

Applicants to deduct from premium payments received in connection with the Policies an amount that is reasonable in relation to Ameritas's increased federal tax burden created by its receipt of such premium payments. The deduction would not be treated as sales load.

3. Section 2(a)(35) of the 1940 Act defines "sales load" as the difference between the price of a security offered to the public and that portion of the proceeds from its sale which is received and invested or held by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

4. Section 27(c)(2) of the 1940 Act prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from purchase payments made under periodic payment plan certificates other than a deduction for sales load.

5. Rule 6e-3(T)(b)(13)(iii), among other things, provides relief from Section 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of certain charges other than sales load, including "[t]he deduction of premium or other taxes imposed by any state or other governmental entity." Applicants represent that the requested exemption is necessary if they are to rely on certain provisions of Rule 6e-3(T)(b)(13).

6. Rule 6e-3(T)(c)(4) defines "sales load" during a contract period as the excess of any payments made during that period over certain specified charges and adjustments, including "[a] deduction for and approximately equal to state premium taxes." Applicants submit that the proposed DAC tax charge is akin to a state premium tax charge and, therefore, should be treated as other than sales load for purposes of the 1940 Act and the rules thereunder.

7. Applicants acknowledge that the proposed DAC tax charge does not fall squarely into any of the itemized categories of charges or adjustments set forth in Rule 6e-3(T)(c)(4); a literal reading of that rule arguably does not exclude such a "tax burden charge" from sales load. Applicants maintain, however, that there is no public policy reason why a tax burden charge designed to cover the expense of federal taxes should be treated as sales load. Applicants also assert that nothing in the administrative history of Rule 6e-

3(T) suggests that the SEC intended to treat tax charges as sales load.

8. Applicants assert that the public policy that underlies Rule 6e-3(T)(b)(13)(i), like that which underlies 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 the receipt of purchase payments as sales load would in no way further this legislative purpose because such a charge has no relation to the payment of sales commissions or other distribution expenses. Applicants further submit that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in Rule 6e-3(T)(c)(4).

9. Applicants assert that the genesis of Rule 6e-3(T)(c)(4) supports this analysis. In this regard, Applicants note that Section 2(a)(35) of the 1940 Act provides a scale against which the percent limits of Sections 27(a)(1) and 27(h)(1) thereof may be measured. Applicants submit that the intent of the SEC in adopting Rule 6e-3(T)(c)(4) was to tailor the general terms of Section 2(a)(35) to flexible premium variable life insurance contracts in order, among other things, to facilitate verification by the SEC of compliance with the sales load limits set forth in Rule 6e-3(T)(b)(13)(i). Applicants submit that Rule 6e-3(T)(c)(4) does not depart, in principal, from Section 2(a)(35).

10. Applicants further assert that Section 2(a)(35) excludes from the definition of sales load under the 1940 Act deductions from premiums for "issue taxes." Applicants submit that, by extension, the exclusion from "sales load" (as defined in Rule 6e-3(T)) of charges to cover an insurer's expenses attributable to its federal tax obligations is consistent with the protection of investors and the purposes intended by the policies and provisions of the 1940 Act.

11. Applicants also 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 that are properly chargeable to such activities. Because the proposed DAC tax charge will be used to compensate Ameritas for its increased federal tax burden attributable to the receipt of premiums, and such deductions are not properly chargeable to sales or promotional activities, Applicants assert that the language of Section 2(a)(35) is

another indication that not treating such deductions as sales load is consistent with the purposes intended by the policies of the 1940 Act.

#### *Condition for Relief*

1. Applicants agree to comply with the following conditions for relief.

a. Ameritas will monitor the reasonableness of the 1.00 percent proposed DAC tax charge.

b. The registration statement for the Policies under which the 1.00 percent charge is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to Ameritas's increased federal tax burden resulting from the application of Section 848 of the Code.

c. The registration statement for the Policies under which the 1.00 percent charge is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to Ameritas's increased federal tax burden resulting from the application of Section 848 of the Code; (iii) the reasonableness of the targeted rate of return that is used in calculating such charge; and (iii) the appropriateness of the factors taken into account by Ameritas in determining such targeted rate of return.

#### **Conclusion**

For the reasons summarized above, Applicants represent that the requested relief from Section 27(c)(2) of the 1940 Act and Rule 6e-3(T)(c)(4)(v) thereunder is necessary or appropriate in the public interest and otherwise meets the standards of Section 6(c) of the 1940 Act.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 95-17521 Filed 7-17-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35959; File No. SR-PSE-95-16]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Violations of the Intermarket Trading System Rules**

July 12, 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 June 8, 1995, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the