

2. Applicants request an exemption from section 12(d)(1) because the Public Funds in the aggregate will own 100% of the stock of the Foreign Securities Fund, thus any one Public Fund's investment in the Foreign Securities Fund may represent more than 5% of the Public Fund's total assets. Applicants believe that the requested exemption will not implicate any of the abuses that section 12(d)(1) was intended to prevent. For example, the concern that the Public Funds might exercise undue influence over the management of the Foreign Securities Fund is not present because all of the Funds are advised by the Advisers. Moreover, because the Advisers will be paid no advisory fee by the Foreign Securities Fund and because the Advisers are under common control, there will be no incentive for any Public Fund to assert undue control over the Foreign Securities Fund. Furthermore, the concern that large redemptions could disrupt the orderly management of the Foreign Securities Fund will not be a problem because the Advisers will be in a position to anticipate redemption needs, and the costs associated with large redemptions of Foreign Securities Fund shares would be mitigated by the ability of the Fund to redeem its shares in kind. In addition, the Foreign Securities Fund will not cause investors in the Public Funds to incur two layers of costs. The Foreign Securities Fund will pay no advisory fee, and its shares will not be subject to any sales load or rule 12b-1 fee.

3. Applicants also request an exemption from section 17(a) of the Act, which prohibits certain purchases and sales of securities between investment companies and their affiliated persons, as defined in section 2(a)(3) of the Act. VKACAM is an affiliated person of each of the Public Funds it advises, and Advisory Corp. is an affiliated person of the Foreign Securities Fund and of each Public Fund it advises. In addition, each of Advisory Corp. and VKACAM is an affiliated person of the other by reason of being under common control. To the extent that the Funds may be deemed to be under common control, each Fund would be an affiliated person of each other Fund. Accordingly, purchases or sales of securities between the Foreign Securities Fund and a Public Fund may violate section 17(a).

4. Sections 6(c) and 17(b) of the Act set forth the standards for exempting a series of transactions from section 17(a). Under section 17(b), the terms of any such transaction must be reasonable and fair and must not involve overreaching on the part of any person, the transaction must be consistent with the

policy of each investment company concerned, and the transaction must be consistent with the general purposes of the Act. In addition, under section 6(c), the exemption must be necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

5. Applicants believe that the proposed transactions meet the standards for relief under sections 6(c) and 17(b). Applicants contend that the terms of the transactions between the Foreign Securities Fund and the Public Funds are reasonable and fair and do not involve overreaching. The consideration paid and received for the purchase and redemption of Foreign Securities Fund shares will be based on the net asset value of the Foreign Securities Fund. The Foreign Securities Fund will not pay an advisory fee, and there will be no sales load or other charge associated with distribution of its shares. Applicants believe that the transactions are consistent with the policies of the Public Funds and the Foreign Securities Fund. The Public Funds' investments in the Foreign Securities Fund, and the Foreign Securities Fund's issuance of shares, will be in accordance with each Fund's investment restrictions and policies. Applicants also believe that the transactions are consistent with the general purposes of the Act. Section 17(a) was intended to prohibit affiliated persons from furthering their own interests by, for example, selling property to an investment company at less than fair value. Applicants believe that their proposal does not present those concerns.

#### Applicants' Conditions

Applicants agree that the following conditions will govern transactions under the requested order:

1. The Public Funds and the Foreign Securities Fund will be part of the same "group of investment companies," as defined in rule 11a-3 under the Act.

2. The Foreign Securities Fund shall not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. A majority of the trustees of the Public Funds will not be "interested persons" (as defined in section 2(a)(19) of the Act).

4. Advisory Corp. will not charge any advisory fee for managing the Foreign Securities Fund.

5. Any sales charges or service fees charged with respect to securities of the Public Funds, when aggregated with any

sales charges or service fees paid by the Public Funds with respect to securities of the Foreign Securities Fund, shall not exceed the limits set forth in Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. Applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets for each Public Fund's portfolio and the Foreign Securities Fund's portfolio; monthly purchases and redemptions (other than by exchange) for each Public Fund's portfolio and the Foreign Securities Fund's portfolio; annual expense ratios for each Public Fund's portfolio and the Foreign Securities Fund's portfolio; and a description of any vote taken by the shareholders of the Foreign Securities Fund, including a statement of the percentage of votes cast for and against the proposal by the Public Funds and by the other shareholders of the Foreign Securities Fund, if any. Such information will be provided as soon as reasonably practicable following each fiscal year-end of each of the Public Funds (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-13456 Filed 5-29-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21975; File No. 812-9696]

#### Washington National Insurance Company, et al.

May 22, 1996.

