) of Rule 6e–2 may not contemplate a contingent deferred sales charge. Moreover, Northwestern's deduction of the premium surrender charge may be viewed as reducing the proceeds that the Policy owner would receive on surrender below the Policy owner's proportionate share of the current net assets of the Account. Applicants request an exemption from the foregoing provisions to the extent necessary to permit part of the sales charge under a Policy to be deducted from premium payments, and part to be deducted as a surrender charge.

6. Applicants represent that Rule 6e–2 was adopted at a time when less flexibility regarding premium payments and other policy features were offered than subsequently have been permitted. Because of these features, particularly premium flexibility, it is possible that the premiums actually received by the insurance company by the date of surrender or lapse of a Policy may be less than the full amount of scheduled minimum premiums paid on or before the relevant due dates. It is unclear how the technical sales load computation provisions in Rule 6e–2 apply under such circumstances, particularly with respect to the premium surrender charge.

7. Applicants submit that, although the definition of ''redeemable security'' found in Section 2(a)(32) does not expressly provide for the imposition of a sales charge at the time of redemption, such a charge is not necessarily inconsistent with the definition of ''redeemable security.'' Applicants further submit that the premium surrender charge is similar to the ''redemption'' charge authorized in Section 10(d)(4) of the 1940 Act, and that Congress obviously intended that such a ''redemption charge''—which is expressly described as a ''discount from net asset value''—be deemed consistent

[3] A ''redeemable security,'' as defined in Section 2(a)(32), entitles a Policy owner to receive his or her approximate proportionate share of the current net assets of the Account upon surrender.

with the concept of ''proportionate share'' under Section 2(a)(32).

8. Applicants submit that there will be no restriction on, or impediment to, surrender that should cause the Policy to be considered other than a redeemable security within the meaning of the 1940 Act and the rules thereunder. The Policy provides for surrender and withdrawals of excess Policy value. The prospectus for the Policy will disclose the contingent deferred nature of part of the sales charge. Upon surrender or lapse, a Policy owner will receive his or her ''proportionate share'' of the Account—*i.e.*, the amount of net premiums paid, reduced by the amount of all charges and increased by the amount of all return credited to the Policy.

9. Rule 22c–1, adopted pursuant to Section 22(c), prohibits Applicants from redeeming a Policy except at a price based on the current net asset value of the Policy that is next computed after receipt of the request for full or partial surrender of the Policy. Rule 6e–2(b)(12) affords exemptions from Rule 22c–1. Rules 22c–1 and 6e–2(b)(12), read together, impose requirements with respect to both the amount payable on surrender and the time as of which such amount is calculated. The proposed premium surrender charge may be deemed inconsistent with Section 22(c) and Rule 22c–1 to the extent that the sales charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after full or partial surrender of the Policy.

10. Applicants submit that the premium surrender charge will not have the dilutive effect which Rule 22c–1 is designed to prohibit because a surrendering Policy owner would receive no more than an amount equal to the cash surrender value determined pursuant to the formula set out in his or her Policy and after receipt of his or her request. Furthermore, variable life insurance policies, by nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against and, even if they could be so used, the surrender charge would discourage, rather than encourage, any such trading.

11. Applicants submit that deduction of part of the sales charge as a deferred charge on surrender or lapse will be more favorable to Policy owners than deduction of the same amount of charge from premiums. First, the amount of the Policy owner's premium payment that will be allocated to the Account and be available to earn a return for the Policy owner will be greater than it would be if the sales charge were deducted from premiums. Second, the total dollar amount of sales load under a Policy is no higher than that permitted by Rule 6e–2(b)(3)(13) for a conventional scheduled premium variable life insurance policy. For a Policy owner who does not lapse or surrender in the early Policy years, the dollar amount of sales load is lower than would be permitted if taken entirely as front-end deductions from premium payments made under a Policy. Third, the cost of insurance charge imposed will be less than it otherwise would be if the same amount of sales charge were deducted from premium payments, because the allocation of a greater amount of the Policy owner's premium to the Account reduces the amount at risk (*i.e.*, the amount of death benefit less the Policy value) upon which the cost of insurance charge is based. Moreover, Applicants represent that the proposed sales load structure provides equitable treatment to both surrendering and persisting Policy owners. That is, if the insurer is not permitted to charge a sales load in the form of a contingent deferred charge, it would have to deduct the sales load entirely from premium payments, thereby charging persisting Policy owners more than may otherwise be necessary to recover the distribution costs attributable to such Policy owners.

