source of profit for NYLIAC which will be added to its surplus and may be used for, among other things, the payment of distribution expenses.

15. The mortality risk borne by NYLIAC arises from its obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the relevant Policy), where a life annuity is selected, regardless of how long an Annuitant may live. The mortality risk under the Policy is the risk that, upon selection of an annuity payment option which has life contingencies, Annuitants will live longer than NYLIAC's actuarial projections indicate, resulting in higher than expected income payments. NYLIAC is also assuming a mortality risk as a result of its promise to pay a minimum death benefit under the Policies.

16. The expense risk borne by NYLIAC under the Policy is the risk that the charges for administrative expenses, which are guaranteed for the life of the Policies, may be insufficient to cover the actual costs of issuing and administering the Policies.

## Applicants' Legal Analysis

 Applicants request an order under Section 6(c) granting exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction from the assets of the Separate Accounts and the Future Accounts of mortality and expense risk charges under the Policies or Other Policies, as appropriate.

2. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 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 policy and provisions of the 1940 Act.

3. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

4. Applicants submit that their request for an order that applies to Other Policies offered by the Separate Accounts and by Future Accounts is

appropriate in the public interest because it would promote competitiveness in the variable annuity policy market by eliminating the need for NYLIAC 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 NYLIAC to repeatedly seek exemptive relief with respect to the same issues addressed in this

Application.

5. Applicants represent that the mortality and expense risk charges under the NVA Policies and MFA Policies are within the range of industry practice for comparable variable annuity contracts. This representation is based upon Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge levels or annuity rate guarantees and the markets in which the Policies will be offered. Applicants state that NYLIAC will maintain at its headquarters and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

Similarly, prior to making available any Other Policies, Applicants will represent that the mortality and expense risk charges under any such Other Policies will be within the range of industry practice for comparable variable annuity contracts. NYLIAC will maintain at its headquarters and make available to the Commission, upon request, a memorandum outlining the methodology underlying such representation.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Policies, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. NYLIAC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and the Policy Owners. NYLIAC will keep at its headquarters and make available to the Commission, upon request, a memorandum setting forth the basis for this representation. In addition, NYLIAC will keep at its headquarters and make available to the Commission, upon request, a memorandum setting forth the basis for the same representation with respect to Other Policies offered by the Separate Accounts and by Future Accounts.

8. Applicants represent that the Separate Account and any Future Account will invest only in underlying funds that have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any such fund, as defined in the 1940 Act, formulate and approve any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses.

#### Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Policies, or under Other Policies, offered by the Separate Account or by Future Accounts are necessary and 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.

[FR Doc. 95-10608 Filed 4-28-95; 8:45 am] BILLING CODE 8010-01-M

## **DEPARTMENT OF TRANSPORTATION**

# Aviation Proceedings; Agreements Filed During the Week Ended April 21, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50297

Date filed: April 18, 1995.

Parties: Members of the International Air Transport Association.

Subject: Request For Interim Approval of Amendment To The Provisions For The Conduct Of IATA Traffic Conferences.

The amendment was adopted by the IATA Executive Committee at its 159th meeting. The amendment involves Article VI, Paragraph 9 of the Provisions and reads as follows (new text underlined):

One-third of the representatives of the voting Members of a Tariff Conference, and one-fifth of the representatives of the voting Members of a Services Conference or Agency Conference which have nominated an Accredited Representative to such Conference, or their respective designated alternates acting in their place and stead, shall constitute the quorum at any meeting of the Traffic Conference concerned: (\* (remainder of paragraph 9 unchanged)

Docket Number: 50298 Date filed: April 18, 1995.