**AGENCY:** Securities and Exchange Commission ("Commission" or "SEC").

**ACTION:** Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** Washington National Insurance Company ("Washington National") and Separate Account I of Washington National Insurance Company (the "Separate Account").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2).

**SUMMARY OF APPLICATION:** Applicants seek an order exempting Washington National and the Separate Account, which will be reorganized from a managed separate account to a separate

account organized as a unit investment trust (the "Continuing Separate Account"), from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, to the extent necessary to permit Washington National to deduct a mortality risk charge from the Continuing Separate Account.

**FILING DATE:** The application was filed July 27, 1995, and amended on November 15, 1995, February 8, 1996, and April 26, 1996.

**HEARING OF 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 Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 17, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester'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, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Craig R. Edwards, Esq., Washington National Insurance Company, 300 Tower Parkway, Lincolnshire, Illinois 60069-3665.

**FOR FURTHER INFORMATION CONTACT:** Mark C. Amorosi, Attorney, or Wendy Finck Friedlander, Deputy Chief, at (202) 942-0670, Office of Insurance Products (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

#### Applicants' Representations

1. Washington National, the sponsor and depositor of the Separate Account, is a stock life insurance company organized under the laws of Illinois. Washington National is a wholly-owned subsidiary of Washington National Corporation, a holding company incorporated in Delaware in 1968 that acquired Washington National in 1968.

2. The Separate Account was established by Washington National as a separate investment account to fund Washington National's tax-qualified and non-tax-qualified retirement benefits offered through group and individual variable annuity contracts (the "Contracts"). The Separate Account meets the definition of a "separate

account" under the 1940 Act and is registered under the 1940 Act as an open-end management investment company. The Separate Account is divided into three sub-accounts (the "Sub-Accounts"), the Bond Sub-Account, the Short-Term Portfolio Sub-Account and the Stock Sub-Account. Washington National is the investment adviser for the Separate Account. Washington National has contracted with NBD Bank, an Illinois banking corporation, to act as sub-adviser for and to manage the investments of the Stock Sub-Account.

3. Applicants state that the Contracts are designed to provide retirement benefits under a variety of retirement programs. Although payments under outstanding Contracts continue to be received, Washington National no longer offers the Contracts for sale. Purchase payments under a Contract may be allocated to the fixed account or the variable account. The Contract also provides for, among other things: (a) a variety of annuity payout options beginning on the annuity commencement date; (b) surrender of the Contract prior to its maturity date for a cash payment representing all or part of the Contract's value; and (c) a death benefit payable if the annuitant dies before the maturity date.

4. Washington National Equity Company ("WNEC"), formerly a registered broker-dealer which was a wholly-owned subsidiary of Washington National, served as the underwriter for the Separate Account. Applicants state that WNEC is no longer in existence.

5. Various fees and charges are deducted under the Contracts. A daily mortality risk charge (the "annuity rate guarantee charge") equal to an effective annual rate of 0.80% of the average net assets of the Separate Account is deducted to compensate Washington National for bearing certain mortality risks under the Contracts. The mortality risk arises from Washington National's obligation to make annuity payments regardless of the mortality experience of persons receiving such payments. Washington National states that the mortality risk charge may not be increased under the Contract. If the deductions are insufficient to cover the actual cost of the mortality risk, Washington National will bear the loss. Conversely, if the deductions prove more than sufficient, the excess will be a profit to Washington National.

6. Applicants state that currently an investment management charge is made daily from the Separate Account to Washington National which is equal on an annual basis to 0.50% of the average net assets of the Separate Account.

