

reporting issuer information is not widely available. Consequently, these issuers must provide the information required by the repropounded amendments to requesting broker-dealers before quotations in their securities can be published. We believe that the 1,734 issuers of non-reporting covered OTC securities (based on an estimate that 25% of the 6,936 potentially covered OTC securities are non-reporting) will spend an average of 9 hours each to collect, prepare, and supply the information required by the proposal to the first broker-dealer that requests this information. Thereafter, we estimate that it will take an average of 1 hour for an issuer to provide the same information to the remaining 3.3 broker-dealers that request the information. Accordingly, we estimate that 1,734 non-reporting issuers annually will incur 15,606 hours ( $1,734 \times 9 \times 1$ ) to comply with the first broker-dealer's request for information, and 5,722 hours ( $1,734 \times 1 \times 3.3$ ) to comply with the subsequent 3.3 broker-dealer requests for an annual total of 21,328 burden hours ( $15,606 + 5,722$ ). On average, therefore, each non-reporting issuer would spend approximately 12.3 burden hours ( $21,328/1,734$ ) per year to comply with these requests.

We estimate the collection of information will require approximately 125,998 burden hours annually ( $104,670 + 21,328$ ) from approximately 2,134 respondents (400 broker-dealers and 1,734 issuers).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 18, 2002.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 02-2118 Filed 1-28-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25373; File No. 812-12698]

### American Skandia Life Assurance Corporation, et al.

January 22, 2002.

**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 "1940 Act" or "Act") granting exemptions from the provisions of section 2(a)(32) and section 27(i)(2)(A) of the 1940 Act, and Rule 22c-1 thereunder to permit the recapture of credits applied to contributions made under certain deferred variable annuity contracts.

**APPLICANTS:** American Skandia Life Assurance Corporation ("ASLAC"), American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Accounts), American Skandia Life Assurance Corporation Variable Account B (Class 9 Sub-Accounts) (the "Account" or "Accounts"), and American Skandia Marketing, Incorporated ("ASM"), referred to collectively herein as "Applicants."

**SUMMARY OF APPLICATION:** Applicants seek an order under section 6(c) of the Act to the extent necessary to permit, under specified circumstances, the recapture of credits applied to contributions made under certain deferred variable annuity contracts and certificates described in the Application (the "Contracts"), as well as other contracts that ASLAC may issue in the future through the Accounts or any other separate account established in the future by ASLAC to support certain deferred variable annuity contracts issued by ASLAC ("Future Account(s)") and that are substantially similar in all material respects to the Contracts (the "Future Contract(s)"). Applicants 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 ASLAC, whether existing or created in the future, that serves as a distributor or principal underwriter for the Contracts or Future

Contracts offered through the Accounts or any Future Account.

**FILING DATES:** The application was filed on November 23, 2001, and amended and restated on January 9, 2002, and January 17, 2002.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 19, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the 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 SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW Washington, DC, 20549-0609. Applicants, c/o American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, Connecticut 06484, Attn: Scott K. Richardson, Esq.

**FOR FURTHER INFORMATION CONTACT:** Patrick Scott, Attorney, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**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. ASLAC is a stock life insurance company incorporated under the laws of Connecticut, all of whose issued and outstanding shares of capital stock are directly owned by American Skandia, Inc. ("ASI"), which in turn is ultimately wholly owned by Skandia Insurance Company Ltd., a Swedish corporation. ASLAC is licensed to do business in the District of Columbia and all of the United States.

2. American Skandia Life Assurance Corporation Variable Account B was created pursuant to the laws of the State of Connecticut on November 25, 1987. American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Accounts) filed a Form N-8A Notification of Registration (File No. 811-5438) under the 1940 Act on December 30, 1987. American Skandia Life Assurance Corporation Variable

Account B (Class 9 Sub-Accounts) filed a Form N-8A Notification of Registration (File No. 811-09989) on June 22, 2000. Applicants state that the assets of the Accounts are owned by ASLAC, but are held separately from the other assets of ASLAC and are not chargeable with liabilities incurred in any other business operation of ASLAC (except to the extent that assets in the Accounts exceed the reserves and other liabilities of the Accounts). The income, capital gains and capital losses incurred on the assets of the Accounts are credited to or charged against the assets of the Accounts without regard to the income, capital gains or capital losses arising out of any other business ASLAC may conduct.

