Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 247/246.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 3, 2006 (71 FR 155).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 2006.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this June 12, 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–9434 Filed 6–19–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–27393; File No. 812–13263]

ING USA Annuity and Life Insurance Company, et al.; Notice of Application

June 13, 2006.

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.

APPLICANTS: ING USA Annuity and Life Insurance Company (''ING USA''), Separate Account B of ING USA Annuity and Life Insurance Company (''Account B''), ReliaStar Life Insurance Company of New York (''RLNY'') (ING USA and RLNY collectively, the ''Life Companies''), Separate Account NY–B of ReliaStar Life Insurance Company of New York (''Account NY–B'') (Account B and Account NY–B collectively, the ''Accounts''), and Directed Services, Inc. (''DSI'').

SUMMARY OF THE APPLICATION: The Applicants request an order pursuant to Section 6(c) of the Act exempting them from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit recapture of certain bonuses applied to purchase payments with respect to: (1) The deferred variable annuity contracts and certificates described herein that the Life Companies intend to issue (the ''Current Contracts''); (2) deferred variable annuity contracts and certificates, substantially similar to the Current Contracts that the Life Companies may issue in the future (the ''Future Contracts'') (Current Contracts and Future Contracts collectively, the ''Contracts''); (3) any other separate accounts of the Life Companies and their successors in interest (''Future Accounts'') that support the Contracts; and (4) any National Association of Securities Dealers, Inc. (''NASD'') member broker-dealers controlling, controlled by, or under common control with any Applicant, whether existing or created in the future, that in the future, may act as principle underwriter for the Contracts (''Future Underwriters''). The circumstances under which the Contracts would allow the recapture of all or a portion of certain bonus credits (previously applied to premium payments) are where the bonus credits were applied and: (1) The contract owner exercises his or her ''free look'' right; (2) the contract owner dies within twelve months of the bonus credit being applied (unless the Contract is continued under the spousal benefit continuation option); or (3) the contract owner takes a partial withdrawal or surrenders the contract in the first seven or four contract years, as applicable, pursuant to the bonus credit recapture schedule set forth below.

FILING DATE: The application was filed on February 28, 2006 and amended and restated on May 3, 2006.

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 the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on July 7, 2006, 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 may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Nicole J. Starr, Counsel, ING USA Annuity and Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Room 1580, Washington, DC 20549.

Applicants' Representations

1. ING USA is an Iowa stock life insurance company, which was originally incorporated in Minnesota on January 2, 1973. ING USA is a wholly owned subsidiary of Lion Connecticut Holdings, Inc. (''Lion Connecticut'') which in turn is an indirect wholly owned subsidiary of ING Groep N.V. (''ING Group''), a global financial services holding company based in The Netherlands. ING USA is authorized to sell insurance and annuities in all states, except New York, and the District of Columbia. ING USA is the depositor and sponsor for Account B. ING USA also serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under the Contracts. ING USA may establish one or more additional Future Accounts for which it will serve as depositor.

2. ING USA established Account B as a segregated investment account under Delaware law on July 14, 1988. Account B is registered with the Commission as a unit investment trust (File No. 811–5626), and interests in Account B offered through the Contracts will be registered under the Securities Act of 1933 on form N–4.

3. RLNY is a New York stock life insurance company originally incorporated on June 11, 1917 under the name, The Morris Plan Insurance Society. RLNY is an indirect wholly owned subsidiary of ING Group. RLNY is authorized to transact business in all states, the District of Columbia, the Dominican Republic, and the Cayman Islands and is principally engaged in the business of providing individual life insurance and annuities, employee benefit products and services, retirement plans, and life and health reinsurance. RLNY is the depositor and sponsor for Account NY–B. RLNY also serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under the Contracts. RLNY may establish one or more additional Future Accounts for which it will serve as depositor.

4. Account NY–B was established as a separate account of First Golden American Life Insurance Company of

New York (''First Golden'') on June 13, 1996. It became a separate account of RLNY as a result of the merger of First Golden into RLNY effective April 1, 2002. Account NY–B is registered with the Commission as a unit investment trust (File No. 811–7935).

