

charge is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to MassMutual's increased federal tax burden resulting from the application of Section 848 of the Code; (ii) the reasonableness of the expected after tax rate of return that is used in calculating the charge; and (iii) the appropriateness of the factors used to determine MassMutual's expected after tax rate of return.

Section 27(a)(3) and Rule 6e-3(T)(b)(13)(ii)—“Stair Step” Exemption

1. Section 27(a)(3) of the 1940 Act provides that the amount of sales load which may be deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment, and that the sales load deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment.

2. Rule 6e-3(T)(b)(13)(ii) provides an exemption from Section 27(a)(3), provided that the proportionate amount of sales load deducted from any payment does not exceed the proportionate amount deducted from any prior payment, unless an increase is caused by reductions in the annual cost of insurance or in sales load for amounts transferred to a variable life insurance policy from another plan of insurance.

3. Under MassMutual's proposed sales load structure for Policies issued in a Case with an Initial Case Premium of less than \$1,000,000, during the first five Policy years, MassMutual assesses a front-end sales load of 15% of premium payments made which are less than or equal to the minimum planned Policy premium, and 6% of premium payments made which exceed the minimum planned Policy premium. After the fifth Policy Year, the sales load percentages for these Policies will decrease to 6% on all premium payments. Thus, if during the first four years of a Policy for which the Initial Case Premium paid was less than \$1,000,000, a Policy owner makes a premium payment which exceeds the minimum planned Policy premium, the percentage of sales load deducted (in the next Policy Year) from that portion of any premium payment which is less than or equal to the minimum planned Policy premium would exceed that deducted from the prior premium payment. Applicants request an exemption from the requirements of Section 27(a)(3) of the 1940 Act and Rule 6e-3(T)(b)(13)(ii) thereunder because the sales load structure under

the Policies appears to violate the “stair-step” provisions articulated in Section 27(a)(3) of the 1940 Act. Moreover, Applicants note, the exemption from Section 27(a)(3) provided by Rule 6e-3(T)(b)(13)(ii) does not appear to cover the case at hand.

4. Applicants represent that MassMutual has designed the Policies so that they comply with Rule 6e-3(T)'s sales load limitations and are “refund proof”: i.e., sales load deductions from premium payments will not exceed the sales load limitations specified in Rule 6e-3(T)(b)(13)(i)(A) and will never require the repayment of any sales charges pursuant to Rule 6e-3(T)(b)(13)(v)(A).

5. Applicants further represent that MassMutual has designed the sales load structure under the Policies to give Policy owners significant flexibility with respect to the timing and amount of premium payments, while permitting MassMutual to deduct only those charges deemed necessary to defray distribution expenses and support the benefits under the Policies.

6. Applicants represent that the proposed sales load design provides a significant benefit to Policy owners by passing through to them a portion of MassMutual's savings resulting from the lower distribution costs associated with Policies having an Initial Case Premium of \$1,000,000 or less and for which premium payments are made during the first five Policy Years which exceed the minimum planned Policy premium set for that Policy year. Applicants submit that it would not be in the interest of Policy owners to require the imposition of a sales charge on premium payments in excess of the minimum planned Policy premium, or subsequent premium payments that are higher than Applicants deem necessary.

7. Applicants assert that Section 27(a)(3) was designed to address abuses involving periodic payment plans under which large amounts of front-end sales load are deducted so early in life of the plan that an investor redeeming in the early periods would recoup little of his or her investment. MassMutual anticipates that: (i) a substantial number of the Policies will be sold in connection with rollover transactions effectuated pursuant to Section 1035 of the Code; and (ii) under such a scenario, there will be a higher occurrence of premium payments made in the first Policy year which exceed the minimum planned premium payment by Policy owners purchasing Policies having an Initial Case Premium of less than \$1,000,000. For these reasons, Applicants submit that the proposed sales load structure would not present

the type of abuse that Section 27(a)(3) was designed to prevent.

8. Moreover, Applicants assert that, to the extent that owners of Policies with an Initial Case Premium of less than \$1,000,000 make premium payments during the first Policy year which exceed the minimum planned Policy premium, MassMutual's proposed sales load structure will cause a greater proportion of the Policies' sales charges to be deducted later than they otherwise might have been deducted. In this regard, Applicants note that MassMutual could have decided to assess a sales load of 30% on premium payments less than or equal to the minimum planned Policy premium made during the first Policy year, and 7.89% on premium payments made thereafter. Applicants submit that, by spreading sales charges more evenly over the life of a Policy, MassMutual's sales load structure furthers the purposes of Section 27(a)(3) of the 1940 Act.

Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the requested exemptions would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by 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.

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[File No. 1-9973]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (The Middleby Corporation, Common Stock, \$0.01 Par Value)

December 7, 1995.

The Middleby Corporation (“Company”) has filed an application with the Securities and Exchange Commission (“Commission”), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (“Act”) and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security (“Security”) from listing and registration on the American Stock Exchange, Inc. (“Amex”).

The reasons alleged in the application for withdrawing the Security from listing and registration include the following: