

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 16, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-4380 Filed 2-24-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Cablevision Systems Corporation, Class A Common Stock, Par Value \$.01 per Share) File No. 1-14764

February 16, 2000.

Cablevision Systems 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")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw the security specified above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex").

The Security has been listed for trading on the Amex and became listed as well on the New York Stock Exchange, Inc. ("NYSE"), pursuant to a Registration Statement on Form 8-A filed with the Commission which became effective on December 3, 1999. Trading in the Security on the NYSE commenced, and was simultaneously suspended on the Amex, at the opening of business on December 7, 1999.

The Company has complied with Amex Rule 18 by filing with the Amex a certified copy of the preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing and registration on the Amex and by setting forth in detail to the Amex the reasons for such proposed withdrawal and the facts in support thereof. The Amex has in turn informed the

Company that it has no objection to the proposed withdrawal of the Company's Security from listing and registration on the Amex.

In making the decision to withdraw the Security from listing on the Amex in conjunction with its new listing on the NYSE, the Company hopes the NYSE listing will provide better marketplace visibility for its Security than did the Amex.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listing and registration on the NYSE. By reason of Section 12(b) of the Act<sup>3</sup> and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission under Section 13 of the Act.<sup>4</sup>

Any interested person may, on or before March 9, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the exchange 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.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-4418 Filed 2-24-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24291; File No. 812-11840]

### Mutual of America Life Insurance Company, et al.

February 17, 2000.

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

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

**APPLICANTS:** Mutual of America Life Insurance Company ("Mutual of America"), Mutual of America Separate Account No. 2 (the "Mutual Annuity Account"), Mutual of America Separate Account No. 3 (the "Mutual VUL Account"), The American Life Insurance Company of New York ("American Life"), The American Separate Account No. 2 (the "American Annuity Account"), and The American Separate Account No. 3 (the "American VUL Account").

**RELEVANT SECTIONS OF THE ACT:** Order requested pursuant to Section 17(b) granting an exemption from Section 17(a) and pursuant to Section 11(a) approving the terms of certain offers of exchange.

**SUMMARY OF APPLICATION:** Applicants seek an order that would (1) permit the transfer of assets from the American Annuity Account and American VUL Account (the "American Accounts") to the Mutual Annuity Account and Mutual VUL Account (the "Mutual Accounts") in connection with the assumption reinsurance by Mutual of America from American Life of the Contracts and Policies to which those assets relate, and (2) approve the terms of the offers of exchange of interests in the American Accounts for interests in the Mutual Accounts to the extent the exemption under Rule 11a-2 is not available for those offers.

**FILING DATE:** The application was filed on November 4, 1999, and amended and restated on February 16, 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 by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be in writing and should be received by the SEC by 5:30 p.m. on March 10, 2000. Any request must 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 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 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants, c/o Deborah S. Becker, Esquire, Mutual of America Life Insurance Company, 320 Park Avenue, New York, New York 10022.

**FOR FURTHER INFORMATION CONTACT:** Ann L. Vlcek, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance

<sup>1</sup> 15 U.S.C. 78j(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 78l(b).

<sup>4</sup> 15 U.S.C. 78m.

<sup>5</sup> 17 CFR 200.30-3(a)(1).

Products, Division of Investment Management, at (202) 942-0670.

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

#### Applicants' Representations

1. Mutual of America is a mutual life insurance company organized under the laws of the State of New York in 1945. Mutual of America is authorized to sell individual and group life insurance policies and variable annuity contracts in 50 states and the District of Columbia. It has been granted variable universal life authority in 47 states and the District of Columbia and has applied for authority in the remaining 3 states.

2. The Mutual Annuity Account is a separate account of Mutual of America established for the purpose of providing an investment medium for variable contracts, including individual annuities. It is registered under the Act as a unit investment trust (File No. 811-4679), and three registration statements on Form N-4 filed pursuant to the Securities Act of 1933 ("1933 Act") are in effect for sales of interests under group and individual variable accumulation annuity contracts (File Nos. 2-90201, 33-5609 and 33-11023). One registration statement covers several forms of contracts, including Individual Retirement Annuity ("IRA") contracts and Flexible Premium Deferred Annuity ("FPA") contracts. The IRA and FPA contracts issued by Mutual of America are herein called the "Mutual Contracts."

3. The Mutual VUL Account is a separate account of Mutual of America established for the purpose of providing an investment medium for variable contracts, including individual life policies. The Mutual VUL Account is registered under the Act as a unit investment trust (File No. 811-9487), and a registration statement on Form S-6 filed pursuant to the 1933 Act is in effect for sales of interest under individual variable universal life insurance policies (herein called the "Mutual Policies") (File No. 333-83413). Mutual of America began offering the Mutual Policy on February 1, 2000 in states that have approved the Mutual Policy form, and the Mutual VUL Account will begin operations when sales commence.