5. The Accounts currently are divided into a number of subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding investment portfolio of one of several series-type open-end management investment companies. The assets of the Accounts support one or more varieties of variable annuity contracts, including the Contracts.

6. DSI is a wholly owned subsidiary of Lion Connecticut Holdings, Inc., which is in turn a wholly owned subsidiary of ING Group. It serves as the principal underwriter of a number of RLNY and ING USA separate accounts registered as unit investment trusts under the Act, including the Accounts, and is the distributor of the variable life insurance contracts and variable annuity contracts issued through such separate accounts, including the Contracts. DSI is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. DSI may act as principal underwriter for Future Accounts of the Life Companies and as distributor for Contracts. Future Underwriters also may act as principal underwriter for the Accounts and as distributor for any of the Contracts.

7. The Contracts are deferred combination variable and fixed annuity contracts that a Life Company may issue to individuals or groups on a ''non-qualified'' basis or in connection with employee benefit plans that receive favorable Federal income tax treatment under the Internal Revenue Code of 1986, as amended. The Contracts make available a number of subaccounts of the Accounts to which an owner may allocate net premium payments and associated bonus credits (described below) and to which an owner may transfer contract value. There are categories of subaccounts for purposes of determining benefits under living benefits and death benefits. The Contracts also offer fixed-interest allocation options under which a Life Company credits guaranteed rates of interest for various periods. A market value adjustment applies to the fixed-interest allocation options under the Contracts. An owner may make transfers of contract value among and between the subaccounts and, subject to certain restrictions, among and between the subaccounts and the fixed-interest allocation options at any time.

8. The Contracts offer a variety of annuity payment options to an owner. The owner may annuitize any time following the fifth contract anniversary. If a contingent deferred sales charge remains at the time of annuitization, the annuity payment option must include at least a 10 year fixed period. In the event of an owner's (or the annuitant's, if any owner is not an individual) death prior to annuitization, the beneficiary may elect to receive the death benefit in the form of one of the annuity payment options instead of a lump sum. The Contracts generally may only be purchased with a minimum initial premium of $10,000 ($1,500 for certain employee benefit plans).

9. A Life Company may deduct a premium tax charge from premium payments in certain states, but otherwise deducts a charge for premium taxes upon surrender or annuitization of the Contract or upon the payment of a death benefit, depending upon the jurisdiction. The Contracts provide for an annual administrative charge of $40 that a Life Company deducts on each Contract Anniversary and upon a full surrender of a Contract. A daily mortality and expense risk charge is deducted from the assets of the Accounts at a rate depending on the death benefit chosen as described below. The range of maximum mortality and expense risk charges is 1.70% to 2.80% annually. A daily administrative charge is deducted from the assets of the Account at an annual rate of 0.15%. The Contracts provide for a charge of $25 for each transfer of contract value in excess of twelve transfers per contract year. The Life Companies currently waive this charge and anticipate waiving this charge for the foreseeable future. The Contracts have a surrender charge in the form of a contingent deferred sales charge as described more fully below. If an owner chooses an optional surrender charge schedule rider that reduces the length of time during which the contingent deferred sales charge is applied, an additional charge will be deducted as described below. A quarterly charge is assessed depending on the type of optional living benefit chosen, if any, as described below. Lastly, if an owner chooses the optional premium credit rider, an additional charge will be deducted as described below.

10. The contingent deferred sales charge (the ''CDSC'') is equal to a percentage of each premium payment surrendered or withdrawn. The CDSC is separately calculated and applied to each premium payment at any time that the premium payment (or part of the premium payment) is surrendered or withdrawn. The CDSC applicable to each premium payment diminishes to zero as the payment ages. The Contracts offer a standard CDSC schedule as follows:

Number of full years since payment of each premium	Charge (percent)
0	8.0
1	7.0
2	6.0
3	5.0
4	4.0
5	3.0
6	2.0
7+	0.0

However, the owner may choose a shorter optional CDSC schedule for an extra charge (see below). The optional CDSC schedule is as follows:

Number of full years since payment of each premium	Charge (percent)
0	8.0
1	7.0
2	6.0
3	5.0
4+	0.0

The charge for the optional CDSC schedule is currently 0.45% of contract value per year, assessed quarterly for four years. The maximum charge for the optional CDSC schedule will be 0.90% of contract value per year, assessed quarterly for four years.