Applicants represent that the Accounts and all Future Accounts will invest in shares of one or more of the investment portfolios (the "Portfolios") of American Skandia Trust ("AST"), which is registered with the Commission as an open-end, diversified management investment company, and/or any other fund or funds which are registered with the Commission as open-end, diversified or non-diversified management investment companies as may be made available by ASLAC and the Accounts or Future Accounts (which funds, including AST, are referred to as the "Funds"). The Accounts or Future Accounts are divided into separate divisions or "Sub-accounts," each of which invests in a separate Portfolio of a Fund.

3. ASM serves as the distributor and principal underwriter of the Contracts. ASM is a wholly-owned subsidiary of ASI. ASM is registered under the Securities Exchange Act of 1934 and with the NASD as a broker-dealer in securities. The Contracts will be offered through unaffiliated, registered broker-dealers, and other entities that are exempt from registration as broker-dealers and that have entered into sales agreements with ASM and ASLAC. In addition, ASM may offer Contracts directly to potential purchasers. The broker-dealers or sales representatives will be licensed by state insurance departments where required by law or regulation to represent ASLAC. The registered representatives that will solicit sale of the Contracts will be licensed insurance agents appointed by ASLAC.

4. Applicant represents that, among the products ASLAC issues are individual and group flexible premium tax deferred variable annuity contracts, such as the Contracts contemplated in the Application, American Skandia XTra Credit<sup>SM</sup> FOUR ("XT FOUR") offered through American Skandia Life

Assurance Corporation Variable Account B (Class 1 Sub-Accounts) and American Skandia XTra Credit<sup>SM</sup> SIX ("XT SIX") offered through American Skandia Life Assurance Corporation Variable Account B (Class 9 Sub-Accounts).

Applicants state further that the Contracts are to be used in connection with retirement plans that qualify for favorable federal income tax treatment under the Internal Revenue Code Section 403 as a tax sheltered annuity, or Section 408 as an individual retirement plan ("Qualified Plan"), or the Contracts may be purchased on a non-tax qualified basis ("Non-Qualified Plan"). The Contracts may also be used for other purposes in the future, or offered only in connection with Qualified or Non-Qualified Plans.

5. Applicants state that ASLAC will add an additional amount, a credit ("Credit(s)"), to the account value in conjunction with each purchase payment applied to XT FOUR, and in conjunction with purchase payments made during the first six (6) annuity years applied to XT SIX. Credits are paid for from ASLAC's own general account assets.

6. Applicants state, in the case of XT FOUR, when total purchase payments are between and \$1000 and \$10,000, the Credits equal 1.5% of purchase payments. When total purchase payments are at least \$10,000 but less than \$5,000,000, the Credits equal 4.0% of purchase payments. When total purchase payments are greater than \$5,000,000, the Credits equal 5.0% of purchase payments.

7. Applicants state, in the case of XT SIX, ASLAC will add a Credit to the account value in conjunction with each purchase payment during the first six (6) annuity years. The amount of the Credit depends on the annuity year in which the purchase payment(s) is made, according to the following schedule: in annuity year one (1) the Credit is 6.00%, in annuity year two (2) the Credit is 5.00%, in annuity year three (3) the Credit is 4.00%, in annuity year four (4) the Credit is 3.00%, in annuity year five (5) the Credit is 2.00%, and in annuity year six (6) the Credit is 1.00%.

8. Applicants state that, where allowed by state law, under some circumstances, ASLAC will apply additional Credits on Contracts owned by a member of a designated class ("Designated Class") as defined in the Application. Generally, members of the Designated Class include various persons with special employment, familial, and/or agency relationships with ASLAC and/or its affiliates or

subsidiaries, as defined in the Application.