12. The premium surrender change, although imposed on other than the premium, will cover expenses associated with the offer and sale of the Policy, just as other forms of sales loads do. Applicants submit that the mere fact that the timing of the imposition of the surrender charge may not fall neatly within the literal pattern of all provisions discussed above, does not change its essential nature as a sales charge. Moreover, Applicants represent that proposed amendments to Rule 6e–2 would permit assessment of a sales charge on a contingent deferred basis.

13. Applicants represent that the percentages of sales load never will exceed the sum of 30% of the premium payments paid for the first Policy year plus 10% of premium payments paid for the second Policy year, and will not exceed 9% of premium payments expected to be paid over the lesser of 20 years or the expected lifetime of the insured. For this reason, Applicants submit that the Policy is consistent with the principles and policies underlying the sales load limitations in Section 27(a)(2) of the 1940 Act, and Rules 6e–2 (b)(13)(i) and (b)(13)(v).

14. Applicants submit that premium and other flexibility options under the Policy are a potential benefit to Policy owners.

C. Request for Exemptions Relating to Collection of Administrative Surrender Charge

1. Although the expenses that the administrative surrender charge is designed to recover are associated with the issuance of a Policy, Northwestern will deduct the administrative surrender charge from the Policy Value—not premiums—in the event of early surrender or lapse of a Policy, and such a deduction will reduce the proceeds otherwise payable. Such a deduction of the administrative surrender charge pursuant to the Policies may be deemed to violate Sections 2(a)(32), 22(c), 27(c)(1), 27(d), and Rule 22c–1 for essentially the same reasons as the premium surrender charge might be deemed to violate those 1940 Act sections and rules. Accordingly, Applicants request exemptions from the foregoing provisions of the 1940 Act to the extent necessary to permit the deduction of the administrative surrender charge upon early surrender or lapse of a Policy.

2. Applicants submit that imposition of the administrative surrender charge is more favorable to Policy owners than a charge deducted entirely from premiums or from the Policy value over the life of the Policy. Because the reduction of the Policy owner's investment in the Account is less than it would be were the administrative surrender charge taken in full in the first Policy year, there is a larger Policy value initially earning a return for the Policy owner. In addition, for a Policy owner who does not lapse or surrender in the early Policy years, the total dollar amount of the charges for issuance and maintenance expenses is no more than Northwestern would be permitted to deduct from premium payments or by way of periodic deductions from Policy value. Also, the total dollar amount of the administrative surrender charge will be no higher than Northwestern would be permitted to deduct if this charge were in the form of a deduction from premium payments and/or from the Policy value prior to the lapse or surrender of a Policy.

3. Applicants represent that the administrative surrender charge has not been increased to take account of the time value of money (*i.e.*, the investment costs attributable to deferment of the charge) or the fact that not all Policy owners would incur the charge.

4. Northwestern does not intend to make a profit on the administrative surrender charge.

5. Administrative charges deducted in the form of a surrender charge are

specifically permitted by Rule 6e–3(T)(b)(13)(iv)(C) for variable life insurance policies offered and sold in reliance on the rule. Applicants submit that the relief requested herein with respect to the administrative surrender charge under the Policies is equally appropriate.

D. Request for Exemptions Relating to Deduction of Insurance Charges From Policy Value

1. Sections 26(a)(2) and 27(c)(2) may be construed to prohibit Northwestern from deducting certain insurance charges from the Policy value. Applicants request exemptions from the foregoing sections and Rule 6e–2(b)(13)(iii)[4] to the extent necessary to permit the deduction of certain insurance charges from Policy value, as described in the application.

2. Applicants submit that the deduction of cost of insurance charges from the Policy value is fair and reasonable, and in accordance with the practice under most other variable life insurance policies.

3. Applicants further submit that deduction from the Policy value of charges for substandard risks and incidental insurance benefits also is reasonable and appropriate. If all such charges were required to be deducted solely from premiums, it would be necessary for Northwestern to: (a) reduce the premium flexibility under the Policy; and/or (b) limit further the classes of insureds for whom the Policy will be available, and limit or eliminate the kinds of rider benefits that Northwestern intends to make available.

4. Applicants submit that Rule 6e–3(T) authorizes deductions from account value for all of these insurance charges in connection with policies eligible to rely on that rule, and that proposed amendments to Rule 6e–2 would authorize deductions from account value of the risk charges for guaranteed benefits.

5. Applicants submit that their method of deducting cost of insurance charges is fair and reasonable, and consistent with general industry practice.

6. Applicants submit that charges for substandard risks and incidental insurance benefits must be deducted from Policy value, as a practical matter.

