

six years, the first two years in an easily accessible place. Keeping these records is necessary for any fund that wishes to obtain the benefit of relying on the rule. Although these records are subject to inspection by the Commission, they are not made public.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 7, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-18188 Filed 7-17-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-26098; File No. 812-12921]

### Integrity Life Insurance Company, et al.; Notice of Application

July 14, 2003.

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

**ACTION:** Notice of application for an order pursuant to 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:* Integrity Life Insurance Company ("Integrity"), National Integrity Life Insurance Company ("National Integrity," together with "Integrity", the "Companies"), Separate Account I of Integrity Life Insurance Company, Separate Account I of National Integrity Life Insurance Company (together with Separate Account I of Integrity Life Insurance Company, the "Account"), and Touchstone Securities, Inc. ("Touchstone").

*Summary of Application:* Applicants seek an order of exemption pursuant to

section 6(c) of the Act to the extent necessary to permit the recapture, under specified circumstances, of credits applied to contributions made under certain flexible premium variable annuity contracts that the Companies will issue through the Accounts (the "Contracts"), as well as other contracts that the Companies may issue in the future through their existing or future separate accounts ("Other Accounts") that are substantially similar to the Contracts in all material respects ("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 or affiliated with, Touchstone, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future ("Affiliated Broker-Dealers").

*Filing Date:* The application was filed on January 21, 2003 and amended and restated on July 11, 2003.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received SEC by 5:30 p.m. on August 13, 2003, 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 SEC's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants c/o G. Stephen Wastek, Esq., Assistant General Counsel, Integrity Life Insurance Company, 515 West Market Street, Louisville, Kentucky 40202.

**FOR FURTHER INFORMATION CONTACT:** Alison White, Senior Counsel, or Lorna J. 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 5th Street, NW., Washington, DC 20549-0102 ((202) 942-8090).

### Applicants' Representations

1. Integrity is a stock life insurance company organized under the laws of Ohio. It is authorized to sell life insurance and annuities in 47 states and the District of Columbia. Integrity is a subsidiary of Western and Southern Life Insurance Company ("Western and Southern"), a mutual life insurance company organized under the laws of Ohio.

2. National Integrity is a stock life insurance company organized under the laws of New York. It is authorized to sell life insurance and annuities in 4 states and the District of Columbia. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of Western and Southern.

3. Separate Account I of Integrity Life Insurance Company was established in 1986 as a separate account under Ohio law for the purpose of funding variable annuity contracts issued by Integrity. It is a segregated asset account of Integrity and is registered with the Commission as a unit investment trust under the Act.

4. Separate Account I of National Integrity Life Insurance Company was established in 1986 as a separate account under New York law for the purpose of funding variable annuity contracts issued by National Integrity. It is a segregated asset account of National Integrity and is registered with the Commission as a unit investment trust under the Act.

5. The Accounts will fund the variable benefits available under the Contracts. Each Company's offering of the Contracts is registered under the Securities Act of 1933. That portion of the assets of the Accounts that is equal to the reserves and other Contract liabilities with respect to the Accounts is not chargeable with liabilities arising out of any other business of the Companies. Any income, gains or losses, realized or unrealized, from assets allocated to the Accounts are, in accordance with the Contracts, credited to or charged against the Accounts, without regard to other income, gains or losses of the Companies.

6. Touchstone is the principal underwriter of the Contracts. Touchstone is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. The Contracts are sold by registered representatives of broker-dealers that have entered into distribution agreements with Touchstone. Touchstone is a wholly owned subsidiary of Western and Southern.

7. The minimum initial contribution is \$20,000. An owner may make

additional contributions of at least \$100 at any time. The Companies may limit total contributions to \$1,000,000 if the owner is under age 76 and to \$250,000 if the owner is age 76 or older.

