of that Section found implicitly in Rule 6e–2 and explicitly in Rule 6e–3(T).

5. Applicants assert that the proposed deduction with respect to Section 848 of the Code arguably is covered by Rules 6e–2(b)(13)(iii) and 6e–3(T)(b)(13)(iii) and should be treated as other than sales load. Applicants note, however, that under a literal reading of Rules 6e–2(c)(4) and 6e–3(T)(c)(4), a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions, arguably causing the deduction to be treated as part of sales load.

6. Applicants state that they have found no public policy reason for including a deduction for an insurer's increased federal tax burden in sales load. Applicants assert that the public policy that underlies paragraph (b)(13)(i) of Rules 6e–2 and 6e–3(T), like that which underlies paragraphs (a)(1) and (h)(1) of Section 27, is to prevent excessive sales loads from being charged for the sale of periodic payment plan certificates. Applicants submit that this legislative purpose is not furthered by treating a federal income tax charge based on premium payments as a sales load because the deduction is not related to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in Rules 6e–2(c)(4) and 6e–3(T)(c)(4).

7. Applicants submit that the source for the definition of sales load found in Rules 6e–2(c)(4) and 6e–3(T)(c)(4) supports this analysis. Applicants believe that, in adopting paragraph (c)(4) of the Rules, the Commission intended to tailor the general terms of Section 2(a)(35) to variable life insurance contracts to ease verification by the Commission of compliance with the sales load limits of subparagraph (b)(13)(i) of the Rules.

8. Applicants submit that the exclusion from the definition of sales load under Section 2(a)(35) of deductions from premiums for issue taxes suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of sales load in Rule 6e–2 and 6e–3(T) deductions made to pay an insurer's costs attributable to its federal tax obligations. Additionally, the exclusion of administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' also suggests that the only deductions intended to fall within the definition of sales load are those that are properly chargeable to sales or promotional activities. Applicants represent that the proposed deductions will be used to compensate Security Equity for its increased federal tax burden attributable to the receipt of premiums and not for sales or promotional activities. Applicants, therefore, believe the language in Section 2(a)(35) further indicates that not treating such deductions as sales load is consistent with the policies of the 1940 Act.

9. Finally, applicants submit that it is probably an historical accident that the exclusion of premium tax in subparagraph (c)(4)(v) of Rules 6e 2 and 6e–3(T) from the definition of sales load is limited to state premium taxes. Applicants note that, when Rules 6e–2 and 6e–3(T) were adopted, and later amended, the additional Section 848 tax burden attributable to the receipt of premiums did not yet exist.

10. Applicants further submit that the terms of the relief requested with respect to Future Policies to be issued through Other Accounts are also consistent with the standards of Section 6(c). Without the requested relief, applicants would have to request and obtain such exemptive relief for each Future Contract to be issued through an Other Account. Such additional requests for exemptive relief would present no issues under the 1940 Act that have not already been addressed in this application.

11. The requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for applicants to file redundant exemptive applications regarding the federal tax charge, thereby reducing their administrative expenses and maximizing the efficient use of their resources. Applicants represent that the delay and expense involved in having to repeatedly seek exemptive relief would impair their ability to effectively take advantage of business opportunities as they arise.

12. Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If applicants were required to repeatedly seek exemptive relief with respect to the same issues regarding the federal tax charge addressed in this application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of applicants' increased overhead expenses.

Conditions for Relief

Applicants agree to the following conditions:

a. Security Equity will monitor the reasonableness of the charge to be deducted pursuant to the requested exemptive relief.

b. The registration statement for each Policy and Future Policy under which the above-referenced federal tax charge is deducted will: (1) disclose the charge; (2) explain the purpose of the charge; and (3) state that the charge is reasonable in relation to Security Equity's increased federal tax burden under Section 848 of the Code resulting from the receipt of premium payments.

c. The registration statement for each Policy and Future Policy under which the above-referenced federal tax charge is deducted will contain as an exhibit an actuarial opinion as to: (1) The reasonableness of the charge in relation to Security Equity's increased federal tax burden under Section 848 of the Code resulting from the receipt of premiums; (2) the reasonableness of the rate of return on surplus that is used in calculating such charge; and (3) the appropriateness of the factors taken into account by Security Equity in determining such rate of return.

Conclusion

1. Section 6(c) of the 1940 Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act, to the extent that such 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 1940 Act.

2. For the reasons and upon the facts set forth above, applicants submit that the requested exemptions from Sections 27(a)(3) and 27(c)(2) of the 1940 Act and Rules 6e–2(c)(4)(v), 6e–3(T)(b)(13)(ii), and 6e–3(T)(c)(4)(v) thereunder, are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the contract and provisions of the 1940 Act. Therefore, the standards set forth in Section 6(c) of the 1940 Act are satisfied.

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

Margaret H. McFarland,

Deputy Secretary.

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