11. The CDSC does not apply when a death benefit is payable under the contracts or to contract value representing an annual free withdrawal amount or to contract value in excess of aggregate premium payments (less prior withdrawals of premium payments) (''earnings''). The CDSC is calculated using the assumption that premium payments are withdrawn on a first-in, first-out basis. The CDSC also is calculated using the assumption that contract value is withdrawn in the following order: (a) The annual free withdrawal amount for that contract year; (b) premium payments; and (c) earnings. The annual free withdrawal amount is 10% of contract value, measured at the time of withdrawal, less any prior withdrawals made in that contract year.

12. Subject to state availability, an owner may purchase optional living benefit riders. The minimum guaranteed income benefit rider (the ''MGIB Rider'') guarantees that a minimum amount of annuity income will be available to the owner, regardless of fluctuating market conditions, if the owner annuitizes on or after the rider's exercise date. The minimum guaranteed amount of annuity income will depend on the amount of

premiums paid and any credits received, if applicable, during the specified number of contract years after the owner purchases the MGIB Rider, how the owner allocates the contract value among the subaccounts and fixed-interest allocations, and any withdrawals and transfers the owner makes while the MGIB Rider is in effect. A Life Company will deduct a maximum annual charge of 1.50% (currently, 0.75%) quarterly of the MGIB Charge Base (as defined in the MGIB Rider).

13. The minimum guaranteed withdrawal benefit rider (the ''MGWB Rider'') guarantees that a certain amount may be withdrawn annually regardless of market performance and even if the contract value is reduced to zero. Some Contracts offer the guaranteed withdrawal amount until the MGWB Base (as defined in the MGWB Rider) is completely recovered. Most Contracts offer the guaranteed withdrawal amount for life. The Life Companies expect to extend the guaranteed withdrawal amount for until the death of the second designated life. The MGWB Rider is subject to conditions and limitations. A Life Company will deduct a maximum annual charge of 1.50% (currently, between 0.45% and 0.75%, depending on the rider and Contract) quarterly of the charge basis (as set forth in the MGWB Rider).

14. If an owner dies before the annuity start date, the Contracts provide for a death benefit payable to a beneficiary, computed as of the date a Life Company receives written notice and due proof of death. The death benefit payable to the beneficiary depends on the death benefit option selected by the owner: (a) Standard death benefit; (b) ratchet death benefit; or (c) rollup death benefit. In the future, a Life Company may also offer an optional earnings multiplier benefit rider.

15. The standard death benefit equals the greater of the (a) base death benefit, and (b) premium and bonus credits, adjusted pro-rata for withdrawals and transfers, less total bonus credits applied since or within twelve months prior to death. The base death benefit is the greater of the (1) contract value on the claim date, less bonus credits applied since or within twelve months prior to death, and (2) cash surrender value. The maximum daily mortality and risk charge for the standard death benefit is the annual rate of 1.70% (currently 0.85%). A Life Company may, in the future, offer the base death benefit as a stand alone option for the maximum daily mortality and risk charge of 2.00% annually.

16. The ratchet death benefit equals the greater of the (a) standard death benefit, and (b) greatest contract value as of any quarterly or annual, as applicable, contract anniversary occurring on or prior to the maximum attained age, adjusted for new premiums and bonus credits, reduced pro rata for withdrawals and transfers, less bonus credits applied since or within twelve months prior to death. The maximum daily mortality and risk charge for the ratchet death benefit is the annual rate of 2.20% (currently 1.10%).