In the case of XT FOUR, ASLAC will apply Credits of 8.5% to any purchase payment made by a member of a Designated Class. Likewise, in the case of XT SIX, ASLAC will apply Credits on purchase payments made by a member of a Designated Class at the following percentage rates in annuity years 1, 2, 3, 4, 5, and 6, respectively: 9.5%, 9%, 8.5%, 8%, 7%, and 6%. During annuity years 7, 8, 9 and 10, respectively, in the case of XT SIX, ASLAC will apply Credits on purchase payment made by a member of a Designated Class at the following percentage rates: 5%, 4%, 3% and 2%. Whereas, under XT SIX generally, subsequent to annuity year Six, ASLAC would not apply Credits to any purchase payments.

9. Applicants represent that Credits applied on all Contracts are vested when applied, except under the following circumstances: (a) An amount equal to any Credit will be recovered by ASLAC if the Contract owner exercises the right to cancel provision in accordance with applicable state law; (b) the amount available under the medically-related surrender provision of the Contract will not include the amount of any Credits applied to purchase payments made within 12 months prior to the date the annuitant first became eligible for the medically-related surrender; and (c) any Credits applied to the account value on purchase payments made within 12 months prior to the date of death will be recovered by ASLAC upon payment of the death benefit, subject to the limitation that Applicants will not exercise their right to recover the Credit to the extent that the death benefit payable is equal to purchase payments minus proportional withdrawals or when the death benefit is equal to the account value but after the recovery of all or a portion of the Credits, the death benefit would be equal to less than purchase payments minus proportional withdrawals.

10. Applicants state that, as of the date of the Application, the Funds in which the Sub-accounts may invest are AST, Montgomery Variable Series, Wells Fargo Variable Trust, INVESCO Variable Investment Funds, Inc., Evergreen Variable Annuity Trust, ProFunds VP, First Defined Portfolio Fund LLC and The Prudential Series Fund, Inc. The assets of each Portfolio are held separately from the others and each Portfolio has its own investment objective and policies. The investment performance of one Portfolio has no affect on the investment performance of any other Portfolio. The investment

objectives and policies of each Portfolio are described in the registration statements for the Funds. Each Fund may establish additional Portfolios, or cease offering any Portfolios, existing or as may be established in the future. In addition, the Account may add Sub-accounts, and may add or cease to offer Sub-accounts, which in turn are dedicated to owning shares of a particular Portfolio of a particular Fund.

11. Applicants state that prior to the annuity date, a Contract owner may surrender the Contract in its entirety for the surrender value or withdraw a portion of the surrender value. Applicants do not seek to recover Credits applied to purchase payments upon surrender or withdrawal of a Contract, other than as described in this paragraph, in the case of a medically-related surrender. Where permitted by law, a Contract owner may request to surrender a Contract prior to the annuity date without application of any contingent deferred sales charge ("CDSC") upon occurrence of a "Contingency Event," as defined in XT FOUR or XT SIX. If a Contingency Event occurs, the amount available for surrender is the account value less an amount equal to any Credit applied to purchase payments within twelve months prior to the Contingency Event less the amount of any Credits added in conjunction with any purchase payments received after ASLAC's receipt of the Contract owner's request for a medically-related surrender. Applicants do not assess a CDSC on a medically-related surrender that would otherwise apply to a full or partial surrender of the Contract.

12. Applicants represent that during the accumulation phase, a death benefit is payable upon the death of the first Contract owner to die (if the Contract is owned by one or more natural persons) or upon the death of the annuitant (if the Contract is owned by an entity and there is no contingent annuitant). The amount of the death benefit is determined when ASLAC obtains satisfactory proof in writing of the applicable death, all representations required or which are mandated by applicable law or regulation to the death claim and the payment of death proceeds, and any applicable election of the mode of payment of the death benefit if not previously elected by the Contract owner.

