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

8. It is possible that someone might view Jackson National's recapture of the Contract Enhancements as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that the recapture of the Contract Enhancement does not violate Rule 22c–1. The recapture of some or all of the Contract Enhancement does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it; and (ii) other unfair results, including speculative trading practices. To effect a recapture of a Contract Enhancement, Jackson National will redeem interests in a Contract owner's Contract value at a price determined on the basis of the current net asset value of the Separate Accounts. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that Jackson National paid out of its general account assets. Although Contract owners will be entitled to retain any investment gains attributable to the Contract Enhancement and to bear any investment losses attributable to the Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the Separate Accounts. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Applicants assert that, because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c–1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c–1, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts.

9. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Applicants assert that investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in the Application.

Applicants further submit, for the reasons stated herein, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5546 Filed 3–10–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26379; File No. 812–13053]

Jackson National Life Insurance Company, et al.

March 5, 2004.

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

ACTION: Notice of Application for an amended order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemptions from the provisions of sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of contract enhancements applied to purchase payments made under certain flexible premium, deferred variable annuity contracts.

Applicants: Jackson National Life Insurance Company (''Jackson National''), Jackson National Separate Account—I (the ''JNL Separate Account''), Jackson National Life Insurance Company of New York (''JNL New York,'' and collectively with Jackson National, the ''Insurance Companies''), JNLNY Separate Account I (the ''JNLNY Separate Account,'' and collectively with JNL Separate Account, the ''Separate Accounts''), and Jackson National Life Distributors, Inc. (''Distributor,'' collectively with the Insurance Companies and Separate Accounts, ''Applicants'').

Summary of Application: Applicants seek an order under section 6(c) of the Act to amend an existing order to the extent necessary to permit the recapture, under specified circumstances, of certain contract enhancements applied to purchase payments made under the flexible premium, deferred variable annuity contracts described herein that Jackson National will issue through the JNL Separate Account (the ''Amended JNL Contract'') and that JNL New York will issue through the JNLNY Separate Account (the ''Amended JNLNY Contract,'' and collectively with the Amended JNL Contract, the ''Amended Contract(s)''), as well as other contracts that the Insurance Companies may issue in the future through their existing or future separate accounts (''Other Accounts'') that are substantially similar in all material respects to the Amended Contracts (''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Jackson National, whether existing or created in the future, that serves as distributor or principal underwriter for the Amended Contracts or Future Contracts (''Affiliated Broker-Dealers''), and any successors in interest to the Applicants.

Filing Date: The application was filed on December 23, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 29, 2004, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Susan Rhee, Esq., Jackson National Life Insurance Company, 1 Corporate Way, Lansing, Michigan 48951; copies to Joan Boros, Esq., Jorden Burt LLP, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington, DC 20007–0805.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, at (202) 942–0552, or Zandra Y. Bailes, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 ((202) 942–8090).

Applicants' Representations:

1. Jackson National is a stock life insurance company organized under the laws of the state of Michigan in June 1961. Its legal domicile and principal business address is 1 Corporate Way, Lansing, Michigan 48951. Jackson National is admitted to conduct life insurance and annuity business in the District of Columbia and all states except New York. Jackson National is ultimately a wholly-owned subsidiary of Prudential plc (London, England).

2. JNL New York is a stock life insurance company organized under the laws of the state of New York in July 1995. Its legal domicile and principal address is 2900 Westchester Avenue, Purchase, New York 10577. JNL New York is admitted to conduct life insurance and annuity business in Delaware, Michigan and New York. JNL New York is ultimately a wholly-owned subsidiary of Prudential plc (London, England).