8. The Companies will credit an extra amount to the Contracts equal to a maximum of 8% of a contribution made within the first twelve months of issuance (the "Credit"). Currently the Credit is 5%. The minimum Credit that may be offered is 4%. The Companies will allocate the Credit pro rata among the investment options in the same proportion as the corresponding contribution. The Companies will fund the Credit from their general account assets.

9. The Credit is not part of the amount an owner will receive if he or she exercises the free look provision. Credits applied within twelve months of the date of receipt of due proof of death will be recaptured and are not included in the amount payable as a death benefit. Similarly, all or part of a Credit applied within twelve months of a withdrawal made pursuant to a withdrawal charge waiver (due to, for example, unemployment, terminal illness, nursing home care, or disability) will be recaptured in the same proportion as the withdrawal bears to the value of the Contract (for example, if 50% of account value is withdrawn, 50% of the Credit will be recaptured). In addition, Integrity will recapture all or part of a Credit if the owner annuitizes within the first five years of the date of issuance. Regardless of whether or not the Credit is vested, all gains or losses attributable to such Credit are part of the owner's account value and are immediately vested.

10. The free look period is the 10-day period (or longer if required by state law) during which an owner may return a Contract after it has been delivered and receive a full refund of the account value, less any Credit applied. Unless the law requires that the full amount of the contribution be refunded, less any withdrawals, the owners bears the investment risk from the time of purchase until he or she returns the Contract and the refund amount may be more or less than the contributions the owner made. The Credit will not be part of the amount an owner will be paid if the free look provision is exercised.

11. The Contracts provide for a standard death benefit and an optional death benefit. Integrity's Contract also provides for an enhanced earnings benefit rider. Any Credit applied within twelve months of the date of receipt of due proof of death will be recaptured and will not be included in the death benefit paid under the Contracts. The

Credit will be recaptured whether or not the owner's spouse elects to continue the Contract. However, recapture of the Credit will never cause the amount of the death benefit to decrease below the amount of the owner's total contributions minus the amount of any withdrawals.

12. An owner may make withdrawals from the Contracts at any time before annuitization. Withdrawals in excess of the 10% annual free withdrawal amount are subject to a withdrawal charge during the first nine years after a contribution is made. Under certain circumstances, the withdrawal charge may be waived. Under the Contract issued by Integrity, the withdrawal charge may be waived for withdrawals made due to unemployment, terminal illness, or nursing home care. Under the Contract issued by National Integrity, the withdrawal charge may be waived for withdrawals made due to disability, terminal illness, or nursing home care.

13. In those cases, where the withdrawal charge is waived, any Credit applied within twelve months of such a withdrawal will be recaptured in the same proportion as the amount of the withdrawal in excess of the 10% annual free withdrawal bears to the account value. For example, if 50% of account value is withdrawn, 10% of which falls within the annual free withdrawal amount, only 40% of the Credit will be recaptured; however, if the entire annual free withdrawal amount has previously been withdrawn, 50% of the Credit will be recaptured. There will be no recapture if a withdrawal charge is imposed or in connection with amounts withdrawn that fall within the 10% annual free withdrawal.

14. In the case of the Contract issued by Integrity, if an owner annuitizes during the first five years after issuance, the Credit will be recaptured according to the following schedule:

Contract Year	Percentage of Credit Recaptured
1 .....	100
2 .....	90
3 .....	80
4 .....	70
5 .....	60

Annuitization does not trigger recapture of the Credit under National Integrity's Contract.

15. Owners of the Contracts may allocate their contributions among sixty-three investment options, sixty variable investment options and three fixed investment options. Each subaccount of the Accounts is a variable investment option that will invest in shares of a

corresponding portfolio of Fidelity's Variable Insurance Product Funds, Franklin Templeton Variable Insurance Products Trust, Janus Aspen Series, J.P. Morgan Series Trust II, MFS Variable Insurance Trust, Putnam Variable Trust Funds, Scudder Variable Insurance Trust, Touchstone Variable Series Trust, or Van Kampen Life Portfolios.