7. The Policy provides for an annual charge, based on the face amount of insurance, for the death benefit guarantee. Generally, this charge is deducted from annual premiums, but if payment of premiums is suspended, the charge will be deducted from Policy value. In addition, an annual cost of insurance charge based on the amount at risk and the attained age and risk classification of the insured is deducted from Policy value; this charge also applies to the values which support any variable paid-up additional insurance.

8. Applicants represent that the proposed method of deducting insurance charges is not designed to yield more revenues than if these charges were assessed solely against premiums.

9. Northwestern represents that these risk charges are reasonable in relation to the risks assumed under the Policy. The methodology used to support this representation is based on an analysis of the pricing structure of the Policies—including other charges, and an analysis of the various risks—including special risks arising out of provisions that allow additional and unscheduled premium payments and, in certain circumstances, suspension of premium payments. Northwestern undertakes to keep and make available to the Commission the documentation used to support this representation.

10. Northwestern further represents that there is a reasonable likelihood that the distribution financing arrangement of the Account will benefit the Account and Policy owners. Northwestern will keep and make available to the Commission on request a memorandum setting forth the basis for this representation.

11. Applicants agree that if the requested order is granted, such order will be expressly conditioned on Applicants' compliance with the following: the Account will invest only in management investment companies which have undertaken, in the event they should adopt any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve such plan.

E. Request for Exemptions Relating to Use of 1980 Standard Ordinary Mortality Tables

1. Section 27(a)(1) prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e–2(b)(13)(i) provides an exemption from Section 27(a)(1) to the extent that the sales load, as defined in Rule 6e–2(c)(4), does not exceed 9% of the payments to be made on the variable life insurance policy during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured, based on the Commissioners 1958 Standard Ordinary Mortality Table (the ''1958 CSO Table'').

2. Rule 6e–2(c)(4), in defining ''sales load,'' contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Table and the assumed investment return specified in the Policy. Following the adoption of Rule 6e–2, the National Association of Insurance Commissioners adopted the 1980 CSO Tables, which reflect more recent information and data about mortality. The guaranteed cost of insurance rates under the Policy are based on the 1980 CSO Tables. Applicants request exemptions from Section 27(a)(i) and Rules 6e–2(c)(1), 6e–2(b)(13)(i), and 6e–2(4) to the extent necessary to permit cost of insurance to be calculated based on the 1980 CSO Tables, for purposes of testing compliance with those rules and that statutory provision.

3. Applicants represent that proposed amendments to Rule 6e–2 would require use of the 1980 CSO Tables for purposes of Rules 6e–2(b)(13)(i) and 6e–2(c)(4), where the 1980 CSO Tables relate to the insurance rates guaranteed under an insurance policy.

4. Applicants further represent that because cost of insurance charges based on the 1980 CSO Tables generally are lower than those based on the 1958 CSO Table, lower charges and higher Policy values generally result if charges are based on the 1980, rather than the 1958, CSO Tables.

F. Request for Exemptions Relating to the DAC Tax

1. Section 2(a)(35), in pertinent part, defines ''sales load'' as the difference between the price of a security to the public and that portion of the proceeds from its sale that is received and invested or held for investment by the depositor, less any portion of such difference deducted for trustee's or custodian's fees or other fees that are not properly chargeable to sales or promotional activities.

2. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from payments made under periodic plan certificates other than a deduction for sales load. Sections 27(a)(1) and 27(h)(1) of the 1940 Act, as modified by Rule 6e–2(b)(13)(i), limit the amount of sales load that can be deducted in connection with variable life insurance policies issued in reliance on Rule 6e–2.

3. Applicants state that Rules 6e–2(b)(13)(iii) and 6e–3(T)(b)(13)(iii) each

[4] In pertinent part, Rule 6e–2(b)(13)(iii) provides an exemption from Sections 26(a)(2) and 27(c)(2), subject to certain conditions which Applicants submit that they satisfy.

provide exemptive relief from Section 27(c)(2) to permit an insurer to deduct certain charges other than sales load, including deductions to pay the insurer's tax liabilities—imposed by any State or other governmental entity—arising as a result of its receipt of premium payments. Applicants seek relief from Section 27(c)(2) only to the extent necessary to permit deductions from premium payments received in connection with the Policies in an amount that is reasonable in relation to Northwestern's increased federal tax burden related to the receipt of such premiums. Applicants also request exemptions from Rule 6e–2(c)(4)(v) so that the proposed ''DAC tax'' charge is treated as other than sales load for purposes of Section 27 and the provisions of Section 27 referred to in Rule 6e2.