3. The JNL Separate Account was established by Jackson National on June 14, 1993, pursuant to the provisions of Michigan law and the authority granted under a resolution of Jackson National's Board of Directors. The JNLNY Separate Account was established by JNL New York on September 12, 1997, pursuant to the provisions of New York law and the authority granted under a resolution of JNL New York's Board of Directors. Jackson National and JNL New York each is the depositors of its respective Separate Account. Each of the Separate Accounts meets the definition of a ''separate account'' under the federal securities laws and each is registered with the Commission as a unit investment trust under the Act (File Nos. 811–08664 and 811–08401, respectively). JNL Separate Account and JNLNY Separate Account will fund, respectively, the variable benefits available under the Amended JNL Contracts and the Amended JNLNY Contracts. The offering of the Amended Contracts will be registered under the Securities Act of 1933 (the ''1933 Act'').

4. The Distributor is a wholly-owned subsidiary of Jackson National and serves as the distributor of the Amended Contracts. The Distributor is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of the NASD. The Distributor enters into selling group agreements with affiliated and unaffiliated broker-dealers. The Amended Contracts are sold by licensed insurance agents, where the Amended Contracts may be lawfully sold, who are registered representatives of broker-dealers which are registered under the 1934 Act and are members of the NASD.

5. The Amended Contracts require a minimum initial premium payment of $5,000 under most circumstances ($2,000 for a qualified plan contract). Subsequent payments may be made at any time during the accumulation phase. Each subsequent payment must be at least $500 ($50 under an automatic payment plan). Prior approval by the relevant Insurance Company is required for aggregate premium payments of over $1,000,000.

6. The Amended JNL Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of seven fixed accounts (the ''Fixed Accounts''), including four ''Guaranteed Fixed Accounts'' which offer guaranteed crediting rates for specified periods of time (currently, 1, 3, 5, or 7 years), two ''DCA+ Fixed Accounts'' (used in connection with dollar cost averaging transfers, each of which from time to time offers special crediting rates) and an ''Indexed Fixed Option'' (with a minimum guaranteed return and additional possible returns based on the performance of the S&P 500 Index).

7. The Amended JNLNY Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of four ''Guaranteed Fixed Accounts'' which offer guaranteed crediting rates for specified periods of time (currently, 1, 3, 5, or 7 years).

8. The Amended Contracts also permit owners to accumulate contract values on a variable basis, through allocations to one or more of the sub-accounts of the Separate Accounts (the ''Investment Divisions,'' and collectively with the Fixed Accounts, the ''Allocation Options''). There are currently 55 Investment Divisions expected to be offered under the Amended Contracts, but additional Investment Divisions may be offered in the future and some of those currently expected to be offered could be eliminated or combined with other Investment Divisions in the future. Similarly, Future Contracts may offer additional or different Investment Divisions. Each Investment Division will invest in shares of a corresponding series of JNL Series Trust or JNL Variable Fund LLC. Not all Investment Divisions may be available.

9. Transfers among the Investment Divisions are permitted. The first 15 transfers in a contract year are free; subsequent transfers cost $25. Certain transfers to, from and among the Fixed Accounts are also permitted during the Amended Contracts' accumulation phase, but are subject to certain adjustments and limitations. Dollar cost averaging and rebalancing transfers are offered at no charge and do not count against the 15 free transfers permitted each year.

10. The owner is also offered certain optional endorsements (for fees described below) that can change the death benefit paid to the beneficiary. First, an ''Earnings Protection Benefit Endorsement'' is offered to owners who are no older than age 75 when their Amended Contracts are issued. This endorsement would add to the death benefit otherwise payable an amount equal to a specified percentage (that varies with the owner's age at issue) of earnings under the Amended Contract up to a cap of 250% of remaining premiums (premiums not previously withdrawn) excluding remaining premiums paid in the 12 months prior to the date of death (other than the initial premium if the owner dies in the first contract year), plus remaining premiums in the Indexed Fixed Option (the amount allocated to the Indexed Fixed Option accumulated at 3% annually, and adjusted for any amounts cancelled or withdrawn for charges, deductions, withdrawals or any taxes due).

