notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: December 22, 2004.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 04–28451 Filed 12–23–04; 9:29 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26712; File No. 812–13122]

Merrill Lynch Life Insurance Group, et al. Notice of Application

December 21, 2004.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application (the ''Application'') for an order of exemption pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') from Sections 2(a)(32) and 27(i)(2)(a) of the Act and Rule 22c–1 thereunder to allow recapture of a bonus amount.

Applicants: Merrill Lynch Life Insurance Company (''MLLIC''), Merrill Lynch Life Variable Annuity Separate Account A (''Account A''), Merrill Lynch Variable Annuity Separate Account C (''Account C''), Merrill Lynch Variable Annuity Separate Account D (''Account D''), ML Life Insurance Company of New York (''MLNY''), ML of New York Variable Annuity Separate Account A (''NY Account A''), ML of New York Variable Annuity Separate Account C (''NY Account C''), ML of New York Variable Annuity Separate Account D (''NY Account D''), and Merrill Lynch, Pierce, Fenner & Smith Incorporated (''MLPF&S'') (except for MLLIC, MLNY, and MLPF&S, each a ''separate account'' as defined in Section 2(a)(37) of the Investment Company Act of 1940, as amended (the ''Act''); each separate account collectively referred to herein as the ''Separate Accounts'') (all foregoing parties collectively referred to herein as the ''Applicants'').

Summary of Application: The Applicants request an order exempting them with respect to the variable annuity contracts described herein (the ''Contracts'') and other variable annuity contracts that are substantially similar in all material respects to the contracts described herein, that MLLIC and/or MLNY (together, the ''Companies'') may issue in the future (''Future Contracts''), and any other separate accounts of the Companies and their successors in interest (''Future Accounts'') that support Future Contracts, and certain NASD member broker-dealers which in the future, may act as principal underwriter of such contracts (''Future Underwriters''), from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, pursuant to Section 6(c) of the Act, to the extent necessary to permit the recapture of all or a portion of the bonus amounts (previously attributable to premium payments under the bonus class of the Contract (the ''XC Class'')) where the bonus amounts were applied and a contract owner (''Owner'') (1) returns the Contract during the ''Ten Day Right to Review'' period (the ''Free Look Period''); (2) dies within six months of receipt and acceptance by MLLIC or MLNY of a premium payment (unless the Contract is continued under the spousal benefit continuation option); or (3) surrenders the Contract (in full or in part) or the surrender value is paid to the Owner (because the Contract has been terminated for inactivity) within three years of receipt and acceptance by MLLIC or MLNY of a premium payment (pursuant to a bonus recapture schedule).

Filing Date: The Application was filed on September 3, 2004 and amended on December 20, 2004.

Hearing or Notification of Hearing: An order granting the Application will be issued unless the Commission orders a hearing. Interested person may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 18, 2005, 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 may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Edward W. Diffin, Jr., Esq., Merrill Lynch Insurance Group, Inc., 1300 Merrill Lynch Drive, 2nd Floor, Pennington, New Jersey 08534. Copies to Mary E. Thornton, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Ave., NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Robert Lamont, Attorney, at (202) 942–0676, or Lorna MacLeod, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. MLLIC is a stock life insurance company that is domiciled in Arkansas. MLLIC was incorporated under the laws of the State of Washington on January 27, 1986, and redomesticated to the State of Arkansas on August 31, 1991. MLLIC is authorized to operate as a life insurance company in forty-nine states, the District of Columbia, the U.S. Virgin Islands, Guam, and Puerto Rico. Its principal offices are located at 1300 Merrill Lynch Drive, 2nd Floor, Pennington, New Jersey 08534. MLLIC is a wholly owned subsidiary of Merrill Lynch Insurance Group, Inc. (''MLIG''). MLLIC is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc., a publicly held company whose shares are traded on the New York Stock Exchange.