4. The exemption requested by Applicants is necessary in order for them to rely on certain provisions of Rule 6e–2(b)(13)(i), which provides exemptions from Sections 27(a)(1)and 27(h)(1). Issuers and their affiliates may rely on subparagraph (b)(13)(i) of Rule 6e–2 only if they meet the limitations on ''sales load,'' as defined in paragraph (c)(4) of that rule. Applicants state that these limitations may not be met if the deduction for an increase in Northwestern's federal tax burden is included in sales load.

5. Rule 6e–2(c)(4) defines ''sales load'' as the excess of premium payments over certain itemized charges and adjustments. Applicants submit that a deduction for an insurer's increased federal tax burden as described above does not fall squarely into any of those itemized charges or adjustments. Arguably, then, such a deduction may be treated as ''sales load'' under a literal reading of Rule 6e–2(c)(4).

6. Applicants submit that there is no public policy reason for including deductions made to pay federal taxes in sales load, nor is there any language in the releases in which the Commission adopted Rule 6e–2 or adopted and amended Rule 6e–3(T) suggesting that the exclusion from the definition of sales load of deductions for tax liabilities attributable to premiums was based on the type of governmental entity imposing the taxes.

7. Applicants submit that the public policy underlying Rule 6e–2(b)(13)(i), like that underlying Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a tax burden charge attributable to premium payments as sales load would not further this objective because such a deduction bears no relation to the payment of sales commissions or other distribution expenses. Applicants state that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of ''sales load'' in Rule 6e–2(c)(4).

8. Applicants assert that the source for the definition of sales load found in Rule 6e–2(c)(4) supports this analysis. Applicants submit that the Commission's intent in adopting subparagraph (c)(4) of Rule 6e–2 was to tailor the general terms of Section 2(a)(35) to variable life insurance contracts. Just as the percentage limits of Sections 27(a)(1) and 27(h)(1) depend on the definition of sales load in Section 2(a)(35) for their efficacy, the percentage limits in subparagraph (b)(13)(i) of Rule 6e–2 depend on subparagraph (c)(4). Applicants submit, therefore, that Rule 6e–2(c)(4) does not depart, in principle, from Section 2(a)(35).

9. Applicants assert that Section 2(a)(35) excludes from the definition of ''sales load'' deductions from premiums for ''issue taxes.'' Applicants submit that this suggests that excluding deductions made to pay an insurer's costs attributable to its tax obligations from the definition of ''sales load'' in Rule 6e–2 is consistent with the policies of the 1940 Act.

10. Applicants further submit that the reference in Section 2(a)(35) to administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' suggests that the only deductions intended to fall within the definition of ''sales load'' are those properly chargeable to such activities. Because the proposed deductions will be used to compensate Northwestern for its increased federal tax burden attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, Applicants assert that the language in Section 2(a)(35) also indicates that not treating such deductions as sales load is consistent with the policies of the 1940 Act.

11. Applicants represent that Northwestern will monitor the reasonableness of the ''DAC tax'' charge to be deducted. Applicants represent, further, that the registration statement for the Policies will: (a) Disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to Northwestern's increased federal tax burden under Section 848 resulting from the receipt of premiums. Applicants also represent that the registration statement for the Policies will contain as an exhibit an actuarial opinion as to: (a) The reasonableness of the charge in relation to Northwestern's increased federal tax burden under Section 848 resulting from the receipt of premiums; (b) the reasonableness of the targeted rate of return that is used in calculating such charge; and (c) the appropriateness of the factors taken into account in determining such targeted rate of return.

12. Applicants assert that it is proper for an insurer to deduct a charge for the tax burden attributable to premiums received from variable life insurance policies, and to exclude such a deduction from sales load, because the deduction for the insurer's increased federal tax burden is a legitimate expense of the company, and is not for sales and distribution expenses. Applicants note that the Commission has previously considered similar deductions for premium taxes in connection with its adoption of Rule 6e–2 and Rule 6e–3(T). In each case, the Commission permitted deductions for such taxes to be made and to be treated as other than sales load. Applicants assert that the proprietary of a charge for an insurers tax burden attributable to premiums received is the same whether such burden arises under state or federal law.

G. Request for Exemptions Relating to Custodianship Arrangements

1. In pertinent part, Sections 26(a)(1) and 26(a)(2) prohibit Applicants from selling the Policy unless it is issued pursuant to a trust indenture or other such instrument that designates one or more trustees or custodians, qualified as specified, to have possession of all securities in which the Account invests.

2. In pertinent part, Section 27(c)(2) may be read to prohibit Applicants from selling the Policy unless the proceeds of all purchase payments are deposited with a trustee or custodian as specified.

3. Rule 6e–2(b)(13)(iii) affords an exemption from Sections 26(a)(1), 26(a)(2), and 27(c)(2), provided that the life insurer complies, to the extent applicable, with all other provisions of Section 26 as if it were a trustee or custodian for the Account, and assuming that it meets the other requirements set forth in the rule.

4. Applicants represent that the holding of Fund shares by the Account or its depositor under an open account arrangement—without having possession of share certificates and without a trust indenture or other such instrument—may be deemed inconsistent with the foregoing provisions. Accordingly, Applicants request exemptions from Sections

26(a)(1), 26(a)(2) and 27(c)(2), to the extent necessary.

5. Applicants represent that current industry practice calls for unit investment trust separate accounts, such as the Account, to hold shares of management investment companies in uncertificated form. Applicants further represent that holding shares of underlying management investment companies in uncertificated form contributes to efficiency in the operation and sale of such shares by separate accounts, and generally saves costs.

6. Applicants note that, in contrast to the Policies (which are covered by Rule 6e–2), policies covered by Rule 6e–3(T) may rely on Rules 6e–3(T)(b)(13)(iii) (B) and (C) which, in effect, afford the exemptions requested here by the Applicants. The Commission has proposed amendments to Rule 6e–2(b)(13)(iii) to permit life insurers to hold the assets of a separate account without a trust indenture or other such instrument, and to permit a separate account organized as a unit investment trust to hold the securities of any registered investment company that offers its shares to the separate account in uncertificated form. Applicants also note that the Commission has adopted 1940 Act Rule 26a–2 which affords exemptions in connection with variable annuity separate accounts that are essentially similar to those requested here. Accordingly, Applicants presume that the Commission adopted or proposed the foregoing exemptive rules based on a determination that, where state insurance law protects separate account assets and open account arrangements foster administrative efficiency and cost savings, safekeeping of separate account assets does not necessarily depend on the presence of a trustee, custodian or trust indenture, or the issuance of share certificates.

7. Northwestern represents that: it will comply with all other applicable provisions of Section 26 of the 1940 Act as if it were a trustee or custodian for its Account (subject to the other exemptive relief requested in the application); it will file with the insurance regulatory authority of Wisconsin an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners—the most recent such statement indicated that Northwestern has a combined capital and surplus of at least $1 million; it is examined from time to time by the insurance regulatory authority of Wisconsin as to its financial condition and other affairs; and it is subject to supervision and inspection with respect to its separate account operations.

H. Request for Exemptions Relating to Sale of Fund Shares Without an Underwriter

1. Section 12(b) of the 1940 Act provides, in pertinent part, that it shall be unlawful for any registered open-end company to act as a distributor of securities of which it is the issuer, except through an underwriter, in contravention of such rules and regulations as the Commission may prescribe. Rule 12b–1(a)(1) provides, in pertinent part, that, except in compliance with the provisions of that rule, it shall be unlawful for a registered open-end management investment company to act as a distributor of securities of which it is the issuer, except through an underwriter.

2. Applicants request exemption from Section 12(b) and Rule 12b–1(a)(1) to the extent necessary to permit the Fund to sell the shares of its portfolios to the Account without the use of an underwriter, on the condition that Applicants not use the Fund's assets for distribution expenses unless the Fund complies with 1940 Act Rule 12b–1(b).

3. Applicants state that shares of the Fund Portfolios have been and will be sold only to the Account and to other separate accounts of Northwestern, except for the seed money shares purchased by Northwestern itself. The shares will be sold at net asset value without any sales charge or underwriting spread. Applicants represent that the Fund bears no expenses for distribution of its shares.

4. Applicants submit that, in view of the foregoing facts, no useful purpose would be served by requiring the Fund to use an underwriter for the sale of the shares of its portfolios to the Account. Direct sales of these shares to the Account would not expose the Fund to any underwriting risks, since such shares are issued only when requests for their purchase are received from the Account. Nor would the direct sales to the Account create any expenses for the Fund.

Conclusion

Applicants assert that, for the reasons set forth above, the requested exemptions meet the standards of Section 6(c) of the 1940 Act. The requested exemptions are 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 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23016 Filed 9–15–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Georgia Greene, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Disaster Survey Worksheet.

SBA Form No.: SBA Form 987.

Frequency: On Occasion.

Description of Respondents: Individuals, businesses and public officials within an area requesting a disaster declaration.

Annual Responses: 4,000.

Annual Burden: 333.

Dated: August 21, 1995.

Jackie White,

Acting Chief, Administrative Information Branch.

[FR Doc. 95–23117 Filed 9–15–95; 8:45 am]

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