

**SECURITIES AND EXCHANGE COMMISSION****[Release No. IC-26314; File No. 812-13013]****Midland National Life Insurance Company, et al.**

December 18, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").**ACTION:** Notice of an application for an order pursuant to Section 6(c) of the Investment Company Act of 1940, as amended the ("Act") granting exemptions from the provisions of sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.**APPLICANTS:** Midland National Life Insurance Company ("Midland"), Midland National Life Separate Account C (the "Midland Account"), and Sammons Securities Company, LLC ("Sammons Securities") (all collectively, the "Applicants").**SUMMARY:** The Applicants hereby apply for an order of the Commission exempting them with respect to the support of variable annuity contracts described herein (the "Contracts") and other variable annuity contracts that are similar in all material respects to the contracts described herein, that Midland may issue in the future ("Future Contracts"), and any other separate accounts of Midland and its successors in interest ("Future Accounts") that support Future Contracts, and certain National Association of Securities Dealers, Inc. ("NASD") member broker-dealers which, in the future, may act as principal underwriter of such Contracts ("Future Underwriters"), from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, pursuant to section 6(c) of the Act, to the extent necessary to permit the recapture of a bonus credit (previously applied to premium payments) where the bonus credit was applied and (i) the contract owner ("Owner") exercises his or her "free look" right, or (ii) in the event of death, partial withdrawal, or surrender of the contract in the first seven contract years (pursuant to a vesting schedule).**DATES:** The Application was filed on September 3, 2003, and amended and restated on December 1, 2003.**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by

5:30 p.m. on January 11, 2004, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants: c/o Steve Horvat, Esq., Midland National Life Insurance Company, One Midland Plaza, Sioux Falls, SD 57193. Copy to Frederick R. Bellamy, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004.**FOR FURTHER INFORMATION CONTACT:** Mark A. Cowan, Senior Counsel, or Zandra Bailes, Branch, Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.**SUPPLEMENTARY INFORMATION:** Following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch, 450 5th Street NW., Washington, DC 20549, (202) 942-8090.**Applicants' Representations**

1. Midland is a stock life insurance company. Midland was organized in 1906, in South Dakota, as a mutual life insurance company at that time named the Dakota Mutual Life Insurance Company. It was reincorporated as a stock life insurance company in 1909. The name Midland was adopted in 1925. Midland was redomesticated to Iowa in 1999. It is licensed to do business in the District of Columbia, Puerto Rico, and in all States except New York. Midland is a subsidiary of Sammons Enterprises, Inc. which has controlling or substantial stock interests in a large number of other companies engaged in the areas of insurance, corporate services, and industrial distribution.

2. Under the terms of the Contracts, the assets of the Midland Account equal to the reserves and other contract liabilities with respect to the Midland Account are not chargeable with liabilities arising out of any other business which the sponsoring company may conduct (except to the extent that assets in the Midland Account exceed the reserves and liabilities of the Midland Account). The Midland Account is comprised of investment divisions established to receive and invest net premium payments under the Contracts (the "Investment Divisions")

and other annuity contracts. The income, gains and losses, realized or unrealized, from the assets allocated to each Investment Division will be credited to or charged against that Investment Division without regard to other income, gains or losses of any other Investment Division. The Midland Account meets the definition of a "separate account" in Rule 0-1(e) under the Act.

3. The Board of Directors of Midland established the Midland Account under the insurance laws of the State of South Dakota in March 1991. The Midland Account is now governed by Iowa law. The Midland Account is registered under the Act as a unit investment trust (File No. 811-07772). The assets of the Midland Account support certain flexible premium variable annuity contracts, and interests in the Midland Account offered through such contracts have been registered under the Securities Act of 1933 ("1933 Act") on three Form N-4 Registration Statements (File Nos. 33-64016, 333-71800 and 333-108437). The Contract, which includes the optional bonus and accompanying recapture that is the subject of this application, is registered in File No. 333-108437.

4. Sammons Securities, an affiliate of Midland, is the principal underwriter of the Contracts. Sammons Securities is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the NASD.

5. Each Investment Division will invest exclusively in a designated series of shares, representing an interest in a particular portfolio of one or more designated management investment companies of the series type ("Funds"). Midland reserves the right to designate the shares of another portfolio of the Funds or of other management investment companies ("Other Funds") as the exclusive investment vehicle for each new Investment Division that may be created in the future. Subject to Commission approval under section 26(c) of the Act, Applicants also reserve the right to substitute the shares of another portfolio previously designated as the exclusive investment vehicle for each Investment Division.

