Conectiv to finance its ongoing business needs through the Authorization Period. Any debt will bear interest at a rate designed to approximate Conectiv's cost of money and will mature in 30 years or less. Conectiv also requests authorization for CEH to participate in the Conectiv system money pool (''Money Pool''). The total debt and equity proposed to be issued by CEH, either directly to Conectiv or through the Money Pool, will not exceed $750 million, less the amount of any debt issued by a CEH subsidiary directly to Conectiv, as described below.

In addition, ACE–REIT, CAG and CDG request authority to issue equity or long- or short-term debt securities to CEH or Conectiv through the Authorization Period. Any debt issued will mature in 30 years or less and will bear interest at a rate designed to approximate the lender's cost of money. Also, Applicants request authority for CAG, CDG, and ACE–REIT to participate in the Money Pool. Applicants propose that the total amount of debt and equity securities issued, either directly to Conectiv or through the Money Pool, by CDG will not exceed $150 million and by ACE–REIT and CAG will not exceed $100 million each.

Like Kind Exchange

Applicants anticipate that facilities having approximately 127 MW of net generating capacity owned by Delmarva to be transferred to CDG, will be subject to an obligation to transfer these assets to a nonassociate in a like-kind exchange (''To Be Transferred Assets''). First, Conectiv Energy, Inc. (''CEI''), which owns certain generating assets currently under construction (''New Hay Road Facilities''), would be transferred to a third party intermediary. Then, the To Be Transferred Assets would be sold to the nonassociate in exchange for the acquisition by CDG of either: (a) the New Hay Road Facilities at a time when the investment in the New Hay Road Facilities equals or approximates the value of the To Be Transferred Assets; or (b) other suitable generation assets (either, ''To Be Acquired Assets''). If CDG is not an EWG at the time of the acquisition of the To Be Acquired Assets, Applicants request authority to acquire those assets as utility assets.

Western Resources, Inc. 70–9665

Western Resources, Inc. (''WRI''), 818 Kansas Avenue, Topeka, Kansas 66612, a Kansas utility company and a public utility holding company claiming an exemption under section 3(a) by rule 2 from all provisions of the Act, except section 9(a)(2), has filed an application under sections 9(a)(2) and 10 of the Act in connection with the acquisition of a utility subsidiary.

WRI conducts utility operations through its KPL division and its subsidiary, Kansas Gas and Electric Company (''KGE''), which together provided approximately 628,000 customers in 471 communities in the state of Kansas with electricity. In addition, WRI has a 45% economic interest in ONEOK, Inc., an Oklahoma corporation that distributes natural gas to more than 1.4 million customers with natural gas.[6] Through various other subsidiaries, WRI is engaged in owning interests in power plants and projects and providing monitored security alarm and home paging services. For the year ending December 31, 1999, WRI reported consolidated revenues of approximately $2.0 million and net income of $12.5 million and had $8.0 billion in consolidated assets at the end of that period.

One nonutility subsidiary company, Westar Generating II Inc. (''WG''), is engaged in constructing two General Electric combustion turbine generators (''CTs''). The CTs are expected to be rated for a capacity of approximately 74 MW of net dependable capacity at peak conditions and are expected to become commercially operational at a KGE generating facility on June 1, 2000. Once the construction is complete and operation begins, WG will qualify as a public utility under section 2(a)(3) of the Act. Accordingly, WRI has requested authority to acquire WG as a public utility company.

WRI's costs associated with the acquisition of WG will be equal to that of the equipment and construction costs incurred by WG, which is expected to be approximately $63 million. The CTs will be connected to KGE at its generating facility directly through a new buss to be tied to a grid located at the facility. Initially, WG intends to sell all capacity and energy generated by the CTs to WRI at a cost-based rate under a power purchase agreement between WRI and WG.

In addition, WRI intends to claim an exemption as an intrastate holding company under section 3(a) of the Act and rule 2 with regards to the ownership of WR as a public utility company.

[6] The economic interest is derived solely from approximately 9.9% of the voting stock and shares of nonvoting convertible preferred stock of ONEOK. The staff of the Commission issued a no-action letter in 1997 on the proposition that ONEOK is not a subsidiary of WRI and that WRI does not control ONEOK. (See *Western Resources, Inc.,* SEC No-Action Letter (Nov. 24, 1997).

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–11961 Filed 5–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–2443; File No. 812–11858]

Valley Forge Life Insurance Company, et al.