2. MLNY is a stock life insurance company that was organized under the

laws of the State of New York on November 28, 1973. MLNY is authorized to sell life insurance and annuities in nine states. Its principal offices are located at 222 Broadway, 14th Floor, New York, New York 10038. MLNY is a wholly owned subsidiary of MLIG. MLNY also is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc.

3. Account A was established by MLLIC under the insurance laws of the State of Arkansas on August 6, 1991. Account A is registered with the Commission under the Act as a unit investment trust. The assets of Account A support certain individual flexible premium variable annuity contracts. A registration statement to register interests in Account A offered through the Contracts has been filed with the Commission under the Securities Act of 1933, as amended (the ''1933 Act'') on Form N–4 (333–118362). Account A is a ''separate account'' as defined in Section 2(a)(37) of the Act. MLLIC is the legal owner of the assets in Account A. Any income, gain, or loss (whether or not realized) from the assets of Account A are credited to or charged against Account A without regard to MLLIC's other income, gain, or loss. Assets of Account A equal to its reserves and other liabilities under the Contracts may not be charged with liabilities arising from any other MLLIC business. Account A is comprised of various subdivisions called subaccounts (the ''Subaccounts''), which were established to receive and invest premium payments under the Contracts and other annuity contracts.

4. Account C was established by MLLIC under the insurance laws of the State of Arkansas on November 16, 2001. Account C is registered with the Commission under the Act as a unit investment trust. The assets of Account C support certain individual flexible premium variable annuity contracts. A registration statement to register interests in Account C offered through the Contracts will be filed with the Commission under the 1933 Act on Form N–4 in the near future. Account C is a ''separate account'' as defined in Section 2(a)(37) of the Act. MLLIC is the legal owner of the assets in Account C. Any income, gain, or loss (whether or not realized) from the assets of Account C are credited to or charged against Account C without regard to MLLIC's other income, gain, or loss. Assets of Account C equal to its reserves and other liabilities under the Contracts may not be charged with liabilities arising from any other MLLIC business. Account C is comprised of various Subaccounts.

5. Account D was established by MLLIC under the insurance laws of the State of Arkansas on June 21, 2002. Account D is registered with the Commission under the Act as a unit investment trust. The assets of Account D support certain individual flexible premium variable annuity contracts. A registration statement to register interests in Account D offered through the Contracts has been filed with the Commission under the 1933 Act on Form N–4 (333–119364). Account D is a ''separate account'' as defined in Section 2(a)(37) of the Act. MLLIC is the legal owner of the assets in Account D. Any income, gain, or loss (whether or not realized) from the assets of Account D are credited to or charged against Account D without regard to MLLIC's other income, gain, or loss. Assets of Account D equal to its reserves and other liabilities under the Contracts may not be charged with liabilities arising from any other MLLIC business. Account D is comprised of various Subaccounts.

6. NY Account A was established by MLNY under the insurance laws of the State of New York on August 14, 1991. NY Account A is registered with the Commission under the Act as a unit investment trust. The assets of NY Account A support certain individual flexible premium variable annuity contracts. A registration statement to register interests in NY Account A offered through the Contracts has been filed with the Commission under the 1933 Act on Form N–4 (333–119611). NY Account A is a ''separate account'' as defined in Section 2(a)(37) of the Act. MLNY is the legal owner of the assets in NY Account A. Any income, gain, or loss (whether or not realized) from the assets of NY Account A are credited to or charged against NY Account A without regard to MLNY's other income, gain, or loss. Assets of NY Account A equal to its reserves and other liabilities under the Contracts may not be charged with liabilities arising from any other MLNY business. NY Account A is comprised of various Subaccounts.