The basic Death Benefit is the greater of (1) the sum of all purchase payments less the sum of all proportional withdrawals, or (2) the sum of the account value in the variable investment options and the interim value in the fixed allocations (without application of

any market value adjustment), less an amount equal to all Credits applied within 12 months prior to the date of death. ASLAC does not recover the amount equal to the Credit applied to purchase payments when the death benefit payable under the Contract is equal to purchase payments minus proportional withdrawals or when the death benefit is equal to the account value but after the recovery of all or a portion of the Credits, the death benefit would be equal to less than purchase payments minus withdrawals.

13. Applicants state that each of the Contracts may offer optional benefits, including optional death benefits, for which the Contract owner may be charged an additional asset-based charge.

14. Applicants represent that prior to the annuity date and upon surrender, ASLAC will deduct an annual maintenance fee equaling the smaller of 2% of account value or \$35 per annuity year from the Sub-account holdings attributable to any particular Contract in the same proportion as each such Sub-account holding bears to the account value of such Contract. No charges are assessed if no account value is maintained in the Sub-accounts. The annual maintenance fee can be increased only for Contracts issued subsequent to the effective date of any such change. The annual maintenance fee may be waived under certain circumstances as described in the then effective registration statements for the Contracts.

15. An insurance charge ("Insurance Charge") is deducted daily against the average assets allocated to the Account. The Insurance Charge for XT FOUR is the combination of the Mortality & Expense Risk Charge (1.25%) and the Administration Charge (0.15%); the total charge is equal to 1.40% on an annual basis. The Insurance Charge for the XT SIX is the combination of the Mortality & Expense Risk Charge (0.50%) and the Administration Charge (0.15%); the total charge is equal to 0.65% on an annual basis. The Insurance Charge is intended to compensate ASLAC for providing the insurance benefits under the Contract, including the Contract's basic death benefit that provides guaranteed benefits to the Contract owner's beneficiaries even if the market declines; furthermore, the charge is intended to compensate ASLAC for the risk that persons to whom ASLAC guarantees annuity payments will live longer than ASLAC's assumptions. The charge also covers administrative costs associated with providing the Contract benefits, including preparation of the

contract, confirmation statements, annual account statements and annual reports, legal and accounting fees as well as various related expenses. Finally, the charge covers the risk that ASLAC's assumptions about the mortality risks and expenses under the Contract are incorrect and that ASLAC has agreed not to increase these charges over time despite actual costs. ASLAC may increase the portion of the total Insurance Charge that is deducted as an Administration Charge, if permission is received from the appropriate regulatory authorities. However, any increase will only apply to Contracts issued after the date of the increase.

16. Applicants state that a distribution charge ("Distribution Charge") is deducted daily against the average assets allocated to the Sub-accounts under XT SIX. The Distribution Charge is equal to 1.00% on an annual basis in annuity years 1 through 10. After the end of the first ten annuity years, the 1.00% charge for distribution will no longer be assessed. The Distribution Charge is intended to compensate ASLAC for a portion of its sales expenses under the Contract, including promotion and distribution of the Contract. At the end of the 10th annuity year, ASLAC will process a transaction to convert the Contract owner's account value to units of the Sub-accounts that reflect only the Insurance Charge. Because units that only reflect the Insurance Charge are less expensive, the number of units attributed to a Contract is decreased and the unit value of each unit of the Sub-accounts in which the Contract owner was invested is increased. The Contract owner's account value is unchanged by the conversion of the account value to the number of units, and unit values will not affect the Owner's account value. Beginning on that date, the Contract owner's account value will fluctuate based on the change in the value of the units that only reflect the Insurance Charge.

17. Applicants represent that no deduction or charge will be made from purchase payments for sales or distribution expenses. However, a CDSC may be assessed on surrender or partial withdrawal from the Contract. The CDSC will be used to compensate ASLAC for sales commissions and other promotional or distribution expenses incurred by ASLAC which are associated with the marketing of the Contracts. ASLAC does not anticipate that the CDSC will be sufficient to permit it to recoup all its sales and distribution expenses.