16. The Companies, at a later date, may decide to create additional subaccounts to invest in any additional funding options as may now or in the future be available. The Companies, from time to time, also may combine or eliminate subaccounts or transfer assets to and from subaccounts.

17. The Contracts provide for a death benefit, various death benefit options, annuity benefits, and annuity payout options, as well as transfer privileges, dollar cost averaging, asset allocation and rebalancing, and other features. The Contracts assess the following charges: (a) A withdrawal charge as a percentage of contributions withdrawn declining from 9% in contribution year 1 to 0% in contribution year 10; (b) an annual maintenance fee of \$40 for Contracts with account value of \$75,000 or less; (c) an annual administrative fee of .15%; (d) a mortality and expense risk charge of 1.52% in the first nine years after issuance and 1.00% thereafter; (e) a transfer charge of \$20 after the first twelve transfers during a Contract year; (f) any applicable death benefit option charge; and (g) any applicable state premium tax. In addition, assets invested in the subaccounts are charged with the annual operating expenses of the underlying portfolios.

18. Applicants seek exemption pursuant to section 6(c) from sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent deemed necessary to permit the Companies to recapture part or all of a Credit in the following instances: (a) When an owner exercises the Contracts' free look provision; (b) when a death benefit is payable and the date of receipt of due proof of death is within twelve months of a Credit being applied; (c) when a withdrawal is made within twelve months of a Credit being applied under circumstances when the withdrawal charge is waived; or (d) in the case of Integrity only, when the Contract is annuitized during the first five years after issuance.

**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 issued by the Companies, funded by the Accounts or Other Accounts, and underwritten or distributed by Touchstone or Affiliated Broker-Dealers. Applicants undertake that Future Contracts will be substantially similar to the Contracts in all material respects. 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. Applicants represent that it is not administratively feasible to track a Credit in the Accounts after the Credit is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amount held in the Accounts, including the Credit, during the recapture periods. As a result, during such periods, the aggregate asset-based charges assessed against an owner's account value will be higher than those that would be charged if the owner's account value did not include the Credit. The account value includes all assets in the Accounts and the fixed accounts, including any Credit.

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

4. Applicants submit that the recapture of the Credit 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. An owner's

interest in the Credit allocated to his or her account value is not fully vested until the sixth Contract year for Contracts issued by Integrity and the third Contract year for Contracts issued by National Integrity. Until the right to recapture has expired and any applicable Credit is vested, the Companies retain the right and interest in the Credit, although not in the earnings attributable to that amount. Thus, when the Companies recapture any Credit, they are merely retrieving their own assets, and the owner has not been deprived of a proportionate share of the applicable Accounts' assets because his or her interest in the Credit has not vested.

5. In addition, Applicants state that permitting an owner to retain a Credit under a Contract upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it and to return it for a quick profit. Furthermore, the recapture of any Credit applied to contributions made within the first twelve months after issuance is designed to provide the Companies with a measure of protection against anti-selection. The anti-selection risk is that an owner can collect a Credit shortly before death, a free withdrawal, or annuitization, thereby leaving the Companies little time to recover the cost of the Credit. As noted earlier, the amount recaptured equals the Credits provided by the Companies from their general account assets, and any gain would remain part of the owner's account value.

6. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put up to 108% of their contributions to work for them in the selected investment options. In addition, the owner will retain any earnings attributable to the Credit, as well as the principal amount of the Credit once vested.