7. NY Account C was established by MLNY under the insurance laws of the State of New York on May 16, 2002. NY Account C is registered with the Commission under the Act as a unit investment trust. The assets of NY Account C support certain individual flexible premium variable annuity contracts. A registration statement to register interests in NY Account C offered through the Contracts will be filed with the Commission under the 1933 Act on Form N–4 in the near future. NY Account C is a ''separate account'' as defined in Section 2(a)(37) of the Act. MLNY is the legal owner of the assets in NY Account C. Any income, gain, or loss (whether or not realized) from the assets of NY Account C are credited to or charged against NY Account C without regard to MLNY's other income, gain, or loss. Assets of NY Account C equal to its reserves and other liabilities under the Contracts may not be charged with liabilities arising from any other MLNY business. NY Account C is comprised of various Subaccounts.

8. NY Account D was established by MLNY under the insurance laws of the State of New York on July 23, 2002. NY Account D is registered with the Commission under the Act as a unit investment trust. The assets of NY Account D support certain individual flexible premium variable annuity contracts. A registration statement to register interests in NY Account D offered through the Contracts has been filed with the Commission under the 1933 Act on Form N–4 (333–119797). NY Account D is a ''separate account'' as defined in Section 2(a)(37) of the Act. MLNY is the legal owner of the assets in NY Account D. Any income, gain, or loss (whether or not realized) from the assets of NY Account D are credited to or charged against NY Account D without regard to MLNY's other income, gain, or loss. Assets of NY Account D equal to its reserves and other liabilities under the Contracts may not be charged with liabilities arising from any other MLNY business. NY Account D is comprised of various Subaccounts.

9. MLPF&S, an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc. and an affiliate of the Companies, is the principal underwriter and distributor of the Contracts. MLPF&S was organized in 1958 under the laws of the state of Delaware and is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the NASD.

10. Each Subaccount invests only in shares of a designated portfolio of certain management investment companies (the ''Funds''). The Companies may also make fixed account options available under the Contracts in the future.

11. The Contracts are individual flexible premium deferred variable annuity contracts issued by the Companies through the Separate Accounts. The Contracts provide for the accumulation of values on a variable basis during the accumulation period, and provide for a variety of annuity settlement options. Certain Contracts may be purchased on a non-qualified tax basis. Certain Contracts also may be purchased and used in connection with

plans qualifying for favorable federal income tax treatment. The Contracts currently offer four different charge structures, each referred to as a ''Class.'' Each Class, including an XC Class described in more detail below, imposes different surrender charges and asset-based insurance charges.

12. The Owner determines at the time of application for a Contract how premium payments will be allocated among the Subaccounts of the applicable Separate Account. The Owner generally may allocate premium payments to up to 20 of any of the available Subaccounts. The Contract Value, which is the total value of an Owner's interest in the Contract, will vary with the investment performance of the Subaccounts selected, and the Owner bears the entire risk for amounts allocated to the Subaccounts.

13. During the Free Look Period, an Owner has the right to return his or her Contract within ten days (or longer if required by state law). If the Contract is returned during the Free Look Period, the amount refunded will equal the Contract Value as of the date MLLIC or MLNY receives the returned Contract. However, in those states that require a return of premium payments in the event of Contract cancellation, the Companies will instead return the greater of all premium payments paid into the Contract (less any withdrawals) or the Contract Value as of the date MLLIC or MLNY receives the returned Contract.

In states that require a return of premium payments, the Companies will allocate all premium payments to a money market Subaccount during the first fourteen days following the Contract Date. In those states, the Companies bear any investment risk associated with the premium payments during the Free Look Period; otherwise, the Owner will bear any investment risk associated with the premium payments during the Free Look Period.

The Companies will not assess surrender charges against a Contract returned during the Free Look Period. The Companies will generally pay the refund within seven days after they receive the returned Contract. The Contract will then be considered void. As described in more detail below, the Companies intend to recapture bonus amounts added to the Contract Value if the Owner returns the Contract during the Free Look Period.