4. American Life is a stock life insurance company organized under the laws of the State of New York in 1955. American Life is a wholly-owned

subsidiary of Mutual of America. American Life is authorized to sell individual and group life insurance and annuities, including variable annuities and variable life policies, in 50 states, the District of Columbia and the United States Virgin Islands.

5. The American Annuity Account is a separate account of American Life established for the purpose of providing an investment medium for variable contracts, including individual annuities. The American Annuity Account is registered under the Act as a unit investment trust (File No. 811-7904), and a registration statement on Form N-4 filed pursuant to the 1933 Act is in effect for sales of interests under IRA contracts and FPA contracts, which are individual variable accumulation annuity contracts (File No. 33-66406). The IRA and FPA contracts issued by American Life are herein called the "Contracts." Under an administrative services agreement between Mutual of America and American Life, Mutual of America provides all administrative services for the Contracts.

6. The American VUL Account is a separate account of American Life established for the purpose of providing an investment medium for variable contracts, including individual life policies. The American VUL Account is registered under the Act as a unit investment trust (File No. 811-8368), and a registration statement on Form S-6 filed pursuant to the 1933 Act is in effect for sales of interests under individual variable universal life insurance policies (herein called the "Policies") (File No. 33-75280). Under an administrative services agreement between Mutual of America and American Life, Mutual of America provides all administrative services for the Policies.

7. The Mutual Annuity Account and the American Accounts currently hold assets in their respective seventeen subaccounts ("investment funds"), each of which invests in shares of a corresponding mutual fund portfolio (collectively, the "Underlying Funds."). Each of the Underlying Funds is a series of a management investment company registered under the Act and its shares are registered for sale under the 1933 Act. Assets of the Mutual VUL Account when it commences operations also will be held in seventeen subaccounts, each of which will invest in shares of one of the Underlying Funds.

8. The Contracts and Mutual Contracts are identical, except that owners of Mutual Contracts have the right to participate in the divisible surplus of Mutual of America, a mutual company. The Mutual Policies when

issued will be identical to the Policies, except that owners of Mutual Policies will have the right to participate in the divisible surplus of Mutual of America.

9. The Underlying Funds, the current administrative charges and the maximum permitted administrative charges, the mortality and expense risk charges, and the rates for the cost of insurance charges in the case of the Mutual Policies, are identical under the Mutual Contracts and Mutual Policies and the Contracts and Policies, respectively. The unit values for the investment funds of the Mutual Annuity Account and the American Annuity Account are identical. The unit values for the investment funds of the Mutual VUL Account when it begins operations will be set at the then current unit values of the corresponding investment funds of the American VUL Account, so that unit values for those accounts will be identical.

10. Mutual of America serves as the principal underwriter of the Mutual Contracts, the Contracts and the Policies, and it will serve as the principal underwriter for the Mutual Policies. It is a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

11. As part of a consolidation by Mutual of America of its insurance operations, American Life will cede, and Mutual of America will reinsure and assume, a substantial portion of the outstanding Contracts and Policies issued by American Life. Mutual of America acquired American Life in 1988 to allow Mutual of America to write, through a subsidiary company, certain insurance and annuity business that had become taxable to Mutual of America as a result of the Tax Reform Act of 1986. On January 1, 1998, all of Mutual of America's business became subject to corporate federal income taxes. As a consequence, Mutual of America no longer needs to separate the business currently issued by American Life from Mutual of America's other business. Mutual of America believes that by combining all of the insurance operations into one entity, it will further enhance service to its contract and policy owners and obtain economies of scale. Mutual of America intends to sell all of the outstanding shares of American Life at the time of, or subsequent to, completion of the assumption reinsurance transactions described herein.

12. American Life and Mutual of America have entered into an individual reinsurance and assumption agreement (the "assumption agreement") relating to various individual annuity contracts

and individual life policies, including substantially all Contracts and Policies. In the assumption agreement, American Life agrees to transfer all of its obligations, rights and liabilities under the Contracts and Policies of Mutual of America on an assumption reinsurance basis, and Mutual of America agrees to assume all such obligations, rights and liabilities transferred to it. The assumption reinsurance transactions under the assumption agreement are proposed to be effective April 1, 2000. No fee or commission is payable by American Life, the American Accounts, Mutual of America, the Mutual Accounts, or any other person with respect to the assumption agreement. American Life will accept contributions under outstanding Contracts and premiums under outstanding Policies until they are assumption reinsured. Thereafter, contributions and premiums will be payable to Mutual of America. The assumption reinsurance transactions described herein will not be consummated for the Contracts and Policies unless Applicants obtain from the Commission all necessary orders for exemptive or other relief, and have effective registration statements that will cover the contributions and premiums under Contracts and Policies reinsured by Mutual of America. In addition, the assumption reinsurance transactions are subject to certain state insurance regulatory approvals, and owners of the Contracts and Policies ("Owners") must give affirmative or deemed consent to the assumption, as described below. The Boards of Directors of Mutual of America and American Life have adopted resolutions approving the proposed assumption reinsurance transactions.

