Section 848 and the use by CG Life of a discount rate of 15% (which is equivalent to its cost of capital) in computing the future deductions resulting from such amortization.

15. CG Life asserts that it may choose to increase the 0.5% charge if future changes in, or interpretations of, Section 848 or any successor or related provisions result in a further increased tax burden resulting from the receipt of premiums. Such an increase could result from, among other things, a change in the federal corporate income tax rate, a change in the 2.05% figure, or a change in the amortization period.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may exempt any person, security or transaction (or any class or classes of persons, securities or transactions) from provisions of the 1940 Act or any rules thereunder, if and 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.

2. Applicants request an order of the Commission pursuant to Section 6(c) exempting them from the provisions of section 27(c)(2) of the 1940 Act and Rule 6e-3(T)(c)(4)(v) thereunder to permit Applicants to deduct form premium pavements received in connection with the Contracts and Future Contracts an amount that is reasonable in relation to CG Life's increased federal income tax burden related to the receipt of such premiums. Applicants further request an exemption from Rule 6e-3(T)(c)(4)(v) of the 1940 Act to permit the proposed deductions to be treated as other than "sale load" for the purposes of Section 27 of th3 1940 Act and the exemptions from various provisions of that Section found in Rule 6e-3(T)(b)(13).

3. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act. Sections 27(a)(1) and 27(h)(1), in effect, limit sales load on periodic payment plan certificates to 9% of total payments.

4. Certain provisions of Rule 6e–3(T) provide a range of exemptive relief for the offering of flexible premium variable life insurance policies such as the Contracts and any Future Contracts. For example, subject to certain conditions,

Rule 6e–3(T)(b)(13)(iii) provides exemptions from Section 27(c)(2) that include permitting the payment of certain administrative fees and expenses, the deduction of a charge for certain mortality and expense risks, and the "deduction of premium taxes imposed by any state or other governmental entity."

5. Rule 6e–(T)(c)(4)(v) defines "sales load" charged during a contract period as the excess of any payment made during the period over the sum of certain specified charges and adjustments, including "[a] deduction for and approximately equal to state premium taxes." Applicants submit that the proposed tax burden charge is akin to a state premium tax charge in that it is an appropriate charge related to CG Life's federal tax burden attributable to premiums received under the Contracts and any Future Contracts.

6. Applicants represent that the requested exemptions from Rule 6e-3(T)(c)(4)(v) are necessary in connection with Applicants' reliance on certain provisions of Rule 6e-(T)(b)(13), particularly on subparagraph (b)(13)(i), which provides exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates may rely on Rule 6e-3(T)(b)(13)(i) if they meet the Rule's alternative limitations on "sales load," as defined in Rule 6e-3(T)(c)(4). Depending on the load structure of a particular contract, these alternative limitations may not be met if the deduction for the increase in an issuer's federal tax burden is included in sales load. Applicants acknowledge that a deduction for an insurance company's increased federal tax burden does not fall squarely within any of the specified charges or adjustments which are excluded from the definition of "sales load" in Rule 6e-3(T)(c)(4). Nevertheless, Applicants submit that there is no public policy reason for treating such increased federal tax burden as "sales load."

7. Applicants assert that the public policy which 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 federal income tax charge attributable to premium payments a sales load would in no way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission has concurred in this conclusion by excluding deductions for

state premium taxes from the Rule 6e–3(T)(c)(4) definition of "sales load."

8. 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 Commission's intent in adopting Rule 6e-3(T)(c)(4) was to tailor the general terms of Section 2(a)(35) of the 1940 Act to variable life insurance contracts in order, among other things, to facilitate verification by the Commission 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).

9. Applicants assert that the language of Section 2(a)(35) suggests that the only charges or deductions intended to fall within the definition of "sales load" are those that are "properly chargeable to sales or promotional activities." Because the proposed tax burden charge will be used to pay costs attributable to CG Life's federal tax liabilities, and such costs are not properly chargeable to sales or promotional activities, Applicants submit that not treating the proposed tax burden charge as sales load is consistent with the purposes intended by the policies of the 1940 Act.

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 the exclusion of charges for expenses attributable to federal taxes from sales load (as defined in Section 2(a)(35)) is consistent with the policies of the 1940 Act. By extension, Applicants submit, it is equally consistent to exclude such charges, including the proposed tax burden charge, from the definition of "sales load" in Rule 6e–3(T)(c)(4).

11. For these reasons, Applicants assert that deducting a charge from variable life insurance contract premium payments for an insurer's tax burdens attributable to its receipt of such payments, and excluding that charge from sales load, is consistent with the policies of the 1940 Act. Applicants submit that this is because such a deduction is an appropriate charge related to the insurer's tax burden attributable to the premium payments received.

12. Applicants seek the relief requested with respect to Contracts and Future Contracts which may be issued by CG Life. Without the requested relief, CG Life would have to request and obtain exemptive relief for each Future