6. The Contracts are flexible premium deferred variable annuity contracts issued by Midland through the Midland Account. Midland currently intends to market the Contract under the name "Advantage II Variable Annuity." The Contracts provide for the accumulation of values on a variable or fixed basis during the accumulation period, and may provide settlement or annuity payment plans on a variable or fixed

basis. The Contracts may be purchased on a non-qualified tax basis. The Contracts may also be purchased and used in connection with plans qualifying for favorable Federal income tax treatment.

7. The Owner determines in the supplemental application or transmittal form for a Contract how the net premium payments will be allocated among the Investment Divisions of the Midland Account, the Fixed Account and any available dollar cost averaging options of the Fixed Account (the "Fixed Account Options"). The Owner generally may allocate premium payments to each Investment Division and to each Fixed Account Option. The Accumulation Value will vary with the investment performance of the Investment Divisions selected, and the Owner bears the entire risk for amounts allocated to the Investment Division.

8. An Owner may return his or her Contract for a refund. This is called the "Free Look Right." The Free Look Right allows an Owner 10 days (or longer if required by state law) to return his or her Contract. Midland generally will return the Accumulation Value minus any premium bonus credit to the Owner, but may return the full premium payment (not including the bonus credit), if greater and required by state law.

9. An Owner may transfer Accumulation Value among the Investment Divisions and between the Fixed Account and any Investment Division prior to the maturity date. The amount that an Owner may transfer into or out of the Fixed Account is limited. The minimum transfer amount is \$200, or 100% of an Investment Division if less than \$200. The minimum amount does not have to come from or be transferred to just one Investment Division. The only requirement is that the total amount transferred in a day equals at least the transfer minimum. Midland currently allows an unlimited number of transfers of accumulated value in a contract year prior to the maturity date, but Midland reserves the right to charge a transfer fee of \$15 for every transfer after the twelfth in a contract year. After the maturity date, Owners may only make two transfers per contract year and then only among the Investment Divisions of the Midland Account.

10. The Owner may withdraw all or part of his or her surrender value prior to the maturity date. If an Owner surrenders a Contract or takes partial surrender, Midland may deduct a surrender charge to compensate it partially for the selling and distribution expenses of the Contracts, including

commissions and the costs of preparing sales literature and printing prospectuses. An Owner is permitted to withdraw 10% of net premiums (premium minus partial surrenders) once each contract year without incurring a surrender charge. The following chart shows the surrender charges that apply to the Contracts:

Length of time from premium payment (number of years)	Surrender charge (as a percentage of premium withdrawn)
1 .....	9
2 .....	8
3 .....	7
4 .....	6
5 .....	5
6 .....	4
7 .....	3
8 .....	2
9 .....	1
10+ .....	0

11. Under the Contracts, Midland will pay a death benefit under certain circumstances. Midland's death benefit equals the greatest of: (i) The Accumulation Value (less any non-vested premium bonus and premium taxes); or (ii) 100% of the total net premium payments. Future Contracts may provide different death benefits.

12. If an Owner elects the Premium Bonus Rider under the Contracts, then Midland will add a 6% bonus credit to the Owner's premium payments made during the first contract year. Once elected, the Premium Bonus Rider may not be terminated. The Owner will vest in a portion of this bonus over each of the first seven contract years. As requested in the application, Midland intends that if the Owner exercises the Free Look Right, then the Owner will not receive any portion of the bonus amount. In the event of death, annuitization, withdrawal (including any penalty fee withdrawals), or surrender of the Contract in the first seven contract years, the Owner or the Owner's beneficiary(ies) will only be entitled to that portion of the bonus that has vested, and is not retained by Midland, at the time the event occurs. In contract year 8 and thereafter, the Owner will be entitled to 100% of the bonus amount. The vesting schedule is as follows:

Contract year	Amount of bonus vested
1 .....	4/12
2 .....	5/12
3 .....	6/12
4 .....	7/12
5 .....	8/12
6 .....	9/12

Contract year	Amount of bonus vested
7 .....	10/12
8 .....	12/12

13. Midland will assess daily charge during the first nine contract years against the Owner's Accumulation Value in the Midland Account as a charge for the Premium Bonus Rider. The current charge for the Premium Bonus Rider is at an annual rate of 0.65% of the Midland Account Accumulation Value. Midland reserves the right to change the charge for the Premium Bonus Rider, but the guaranteed maximum level of this charge is 0.70% annually.