13. Mutual of America will issue assumption certificates to Owners of the Contracts and Policies it assumption reinsures. The assumption certificates will have been approved for use by the appropriate state insurance regulatory authorities. Each assumption certificate will inform the Owner of the assumption by Mutual of America of all of American Life's obligations under the Contract or Policy and make the Owner a participating policy owner of Mutual of America. After assumption, an Owner will deal directly with Mutual of America, any further contributions or premiums the Owner wishes to apply to the Contract or Policy will be forwarded directly to Mutual of America for allocation to the Mutual Annuity Account or Mutual VUL Account, as applicable, and American Life will not longer have any obligations under the assumed Contract or Policy.

14. Several jurisdictions require Owners to affirmatively consent to the assumption reinsurance of their Contracts and Policies by Mutual of America. Requests for consent and election forms used in these states will be in the form and sent on the schedule required by applicable state insurance provisions. A number of jurisdictions require Applicants to grant Owners the right to "opt out" of the assumption reinsurance of their Contracts or Policies, pursuant to which Owners must be sent two or more opt out notices within specified time periods before their consent can be "deemed" to have been given. American Life and Mutual of America will seek the affirmative consent of Owners in these states instead of sending multiple opt out notices. A majority of states do not have statutory provisions for affirmative or deemed consent, and Mutual of America will provide opt out rights to Owners in these states pursuant to which Owners will be sent at least one notice of the right to opt out of the assumption reinsurance, along with an election form and a stamped self-addressed envelope, 30 to 60 days prior to the scheduled date of assumption reinsurance of their Contracts and Policies. The New York States Insurance Department will not permit Mutual of America to assumption reinsure any Contracts or Policies issued to residents of New York if the Owners are no longer New York residents and, accordingly, such Owners will not be asked for consent to the assumption reinsurance of their Contracts and Policies. Applicants believe their there will be no tax consequences to an Owner resulting from exercise of the opt out right.

15. Mutual of America will not assumption reinsure Contracts and Policies when Owners must give affirmative consent until the consents have been obtained. For Owners with opt out rights, Mutual of America will assumption reinsure their Contracts and Policies on the effective date of the assumption agreement, unless American Life receives timely notice of the exercise of opt out rights. Any Owner who is a resident of New York (or a resident of any other state when that state's insurance department or insurance law provisions so require) may opt out of the assumption reinsurance, even if the exercise period for the opt out has expired, until the time the Owner takes some action directed towards Mutual of America that recognizes the assumption reinsurance of the Contract or Policy, such as making a payment, receiving a benefit, or completing an administrative

form. If an Owner opts out after the assumption reinsurance transaction has occurred, the Owner will be restored to the same position he or she would have had if the transaction had not taken place.

16. After the effective date of the assumption agreement and before the closing date of Mutual of America's sale of American Life to a third party, Mutual of America and American Life may make an additional request for consent to assumption to Owners whose Contracts and Policies have not yet been assumptions reinsured for any reason, including the exercise of opt out rights, failure to affirmatively consent, or residence in a state that did not approve the transactions prior to the effective date of the assumption agreement. Mutual of America and American Life will comply with applicable state insurance laws in making any additional requests, including amending the assumption agreement or entering into an additional assumption reinsurance agreement with terms substantially identical to those of the assumption agreement. Owners who do not consent to the reinsurance of their Contracts and Policies at this time will remain with American Life, and their Contract and Policy account balances will be based on the American Annuity Account or American Life VUL Account, as applicable.

17. Upon a closing of assumption reinsurance transactions, assets of the American Annuity Account equal to the contract liabilities attributable to the variable portion of the Contracts being assumption reinsured will be transferred to the Mutual Annuity Account, and assets of the American VUL Account equal to the contract liabilities attributable to the variable portion of the Policies being assumed reinsured will be transferred to the Mutual VUL Account. Assets in each of the American Accounts, as well as the Mutual Accounts, are segregated from General Account assets and are not chargeable with liabilities from any other businesses conducted by American Life or Mutual of America, respectively. American Life also will transfer to Mutual of America, as the effective date of assumption reinsurance, cash and liquid assets in an amount equal to American Life's General Account statutory reserves attributable to the Contracts and Policies being assumed.