11. Second, the owner of an Amended JNL Contract (but not an Amended JNLNY Contract) is offered the following five optional death benefits (that would replace the base death benefit): (i) A ''4% Roll-Up Death Benefit'', (ii) a ''5% Roll-Up Death Benefit'', (iii) a ''Highest Anniversary Value Death Benefit'', (iv) a ''Combination 4% Roll-Up and Highest

Anniversary Value Death Benefit'' or (v) a ''Combination 5% Roll-Up and Highest Anniversary Value Death Benefit.''

12. The Amended Contracts offer fixed and variable versions of the following four types of annuity payment or ''income payment:'' life income, joint and survivor, life annuity with 120 or 240 monthly payments guaranteed to be paid (although not guaranteed as to amount if variable), and income for a specified period of from 5 to 30 years. The Insurance Companies may also offer other income payment options.

13. In addition to the Earnings Protection Benefit and optional death benefit endorsements described above and the optional Contract Enhancements endorsements defined below, additional optional endorsements are offered with the Amended Contracts, four of which relate to withdrawals: (i) An endorsement that expands the percentage of premiums (that remain subject to a withdrawal charge) that may be withdrawn in a contract year with no withdrawal charge imposed from 10% to 20%; (ii) an endorsement that reduces the withdrawal charges applicable under the Amended Contract and shortens the period for which withdrawal charges are imposed from seven years to five years or three years; (iii) an endorsement, the Guaranteed Minimum Withdrawal Benefit (''GMWB''), that permits partial withdrawals prior to the Income Date (so long as gross partial withdrawals taken within any one contract year do not exceed 7% of net premium payments) that in total equal the amount of net premium payments made (if elected after issue, the contract value, less any recapture charges will be used instead of the net premium payment at issue); and (iv) on May 1, 2004, an additional 5% for Life GMWB will be offered, which will permit partial withdrawals prior to the Income Date for the longer of the duration of the owner's life or until total periodic withdrawals equals (a) the total net premium payments if elected at issue or (b) contract value net of any recapture charges if elected after issue.

14. If one of the optional Contract Enhancement endorsements is elected, each time an owner makes a premium payment during the first contract year, Jackson National or JNL New York will add an additional amount to the owner's contract value (a ''Contract Enhancement''). All Contract Enhancements are paid from the Insurance Companies' general account assets. The Contract Enhancement is equal to 2%, 3%, or 4% of the premium payment. At issue, an Amended Contract Owner can choose only one of the Contract Enhancement endorsements. An owner may not elect the 3% or 4% Contract Enhancements if the 20% additional free withdrawal endorsement is elected. The Insurance Companies will allocate the Contract Enhancement to the guaranteed accounts and/or Investment Divisions in the same proportion as the premium payment allocation. The Contract Enhancement is not credited to any premiums received after the first contract year.

15. There is an asset-based charge for each of the Contract Enhancements. The 2% Contract Enhancement has a 0.395% charge that applies for five years. The asset-based charges for the other Contract Enhancements apply for seven years and are 0.42% and 0.56%, respectively, for the 3% and 4% Contract Enhancements. These charges will also be assessed against any amounts an Amended Contract owner has allocated to the guaranteed accounts, resulting in a lower credited interest rate than the annual credited interest rate that would apply to the guaranteed account if the Contract Enhancement had not been elected.

16. The Insurance Companies will recapture all or a portion of any Contract Enhancements by imposing a recapture charge whenever an owner: (i) makes a total withdrawal within the recapture charge period (five years after a first year payment in the case of the 2% Contract Enhancement and seven years after a first year payment in the case of the other Contract Enhancements) or a partial withdrawal of corresponding premiums within the recapture charge period in excess of those permitted under the Amended Contracts' free withdrawal provisions (including free withdrawals permitted by a 20% additional free withdrawal endorsement), unless the withdrawal is made for certain health-related emergencies specified in the Amended Contracts (not all of which are available in the Amended JNLNY contracts); (ii) elects to receive payments under an income option within the recapture charge period; or (iii) returns the Amended Contract during the free look period

17. The amount of the recapture charge varies, depending upon which Contract Enhancement is elected and when the charge is imposed, as follows:

CONTRACT ENHANCEMENT RECAPTURE CHARGE

[As a Percentage of First Year Premium Payments]

Completed years since receipt of premium	0	1	2	3	4	5	6	7+
.								
Recapture Charge (2% Credit)	2%	2%	1.25%	1.25%	0.5%	0	0	0
Recapture Charge (3% Credit)	3%	3%	2%	2%	2%	1%	1%	0
Recapture Charge (4% Credit)	4%	4%	2.5%	2.5%	2.5%	1.25%	1.25%	0

18. The recapture charge percentage will be applied to the corresponding premium reflected in the amount withdrawn or the amount applied to income payments that remains subject to a withdrawal charge. The amount recaptured will be taken from the Investment Divisions and the guaranteed accounts in the same proportion as the withdrawal charge.

19. Recapture charges will be waived upon death, but will be applied upon electing to commence income payments, even in a situation where the withdrawal charge is waived. Partial withdrawals will be deemed to remove premium payments on a first-in-first-out basis (the order that entails payment of the lowest withdrawal and recapture charges).

20. The Insurance Companies do not assess the recapture charge on any payments paid out as: death benefits; withdrawals necessary to satisfy the minimum distribution requirements of the Internal Revenue Code; if permitted by the owner's state, withdrawals of up to $250,000 from the Separate Account or from the Fixed Accounts other than the Indexed Fixed Option in connection with the owner's terminal illness or if the owner needs extended hospital or nursing home care as provided in the Amended Contract; or if permitted by the owner's state, withdrawals of up to 25% of contract value (12.5% for each

of two joint owners) in connection with certain serious medical conditions specified in the Amended Contract.

21. The contract value will reflect any gains or losses attributable to a Contract Enhancement described above. Contract Enhancements, and any gains or losses attributable to a Contract Enhancement, distributed under the Amended Contracts will be considered earnings under the Amended Contract for tax purposes and for purposes of calculating free withdrawal amounts.

22. The Amended JNL Contracts have a ''free look'' period of ten (twenty for Amended JNLNY Contracts) days after the owner receives the Amended Contract (or any longer period required by state law). Contract value is returned upon exercise of free look rights by an owner unless state law requires the return of premiums paid. The Contract Enhancement recapture charge reduces the amount returned.

23. In addition to the Contract Enhancement charges and the Contract Enhancement recapture charges, the Amended JNL Contracts have the following charges: mortality and expense risk charge of 1.10% (as an annual percentage of average daily account value); administration charge of 0.15% (as an annual percentage of average daily account value); contract maintenance charge of $35 per year (waived if contract value is $50,000 or more at the time the charge is imposed); Earnings Protection Benefit charge of 0.30% (as an annual percentage of daily account value—only applies if related optional endorsement is elected); GMIB charge of .60% per year (0.15% per quarter) of the ''GMIB Benefit Base;'' GMWB charge of .70% (the current charge for GMWB is .35% and currently there is an increase in the charge to .55% when a ''step-up'' is elected); 5% for Life GMWB charge is an annual asset based charge that will vary by age; 20% additional free withdrawal benefit charge of 0.30% (as an annual percentage of daily account value—only applies if related optional endorsement is elected); five-year withdrawal charge period charge of 0.30% (as an annual percentage of daily account value—only applies if related optional endorsement is elected); three-year withdrawal charge period charge of 0.45% (as an annual percentage of daily account value—only applies if related optional endorsement is elected); optional death benefit charge of either 0.30% or 0.55% (as an annual percentage of daily account value—only applies if related optional endorsement is elected) depending upon which (if any) optional death benefit endorsement is elected; transfer fee of $25 for each transfer in excess of 15 in a contract year (for purposes of which dollar cost averaging and rebalancing transfers are excluded); commutation fee that applies only upon withdrawals from income payments for a fixed period, measured by the difference in values paid upon such a withdrawal due to using a discount rate of 1% greater than the assumed investment rate used in computing the amounts of income payments; and a withdrawal charge that applies to total withdrawals, partial withdrawals in excess of amounts permitted to be withdrawn under the Amended JNL Contract's free withdrawal provisions (or the 20% additional free withdrawal endorsement) and on the income date (the date income payments commence) if the income date is within a year of the date the Amended JNL Contract was issued.