May 5, 2000.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'' or ''Act''(granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder, to permit the recapture of immediate interest payments applied to purchase payments made under certain deferred variable annuity contracts.

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the 1940 Act to the extent necessary to permit, under specified circumstances, the recapture of immediate interest payments applied to purchase payments made under deferred variable annuity contracts (the ''Contracts'') that Valley Forge Life Insurance Company (''Valley Forge'') will issue through Valley Forge Life Insurance Company Variable Annuity Separate Account (''VFL Separate Account''), as well as other contracts that Valley Forge may issue in the future through VFL Separate Account or any other future separate accounts of Valley Forge ''Future Accounts'') that are substantially similar in all material respects to the Contracts (the ''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Valley Forge, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts or Future Contracts offered through VFL Separate Account or any Future Accounts (''Valley Forge Broker-Dealers(s)'').

APPLICANTS: Valley Forge Life, VFL Separate Account, the Future Accounts and CNA Investor Services, Inc. (collectively, ''Applicants'').

FILING DATE: The application was filed on November 17, 1999 and amended on April 3, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on May 30, 2000, 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 who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Jonathan Kantor, Esq., Valley Forge Life Insurance Company, CNA Plaza, 43 South, Chicago, Illinois 60685.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Keith E. Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a free from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Valley Forge is a wholly-owned subsidiary of Continental Assurance Company. Continental Assurance Company is a wholly-owned subsidiary for Continental Casualty Company, which is wholly-owned by CNA Financial Corporation. Loews Corporation owns approximately 86% of the outstanding common stock of CNA Financial Corporation. VFL Separate Account was established on February 12, 1996 by resolutions of the Board of Directors of Valley Forge. Valley Forge serves as depositor of VFL Separate Account. Valley Forge may in the future establish one or more Future Accounts for which it will serve as depositor.

2. VFL Separate Account is a segregated asset account of Valley Forge. VFL Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. VFL Separate Account filed a Form N–8A Notification of Registration under the 1940 Act on February 20, 1996.

3. VFL Separate Account filed a Form N–4 Registration Statement on August 18, 1999 under the Securities Act of 1933 (''1993 Act'') relating to the Contracts. Valley Forge may in the future issue Future Contracts through VFL Separate Account or through Future Accounts. That portion of the assets of VFL Separate Account that is equal to the reserves and other Contract liabilities with respect to VFL Separate Account is not chargeable with liabilities arising out of any other business of Valley Forge. Any income, gains or losses, realized or unrealized, from assets allocated to VFL Separate Account is, in accordance with VFL Separate Account's Contracts, credited to or charged against VFL Separate Account, without regard to other income, gains or losses of Valley Forge.

4. CNA Investor Services, Inc. (''CNAISI'') is an affiliate of Valley Forge and will be the principal underwriter of VFL Separate Account and distributor of the Contracts funded through VFL Separate Account (the ''VFL Separate Account Contracts''). CNAISI is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of the NASD. The VFL Separate Account Contracts will be offered through unaffiliated broker-dealers who have entered into selling agreements with CNAISI. CNAISI, or any successor entity, may act as principal underwriter for any Future Accounts and distributor for any Future Contracts issued by Valley Forge.

5. The Contract is a part of Valley Forge's line of annuity products. The Contract is an individual deferred variable and fixed annuity contract. The Contract may be issued under a qualified plan, specially sponsored program or an individual retirement annuity or as a non-tax qualified contract. Purchase payments may be made at any time during the accumulation phase. The minimum initial purchase payment is $10,000 for non-tax qualified contracts and $2,000 for a qualified plan contract. Additional purchase payments of at least $1,000 can be made ($100 under the electronic fund transfer program). Unless Valley Forge agrees otherwise, the maximum total purchase payments it accepts is $1,000,000.

6. The Contracts permit purchase payments to be allocated to fixed accounts of Valley Forge (''Fixed Accounts''). The Fixed Accounts are not registered with the Commission.

7. VFL Separate Account currently is divided into 23 sub-accounts, each of which will be available under the VFL Separate Account Contracts. The sub-accounts are referred to as ''Investment Options''. Each Investment Option will invest in shares of a corresponding portfolio of certain underlying investment companies (''Funds''). The Investment Options and the Fixed Accounts will comprise the initial investment choices under the Contract. The Funds are open-end, management investment companies registered under the 1940 Act, whose shares are registered under the 1933 Act. Valley Forge, at a later date, may determine to create additional Investment Options of VFL Separate Account to invest additional underlying portfolios or other investments as may now or in the future be available. Similarly, Investment Option(s) of VFL Separate Account may be combined or eliminated from time to time.