18. If an Owner exercises an opt out right after the Owner's Contract or Policy has been assumption reinsured, the assets equal to the contract liabilities attributable to the variable portion of the Owner's Contract or Policy will be

transferred from the related Mutual Account back to the appropriate American Account.

19. No change in any terms of the Contracts or Policies will be made by Mutual of America in connection with its assumption reinsurance of the Contracts and Policies, except that Owners will be given the right to participate in the divisible surplus of Mutual of America. The effect of the assumption reinsurance, therefore, will be to change only the identity of the issuing company and depositor of the separate through which the Contracts or Policies are funded.

20. The assumption reinsurance of the Contracts and Policies will not change the separate account charges or other charges under the Contracts and Policies, the number of accumulation units credited under the Contracts and Policies or the value of such units, or the available separate account investment funds through which allocations are made to the Underlying Funds. Owners' account balances under the Contracts and Policies assumption reinsured by Mutual of America will be the same as they would have been had the assumption reinsurance transaction not occurred. Applicants believe there will be no tax consequences, adverse or otherwise, to Owners as a result of the assumption reinsurance of their Contracts and Policies.

21. If Applicants undo the assumption reinsurance of any Contract or Policy upon the exercise by an Owner of an opt out right after the date of the assumption, the number of accumulation units credited under the Contract on Policy and their values will be identical to what they would have been had the assumption reinsurance transaction not occurred.

22. Shares of the Underlying Funds held by the American Accounts that are attributable to the Contracts and Policies being assumed will be transferred to the respective Mutual Accounts. The transfer will be made by book entry on the Underlying Funds' shareholder records, through simultaneous purchase orders by the Mutual Accounts and redemption orders in identical amounts by the American Accounts. Neither the American Accounts, the Mutual Accounts nor the Underlying Funds will incur any charge or expense for the transfer of shares of the Underlying Funds.<sup>1</sup> In addition, the Underlying Funds are not parties to the assumption agreement or transactions, and the terms

<sup>1</sup> The transfer of General Account statutory reserves from American Life to Mutual of America for the fixed portion of the Contracts and Policies being assumption reinsured also will be without charge or expense to the Owners.

of the participation agreements pursuant to which they sell shares to the American Accounts and Mutual Accounts are not affected by the assumption transactions. Accordingly, Applicants anticipate that the assumption reinsurance transactions will have no impact on the Underlying Funds.

23. Owners will be sent, at their addresses as shown in American Life's records, a current prospectus for the Mutual Contracts or the Mutual Policies, as appropriate, when they are mailed the initial notice from American Life requesting their affirmative or deemed consent to Mutual of America's assumption of their Contracts or Policies. If Owners are sent additional notices asking for their consent to assumption, these Owners will receive subsequent supplements to the prospectuses and any updated prospectuses, so that Owners will have been sent current prospectuses, as supplemented, at any time they are asked for consent to the assumption reinsurance of their Contracts or Policies.

24. Applicants anticipate that a limited number of Owners will remain with American Life. The terms of the Contracts and Policies will remain unchanged for the Owners who do not consent to assumption reinsurance. Some Policy owners have the option of paying premiums through a payroll deduction arrangement between American Life and their employer. It is possible that an employer may choose not to provide payroll deduction for both Mutual Policies and any remaining Policies owned by employees after the proposed assumption transactions. If an employer terminates its payroll deduction arrangement with American Life, Policy owners who have opted out of the assumption will pay premiums by sending them directly to American Life. Some Contract owners have IRA Contracts purchased under their employer's Simplified Employee Pension ("SEP") or Savings Incentive Match Plan for Employees ("SIMPLE"). Each employer with a SEP or SIMPLE funded with American Life IRA Contracts is expected to amend its SEP or SIMPLE to provide for funding with Mutual of America IRA Contracts, and as a consequence any Contracts owned by employees who do not consent to assumption reinsurance will not be eligible to receive employer contributions under the employer's SEP or SIMPLE. In such case, those employees are expected to apply for Mutual of America IRA Contracts in order to receive employer contributions. Pursuant to federal tax law provisions,

the employees may roll over amounts under their Mutual IRA Contracts to their American Life IRA Contracts or to any other IRA contract. Employees will not pay any surrender or withdrawal charges for rollovers, because the Mutual Contracts do not impose such charges.