17. The roll-up death benefit equals the greater of (a) the ratchet death benefit, and (b) the lesser of (1) a specified maximum percentage of all premiums plus bonus credits adjusted pro-rata for withdrawals and transfers, or (2) premiums and bonus credits, if applicable, adjusted for withdrawals and transfers accumulated at a specified percentage up to the maximum attained age, less bonus credits applied since or within twelve months prior to death. The maximum daily mortality and risk charge for the roll-up death benefit is the annual rate of 2.80% (currently 1.40%).

18. The earnings multiplier benefit rider provides a separate additional death benefit option. This rider provides additional funds to the beneficiary that be used to help pay the taxes on the death benefit. Upon the owner's death, the beneficiary receives an amount equal to a percentage of the Contract's earnings, if any, up to a maximum amount. The maximum charge is 0.50% (currently 0.25%).

19. The Life Companies intend to offer an optional bonus credit rider under the Contracts, which the owner may elect at the time of application. Under the bonus credit rider, a Life Company credits the contract value in the subaccounts and the fixed-interest allocations with a bonus credit amount that is a percentage of each premium payment made. The bonus credit applies upon issuance of the Contract and is based upon premium payments received within the first contract year. A Life Company allocates the bonus credit for the applicable premium payment among the subaccounts and fixed-interest allocations the owner selects in proportion to the premium payment allocated to each investment option. If the owner has elected to retain the standard CDSC schedule, the bonus credit equals 4% of each premium payment made in the first contract year. If the owner has elected to have the optional CDSC schedule rider, the bonus credit equals 2% of each premium payment made in the first contract year. A Life Company reserves the right to increase or decrease the amount of the bonus credit or discontinue the bonus credit rider in the future.

20. The maximum annual charge assessed for the bonus credit rider (as a percentage of contract value) is 0.57% (currently, 0.55%) for the first seven contract years if the owner retains the standard CDSC schedule and 0.50% (currently, 0.45%) for the first four contract years if the owner selects the optional CDSC schedule rider. The charge is deducted from the contract value in the subaccounts and from amounts in fixed interest allocations by crediting a lower interest rate.

21. Under the bonus credit rider, a Life Company recaptures or retains the bonus credits in several circumstances. First, a Life Company recaptures or retains 100% of the bonus credits in the event that the owner exercises his or her cancellation right during the ''free look'' period. Second, a Life Company recaptures the bonus credits applied to premium payments made since or within twelve months of the date as of which a death benefit is computed (unless the Contract is continued under the spousal benefit continuation option). Third, a Life Company also will recapture part or all of the applicable bonus credit upon surrender or withdrawal of corresponding premium payments.

22. In the event of a surrender or withdrawal, the amount of the bonus credit a Life Company will recapture is based on the percentage of the corresponding premium payment withdrawn and the contract year of surrender or withdrawal. For each premium payment, the portion of the bonus credit subject to recapture is the total bonus credit amount attributable to that premium payment multiplied by the percentage of the corresponding premium payment withdrawn. The dollar amount of the bonus credit recaptured is the portion of the bonus credit subject to recapture multiplied by the applicable recapture percentage. The recapture percentage applicable to each bonus credit depends on which CDSC is in effect and when the premium payment associated with such bonus credit was withdrawn. If the standard CDSC schedule is chosen, the recapture percentage applicable to each bonus credit is level for the first two contract years and diminishes to zero after the seventh contract year. The schedule is as follows:

Contract year of surrender or withdrawal	Bonus credit recapture percentage (percent)
Years 1–2	100
Years 3–4	75
Years 5–6	50
Year 7	25
Years 8+	0

If the optional CDSC schedule rider is chosen, the recapture percentage applicable to each bonus credit diminishes to zero after the fourth contract year. The schedule is as follows:

Contract year of surrender or withdrawal	Bonus credit recapture percentage (percent)
Year 1	100
Year 2	75
Year 3	50
Year 4	25
Years 5+	0

A Life Company will not recapture bonus credits attributable to premium payments withdrawn representing the annual free withdrawal amount or to contract value representing earnings.

