the Code. The deduction would not be treated as sales load.

Relief From Provisions of Section 27(c)(2) and Rule 6e-3(T)(c)(4)(v)

- 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 for investment 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. Sections 27(a)(1) and 27(h)(1) of the 1940 Act, in effect, limit sales loads on periodic payment plan certificates to 9 percent of total payments.
- 5. Paragraph (a) of Rule 6e–3(T) requires that a separate account (such as the Accounts) that issues flexible premium variable life insurance contracts, its principal underwriter and its depositor, comply with all provisions of the 1940 Act and rules thereunder applicable to a registered investment company issuing periodic payment plan certificates.
- 6. Paragraph (b) of Rule 6e-3(T) provides numerous limited conditional exemptions from most such provisions and rules in connection with the offer, sale and administration of flexible premium variable life insurance contracts. For example, Rule 6e-3(T)(b)(13)(iii)(E) 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 request the relief from Section 27(c)(2) sought in this application only to preclude the possibility that a charge related to the increased burden resulting from Section 848 of the Code is not covered by the exemption provided by Rule 6e-3(T)(b)(13)(iii)(E). Applicants submit that the public policy reasons underlying Rule 6e-3(T)(b)(13)(iii)(E)provide support for the exemption from Section 27(c)(2) requested herein.

- 7. Paragraph (c)(4) of Rule 63-3(T) defines "sales load" (for purposes of the rule) as the excess of any purchase payments over certain itemized charges and adjustments. A tax burden charge, such as the one the Company proposes to deduct, may not fall squarely into any of the itemized categories of charges or adjustments. Consequently, a literal reading of paragraph (c)(4) arguably does not exclude such a 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 or otherwise subject to the sales load limits of Rule 6e–3(T). Applicants assert that nothing in the administrative history of the Rule (or in the administrative history of Rule 6e-2, its predecessor) suggests that the Commission intended to treat tax charges as sales load.
- 8. The exemption requested by Applicants is necessary in order for them and any Future Account to rely on certain provision of Rule 6e-3(T)(b)(13), including sub-paragraph (b)(13)(i) thereof, which provides critical exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates only may rely, however, on sub-paragraph (b)(13)(i) if they meet its alternate limits that apply to sales load as defined in paragraph (c)(4). **Applicants and Future Accounts** generally could not meet these limits if the tax burden charge is included in sales load.
- 9. The public policy that underlies sub-paragraph (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 assert that the treatment of a tax burden charge attributable to the receipt of purchase payments as sales load would not in any way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses.
- 10. Applicants assert that the genesis of Rule 6e–3(T)(c)(4) supports this analysis, and suggest that Section 2(a)(35) provides a scale against which the percentage limits of Sections 27(a) (1) and 27(h)(1) may be measured. Applicants submit that Rule 6e–3(T)(c)(4), is simply a more specific articulation of the requirements of Section 2(a)(35) as applied to flexible premium variable life insurance policies. Section 2(a)(35), like Rule 6e–3(T)(c)(4), defines sales load derivatively, treating as sales load the:

difference between the price of a security to the public and that portion of the proceeds from its sale which is invested or held for investment . . . 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. (Emphases added.)

Applicants maintain that the Commission's intent in adopting paragraph (c)(4) of Rule 6e–3(T) was to tailor the general terms of Section 2(a)(35) to flexible premium variable life insurance policies in order, among other things, to facilitate verification by the Commission of compliance with the sales load limits set forth in subparagraph (b)(13)(i). According to their analysis, paragraph (c)(4) does not depart, in principal, from Section 2(a)(35).

- 11. Section 2(a)(35) excludes deductions from purchases payments for "issue taxes" from the definition of sales load under the 1940 Act. Applicants suggest that this indicates that it is consistent with the protection of investors and the purposes intended by the policies and provisions of the 1940 Act to exclude charges for expenses attributable to federal taxes from sales load. Applicants argue that, by extension, it is equally consistent to exclude such charges, including the tax burden charge described above, from the Rule 6e-3(T)(c)(4) definition of sales load.
- 12. Applicants argue that the Section 2(a)(35) reference to administrative expenses or fees that are "not properly chargeable to sales or promotional activities" (quoted and emphasized above) suggests that the only charges or deductions intended to fall within the definition of sales load are those that are properly chargeable to such activities. Because the proposed tax burden charge will be used to pay costs attributable to the Company's federal tax liabilities, which are not properly chargeable to sales or promotional activities, Applicants assert that language is another indication that not treating such deductions as sales load is consistent with the purposes intended by the policies and provisions of the 1940 Act.
- 13. Applicants note that the Rule 6e–3(T)(c)(4)(v) limitation of the premium tax exclusion from the definition of "sales load" to state premium taxes is probably a historical accident, related to the fact that, when Rule 6e–3(T) was initially adopted in 1984 and when it was amended in 1987, the additional Section 848 tax burden attributable to the receipt of premiums did not exist.
- 14. Applicants represent that, for the reasons summarized above, deducting a