14. On the maturity date the Owner may take the surrender value in one lump sum or convert the surrender value into an annuity. The owner may elect or change an annuity payment option up until thirty days before the maturity date. The first annuity payment will be made within one month after the maturity date. The first annual payment will be made within one month after the maturity date. The Owner generally may change the maturity date, subject to limits specified in the prospectus.

15. The amount of each annuity payment under the annuity payment plans will depend on which type of plan is selected, and depending on the plan that is chosen, may depend on factors such as the payee's age, sex (if allowed), and length of the payment period between each annuity payment.

16. Midland may offer Owners dollar cost averaging programs, where Midland, on a monthly or quarterly basis, will automatically transfer a predetermined amount of money from any Investment Option or the Fixed Account into one or more of the Investment Divisions; a portfolio rebalancing program, where Midland will automatically rebalance, on a monthly, quarterly, semi-annual or annual basis, the amounts in an Owner's Investment Divisions according to his or her desired asset allocation; a fixed account earnings sweep program, where Midland will transfer, on a monthly or quarterly basis, Fixed Account interest earnings to one or more of the Investment Divisions; and a systematic withdrawal option, where an Owner, on a monthly quarterly semi-annual or annual basis, which basis the Owner shall select may receive regular payments from his or her Contract subject to certain limitations; or other programs.

17. Midland deducts various fees and charges from the Contracts or the

Midland Account, which currently include daily mortality and expense risk fee; an annual maintenance fee (which may be waived if the Owner's net premium exceeds a certain amount or if the Owner's Contract is a qualified plan under Federal tax law); premium taxes, surrender charges (contingent deferred sales loads); transfer fees (if applicable although no such fees are currently charged); and fees for optional benefits or riders.

#### Applicants' Legal Analysis

1. Applicants respectfully request that the Commission, pursuant to section 6(c) of the Act, grant the exemptions set forth below to permit the Applicants to recapture the bonus credit applied to premium payments under the Premium Bonus Rider of the Contracts (subject to a vesting schedule) (i) upon exercise of the Free Look Right, or (ii) in the event of death, annuitization, or surrender (full or partial) before the eighth contract year.

2. Section 6(c) authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the Act 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 contract and provisions of the Act. Applicants request exemptions for the Contracts described herein, and for Future Contracts, from sections 2(a)(32), 22(c) and 27(i)(2)(a) of the Act, and Rule 22c-1 thereunder, pursuant to section 6(c), to the extent necessary to recapture the bonus credit applied to a premium payment under the Premium Bonus Rider, as described above. Applicants seek exemptions therefrom in order to avoid any questions concerning the Contracts' compliance with the Act and rules thereunder.

3. For the reasons discussed below, Applicants assert that the recapture of some or all of the bonus credit under the Premium Bonus Rider in the circumstances described herein is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

4. Section 27(i) provides that section 27 does not apply to any registered separate account funding variable insurance contracts, nor to the sponsoring insurance company and principal underwriter of such account, except as provided for in section 27(i)(2)(A). Section 27(i)(2)(A) of the Act, in pertinent part, makes it unlawful

for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless such contract is a redeemable security.

5. Section 2(a)(32) of the Act defines "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

6. To the extent that the recapture of bonus credit under the Premium Bonus Rider might be seen as a discount from the net asset value, or might be viewed as resulting in the payment to an Owner of less than the proportionate share of the issuer's net assets, the bonus credit recapture would trigger the need for relief absent some exemption from the Act. Rule 6c-8 provides, in relevant part, that a registered separate account, and any depositor of such account, shall be exempt from sections 2(a)(32), 22(c), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c-1 thereunder to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account. However, the bonus credit recapture under the Premium Bonus Rider is not a sales load, but a recapture of a bonus credit Midland previously applied to an Owner's premium payments. Under the Premium Bonus Rider, Midland provides the bonus credit from its general account on a guaranteed basis. The Contracts are designed to be long-term investment vehicles. In undertaking this financial obligation, Midland contemplates that an Owner will retain a Contract over an extended period, consistent with the long-term nature of the Contracts. Midland designed its product so that it would recover its costs (including the bonus credit) over an anticipated duration while a Contract is in force. If an Owner withdraws his or her money from the Contract before this anticipated period, Midland must recapture the bonus credit under the Premium Bonus Rider in order to avoid a loss.