23. Because of the recapture provisions discussed above, the value of a bonus credit only fully vests or belongs irrevocably to the owner when the recapture period for the bonus credit expires. All bonus credits vest over the 4-year period or 7-year period, as applicable, after a Life Company grants them. Under the bonus credit rider, a Life Company applies the bonus credit to an owner's contract value either by ''purchasing'' accumulation units of an appropriate subaccount or adding to the owner's fixed interest allocation option values.

24. With regard to variable contract value, several consequences flow from the foregoing. First, increases in the value of accumulation units representing bonus credits accrue to the owner immediately, but the initial value of such units only belongs to the owner when, or to the extent that, each vests. Second, decreases in the value of accumulation units representing bonus credits do not diminish the dollar amount of contract value subject to recapture. Therefore, additional accumulation units must become subject to recapture as their value decreases. Stated differently, the proportionate share of any owner's variable contract value (or the owner's interest in the Account) that a Life Company can ''recapture'' increases as variable contract value (or the owner's interest in the Account) decreases. This dilutes somewhat the owner's interest in the Account vis-à-vis a Life Company and other owners, and in his or her variable contract value vis-à-vis a Life Company. Lastly, because it is not administratively feasible to track the unvested value of bonus credits in the Account, a Life Company deducts the daily mortality and expense risk charge and the daily administrative charge from the entire net asset value of the Account. As a result, the daily mortality and expense risk charge, the daily administrative charge, and the daily bonus credit rider paid by any owner is greater than that which he or she would pay without the bonus credit.

25. Applicants previously have received an order for exemptive relief to permit the recapture of certain bonus credits on the prior contracts in similar circumstances to those described above. That order encompassed relief for future contracts substantially similar in all material respects to the prior contracts. Applicants assert that the Contracts described in the application differ from the prior contracts in several respects. Charges are slightly higher. The Contracts also offer living benefits and death benefit options not available with the prior contracts. Because the Applicants believe the Commission may view these differences as material, Applicants are seeking an additional order as set forth in the application.

Legal Analysis

1. The Applicants hereby request that the Commission issue an order pursuant to Section 6(c) of the Act to exempt the Applicants with respect to: (a) The Contracts; (b) Future Accounts that support the Contracts; and (c) Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of all or a portion of the bonus credits (previously applied to premium payments) in the circumstances described above.

2. 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.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account supporting variable annuity contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of subsection (i). Paragraph (2) provides that it shall be unlawful for a registered separate account or sponsoring insurance company to sell a variable annuity contract supported by the separate account unless the '' * * * contract is a redeemable security; and * * * [t]he insurance company complies with Section 26(e)* * *''

4. Section 2(a)(32) defines a ''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.

5. Rule 22c–1 imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time as of which such amount is calculated. Specifically, Rule 22c–1, in pertinent part, 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.

6. To the extent that the recapture of the bonus credits arguably could be seen as a discount from the net asset value, or arguably could be viewed as resulting in the payment to an owner of less than the proportional share of the issuer's net assets, in violation of Sections 2(a)(32) or 27(i)(2)(A) of the Act, the bonus credit recapture would trigger the need for relief absent some exemption from the Act. Rule 6c–8 provides, in relevant part, that a registered separate account, and any depositor of such account, shall be exempt from Sections 2(a)(32), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit them to impose a deferred sales loan on any variable annuity contract participating in such account. However, the bonus credit recapture is not a sales load. Rather, it is a recapture of a bonus credit previously applied to an owner's premium payments. A Life Company provides the bonus credit from its general account on a guaranteed basis. The Contracts are designed to be long-term investment vehicles. In undertaking this financial obligation, a

Life Company contemplates that an owner will retain a Contract over an extended period, consistent with the long-term nature of the Contracts. A Life Company designed the product so that it would recover its costs (including the bonus credits) over an anticipated duration while a Contract is in force. If an owner withdraws his or her money during the free look period, a death benefit is paid, or a withdrawal or surrender is made before this anticipated period, a Life Company must recapture the bonus credits subject to recapture in order to avoid a loss.