8. The Contract provides for withdrawal options, annuity payment options, as well as transfer privileges among Investment Options, dollar cost averaging, automatic transfer option, death benefits and other features. The Contract has charges consisting of: (i) an annual asset-based product expense charge of 1.40% assessed against the net assets of each sub-account; (ii) a withdrawal charge as a percentage of purchase payments which starts at 7% in the first year, and declines to 0% after 8 years with a 10% free withdrawal amount permitted under certain circumstances; (iii) a $30 contract maintenance charge for Contracts with Contract value of less than $50,000 during the accumulation phase; and (iv) a transfer fee of $25 for each transfer in excess of 12 in a Contract year during the accumulation period. The Funds also incur management fees and operating expenses which vary depending upon with Funds are selected.

9. Each time Valley Forge receives a purchase payment from an owner during the first Contract year, Valley Forge will add an additional amount to the Contract (''Immediate Interest Payment''). The Immediate Interest Payment will equal 3% of the purchase payment. Valley Forge will fund the Immediate Interest Payment from its general account assets. Valley Forge will allocate the Immediate Interest Payment to the Fixed Accounts and/or Investment Options in the same proportion as the purchase payment. Valley Forge will recapture Immediate Interest Payments only under the following circumstance: if the Contract owner makes a withdrawal anytime

before the first day of the second Contract year, including if the Owner returns the Contract for a refund during the free look period (except for withdrawals pursuant to the systematic withdrawal program not subject to the withdrawal charge).

10. Applicants seek exemption pursuant to Section 6(c) of the 1940 Act from Sections (2)(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to the extent necessary to permit Valley Forge to recapture an amount equal to any Immediate Interest Payment in the event that a Contract owner makes a withdrawal of Contract value, including the exercise of the free-look right, before the first day of the second Contract year (except for withdrawals pursuant to the systematic withdrawal program not subject to the withdrawal charge). The dollar amount of Immediate Interest Payments will be deducted pro-rata from the amount withdrawn.[1] Any earnings that resulted from the Immediate Interest Payments will not be deducted. After the First Contract year, the Immediate Interest Payment will vest and can be withdrawn at any time. Valley Forge reserves the right to limit Immediate Interest Payments in the future.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder, if and to the extent that such 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. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions summarized above with respect to the Contracts and any Future Contracts funded by VFL Separate Account or Future Accounts, that are issued by Valley Force and underwritten or distributed by CNAISI or Valley Forge Broker-Dealers. Applicants undertake that Future Contracts funded by VFL Separate Account or any Future Accounts will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are 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 represent that it is not administratively feasible to track the Immediate Interest Payment amounts in VFL Separate Account after the Immediate Interest Payment is applied. Accordingly, the asset-based charges applicable to VFL Separate Account will be assessed against the entire amounts held in VFL Separate Account, including the Immediate Interest Payment amount, during the first Contract year. As a result, during such period, the aggregate asset-based charges assessed against a Contract owner's Contract value will be higher than those that would be charged if the Contract owner's Contract value did not include the Immediate Interest Payment.

3. Subsection (i) of Section 27 of the 1940 Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) of the 1940 defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Immediate Interest Payment recapture provisions of the Contract would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. Applicants state that a Contract owner's interest in the amount of the Immediate Interest Payment allocated to his or her Contract value upon receipt of purchase payments in the first Contract year are not vested until the first day of the second Contract year. Until or unless the amount of any Immediate Interest Payment is vested, Applicants submit that Valley Forge retains the right and interest in the Immediate Interest Payment amount, although not in the earnings attributable to that moment. Applicants argue that when Valley Forge recaptures any Immediate Interest Payment it is simply retrieving its own assets, and because a Contract owner's interest in the Immediate Interest Payment is not vested, the Contract owner has not been deprived of a proportionate share of VFL Separate Account assets, *i.e.,* a share of VFL Separate Account's assets proportionate to the Contract owner's Contract value (including the Immediate Interest Payment).