18. Applicants state that XT FOUR offers a free withdrawal privilege. This privilege permits a Contract owner to

withdraw account value without any CDSC being imposed at the time of withdrawal. The maximum amount available as a free withdrawal during annuity year one through eight is 10% of all purchase payments. The 10% free withdrawal is not cumulative. After annuity year eight, the maximum free withdrawal amount is the sum of (a) 10% of any purchase payments applied to the Contract after the initial purchase payment, (b) 100% of the initial purchase payment and (c) 100% of any growth in the Contract, which equals the current account value minus all purchase payments that have not been previously withdrawn. The Credit amount, which is applied to the purchase payments when applicable, is not considered growth and is not available as a free withdrawal. Amounts withdrawn under the free withdrawal provision do not reduce the CDSC that may apply to a subsequent surrender. The XT SIX offers a free withdrawal privilege as well. This privilege permits a Contract owner to withdraw account value without any CDSC being imposed at the time of withdrawal. The maximum amount available as a free withdrawal during annuity year one through ten is 10% of all purchase payments. The 10% free withdrawal is not cumulative. After annuity year ten, the maximum free withdrawal amount is 100% of the account value, including any Credits.

Applicants represent that on full or partial surrenders under XT FOUR, the CDSC on any purchase payments surrendered in excess of the free withdrawal privilege is based on a schedule of 8.5% in year one to 0.0% in year nine and beyond. The amount of the CDSC applicable to each purchase payment decreases over time, measured from the date each purchase payment is applied.

Applicants further represent that on full or partial surrenders under the XT SIX, the CDSC on any purchase payments surrendered in excess of the free withdrawal privilege is based on a schedule of 9.0% in year one to 0.0% in year eleven and beyond. The CDSC is measured from the issue date, not from the date that each purchase payment is applied.

Applicants state that for purposes of calculating the CDSC, withdrawals will be considered to come first from any amount available as a free withdrawal, then, to the extent the amount withdrawn exceeds the free withdrawal, from purchase payments that have not previously been withdrawn subject to a CDSC. If there are multiple new purchase payments, the one received earliest is liquidated first, then the one

received next, so that the lowest CDSC percentage will apply to the amount withdrawn.

#### **Applicant's 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.

2. 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 Accounts or Future Accounts, that are issued by ASLAC and underwritten or distributed by ASM. Applicants undertake that Future Contracts funded by the Account or any Future Account 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.

3. Applicants represent that it is not administratively feasible to track the actual Credit amount in one or the other of the Accounts after the Credit is applied to purchase payments in the Contract. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire account value held in the respective Accounts, including the Credit amount, during the right to cancel period, for a medically-related surrender and when purchase payments are made within 12 months prior to the date of death. As a result, the aggregate asset-based charges assessed against a Contract owner's account value will be higher than that which would be charged if the Contract owner's account value did not include the Credit. ASLAC has agreed to provide such disclosure in the prospectus.

4. Subsection (i) of Section 27 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) of the subsection 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 "(A) 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.

5. Applicants submit that the Credit recapture provisions would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the amount of the Credit allocated to his or her annuity account value is not vested until the applicable right to cancel period has expired without return of the Contract. Similarly, a Contract owner's interest in the amount of the Credit allocated to his or her annuity account value will vest, except for Credits allocated to purchase payments received by ASLAC within the first 12 months of the date the Annuitant first became eligible for the medically-related surrender. And lastly, a Contract owner's interest in the amount of the Credit allocated to his or her annuity account value will vest, except for Credits applied to the account value on purchase payments made within 12 months prior to the date of death.