7. Applicants submit that the proposed bonus credit rider would not violate Sections 2(a)(32) or 27(i)(2)(A) of the Act. A Life Company would grant bonus credits out of its general account assets and the amount of the bonus credits (although not the earnings on such amounts) would remain the Life Company's until such amounts vest with the owner. Until the appropriate recapture period expires, a Life Company retains the right to and interest in each owner's contract value representing the dollar amount of any unvested bonus credits. Therefore, if a Life Company recaptures any bonus credit or part of a bonus credit in the circumstances described above, it would merely be retrieving its own assets. To the extent that a Life Company may grant and recapture bonus credits in connection with variable contract value, it would not, at either time, deprive any owner of his or her then proportionate share of the Account's assets.

8. Applicants further submit that the dynamics of the proposed bonus credit rider would not violate Sections 2(a)(32) or 27(i)(2)(A) of the Act because the recapture of bonus credits would not, at any time, deprive an owner of his or her proportionate share of the current net assets of an Account. Section 2(a)(32) defines a redeemable security as one "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 asset value." Taken together, these two sections of the Act do not require that the holder receive the exact proportionate share that his or her security represented at a prior time. Therefore, the fact that the proposed bonus credit provisions have a dynamic element that may cause the relative ownership positions of a Life Company and a Contract owner to shift due to Account performance and the vesting schedule of such credits, would not cause the provisions to conflict with Sections 2(a)(32) or 27(i)(2)(A). Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek exemptions from these two sections.

9. A Life Company's granting of bonus credits would have the result of increasing an owner's contract value in a way that arguably could be viewed as the purchase of an interest in the Account at a price below the current net asset value. Similarly, a Life Company's recapture of any bonus credit arguably could be viewed as the redemption of such an interest at a price above the current net asset value. If such is the case, then the bonus credit rider arguably could be viewed as conflicting with Rule 22c–1. Applicants contend that these are not correct interpretations or applications of these statutory and regulatory provisions. Applicants also contend that the bonus credits do not violate Rule 22c–1.

10. Rule 22c–1 was intended to eliminate or reduce, as far as was reasonably practicable, (a) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption at a price above net asset value, or (b) other unfair results, including speculative trading practices. Applicants submit that the evils prompting the adoption of Rule 22c–1 were primarily the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing permitted certain investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding shares.

11. The bonus credit rider does not give rise to either of the two evils that Rule 22c–1 was designed to address. First, the proposed bonus credit rider poses no such threat of dilution. An owner's interest in his or her contract value or in the Account would always be offered at a price based on the net asset value next calculated after receipt of the order. The granting of a bonus credit does not reflect a reduction of that price. Instead, a Life Company would purchase with its general account assets, on behalf of the owner, an interest in the Account equal to the bonus credit. Because the bonus credit will be paid out of the general account assets, not the Account assets, no dilution will occur as a result of the bonus credit. Recaptures of bonus credits result in a redemption of a Life Company's interest in an owner's contract value or in the Account at a price determined based on the Account's current net asset value and not at an inflated price. Moreover, the amount recaptured will always equal the amount that a Life Company paid from its general account for the bonus credits. Similarly, although an owner is entitled to retain any investment gains attributable to the bonus credits, the amount of such gains would always be computed at a price determined based on net asset value.

12. Second, Applicants submit that speculative trading practices calculated to take advantage of backward pricing will not occur as a result of a Life Company's recapture of the bonus credit. Variable annuities are designed for long-term investment, and by their nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was designed to prevent. More to the point, the bonus credit recapture simply does not create the opportunity for speculative trading.

13. Rule 22c–1 should have no application to the bonus credit available, as neither of the harms that Rule 22c–1 was intended to address arise in connection with the proposed bonus credit rider. Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Rule 22c–1.