24. The withdrawal charge for the Amended JNL Contracts varies, depending upon the contribution year of the premium withdrawn as follows:

WITHDRAWAL CHARGE

[As a Percentage of Premium Payments]

Completed years since receipt of premium	0	1	2	3	4	5	6	7+
Withdrawal Charge	8.5	8	7	6	5	4	2	0
Withdrawal Charge if Five-Year Period is elected	8	7	6	4	2	0	0	0
Withdrawal Charge if Three-Year Period is elected	7.5	6.5	5	0	0	0	0	0

25. The withdrawal charge is waived upon withdrawals to satisfy the minimum distribution requirements of the Internal Revenue Code and, to the extent permitted by state law, the withdrawal fee is waived in connection with withdrawals of: (i) Up to $250,000 from the Investment Divisions or the Guaranteed Fixed Accounts of the Amended Contracts in connection with the terminal illness of the owner of an Amended Contract, or in connection with extended hospital or nursing home care for the owner; and (ii) up to 25% (12.5% each for two joint owners) of contract value (excluding values allocated to the Indexed Fixed Option) in connection with certain serious medical conditions specified in the Amended Contract.

26. The Amended JNLNY Contracts are identical to the Amended JNL Contracts in the operation of Contract Enhancements, Contract Enhancement charges and Contract Enhancement recapture charges.

27. The Amended JNLNY Contracts are identical in other aspects as well, with the following exceptions: (i) The Indexed Fixed Option, DCA+Fixed Account, waivers of withdrawal charges for terminal illness and specified medical conditions, and the three optional death benefits which replace the base death benefit will not be available under the Amended JNLNY Contracts; (ii) the death benefit of the Amended JNLNY Contracts will be the greatest of: contract value on the date that JNL New York receives proof of death and an election of the type of payment from the beneficiary, total premiums minus withdrawals (including any applicable charges and adjustments), and premium taxes and the maximum contract value on any anniversary prior to the owner's 86th birthday, minus any withdrawals and withdrawal charges, and plus any premiums paid after that anniversary; (iii) the mortality and expense risk charge for the Amended JNLNY Contracts is 1.20% (as an annual percentage of average daily account value); and (iv) the annual contract maintenance fee is $30 for the Amended JNLNY Contracts (applicable only when contract value is less than $50,000).

28. The withdrawal charges of the Amended JNLNY Contracts are as follows:

WITHDRAWAL CHARGE

[As a percentage of premium payments]

Contribution year of premium payment	1	2	3	4	5	6	7	8+
Withdrawal Charge	7	6	5	4	3	2	1	0
Withdrawal Charge if Five-Year Period is elected	6.5	5	3	2	1	0	0	0
Withdrawal Charge if Three-Year Period is elected	6	4	2	0	0	0	0	0

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission pursuant to section 6(c) of the Act grant the exemptions requested below with respect to the Amended Contracts and any Future Contracts funded by the Separate Accounts or Other Accounts that are issued by the Insurance Companies and underwritten or distributed by the Distributor or Affiliated Broker-Dealers. Applicants undertake that Future Contracts funded by the Separate Accounts or Other Accounts, in the future, will be substantially similar in all material respects to the Amended Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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

3. Applicants submit that the recapture of the Contract Enhancement in the circumstances set forth in the application would not deprive an owner of his or her proportionate share of the issuer's current net assets. An Amended Contract owner's interest in the amount of the Contract Enhancement allocated to his or her Contract value upon receipt of a premium payment is not fully vested until five or seven complete years following a premium. Until or unless the amount of any Contract Enhancement is vested, the Insurance Companies retain the right and interest in the Contract Enhancement amount, although not in the earnings attributable to that amount. Thus, Applicants urge that when the Insurance Companies recapture any Contract Enhancement they are simply retrieving their own assets, and because an Amended Contract owner's interest in the Contract Enhancement is not vested, the Amended Contract owner has not been deprived of a proportionate share of the Separate Account's assets, *i.e.*, a share of the Separate Account's assets proportionate to the Amended Contract owner's contract value.