6. Applicants state that the recapture of any Credit is intended only to protect ASLAC against anti-selection under certain specified contingencies. "Anti-selection" can generally be described as a risk that persons obtain coverage based on knowledge that the contingency that triggers payment of an insurance benefit is likely to occur, or is to occur shortly. In the case of the Contracts, the Credits are provided on a guaranteed issue basis. The protection against anti-selection by persons who are ill is the reduction of the death benefit or the amount available as a medically-related surrender by the amount of a Credit applied to purchase payments made within 12 months prior to the applicable Contingency Event, as defined in XT FOUR or XT SIX. With respect to Credits allocated prior to the end of the Contract's right to cancel provision, the amount payable when such provision is exercised must be reduced by an amount equal to the Credits allocated. Otherwise, purchasers would apply for annuities for the sole purpose of making a quick profit and then exercise the right to cancel provision.

7. Applicants represent that, until or unless the amount of any Credit is vested, ASLAC retains the right to, and interest in, the Credit amount, although

not in the earnings attributable to that amount. Thus, when ASLAC recaptures any Credit, it is simply retrieving its own assets, and because a Contract owner's interest in the Credit is not vested, the Contract owner has not been deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the Contract owner's account value (including the Credit).

8. For the foregoing reasons, Applicants state, the provisions for recapture of any Credit under the Contracts do not, and any such Future Contract provisions will not, violate section 2(a)(32) and section 27(i)(2)(A) of the Act. Indeed, a contrary conclusion would be inconsistent with a stated purpose of the National Securities Market Improvement Act ("NSMIA"), which is "to amend the [Act] to \* \* \* provide more effective and less burdensome regulation." Section 26(e) (now renumbered as section 26(f)) and section 27(i) were added to the Act pursuant to section 205 of NSMIA to implement the purposes of NSMIA and the Congressional intent. Thus, the application of a Credit to contributions made under the Contracts should not raise any questions as to ASLAC's compliance with the provisions of section 27(i). Nevertheless, to avoid any uncertainties, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described herein with respect to Contracts and any Future Contracts, without the loss of the relief from section 27 provided by section 27(i).

9. 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 thereunder 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.

10. ASLAC's recapture of the Credit arguably might be viewed as resulting in

the redemption of redeemable securities for a price other than one based on the current net asset value of the Sub-accounts. The recapture of the Credit is not violative of Rule 22c-1. The recapture of the Credit does not involve either of the evils that Rule 22c-1 was intended to eliminate or reduce as far as reasonably practicable, namely: (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 or repurchase at a price above it, and (b) other unfair results, including speculative trading practices. These evils were 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 allowed 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 mutual fund shares.

11. Applicants state that the proposed recapture of the Credit poses no such threat of dilution. To effect a recapture of a Credit, ASLAC will redeem interests in a Contract owner's account at a price determined on the basis of the current net asset value of the respective Sub-Accounts. The amount recaptured will equal the amount of the Credit that ASLAC paid out of its own general account assets. Although Contract owners will be entitled to retain any investment gain attributable to the Credit, the amount of such gain will be determined on the basis of the current net asset value of the respective Sub-accounts. Thus, no dilution will occur upon the recapture of the Credit. 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 Credit.

Applicants believe that because neither of the harms that Rule 22c-1 was meant to address is found in the recapture of the Credit, Rule 22c-1 should have no application to any Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Rule 22c-1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contracts.

#### Conclusion

Applicants submit, based on the grounds summarized above, 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.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-2069 Filed 1-28-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

*Federal Register Citation of Previous Announcement:* [To be published on Friday, January 25, 2002]

*Status:* Closed Meeting.

*Place:* 450 Fifth Street, NW., Washington, DC.

*Date and Time of Previously Announced Meeting:* Tuesday, January 29, 2002 at 10 a.m.

*Change in the Meeting:* Cancellation of Meeting/Additional Meetings.

The closed meeting scheduled for Tuesday, January 29, 2002, has been cancelled, and rescheduled for Wednesday, February 6, 2002, at 10 a.m. An additional closed meeting will be held on Thursday, February 7, 2002, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3) (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matters of the closed meetings scheduled for Wednesday, February 6, 2002, and Thursday, February 7, 2002, will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; formal orders of investigation; and adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if