The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2001, the computation of the calendar year 2002 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2002, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2002.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of $100 million or the amount that bears the same ratio to $100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than $100 million (as indexed), but at least $50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than $50 million (as indexed), but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The system compensation base as of June 30, 1991 was $2,763,287,237.04. The system compensation base for June 30, 2001 was $3,095,486,497.55. The ratio of $3,095,486,497.55 to $2,763,287,237.04 is 1.12021887. Multiplying 1.12021887 by $100 million yields $112,021,887. Multiplying $50 million by 1.12021887 produces $56,010,944. The Account balance on June 30, 2001, was $53,029,889.30. Accordingly, the surcharge rate for calendar year 2002 is 2.5 percent.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2002 shall be equal to the greater of (a) $600 or (b) $600 [1 + {(A—37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 2002 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 2002 tier 1 tax base is $84,900. Subtracting $37,800 from $84,900 produces $47,100. Dividing $47,100 by $56,700 yields a ratio of 0.83068783. Adding one gives 1.83068783. Multiplying $600 by the amount 1.83068783 produces the amount of $1,098.41, which must then be rounded to $1,100. Accordingly, the monthly compensation base is determined to be $1,100 for months in calendar year 2002.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2002 monthly compensation base of $1,100 produces $2,750. Accordingly, the amount determined under section 1(k) is $2,750 for calendar year 2002.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account. The calendar year 2002 monthly compensation base is $1,100. The ratio of $1,100 to $600 is 1.83333333. Multiplying 1.83333333 by $775 produces $1,421. Accordingly, the amount determined under section 2(c) is $1,421 for months in calendar year 2002.

Under section 3, an employee shall be a "qualified employee" if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2002 monthly compensation base of $1,100 produces $2,750. Accordingly, the amount determined under section 3 is $2,750 for calendar year 2002.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 2002 monthly compensation base of $1,100 produces $2,750. Accordingly, the amount determined under section 4(a–2)(i)(A) is $2,750 for calendar year 2002.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2002, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

The calendar year 2001 monthly compensation base is $1,050. Multiplying $1,050 by 0.05 yields $52.50, which must then be rounded down to $52. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2002, is determined to be $52.

Dated: November 13, 2001.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 01–30670 Filed 12–11–01; 8:45 am]

BILLING CODE 7905–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25310; File No. 812–12628]

Jackson National Life Insurance Company, et al.; Notice of Application

December 5, 2001.

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

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "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 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 contract described herein that Jackson National will issue through the JNL Separate Account (the ''JNL Contract'') and that JNL New York will issue through the JNLNY Separate Account (the ''JNLNY Contract,'' and collectively with the JNL Contract, the ''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 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 Contracts or Future Contracts (''Affiliated Broker-Dealers''), and any successors in interest to the Applicants.

Filing Date: The Application was filed on September 4, 2001 and amended on October 9, 2001.

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 December 27, 2001, 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 W. Randolph Thompson, 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 Keith E. Carpenter, Branch Chief, at (202) 942–0679, 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 JNL Contracts and the JNLNY Contracts. The offering of the 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 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 Contracts are sold by licensed insurance agents, where the 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 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 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, one of which, the DCA+ Fixed Account, 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 JNLNY Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of four fixed accounts, including

four ''Guaranteed Fixed Accounts'' which offer guaranteed crediting rates for specified periods of time (currently, 1, 3, 5, or 7 years).

8. The Contracts also permit owners to accumulate contract values on a variable basis, through allocations to one or more of the investment divisions of the Separate Accounts (the ''Investment Divisions,'' collectively with the Fixed Accounts, the ''Allocation Options''). There are currently 34 (33 for JNLNY contracts) Investment Divisions expected to be offered under the Contracts, but additional Investment Divisions may be offered in the future and some of those listed could be eliminated or combined with other Investment Divisions in the future. Similarly, Future Contracts may offer additional or different Investment Divisions.

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 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 Contracts offer certain optional endorsements that 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%; and (ii) an endorsement that reduces the withdrawal charges applicable under the Contract and shortens the period for which withdrawal charges are imposed from seven years to five years.

11. 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 will add an additional amount to the owner's contract value (a ''Contract Enhancement''). All Contract Enhancements are paid from Jackson National's general account assets. The Contract Enhancement is equal to 2%, 3%, or 4% of the premium payment. A Contract Owner can choose only one of the Contract Enhancement endorsements. The 2% Contract Enhancement is offered only if the owner elects the optional five year withdrawal charge endorsement or the 20% additional free withdrawal endorsement. An owner may not elect the 3% or 4% Contract Enhancements if one of those two other optional endorsements 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.

12. There is an asset-based charge for each of the Contract Enhancements. The 2% Contract Enhancement has a 0.40% charge that applies for five years. The asset-based charges for the other Contract Enhancements apply for seven years and are 0.425% and 0.57%, respectively, for the 3% and 4% Contract Enhancements. These charges will also be assessed against any amounts you have allocated to the guaranteed accounts, resulting in a credited interest rate of 0.40%, 0.425%, and 0.57% for the 2%, 3%, and 4% contract enhancements, respectively, less than the annual credited interest rate that would apply to the guaranteed account if the contract enhancement had not been elected. However, the interest rate will never go below 3%.

13. The Insurance Companies will recapture all or a portion of any Contract Enhancements by imposing a recapture charge whenever an owner: (i) Makes a withdrawal of corresponding premium 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) in excess of those permitted under the 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 Contracts (not all of which are available in the JNLNY contracts); (ii) elects to receive payments under an income option within the recapture charge period; or (iii) returns the Contract during the free look period.