4. In addition, Applicants state that it would be patently unfair to allow an Amended Contract owner exercising the free-look privilege to retain the Contract Enhancement amount under an Amended Contract that has been returned for a refund after a period of only a few days. If the Insurance Companies could not recapture the Contract Enhancement, Applicants claim that individuals could purchase an Amended Contract with no intention of retaining it and simply return it for a quick profit. Furthermore, Applicants state that the recapture of the Contract Enhancement relating to withdrawals or receiving income payments within the first five or seven years of a premium contribution is designed to protect the Insurance Companies against Amended Contract owners not holding the Amended Contract for a sufficient time period. According to Applicants, it would provide the Insurance Companies with insufficient time to recover the cost of the Contract Enhancement, to its financial detriment.

5. Applicants represent that it is not administratively feasible to track the Contract Enhancement amount in the Separate Accounts after the Contract Enhancement(s) is applied. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the Separate Accounts, including any Contract Enhancement amounts. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the Amended Contract owner's Contract value did not include any Contract Enhancement. The Insurance Companies nonetheless represent that the Amended Contracts' fees and charges, in the aggregate, are reasonable in relation to service rendered, the expenses expected to be incurred, and the risks assumed by the Insurance Companies.

6. Applicants represent that the Contract Enhancement will be attractive to and in the interest of investors because it will permit owners to put 102%, 103% or 104% of their first-year premium payments to work for them in the Investment Divisions and the guaranteed accounts. In addition, the owner will retain any earnings attributable to the Contract Enhancements recaptured, as well as the principal of the Contract Enhancement amount once vested.

7. Applicants submit that the provisions for recapture of any Contract Enhancement under the Amended Contracts do not violate sections 2(a)(32) and 27(i)(2)(A) of the Act. Applicants assert that the application of a Contract Enhancement to premium payments made under the Amended Contracts should not raise any questions as to compliance by the Insurance Companies with the provisions of section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from section 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Contract Enhancement under the circumstances described in the application, without the loss of relief from section 27 provided by section 27(i).

8. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered

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

9. It is possible that someone might view the Insurance Companies' recapture of the Contract Enhancements as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that the recapture of the Contract Enhancement does not violate Rule 22c–1. The recapture of some or all of the Contract Enhancement does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. To effect a recapture of a Contract Enhancement, the Insurance Companies will redeem interests in an Amended Contract owner's Contract value at a price determined on the basis of the current net asset value of the Separate Accounts. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that the Insurance Companies paid out of their general account assets. Although Amended Contract owners will be entitled to retain any investment gains attributable to the Contract Enhancement and to bear any investment losses attributable to the Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the Separate Accounts. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Applicants assert that, because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c–1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c–1, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Amended Contracts.

10. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in the application.

Applicants further submit, for the reasons stated herein, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5547 Filed 3–10–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49367; File No. SR–CBOE–2004–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. to Adopt Rules and Procedures Governing the Execution of Complex Orders Involving Options and Security Futures

March 5, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 4, 2004, CBOE submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

CBOE proposes to adopt rules and procedures governing the execution of complex orders involving options and security futures. The text of the proposed rule change follows. Additions are in italics. Deleted text is in brackets.

Chicago Board Options Exchange, Incorporated Rules

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CHAPTER I—Definitions

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Rule 1.1. Definitions

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Stock-Option Order

(ii) A stock-option order is an order to buy or sell a stated number of units of an underlying or a related security coupled with either (a) the purchase or sale of option contract(s) [of the same series] on the opposite side of the market representing *either* the same number of units of the underlying or related security *or the number of units of the underlying security necessary to*

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

[2] 17 CFR 240.19b–4.