Washington National pays NBD Bank, the sub-adviser for the Stock Sub-Account, a fee of 0.40% of the average net assets of the Stock Sub-Account.

7. A daily asset-based financial accounting service charge equal to an effective annual rate of 0.35% of the average net assets of the Separate Account is deducted to reimburse Washington National for providing financial accounting services to the Separate Account, including preparation and maintenance of all accounting, bookkeeping, financial and other statements for the conduct of the business and operations of the Separate Account. Applicants state that this charge is guaranteed not to increase and is designed to cover the actual expenses incurred in providing these services. Washington National does not expect or intend to profit from the charge which will be deducted in reliance on Rule 26a-1.

8. An annual contract maintenance charge of \$30 is deducted from the Contract value on each Contract anniversary or on the date of full withdrawal or election of a settlement option if that date is not the Contract anniversary. The charge is deducted on a pro rata basis from the Contract value of each Sub-Account and the fixed account. The charge is not guaranteed, may be changed in the future and may be deducted more frequently than annually. Applicants represent that this charge will be deducted in reliance on Rule 26a-1 and is not greater than the cost of the bookkeeping and other administrative services to be provided for one year.

9. The Separate Account currently pays all taxes, interest, brokerage fees and commissions, fees and expenses of legal counsel and independent auditors, custodian fees and expenses, expenses associated with meetings of the Contract owners, expenses incurred in the preparation, printing and distribution of reports and prospectuses by the Separate Account to its current owners, fees of and expenses incurred by directors of the Separate Account who are not Washington National's directors, officers or employees, fees and expenses associated with the approval, qualification or registration of the Contracts, extraordinary expenses if permitted by applicable laws and regulations, and all other fees and expenses incurred by or on behalf of the Separate Account which are not borne by Washington National (collectively, "Separate Account Expenses"). During 1995, charges for the Separate Account Expenses were made against the assets of each Sub-Account of the Separate Account at an annual rate of 0.20%.

10. Although Washington National currently pays premium taxes, Washington National reserves the right to deduct premium taxes from purchase payments or to charge them against the Contracts to which they are attributable in the future. Premium taxes currently range up to 3.5%.

11. No sales charge is deducted from purchase payments. However, certain full or partial surrenders are subject to a contingent deferred sales charge ("Withdrawal Charge"). The Withdrawal Charge covers expenses relating to the sale of the Contracts. If the proceeds received from the Withdrawal Charge are not sufficient to pay such expenses, then Washington National will pay the excess out of its general assets, which may include proceeds derived from the annuity rate guarantee charge.

The Withdrawal Charge is made at the rate of 6% of the amount withdrawn and is deducted from the amount withdrawn. In calculating the Withdrawal Charge, any amount which the Contract owner withdraws will be treated as a withdrawal of purchase payments until the Contract owner has withdrawn the total amount of all purchase payments received within 72 months of the date of withdrawal. The Withdrawal Charge applies to purchase payments on a first-in, first-out basis. The total Withdrawal Charge will never exceed 6% of the total purchase payments.

Washington National will not deduct the Withdrawal Charge: (a) on the first 10% of the Contract value withdrawn from a Contract during any Contract year (determined as of the date of the first withdrawal during the year); (b) on purchase payments received more than 72 months prior to the date of withdrawal; (c) if the amount withdrawn is applied to (i) a settlement option after the Contract has been in effect for five or more years, or (ii) settlement options 2, 5 or 6 (as defined in the Contract) at any time; and (d) if the annuitant dies.

12. Pursuant to an Asset Transfer Agreement and Plan of Reorganization (the "Reorganization Agreement") and subject to approval by persons entitled to vote in respect of the Separate Account ("Separate Account Voters"), the Separate Account will be restructured as a unit investment trust (the "Reorganization"). Applicants state that the unit investment trust will be divided into three sub-accounts, each of which will invest exclusively in shares of a corresponding series of the Scudder Variable Life Investment Fund (the "Fund") whose investment objective is substantially the same as the current

investment objective of the relevant Sub-Account of the Separate Account. In connection with the Reorganization, the assets of each Sub-Account of the Separate Account will be transferred to the corresponding portfolio of the Fund in exchange for shares of the portfolio of equal value. Applicants state that the Reorganization is intended to counteract the trend of net redemptions in the Separate Account which limits investment flexibility and threatens the ability of the Separate Account to best achieve its investment objectives. Applicants also state that the Reorganization will benefit Contract owners by providing economies of scale and simplifying record keeping.