7. Applicants further submit that the recapture of any Credit only applies in relation to the risk of anti-selection against the Companies. Anti-selection can generally be described as a risk that owners obtain an undue advantage. This undue advantage is based on elements of fairness to the Companies and the actuarial and other factors taken into account in designing the Contracts and Future Contracts. The Companies provide the Credit from their general account assets on a guaranteed basis. Thus, they undertake a financial obligation that contemplates the retention of the Contracts and Future Contracts by their owners over an

extended period, consistent with the long-term nature of retirement planning. The Companies generally expect to recover their costs, including the amount of the Credit, over an anticipated duration while a Contract or Future Contract is in force. The right to recapture Credits applied to contributions made within the first twelve months after issuance protects the Companies against the risk that an owner will purchase a Contract or Future Contract or make larger or additional contributions with the knowledge that the contingency that triggers payment of a benefit is likely or about to occur. With respect to refunds paid upon the return of the Contracts or Future Contracts within the free look period, the amount payable by the Companies must be reduced by the amount of the Credit. Otherwise, investors could purchase a Contract or Future Contract for the sole purpose of exercising the free look provision and making a quick profit.

8. Applicants submit that the provisions for recapture of Credits under the Contracts and Future Contracts do not violate sections 2(a)(32) and 27(i)(2)(A) of the Act. Sections 26(e) and 27(i) were added to the Act to implement the purposes of the National Securities Markets Improvement Act of 1996 and Congressional intent. The application of a Credit to contributions made under the Contracts should not raise any questions as to the Companies' compliance 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 Credit under the circumstances described in this application without the loss of relief from section 27 provided by section 27(i).

9. 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 next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. The Companies' recapture of a Credit might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current

accumulation unit value of the Accounts. Applicants contend, however, that the recapture of the Credit does not violate Rule 22c-1. To effect a recapture of a Credit, the Companies will redeem interests in a Contract at a price determined on the basis of the current accumulation unit value of the subaccounts to which the owner's account value is allocated. The amount recaptured will equal the amount of the Credit paid out of the Companies' general account assets. Although the owner will be entitled to retain any investment gain attributable to the Credit, the amount of that gain will be determined on the basis of the current accumulation unit values of the applicable subaccounts. 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. 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 not apply. 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 that their request for an order that applies to the Accounts and any Other Accounts established by the Companies, in connection with the issuance of the Contracts and Future Contracts, is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants state that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in this application. Applicants submit that having Applicants file additional applications would impair Applicants' ability to take advantage of business opportunities as they arise. Further, Applicants state that if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive

any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive requests meet the standards set out in section 6(c), 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. 03-18189 Filed 7-17-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 21, 2003: Closed Meetings will be held on Tuesday, July 22, 2003 at 2 p.m. and Thursday, July 24, 2003 at 3 p.m., and an Open Meeting will be held on Thursday, July 24, 2003 at 2 p.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 matter of the Closed Meeting scheduled for Tuesday, July 22, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Formal order of investigation; and Opinions.

The subject matter of the Open Meeting scheduled for Thursday, July 24, 2003 will be:

1. The Commission will hear oral argument on an appeal by Robert M.

Fuller, a former Chairman of the Board of Directors and Executive Vice-President for Investor Relations of Vista 2000, Inc. ("Vista"), from an administrative law judge's initial decision.

The law judge found that Fuller caused Vista to violate Section 17(a) of the Securities Act of 1933, sections 10(b) and 13(a) of the Securities Exchange Act of 1934, and Exchange Act Rules 10b-5, 13a-1, and 12b-20. The law judge ordered Fuller to cease and desist from committing or causing any violations or future violations of these provisions.

The Commission will consider the following issues:

- Whether Fuller caused Vista to commit the alleged violations; and
- If so, whether the imposition of a cease-and-desist order is appropriate and in the public interest.

The subject matter of the Closed Meeting scheduled for Thursday, July 24, 2003 will be: Post-argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942-7070.

Dated: July 15, 2003.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03-18395 Filed 7-15-03; 4:48 pm]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48172; File No. SR-Amex-2003-34]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC, Relating to Indications, Openings and Re-Openings

July 14, 2003.

On April 23, 2003, the American Stock Exchange LLC ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to codify and revise the Exchange's policies regarding tape indications and re-openings in stocks that are subject to a trading halt (other than "circuit

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.