7. Applicants submit that the recapture of a bonus credit does not violate section 2(a)(32) of the Act. The Applicants submit that the bonus recapture under the Premium Bonus Rider of the Contracts does not deprive the Owner of his or her proportionate share of the issuer's current net assets. An Owner's right to the bonus credit under the Premium Bonus Rider will begin to vest in the first contract year, and will become fully vested after the seventh contract year. Until that time,

Midland retains the right and interest in the dollar amount of any unvested bonus credit amount. Thus, when Midland recaptures a bonus credit, it is only retrieving its own assets, and because an Owner's interest in the bonus credit is not vested, such Owner would not be deprived of a proportionate share of the Midland Account's assets (the issuer's current net assets) in violation of section 2(a)(32). Therefore, such recapture does not reduce the amount of the Midland Account's current net assets an Owner would otherwise be entitled to receive. However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the provisions of sections 2(a)(32) and 27(i)(2)(A) to the extent deemed necessary to permit them to recapture the bonus credit under the Premium Bonus Rider of the Contracts and Future Contracts.

8. Section 22(c) of the Act states that the Commission may make rules and regulations applicable to registered investment companies, and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same ends as contemplated by section 22(a). Rule 22c-1, promulgated under section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing a redeemable security (and a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, any such security) from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security.

9. As a result of the 6% bonus credit under the Premium Bonus Rider, an Owner who made a \$10,000 initial premium payment could be viewed as having an Accumulation Value of \$10,600 before any earnings accrued. Midland's addition of the bonus credit might arguably be viewed as resulting in an Owner purchasing a redeemable security for a price below the current net asset value. Further, by recapturing the bonus credit, Midland might arguably be redeeming a redeemable security for a price other than one based on the current net asset value of the Midland Account. The Applicants contend that these are not correct interpretations or applications of these statutory and regulatory provisions. The Applicants contend that the bonus credit under the Premium Bonus Rider of the Contracts does not violate section 22(c) and Rule 22c-1.

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

the Act, and that an order of the Commission including such class relief, should, therefore, be granted. Any entity that currently intends to rely on the requested exemptive order is named as an applicant. Any entity that relies upon the requested order in the future will comply with the terms and conditions contained in this Application.

6. Applicants represent that the requested exemptions are necessary and appropriate in the public interest and consistent with protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-31696 Filed 12-23-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48937; File No. SR-Amex-2003-109]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Correct a Numerical Error on a Previously Approved Proposed Rule Change

December 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 11, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Amex has designated this proposal as one concerned solely with the administration of the Amex pursuant to section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(3)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to change the rule number originally assigned to Amex Rule 359 (Mandatory Continuing Education for all Floor Members and Mandatory Continuing Education and Initial Test Requirements for Floor Clerks of Members and Member Firms) to Amex Rule 359A. The Amex proposes no substantive changes to the rule. The text of the proposed rule change is available at the Amex and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to replace the rule number originally assigned to Amex Rule 359 (Mandatory Continuing Education for all Floor Members and Mandatory Continuing Education and Initial Test Requirements for Floor Clerks of Members and Member Firms) in SR-Amex-2003-06,<sup>5</sup> and replace it with Amex Rule 359A. The same rule number was chosen inadvertently in a subsequent proposed rule change after SR-Amex-2003-06 was filed on January 31, 2003, and Amendment No. 1 was filed on May 20, 2003. The other proposed rule change bearing a similar rule number was approved ahead of SR-Amex-2003-06.

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of section 6(b)(1) of the Act<sup>7</sup> in particular in that it is designed to enforce compliance by its members and

persons associated with its members, with the rules of the Exchange.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and subparagraph (f)(3) of Rule 19b-4 thereunder,<sup>9</sup> because it is concerned solely with the administration of the Amex.<sup>10</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-Amex-2003-109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(3).

<sup>10</sup> The Commission notes that the Amex referenced section 19(b)(3)(A)(ii) of the Act as the rationale for the instant proposed rule change being effective upon filing with the Commission. 15 U.S.C. 78f(b)(3)(A)(ii). See SR-Amex-2003-109, page 6 of 7. The Amex's reference to this section of the Act is improper. The Commission assumes, however, that the error is a typographical error, and did not, in this instance, require the Amex to amend the proposed rule change to correct its mistake.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

<sup>5</sup> Securities Exchange Act Release No. 48258 (July 30, 2003), 68 FR 46674 (August 6, 2003).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(1).