Depending on the number of Owners who remain in each of the American Accounts, American Life may seek at a future date to deregister either one or both of the American Accounts pursuant to Section 8(f) of the Act, or it may take such other steps as it deems appropriate to reduce the number of Contracts and Policies outstanding or the administrative burdens presented by such Contracts and Policies. The administrative charges American Life currently imposes under the Contracts and Policies are less than the maximum amounts permitted. American Life, after it is purchased by a third party or in connection with additional requests for consent to Owners after the effective date of the assumption agreement, may increase the administrative charges under the Contracts and Policies.<sup>2</sup>

25. In connection with the sale of American Life's outstanding shares by Mutual of America, American Life and Mutual of America anticipate that they will enter into a new administrative services agreement pursuant to which Mutual of America will perform the administrative services specified therein for the Contracts and Policies remaining with American Life. In addition, Mutual of America and American Life may enter into an indemnity reinsurance agreement covering the Contracts and Policies not transferred to Mutual of America, with terms to be negotiated between Mutual of America and the purchaser of American Life. Under such an agreement, Mutual of America would agree to assume from American Life and indemnify American Life for, and American Life would agree to cede to Mutual of America on an indemnity reinsurance basis, all of American Life's

<sup>2</sup> Owners currently pay a monthly administrative contract fee of \$2 per month. American Life may raise this fee to \$10 per month for each Policy owner and \$2.50 per month for each Contract owner, subject in each case to a limit of 1/2 of 1% of the Owner's account balance in that month. American Life's current Separate Account administrative charge is 40% of the Separate Account's net assets. Under the Policies, the maximum permitted charge is .65% of net assets. Under the Contracts, the maximum charge against net assets for all expenses, excluding mortality risk, is 2% of net assets. Any increase by American Life in administrative charges will be subject to its continued ability to provide the undertaking to the Commission that the charges under the Contracts and Policies, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by American Life.

liability under such Contracts and Policies, and American Life would remain liable to Owners for obligations under the Contracts and Policies. If any of the Contracts or Policies subject to an indemnity reinsurance agreement were included in any subsequent assumption reinsurance transaction by Mutual of America, they no longer would be covered by the indemnity reinsurance agreement. Mutual of America also anticipates it will agree with American Life's purchaser that it will continue to serve as the principal underwriter of the Contracts and Policies until the final assumption reinsurance transactions occur or until another date agreed upon by Mutual of America and the purchaser.

### Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, makes it unlawful for an affiliated person or principal underwriter for a registered investment company to knowingly sell to or purchase from the registered company any security or other property, with exceptions not applicable to the transactions described herein.

2. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with, such person.

3. Applicants state that the prohibitions of Section 17(a) would prohibit the American Annuity Account's and the American VUL Account's sales of shares of the Underlying Funds to the Mutual Annuity Account and the Mutual VUL Account, respectively, in connection with the assumption reinsurance of the Contracts and Policies, because the American Accounts are affiliated persons of the Mutual Accounts as long as Mutual of America wholly owns American Life. Similarly, Applicants state that Section 17(a) would prohibit the Mutual Accounts' purchase of shares of the Underlying Funds from the American Annuity Account and the American VUL Account, because the Mutual Accounts are affiliated persons of the American Accounts as long as Mutual of America wholly owns American Life. Even if Mutual of America no longer owns any of the outstanding stock of American Life at the time certain of the Contracts and Policies are assumption reinsured, Applicants believe that Section 17(a) may nevertheless apply both to the American Accounts' sales, and to the Mutual Accounts' purchases, of shares of the Underlying Funds because an assumption agreement will have been executed when Mutual of America

wholly owns American Life and because it will bind the parties to the assumption reinsurance transactions. Moreover, Applicants state that Mutual of America will continue to act as principal underwriter for the American Accounts until the final assumption reinsurance transactions occur for the Contracts and Policies, which may be after the closing of the sale of American Life by Mutual of America.

4. Section 17(b) of the Act requires the Commission to exempt an affiliated transaction from the provisions of Section 17(a) upon application when the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act, and the proposed transaction is consistent with the general purposes of the Act.

5. Applicants therefore request an exemption pursuant to Section 17(b) of the Act from the prohibitions of Section 17(a) to the extent necessary to permit the transfers of shares of the Underlying Funds from the American Accounts to the Mutual Accounts in connection with the assumption reinsurance of the Contracts and Policies as described herein. Applicants submit that the proposed transfers of assets meet the standards for relief under Section 17(b).

6. Applicants submit that the terms of the transfers are reasonable and fair, because the only consideration to be received by the American Accounts and to be paid by the Mutual Accounts is the Mutual Accounts' assumption of the contract liabilities held in the American Accounts for the variable portion of the Contract and Policies being assumption reinsured. Applicants state that the value of the shares of the Underlying Funds to be transferred will equal the amount of the liabilities assumed, and such value will be computed in accordance with provisions of the Act and the rules thereunder. Applicants maintain that the unit values in the American Accounts and Mutual Accounts will not change as a result of the assumption reinsurance, and no person will receive a fee or commission in connection with the assumption reinsurance, so that there is no overreaching by any person in connection with the assumption transactions.

