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)(b0(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.

[FR Doc. 95–30356 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

[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:

According to the Company, its Board of Directors unanimously approved resolutions on October 24, 1995 to withdraw the Security from listing on the Amex and instead, to list the Security on the National Association of Securities Dealers Automated Quotations National Market System (''Nasdaq/MMS).

The decision of the Board followed a thorough study of the matter and was based upon the belief that listing the Security on the Nasdaq/NMS will be more beneficial to the Company's stockholders than the present listing on the Amex for the following reasons.

(1) According to the Company, its Board of Directors determined that a listing on Nasdaq/NMS would provide greater coverage for the Security; and

(2) According to the Company, its Board of Directors determined that a listing on the Nasdaq/NMS would provide improved liquidity to the Company's shareholders.

Any interested person may, on or before December 29, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30302 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21573; 811–7476]

The 231 Funds; Notice of Application

December 6, 1995.

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

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The 231 Funds.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 7, 1995.

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 by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 1996, and should be accompanied by proof of service on applicant, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 125 West 55th Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, management investment company organized as a Massachusetts business trust. On February 10, 1993, applicant registered under the Act as an investment company, and filed a registration statement under the Securities Act of 1933 registering an indefinite number of shares. The registration statement was declared effective on August 20, 1993. Applicant issued shares in two portfolios, the Prime Fund (''231 Prime Fund'') and the Treasury Fund (''231 Treasury Fund''), each of which issued two classes of shares (Institutional Shares and Service Shares). Institutional Shares were first issued on September 1, 1993 for both portfolios and Service Shares were first issued on March 1, 1994 for the 231 Prime Fund and April 5, 1994 for the 231 Treasury Fund.

2. At a meeting held on June 13, 1995, applicant's Board of Trustees approved on Agreement and Plan of Reorganization (the ''Reorganization Agreement'') between applicant and Pacific Horizon Funds, Inc. (''Pacific Horizon'') whereby Pacific Horizon's Prime Fund (''PH Prime Fund'') and Treasury Fund (''PH Treasury Fund'') would acquire all of the assets and liabilities of 231 Prime Fund and 231 Treasury Fund, respectively, in exchange for Horizon Shares and Horizon Service Shares of PH Prime Fund and PH Treasury Fund. Applicant's Board of Trustees determined that the interests of applicant's shareholders would best be served by approving the Reorganization Agreement. In reaching this determination, the Board of Trustees considered the anticipated loss of applicant's assets as a result of the sale of the institutional trust business of Bank of America Illinois, applicant's investment adviser (''Adviser''). The Board of Trustees concluded that, among other advantages, the reorganization would be likely to provide shareholders with an interest in a larger and more diversified portfolio while reducing the total expense ratio that would exist absent voluntary reimbursements.

3. Proxy materials were filed with the SEC and were distributed to applicant's shareholders on or about July 21, 1995. At a special meeting held on August 24, 1995, shareholders of the 231 Prime Fund and the 231 Treasury Fund approved the reorganization.

4. On August 25, 1995, the assets and liabilities of the 231 Prime Fund and 231 Treasury Fund were transferred to and assumed by PH Prime Fund and PH Treasury Fund in exchange for full and fractional Horizon Shares and Horizon Service Shares of the PH Prime Fund and PH Treasury Fund. The shares exchanged were equal in number and value to the number of full and fractional Institutional Shares and Service Shares of the 231 Prime Fund and 231 Treasury Fund. Following the transfer, applicant distributed the Horizon Shares and Horizon Service Shares to the holders of Institutional Shares and Service Shares of applicant in liquidation of the 231 Prime Fund and 231 Treasury Fund. Applicant did not incur any brokerage commission in connection with disposition of its portfolio securities and other assets.

5. Aggregate expenses of $50,000 were incurred by applicant in connection with the reorganization. Applicant, Concord Financial Services, Inc. (Pacific Horizon's transfer agent), and the Adviser shall each pay one-third of these expenses. Pacific Horizon, Concord, and the Adviser shall each pay one-third of the expenses incurred by Pacific Horizon in connection with the reorganization.

6. At the time of the filing of the application, applicant had no assets or liabilities, was not a party to any litigation or administrative proceeding, and had no shareholders. Applicant is