13. The Fund was organized as a Massachusetts business trust on March 15, 1985, for the purpose of serving as the funding vehicle for variable annuity contracts and variable life insurance policies to be offered by the separate accounts of certain life insurance companies. The Fund has six separate investment portfolios: the Bond Portfolio, the Money Market Portfolio; the Capital Growth Portfolio; the Growth and Income Portfolio; the Balanced Portfolio; and the International Portfolio. Only the Bond Portfolio, the Money Market Portfolio and the Capital Growth Portfolio of the Fund will be involved in the Reorganization. Scudder Investor Services, Inc. serves as the underwriter for the Fund.

14. The Fund has adopted a plan for financing distribution expenses pursuant to Rule 12b-1 under the 1940 Act for a newly authorized class of shares ("Class B" shares). Applicants state that the Continuing Separate Account will, at the time of the Reorganization and thereafter, invest only in a class of the Fund's shares for which such a Rule 12b-1 plan has not been adopted ("Class A" shares).

15. Pursuant to an investment advisory agreement with the Fund, and subject to the supervision and approval of the Fund's Board of Trustees, Scudder, Stevens & Clark, Inc. (the "Adviser") renders investment advisory services to the Fund's portfolios. Under the investment advisory agreement, the Adviser charges the Fund an investment management fee with respect to the Bond Portfolio at the annual rate of 0.475% of its average net assets, with respect to the Money Market Portfolio at the annual rate of 0.370% of its average net assets, and with respect to the Capital Growth Portfolio at the annual rate of 0.475% of its average net assets. In addition, the Fund bears certain expenses for clerical, accounting and certain other services provided to the

Fund. In 1995, these other expenses were deducted at an annual rate of 0.085%, 0.130% and 0.095% of the average net assets of the Bond Portfolio, the Money Market Portfolio and the Capital Growth Portfolio, respectively.

16. Applicants state that Washington National will assume all costs to be incurred by the Separate Account in effecting the Reorganization. In exchange for the assets of each of the Sub-Accounts of the Separate Account, shares of the corresponding portfolio of the Fund will be issued. Shares of the Capital Growth Portfolio will be issued in return for the assets of the Stock Sub-Account, shares of the Bond Portfolio will be issued for the assets of the Bond Sub-Account, and shares of the Money Market Portfolio will be issued for the assets of the Short-Term Portfolio Sub-Account.

17. The number of shares of each portfolio to be issued in connection with the Reorganization to the respective corresponding sub-account of the Continuing Separate Account will be determined by dividing the value of the net assets to be transferred from the particular Sub-Account of the Separate Account as of the business day immediately preceding the effective date of the Reorganization by the net asset value per share of the corresponding portfolio of the Fund.

18. Applicants state that, after the Reorganization, the investment management fee and the charge for Separate Account Expenses will not be deducted from the Continuing Separate Account. Applicants state, however, that the portfolios of the Fund in which the sub-accounts of the Continuing Separate Account will invest after the Reorganization will deduct an investment management fee and a charge for operating expenses of each portfolio of the Fund.

19. Applicants state that the Reorganization will not have any adverse economic impact on the Contract owners' interests under the Contracts. Applicants state that the overall level of fees and charges borne, directly or indirectly, by Contract owners will not be materially greater (and generally should be lower) immediately after the Reorganization than immediately before it. The investment management fee for each of the three available portfolios of the Fund is lower than the current rate charged to any of the Sub-Accounts of the Separate Account. Applicants state that in 1995 the sum of the investment management fee and the other operating expenses deducted from each of the three portfolios of the Fund (0.56% for the Bond Portfolio, 0.50% for the Money

Market Portfolio and 0.57% for the Capital Growth Portfolio) is less than the 0.70% sum of the investment management fee and the deduction for other expenses currently imposed against the assets of the three corresponding Sub-Accounts of the Separate Account.