14. The Owner may surrender the Contract or make a partial withdrawal from Contract Value during the accumulation period. The minimum amount that may be withdrawn is $100, and at least $5,000 must remain in the Contract after a partial withdrawal (and any associated surrender charge) is made. If an Owner surrenders a Contract or takes a partial withdrawal, the Companies may deduct a surrender charge to compensate them for expenses relating to the sale of the Contracts, such as commissions, preparation of sales literature, and other promotional activity. Upon partial withdrawal, the Companies also may deduct any applicable premium taxes. Upon surrender, the Companies also will deduct any applicable contract fee, accrued but uncollected rider charges, and premium taxes. The surrender charge will be reduced using the ''free withdrawal amount'' provided for in the Contract. The free withdrawal amount is the portion of any partial withdrawal or surrender that is not subject to a surrender charge. The free withdrawal amount is the greater of: (a) 10% of the amount of each premium subject to a surrender charge (not to exceed the amount of each premium that had not been previously withdrawn as of the beginning of the Contract year), less any prior withdrawals during that Contract year; and (b) the ''gain'' in the Contract plus premiums remaining in the Contract that are no longer subject to a surrender charge. Any amount previously withdrawn from the Contract during that Contract year will be taken into account in determining the ''free withdrawal amount'' available as of the date of the withdrawal request. For the purpose of calculating the surrender charge, the Companies make withdrawals as if gain is withdrawn first, followed by premiums. Premium payments are assumed to be withdrawn on a first-in, first-out (''FIFO'') basis.

The surrender charge equals a percentage of each premium withdrawn. With regard to the XC Class offered under the Contracts, each premium is subject to the charge for the applicable period specified below from the date it is received and accepted by MLLIC or MLNY, as follows:

Complete years elapsed since payment of premium	Surrender charge percentage (as a percentage of the premium payment)
0	8.0
1	8.0
2	7.0
3	7.0
4	6.0
5	6.0
6	5.0
7	4.0
8	3.0
9	0

As described in more detail below, the Companies may recapture all or a portion of the bonus amounts added to the Contract Value if the Owner surrenders the Contract or makes a partial withdrawal within three years of MLLIC's or MLNY's receipt and acceptance of a premium payment.

15. Under certain circumstances, the Contract may be terminated due to inactivity. If no premiums have been received during the prior 24 months, the total of all premiums paid (less any partial withdrawals) is less than $2,000, and the Contract Value is less than $2,000, then the Contract may be terminated. No Contract will be terminated solely due to negative investment performance. Termination for inactivity is treated as a surrender for purposes of bonus recapture.

16. During the accumulation period, the Companies will pay a death benefit upon the Owner's death (upon the death of the first Owner to die if there are Co-Owners, or upon the death of the first Annuitant if any Owner is not a natural person). Unless the Owner selects an optional guaranteed minimum death benefit (''GMDB''), the death benefit will equal the Contract Value.

17. The Contracts provide four GMDB options that an Owner may select to purchase for an additional charge if the Owner (or the older Owner, if the Contract has Co-Owners, or the Annuitant, if the Owner is a non-natural person) is age 75 or under. If the Owner dies within 90 days of the Contract Date or within one year of the date of a change of Owner, any GMDB will equal the Contract Value. Some GMDB options may not be available in every state. If the Owner purchases a GMDB, the death benefit equals the greater of the Contract Value or the GMDB Base. The current calculation for each GMDB Base is described below.

18. In addition to the above death benefits and for an additional charge, an Owner may elect the Additional Death Benefit Rider if the Owner (or the older Owner, if the Contract has Co-Owners, or the older Annuitant, if the Owner is a non-natural person) is age 75 or under. This rider is designed to help offset expenses, including income taxes, attributable to payment of death benefit proceeds. The Additional Death Benefit Rider may not be available in all states. Upon payment of the death benefit, the Companies may deduct any applicable premium taxes.