7. Applicants submit that the terms of the transactions are consistent with the politics of each American Account and

Mutual Account, because the policy of the American Accounts and the Mutual Accounts is to invest exclusively in shares of the Underlying Funds.

8. Applicants submit that the proposed transactions are consistent with the general purposes of the Act because the interests of Owners are not adversely affected by the reinsurance of the Contracts and Policies. Applicants state that, upon assumption reinsurance the terms of the Contracts and Policies will be the same except for the addition of the right of Owners to participate in the divisible surplus of Mutual of America. Applicants maintain that the number of accumulation units credited to each Owner and the unit values thereof, and therefore each Owner's account balance, will not change as a result of the assumption. Applicants note that Mutual of America has been providing administrative services for the Contracts and Policies, so services provided will remain the same.

Applicants state that Mutual of America has wholly owned American Life during the time all of the Contracts and Policies were issued, and the proposed reinsurance of the Contracts and Policies affords Owners the opportunity to have their Contracts and Policies remain with the Mutual of America group of companies, notwithstanding Mutual of America's anticipated sale of the outstanding stock of American Life. Applicants note that Mutual of America is a larger company than American Life with significant greater assets and surplus to support its obligations under the assumed Contracts and Policies.

9. Applicants note that the Commission has previously granted exemptive relief under Section 17(b) to applicants for transactions similar to Applicants' proposed assumption reinsurance transactions.<sup>3</sup> Applicants

<sup>3</sup> A number of orders have related to the transfer of assets between separate accounts of affiliated companies, see, e.g., Security First Life Insurance Company et al., Inv. Co. Act Rel. Nos. 22263 (Oct. 4, 1996) (notice) and 22309 (Oct. 31, 1996, as corrected Nov. 4, 1996) (order); Sentry Life Insurance Company, et al., Inv. Co. Act Rel. Nos. 20576 (Sept. 26, 1994) (notice) and 20654 (Oct. 25, 1994) (order); Hartford Life and Accident Insurance Company, et al., Inv. Co. Act Rel. Nos. 19800 (Oct. 18, 1993) (notice) and 19878 (Nov. 16, 1993) (order); and Family Life Insurance Company, et al., Inv. Co. Act Rel. Nos. 18179 (June 3, 1991) (notice) and 18217 (July 2, 1991) (order). All transfers other than those in Hartford Life were in contemplation of the sale of the affiliated corporation from which the contracts were being assumption reinsured. Several orders have concerned the transfer of assets between separate accounts of non-affiliated companies, see e.g., The Lincoln National Life Insurance Company, et al., Inv. Co. Act Rel. Nos. 22189 (Aug. 29, 1996) (notice) and 22251 (Sept. 26, 1996) (order); AUSA Life Insurance Company, Inc. et al., Inv. Co. Act Rel. Nos. 20518 (Aug. 31, 1994) (notice) and 20587 (Sept. 28, 1994) (order); and

assert that the assumption reinsurance transactions for which orders were granted in Security First Life Insurance Company et al., Sentry Life Insurance Company, et al., Hartford Life and Accident Insurance Company et al., and Family Life Insurance Company, et al.<sup>4</sup> were substantially similar to the assumption reinsurance transactions proposed by Applicants. According to the Applicants, the applicants for these previous orders represented that the contracts, when assumed, would be identical or identical in all material respects to the ceded contracts, except for the change in the identity of the issuing company and depositor of the separate account funding the contracts. Applicants maintain that these applicants also represented that the underlying investment fund, separate account unit values, and owners' account balances would be unchanged by the assumption reinsurance transactions, as is the case for the assumption reinsurance transactions proposed by Applicants. On the basis of these precedents and Applicants' fulfillment of the requirements for exemptive relief set forth in Section 17(b), Applicants submit that the exemption they have requested from Section 17(a) should be granted.

10. Section 11(a) of the Act makes it unlawful for a registered open-end investment company or its principal underwriter to offer securities of an investment company in exchange for other securities of the same or another investment company, unless the exchange either is based on the respective net asset values of the securities or the terms of the offer have received prior approval of the Commission. Section 11(c) provides that in the case of a unit investment trust, the prohibition of Section 11(a) is applicable irrespective of the basis of exchange.

11. Rule 11a-2 under the Act exempts from the provisions of Section 11 an offer by a registered separate account or any principal underwriter for such an account to the holder of a security of any other registered separate account having an insurance company depositor or sponsor that is an affiliate of the offering account's depositor or sponsor to exchange his or her security for a security of the offering account when certain conditions are met.