20. The application states that a Special Meeting of Separate Account Voters was held on March 12, 1996. The proposed transactions were approved at the Special Meeting by the vote of a majority of the outstanding voting securities with respect to each Sub-Account of the Separate Account. Applicants state that on September 22, 1995, a registration statement was filed on Form N-14 in connection with the Reorganization.

#### Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent 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. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Applicants request exemptions from Sections 26(a)(2)(C) and 27(a)(2) of the 1940 Act to the extent necessary to permit the deduction of the 0.80% mortality risk charge from the assets of the Continuing Separate Account. Applicants represent that the annuity rate guarantee charge under the Contracts is within the range of industry practice for comparable annuity contracts issued by other insurance companies. This representation is based upon Washington National's analysis of publicly available information about such other contracts, taking into consideration the particular annuity features of the comparable contracts, including such factors as current charge levels, charge level or annuity rate guarantees, the manner in which the charges are imposed and the markets in which the contracts have been offered. Applicants state that Washington

National will maintain a memorandum, available to the Commission upon request, setting forth in detail the products analyzed in the course of, and the methodology and results of, its review.

3. Applicants state that amounts derived from the annuity rate guarantee charge that exceed the expenses that the deductions were designed to cover will be offset by aggregate expenses of Washington National, which will include any distribution expenses not reimbursed by the contingent deferred sales charge. In such circumstances, a portion of the annuity rate guarantee charge could be viewed as providing for a portion of the costs relating to distribution of the Contracts.

4. Applicants state that there is currently no distribution financing arrangement for the Contracts because no new Contracts are being distributed. Nevertheless, Applicants represent that there is a reasonable likelihood that the distribution financing arrangement for the Continuing Separate Account (to the extent that such an arrangement may be deemed to exist) will benefit the Continuing Separate Account and the Contract owners. Applicants state that Washington National will maintain a memorandum, available to the Commission upon request, setting forth in detail the basis for this conclusion.

5. Washington National represents that the assets of the Continuing Separate Account will be invested only in a management investment company which undertakes, in the event it should adopt a plan for financing distribution expenses pursuant to Rule 12b-1 under the 1940 Act, to have such plan formulated and approved by a board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

#### Conclusion

For the reasons set forth above, Applicants represent 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 1940 Act.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-13457 Filed 5-29-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37238, File No. SR-NYSE-96-06]

#### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Continued Listing Standards for Specialized Securities

May 22, 1996.

On March 18, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to establish continued listing criteria for certain specialized securities.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37056 (Apr. 1, 1996), 61 FR 15547 (Apr. 8, 1996). No comments were received on the proposal.

Currently, the NYSE has listing standards for certain specialized securities: stock warrants, foreign currency warrants and currency index warrants, stock index warrants, contingent value rights ("CVRs")<sup>3</sup> other securities, and equity-linked debt securities ("ELDS").<sup>4</sup> The uniform listing standards for specialized securities require one million shares outstanding, 400 holders, \$4 million aggregate market value and a minimum life of one year.<sup>5</sup>

With this rule proposal, the Exchange proposes to establish uniform continued listing criteria for these specialized securities in paragraphs 801 and 802 of the Exchange's Listed Company Manual ("Manual") to correspond to the initial listing standards. The NYSE would consider delisting these specialized securities when the number of publicly-held shares is less than 100,000, the

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

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

<sup>3</sup> CVRs are unsecured obligations of an issuer that provide for a possible cash payment upon maturity depending upon the price performance of an affiliate's equity security.

<sup>4</sup> ELDS are intermediate-term (two to seven years), non-convertible, hybrid securities, the value of which is based, at least in part, on the value of another issuer's common stock or other equity security. ELDS may pay periodic interest or may be issued as zero-coupon instruments with no payments to holders prior to maturity. Moreover, ELDS may be subject to a "cap" on the maximum principal amount to be repaid to holders upon maturity and, additionally, may feature a "floor" on the minimum principal amount to be repaid to holders upon maturity.

<sup>5</sup> There are additional standards for several of these securities. For example, ELDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security.