

10. An Owner's interest in his or her Accumulation Value or in the Midland Account would always be offered at a price based on the net asset value next calculated after receipt of the order. The granting of a bonus credit pursuant to the Premium Bonus Rider does not reflect a reduction of that price. Instead, Midland will purchase with its own general account assets an interest in the Midland Account equal to the bonus credit. Because the bonus credit will be paid out of Midland's assets, not the Midland Account's assets, no dilution will occur as a result of the credit.

11. The recapture of the bonus credit under the Premium Bonus Rider does not involve either of the evils that the Commission intended to eliminate or reduce with Rule 22c-1. The Commission's stated purposes in adopting Rule 22c-1 were to avoid or minimize (i) dilution of the interests of other security holders and (ii) speculative trading practices that are unfair to such holders. These evils were the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, and thereby the values of outstanding mutual fund shares were diluted.

12. The proposed recapture of the bonus credit under the Premium Bonus Rider does not pose such threat of dilution. The bonus credit recapture will not alter an Owner's net asset value. Midland will determine an Owner's surrender value under a Contract in accordance with Rule 22c-1 on a basis next computed after receipt of an Owner's request for surrender (likewise, the calculation of death benefits and annuity payment amounts will be in full compliance with the forward pricing requirement of Rule 22c-1). The amount recaptured will equal the amount of the bonus credit that Midland paid out of its general accounts assets. Although an Owner will retain any investment gain attributable to the bonus credit, Midland will determine the amount of such gain on the basis of the current net asset value of the Investment Division. Thus, no dilution will occur upon the recapture of the bonus credit.

13. Further, Applicants submit that the other harm that Rule 22c-1 was designed to address (speculative trading practices calculated to take advantage of backward pricing) will not occur as a result of Midland's recapture of the bonus credit. Variable annuities are

designed for long-term investment, and by their nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c-1 was designed to prevent. More to the point, the credit recapture simply does not create the opportunity for speculative trading.

14. Applicants assert that Rule 22c-1 and section 22(c) should have not application to the bonus credit available under the Premium Bonus Rider, as neither of the harms that Rule 22c-1 was designed to address is present in the recapture of the bonus credit.

However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the provisions of section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recapture the bonus credit under the Premium Bonus Rider of the Contracts and Future Contracts.

15. Applicants submit that Midland's recapture of the bonus credit is designed to prevent anti-selection. The risk of anti-selection would be that an Owner could make significant premium payments into the Contract solely in order to receive a quick profit from the credit.

Conclusion

1. For the reasons discussed above, the Applicants submit that the bonus credit involves none of the abuses to which provisions of the Act and the rules thereunder are directed. The Owner will always retain the investment experience attributable to the bonus credit, and will retain the principal amount in all cases except under the single circumstances described herein. Further, Midland should be able to recapture such bonus credit to protect itself from investors wishing to use the Contract as a vehicle for a quick profit at a Midland's expense, and to enable Midland to limit potential losses associated with such bonus credit.

2. Accordingly, Applicants request exemptions from section 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the Applicants to recapture the bonus credit applied to a premium payment in the circumstance described above. For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and consistent with and supported by Commission precedent.

3. Applicants seek relief herein not only for themselves with respect to the support of the Contracts, but also with

respect to Future Accounts or Future Contracts described herein. Applicants represent that the terms of the relief requested with respect to any Contracts or Future Contracts funded by the Midland Account or Future Accounts are consistent with the standards set forth in section 6(c) of the Act and Commission precedent. The Commission has previously granted class relief (from certain specified provisions of the Act for separate accounts that support variable annuity contracts) that is materially similar to the relief described in the application.

4. In addition, Applicants seek relief herein with respect to Future Underwriters (*i.e.*, a class consisting of NASD member broker-dealers which may also as principal underwriter of the Contracts and Future Contracts). The Commission has regularly granted relief to "future underwriters" that are not named, and are not affiliates of the Applicants. Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in section 6(c) of the Act and Commission precedent.

5. Applicants state that, without the requested class relief, exemptive relief for any Future Account, Future Contract, or Future Underwriter would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no issues under the Act not already addressed herein. Applicants state that if the Applicants were to repeatedly seek exemptive relief with respect to the same issues addressed herein, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional request for relief. Applicants argue that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for Midland to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would, Applicants opine, enhance Applicants' ability to effectively take advantage of business opportunities as such opportunities arise. Applicants submit, for all the reasons stated herein, that their request for class exemptions 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