12. Rule 11a-2(b)(1) covers exchanges of variable annuity contracts and provides that for contracts with no front

end or deferred sales charges, as is the case for the Contracts and the Mutual Contracts, the only conditions are that an exchange must be made at the relative net asset values of the securities to be exchanged and any administrative fee assessed in connection with the exchange must be disclosed in the prospectus. Rule 11a-2(b)(2) covers exchanges of variable life insurance contracts and provides that an exchange must be made at the relative net asset values of the securities to be exchanged and any administrative fee assessed in connection with the exchange must be disclosed in the prospectus. Rule 11a-2(b)(2) does not permit the imposition of any sales load in connection with an exchange. Applicants state that there is uncertainty that the relief in Rule 11a-2(b) would extend to an offer of exchange of variable life insurance contracts.

13. Applicants state that, in the majority of states, Owners will be notified of the assumption reinsurance of their Contracts or Policies and advised that their consent will be deemed if they do not, within the time period specified in the notice, exercise their right to opt out of the assumption reinsurance. Applicants explain that, in a number of states, Owners will be asked for their affirmative consent to the assumption of their Contracts or Policies by Mutual of America. Applicants state that opt out rights and requests for affirmative consents constitute offers of exchange to Owners relating to their variable interests in the American Accounts and the Mutual Accounts, which are registered unit investment trusts, to which the provisions of Sections 11 (a) and (c) will apply.

14. Applicants state that in Alexander Hamilton Funds (available July 20, 1994), the staff of the Commission stated its view that the legislative history of Section 11(a) shows that "Congress primarily intended to deter switching between affiliated investment funds," rather than offers by unaffiliated investment companies, so long as offers are at relative net asset values. The staff noted, however, that "there may be circumstances when Section 11(a) would apply to exchange offers between unaffiliated funds." As an example, in Footnote 4, the staff states that "Section 11 would apply if two unaffiliated fund complexes agree, formally or informally, to offer a waiver of sales load or some other incentive for an exchange of shares from one fund family to another." Applicants state that the American Accounts and Mutual Accounts will no longer be affiliates after Mutual of America sells American Life, and any exchange offers made or

transactions effected after the date of sale might be viewed as occurring between non-affiliates and outside the scope of section 11. However, Mutual of America states that it may have an economic incentive to assume the remaining Contracts and Policies, based on its expected role as principal underwriter for those Contracts and Policies, as the provider of administrative services to the purchaser of American Life for the Contracts and Policies, and as the indemnity reinsurer for the Contracts and Policies. In addition, American Life, as previously noted, may increase its administrative charges for the Contracts and Policies not assumed. Applicants therefore believe that Section 11(a) may apply to any offers or exchanges made when American Life is no longer a subsidiary of Mutual of America and consider it appropriate to seek exemptive relief from the provisions of Section 11(a) for any assumption transactions that occur when Rule 11a-2 would not be available.

15. Applicants submit that the offers of exchange involved in the assumption reinsurance of the Contracts will satisfy all of the conditions of Rule 11a-2 and will be permitted by that Rule so long as Mutual of America is an affiliate of American Life at the time the offers are made. Applicants also submit that the offers of exchange involved in the assumption reinsurance of the Policies arguably satisfy the conditions of Rule 11a-2 because the securities involved have no sales loads. Applicants state that Mutual of America will be an affiliate of American Life at the time the assumption agreement is executed, at which time it becomes contractually obligated to assumption reinsure the Contracts and Policies. According to the Applicants, Mutual of America anticipates that it will wholly own American Life at the date most assumption reinsurance transactions occur. Applicants state that the Contracts and the Mutual Contracts, and the Policies and Mutual Policies, do not have any front end sales charges or deferred sales charges, no administrative fee will be assessed in connection with the assumption transactions will be made at the relative net asset values of the securities to be exchanged.

16. Applicants state that Mutual of America intends to sell all of the outstanding shares of American Life, and therefore Mutual of America and American Life may not be affiliates at the time certain of the Contracts and Policies are assumption reinsured by Mutual of America, which would result in the relief afforded by Rule 11a-2

Pacific Corinthian Life Insurance Company, et al., Inv. Co. Act Rel. Nos. 18925 (Sept. 2, 1992) (notice) and 18975 (Sept. 24, 1992) (order).

<sup>4</sup> Refer to the citations in Note 3 above.

being unavailable. Even if Mutual of America and American Life are affiliates at the time of the exchange offers and assumption transactions, Applicants state that there is uncertainty that the exemptive relief provided by Rule 11a-2 would extend to offers of exchange of variable life insurance policies. Accordingly, Applicants request an order pursuant to Section 11(a) approving the terms of any offers of exchange involved in the assumption reinsurance of the Contracts and Policies for which the exemption provided under Rule 11a-2 is unavailable.

