the future that are materially similar to the Front Load Contracts and the Back Load Contracts all charges and expenses will be identical to, or lower than, the corresponding charges and expenses for the Front Load Contracts and the Back Load Contracts, respectively, as described in the application.²

13. The mortality risk borne by Northwestern under both versions of the Contracts arises from its obligation to make annuity payments regardless of how long an annuitant may live. The mortality risk is the risk that annuitants will live longer than Northwestern's actuarial projections indicate, resulting in higher than expected annuity payments.

14. The expense risk borne by Northwestern under the Contracts is the risk that the charges for administering the Contracts, which are guaranteed for the life of each Contract, may be insufficient to cover the actual costs of issuing and administering the Contracts.

15. The mortality and expense risk is higher for the Back Load Contracts than for the Front Load Contracts for several reasons. Collection of a significant front end load inherently reduces the risk that charges will fall short of corresponding expenses since receipt of deferred loads is far less certain. The Front Load Contracts require a minimum initial purchase payment of \$10,000, compared with \$25, \$100 or \$3,500 for Back Load Contracts. The economies of scale associated with larger units reduce the expense risk. Northwestern asserts that an additional mortality risk for the Back Load Contract exists because the withdrawal charge does not apply upon the death of the annuitant.

Applicants' Legal Analysis and **Conditions**

- 1. Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent any relief is necessary to permit the deduction from Account B of the mortality and expense risk charges under the Contracts. Applicants request that the order also permit the deduction of the mortality and expense risk charges described herein from the assets of Account B pursuant to other contracts offered in the future through Account B, to the extent that such contracts are materially similar to the Contracts.
- 2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates

unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants submit that their request for an order that applies to materially similar contracts offered in the future by Account B is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity contract market by eliminating the need for Northwestern to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring Northwestern to seek repeatedly exemptive relief regarding the same issues addressed in the

application.

4. Applicants represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk charges under variable annuity contracts comparable to the Front Load Contracts and the Back Load Contracts currently being offered in the insurance industry taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of expense and annuity rate guarantees and the markets in which the Contracts will be offered. Based upon this review, Applicants represent that the mortality and expense risk charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation. Similarly, prior to making available any materially similar contracts through Account B, Applicants will represent that the mortality and expense risk charges under any such contracts will be within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying such representation.

5. Applicants represent that Account B will invest only in underlying funds which undertake, in the event they should adopt a plan under Rule 12b-1 under the 1940 Act to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not interested persons as defined under Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

6. Applicants do not expect the frontend sales load or contingent deferred sales load imposed under the Contracts will necessarily cover the expected costs of distributing the Contracts. Any shortfall will be made up from Northwestern's general assets which will include amounts derived from the mortality and expense risk charges. Northwestern has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit Account B and the Contract owners. Northwestern will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts, or under materially similar contracts offered in the future by Account B, meets the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. **Relating to Buy-Write Options Unitary** Derivatives ("BOUNDs")

March 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 6, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC") or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The

² Applicants represent that they will amend the application during the Notice Period to reflect the representations in this paragraph.