14. The Applicants submit that the Commission should grant the exemptions requested in the application even if the bonus credit rider arguably conflicts with Sections 2(a)(32), or 27(i)(2)(A) of the Act or Rule 22c–1 thereunder. The bonus credit is generally beneficial to an owner. The recapture tempers this benefit somewhat, but unless the owner dies, the owner retains the ability to avoid the bonus credit recapture in the circumstances described herein. While there would be a small downside in a declining market where losses on the bonus credit amount would vest with him or her immediately, it is the converse of the benefits an owner would receive on the bonus amounts in a rising market because earnings on the bonus credit amount vest with him or her immediately. As any earnings on bonus credits applied would not be subject to recapture and thus would be immediately available to an owner, likewise any losses on bonus credits would also not be subject to recapture and thus would be immediately available to an owner. The bonus credit recapture does not diminish the overall value of the bonus credits.

15. The bonus credit recapture provision is necessary for a Life Company to offer the bonus credits and avoid anti-selection against it. It would be unfair to a Life Company to permit

an owner to keep his or her bonus credits upon his or her exercise of the Contract's ''free look'' provision. Because no CDSC applies to the exercise of the ''free look'' provision, the owner could obtain a quick profit in the amount of the bonus credit at a Life Company's expense by exercising that right. Similarly, the owner could take advantage of the bonus credit by taking withdrawals within the recapture period, because the cost of providing the bonus credit is recouped through charges imposed over a period of years. Likewise, because no additional CDSC applies upon death of an owner (or annuitant), a death shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at a Life Company's expense.

16. In the event of such profits to an owner or beneficiary, a Life Company could not recover the cost of granting the bonus credits. This is because a Life Company intends to recoup the costs of providing the bonus credits through the charges under the bonus credit rider and the Contract, particularly the daily mortality and expense risk charge and the daily administrative charge. If the profits described above are permitted, an owner could take advantage of them, reducing the base from which the daily charges are deducted and greatly increasing the amount of bonus credits that a Life Company must provide. Therefore, the recapture provisions are a price of offering the bonus credits. A Life Company simply cannot offer the proposed bonus credits without the ability to recapture those credits in the limited circumstances described herein.

17. Applicants state that the Commission's authority under Section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, the Life Companies' successors in interest, Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder with respect to the Contracts. The exemption of these classes of persons is 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 because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to persons that in all material respects are the same as the Applicants. The Commission has previously granted exemptions to classes of similarly situated persons in various contexts and in a wide variety of circumstances, including class exemptions for recapturing bonus credits under variable annuity contracts.

18. Applicants represent that any contracts in the future will be substantially similar in all material respects to the Contracts, but particularly with respect to the bonus credits and recapture of bonus credits, and that each factual statement and representation about the bonus credit rider will be equally true of any Contracts in the future. Applicants also represent that each material representation made by them about the Account and DSI will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in this Application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be an NASD member.

19. For the reasons above, Applicants submit that the bonus credit rider involves none of the abuses to which provision of the Act and rules thereunder are directed. The owner will always retain the investment experience attributable to the bonus credit and will retain the principal amount in all cases except under the circumstances described herein. Further, a Life Company should be able to recapture such bonus credits to limit potential losses associated with such bonus credits.

Conclusion

Applicants submit that the exemptions requested are necessary or appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and consistent with and supported by Commission precedent. Applicants also submit, based on the analysis listed above, that the provisions for recapture of any bonus credit under the Contracts does not violate Section 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. The Applicants hereby request that the Commission issue an order pursuant to Section 6(c) of the Act to exempt the Applicants with respect to: (a) The Contracts; (b) Future Accounts that support the Contracts; and (c) Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of all or a portion of the bonus credits (previously applied to premium payments) in the circumstances described above.

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

Nancy M. Morris,

Secretary.

[FR Doc. E6–9607 Filed 6–19–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53975; File No. SR–CBOE–2006–51]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Regarding Market-Maker Appointments

June 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 amend CBOE Rule 8.3 relating to Market-Maker appointments. The text of the proposed rule change is available on the CBOE's Web site (*http://www.cboe.com*), at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

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

[2] 17 CFR 240.19b–4.