17. Applicants submit that the terms of any offers of exchange involved in the proposed assumption reinsurance of the Contracts and Policies by Mutual of America are fair to Owners and should be approved by the Commission. Applicants assert that, since no sales or other charges will be assessed in connection with the assumption reinsurance of the Contracts and Policies by Mutual of America, the sales charge abuse to which Section 11(a) is directed will not be present.<sup>5</sup> Applicants state that the only change resulting from the reinsurance of the Contracts and Policies, which is in effect an exchange of American Contracts and Policies for Mutual Contracts and Policies, is in the identity of the issuing insurance company and the depositor of the separate account through which the Contracts and Policies are funded. Applicants believe as well that there will be no adverse tax consequences for Owners as a result of the exchange offers, the assumption reinsurance, or the decision by any Owners to opt out of assumption reinsurance. Applicants maintain that Mutual of America has substantial assets and surplus to assure the performance of its obligations under the Contracts and Policies, and it currently performs all administrative services for the Contracts and Policies under an agreement with American life.

18. Applicants stated that Owners will receive current prospectuses for the Mutual Contracts or Mutual Policies, as applicable, and will have complete information about the exchange offer in terms of their opt out rights or the requirement for their affirmative consent. Applicants also state that the exchanges of interests will be made on

<sup>5</sup> The Commission's Report on the "Public Policy Implications of Investment Company Growth," H.R. Rep. No. 2337 (1966) at p. 331, stated:

Section 11(a) was specifically designed to prevent the practices of "switching" and "reloading" whereby the holders of securities were induced to exchange their certificates for new certificates on which a new load would be payable.

the basis of relative net asset values, and that no provision of the Contracts or Policies will be changed upon their assumption except for the addition of the right to participate in Mutual of America's divisible surplus. According to the Applicants, Owners will have investment funds available in the Mutual Accounts with the same Underlying Funds as prior to the assumption, and the number and value of units credited under the Mutual Contracts and Mutual Policies upon assumption reinsurance will be the same as under the Contracts and Policies.

19. Applicants note that the Commission has previously approved offers of exchange involved in assumption reinsurance transactions in circumstances when Rule 11a-2 would not apply because the insurance companies were not affiliated or might not be affiliated at the time certain exchange offers for variable annuities were made or assumption transactions were consummated.<sup>6</sup> Applicants state that the terms of their proposed exchange offers would satisfy all of the conditions of Rule 11a-2 applicable to affiliated companies if made prior to the sale of American Life and that the offers satisfy the standards of the Commission for determining that the terms of an exchange offer are fair to Owners. On the basis of the precedents cited and the showing by Applicants that the terms of the exchange offers involved are fair, Applicants submit that the requested relief should be granted.

#### Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the requested exemption pursuant to Section 17(b) from Section 17(a) and the necessary approval pursuant to Section 11(a) should be granted.

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>6</sup> Family Life Insurance Company, et al., supra note 3, involving assumption reinsurance between affiliates in connection with the sale of the ceding company, and The Lincoln National Life Insurance Company, et al., AUSA Life Insurance Company, Inc. et al., and Pacific Corinthian Life Insurance Company, et al., involving exchange offers under variable annuity assumption reinsurance transactions between non-affiliates when Rule 11a-2 would have been available if the insurance companies had been affiliated.

## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-4923]

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Westminster Capital, Inc., Common Stock, Par Value \$1.00 per Share)

February 18, 2000.

Westminster Capital, Inc. ("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")<sup>1</sup> and Rule 12d2-2(d) promulgated thereunder,<sup>2</sup> to withdraw the above specified security ("Security") from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Security has been listed for trading on the PCX. Pursuant to Registration Statement on Form 8-A filed with the Commission, which became effective on June 7, 1999, the Security has also been listed on the American Stock Exchange LLC ("Amex"). Trading in the Security on the Amex commenced at the opening of business on June 15, 1999, while continuing to trade on the PCX.

In making the decision to withdraw its Security from listing and registration on the PCX, the Company hopes to avoid the direct and indirect costs of maintaining listings simultaneously on two exchanges. The Company does not see any particular advantage to having its Security trade on two exchanges and believes that this dual trading would result in a fragmentation of the market for its Security.

The Company has complied with the rules of the PCX by filing with the Exchange a certified copy of resolution adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the PCX as well as correspondence setting forth in detail to the PCX the reasons for such proposed withdrawal and the facts in support thereof. The PCX has informed the Company that it has no objection to the withdrawal of the Company's Security from listing and registration on the PCX.

This application related solely to the Security's withdrawal from listing and registration on the PCX and shall have no effect upon the continued listing and registration of such Security on the Amex. By reason of Section 12(b) of the

<sup>1</sup> 15 U.S.C. 78j(d)

<sup>2</sup> 17 CFR 240.12d2-2(d).