5. In addition, with respect to Immediate Interest Payment recapture upon the exercise of the free-look privilege, Applicants state that it would be patently unfair to allow a Contract owner exercising that privilege to retain the Immediate Interest Payment amount under a Contract that has been returned for a refund after a period of only a few days. Applicants state that if Valley Forge could not recapture the Immediate Interest Payment, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

6. Furthermore, Applicants state that the recapture of the Immediate Interest Payment, in the event of a withdrawal before the first day of the second Contract year, is designed to protect Valley Forge against Contract owners making large purchase payments in the first Contract year without affording it sufficient time to recover the cost of the Immediate Interest Payment, to its financial detriment. Again, the amounts recaptured equal the Immediate Interest Payment provided by Valley Forge from its own general account assets and any gain would remain as part of the Contract owner's Contract value.

7. Applicants represent that the Immediate Interest Payment will be attractive to and in the interest of investors because it will permit Contract owners to put 103% of their purchase payments to work for them in the selected Investment Options and Fixed Accounts. Also, any earnings attributable to the Immediate Interest Payment will be retained by the Contract owner, and the principal

[1] When an owner requests a withdrawal any time during the first contract year, Valley Forge will deduct the amount of the Immediate Interest Payment in proportion to the amount of the purchase payment withdrawn.

Example:

Purchase Payment: $100,000

Immediate Interest Payment: $3,000

Subsequent 1st Year Withdrawal: $10,000

Immediate Interest Payment Recaptured: $300

The withdrawal charge is assessed on the amount of the purchase payment withdrawn ($10,000). The resulting withdrawal charge is 7% of $10,000 which reduces the amount available to $9,300. VFL would then deduct the proportionate amount of the Immediate Interest Payment to be recaptured ($300) from the amount to be disbursed to the owner.

amount of the Immediate Interest Payment will be retained if a Contract owner does not make a withdrawal of Contract value (including the exercise of the free-look right) before the first day of the second Contract year.

8. Applicants state that Valley Forge's right to recapture Immediate Interest Payments applied to purchase payments in the event of a withdrawal before the first day of the second Contract year, is designed to protect Valley Forge against Contract owners making large purchase payments in the first Contract year without affording it sufficient time to cover the cost of the Immediate Interest Payment, to its financial detriment. With respect to funds paid upon the return of Contracts within the free-look period, the amount payable by Valley Forge must be reduced by the allocated Immediate Interest Payment. Otherwise, Applicants state that purchasers could apply for Contracts for the sole purpose of exercising the free-look provision and making a quick profit.

9. Applicants submit that the provisions for recapture of any applicable Immediate Interest Payment under the Contracts or any Future Contract as set forth in this Application will not violate Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Immediate Interest Payment under the circumstances described herein with respect to the Contracts and any Future Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

10. Section 22(c) of the 1940 Act authorizes the Commission to 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 purposes as contemplated by Section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

11. Arguably, Valley Forge's recapture of the Immediate Interest Payment might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of VFL Separate Account. Applicants contend, however, that the recapture of the Immediate Interest Payment is not violative of Section 22(c) and Rule 22c–1. Applicants argue that the recapture does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, as far as reasonably practicable, namely: (1) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. To effect a recapture of an Immediate Interest Payment, Valley Forge will redeem interests in a Contract owner's Contract value at a price determined on the basis of current net asset value of VFL Separate Account. The amount recaptured will equal the amount of the Immediate Interest Payment that Valley Forge paid out of its general account assets. Although Contract owners will be entitled to retain any investment gain attributable to the Immediate Interest Payment, the amount of such gain will be determined on the basis of the current net asset value of VFL Separate Account. Thus, no dilution will occur upon the recapture of the Immediate Interest Payment. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Immediate Interest Payment. However, to avoid any uncertainty as to full compliance with the Act, 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 Immediate Interest Payment under the Contracts and Future Contracts.

Conclusion

Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in the Application described herein. Applicants submit that having Applicants file additional applications would impair Applicants' ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in the application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are 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, therefore, the Commission should grant the requested order.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–11960 Filed 5–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42759; File No. SR–PCX–99–39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3, 4, 5, 6 and 7 to the Proposed Rule Change by the Pacific Exchange, Inc. Creating PCX Equities, Inc.

May 5, 2000.

I. Introduction

On October 7, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to create PCX Equities, Inc. (''PCX Equities''). The proposed rule change was published for comment in the **Federal Register** on December 6, 1999. [3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42178 (Nov. 24, 1999), 64 FR 68136.