14. 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 (percent)	1 (percent)	2 (percent)	3 (percent)	4 (percent)	5 (percent)	6 (percent)	7+ (percent)
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

15. 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.

16. 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).

17. 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 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 Contract.

18. 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 Contracts will be

considered earnings under the Contract for tax purposes and for purposes of calculating free withdrawal amounts.

19. The JNL Contracts have a ''free look'' period of ten (twenty for JNLNY Contracts) days after the owner receives the 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.

20. The Separate Accounts consist of sub-accounts, each of which will be available under the Separate Accounts. The sub-accounts are referred to as ''Investment Divisions.'' The Separate Accounts currently consist of the 34 (33 for JNLNY Contracts) Investment Divisions, and each will invest in Shares of a corresponding series (''Series'') of JNL Series Trust (''Trust'') or JNL Variable Fund LLC. Not all Investment Divisions may be available.

21. In addition to the Contract Enhancement charges and the Contract Enhancement recapture charges, the JNL Contracts have the following charges: mortality and expense risk charge of 1.00% (1.25% in the case of the JNLNY Contracts) (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 ($30 per year in the case of the JNLNY Contracts) (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); 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); optional death benefit charge of either 0.15% or 0.25% (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 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 Contract was issued.

22. The withdrawal charge for the 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 (percent)	1 (percent)	2 (percent)	3 (percent)	4 (percent)	5 (percent)	6 (percent)	7+ (percent)
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

23. 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 Contracts in connection with the terminal illness of the owner of a 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 Contract.

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

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

WITHDRAWAL CHARGE

[As a percentage of premium payments]

Contribution Year of Premium Payment	1 (percent)	2 (percent)	3 (percent)	4 (percent)	5 (percent)	6 (percent)	7 (percent)	8+ (percent)
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

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 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 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 the 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 this Application would not deprive an owner of his or her proportionate share of the issuer's current net assets. A 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 a Contract owner's interest in the Contract Enhancement is not vested, the 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 Contract owner's contract value.

4. In addition, Applicants state that it would be patently unfair to allow a Contract owner exercising the free-look privilege to retain the Contract Enhancement amount under a 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 a 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 Contract owners not holding the 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 Contract owner's Contract value did not include any Contract Enhancement. The Insurance Companies nonetheless represent that the 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 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 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 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 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 the Insurance Companies 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.

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 this 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.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30649 Filed 12–11–01; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25311; File No. 812–12566]

First Allmerica Financial Life Insurance Co., et al.; Notice of Application

December 5, 2001.

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

ACTION: Notice of an Application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'') approving the proposed substitutions of securities and pursuant to section 17(b) of the Act exempting related transactions from section 17(a) of the Act.

Applicants: First Allmerica Financial Life Insurance Company (''First Allmerica''), Fulcrum Separate Account of First Allmerica Financial Life Insurance Company (the ''First Allmerica Separate Account''), Allmerica Financial Life Insurance and Annuity Company (''Allmerica Financial Life''), Fulcrum Separate Account of Allmerica Financial Life Insurance and Annuity Company (the ''Allmerica Financial Life Separate Account''), Allmerica Investment Trust (''AIT''), The Fulcrum Trust (''Fulcrum''), and Gabelli Capital Series Funds, Inc. (''Gabelli'') (collectively, the ''Applicants'').

Summary of Application: Applicants request an order approving the substitution of shares of three series of AIT and one series of Gabelli for shares of series of Fulcrum held by the First Allmerica Separate Account and the Allmerica Financial Life Separate Account to support variable life insurance contracts or variable annuity contracts (collectively, the ''Variable Contracts'') issued by First Allmerica or Allmerica Financial Life. Applicants also request an order exempting them from section 17(a) of the 1940 Act to the extent necessary to permit the Applicants to, by means of in-kind redemptions and purchases, carry out the above-referenced substitutions of securities.

Filing Date: The application was filed on July 3, 2001 and amended and restated on December 4, 2001.

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 on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 27, 2001, and 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 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 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Richard M. Reilly, President, Allmerica Financial Life, 440 Lincoln Street, Worcester, MA 01653, and copy to George M. Boyd, Esq., First Allmerica, Office of the General Counsel, N–440, 440 Lincoln Street, Worcester, MA 01653.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Fang, Attorney, or Keith E. Carpenter, 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 may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. First Allmerica was organized under the laws of Massachusetts in 1844. Effective October 16, 1995, First Allmerica converted from a mutual life insurance company known as State Mutual Life Assurance Company of America to a stock life insurance company and adopted its present name. First Allmerica is a wholly-owned subsidiary of Allmerica Financial Corporation (''AFC'').

2. Allmerica Financial Life is a life insurance company organized under the laws of Delaware in July 1974. Allmerica Financial Life is an indirect, wholly-owned subsidiary of First Allmerica, which in turn is a wholly-owned subsidiary of AFC.

3. The First Allmerica Separate Account and the Allmerica Financial Life Separate Account (the ''Applicant Separate Accounts'') are separate accounts for which either First Allmerica or Allmerica Financial Life (the ''Applicant Insurance Companies'') serves as sponsor and depositor. First Allmerica serves as sponsor and depositor of the First Allmerica Separate Account. Allmerica Financial Life serves as sponsor and depositor of the Allmerica Financial Life Separate Account.

4. Each of the two Applicant Separate Accounts is a segregated asset account of the indicated Applicant Insurance Company, and each is registered under the 1940 Act as a unit investment trust. Each of the respective Applicant Separate Accounts is used by the Applicant Insurance Company of which it is a part to fund certain variable annuity or variable life contracts. Certain sub-accounts of the respective Applicant Separate Accounts are