19. As described in more detail below, the Companies will recapture any bonus amounts added to the Contract Value if the Owner (the first Owner to die, if there are Co-Owners, or the first Annuitant, if any Owner is not a natural

person) dies within six months of MLLIC's or MLNY's receipt and acceptance of the corresponding premium payment. However, if an Owner dies and the Contract is continued under the spousal benefit continuation option, any bonus amounts not previously recaptured will no longer be subject to recapture as of the spousal continuation date.

20. If an Owner elects the XC Class under the Contracts, then the Companies will add a bonus amount to the Contract Value each time the Owner makes a premium payment. With regard to an initial premium payment, the Companies will apply the corresponding bonus amount to an Owner's Contract Value on the Contract Date. With regard to each additional premium payment, the Companies will apply a corresponding bonus amount to an Owner's Contract Value at the end of the valuation period during which that premium payment is received and accepted at MLLIC's or MLNY's Service Center.

21. To calculate each bonus amount, the Companies will allocate the corresponding premium payment to one or more bonus tiers based on the amount of cumulative premium payments made under the Contract, as follows:

If cumulative premium payments are:	Then maximum bonus amount percentage is:	Then current bonus percentage is:	Then minimum guaranteed bonus percentage is:
Less than or equal to $25,000	5.0	4.5	3.0
Greater than $25,000 but less than or equal to $125,000	5.5	4.5	3.0
Greater than $125,000 but less than or equal to $500,000	5.5	4.5	3.5
Greater than $500,000 but less than or equal to $1,000,000	6.0	5.5	4.0
Greater than $1,000,000	7.0	5.5	4.5

Thus, the Companies may apply different bonus percentages to each premium payment (unless cumulative premium payments are less than or equal to $25,000) by breaking out the payment according to the ranges in the above table and multiplying the portion of the payment allocated to each tier by that tier's current bonus amount percentage. However, a premium payment will only be allocated to the first tier if cumulative premium payments are less than or equal to $25,000. If the initial premium payment exceeds $25,000, the first tier will not apply and the second tier will apply to all cumulative premiums less than or equal to $125,000. For example, an initial premium payment of $20,000 would receive a maximum bonus amount of $1,000 ($20,000 × 0.05 (tier 1)). If the initial premium payment is $100,000, the maximum bonus amount would be $5,500 ($100,000 × 0.055 (tier 2)). However, an initial premium payment of $700,000 would receive a maximum bonus amount of $39,500 ($125,000 × 0.055 (tier 2) + $375,000 × 0.055 (tier 3) + $200,000 × 0.06 (tier 4)).

No bonus amount (or subsequent recapture thereof, as discussed below) will be based on a percentage that exceeds the maximum bonus amount percentages shown in the above table. When calculating each bonus amount, ''cumulative premium payments'' do not include bonus amounts previously added to Contract Value. The bonus amount is allocated among the Subaccounts in the same manner as the corresponding premium payment. The Companies may change the current bonus amount percentage, but it will never be less than the minimum guaranteed bonus amount percentage listed in the table.

From time to time, the Companies may offer promotional programs with promotional rates for XC Class Contracts issued within specified periods of time (each, a ''Promotional Period''). Such promotional programs may apply to initial and/or subsequent premium payments received during the Promotional Period. Initial and/or subsequent premium payments received after the Promotional Period will receive the current bonus amount percentage in effect at that time. The Promotional Period will never exceed the maximum bonus amount. The Companies may terminate any promotional programs or offer other promotional programs at any time in their sole discretion.

22. If the Owner returns the Contract during the Free Look Period, then the Owner will not receive any portion of the bonus amounts (*i.e.*, the Companies will ''recapture'' the full amount of each bonus). In the event of the death of the Owner (or upon the death of the first Owner to die if there are Co-Owners, or upon the death of the first Annuitant if any Owner is not a natural person), the Companies will recapture any bonus amounts corresponding to premium payments received and accepted within the previous six months of death. Thus, under the XC Class, if an optional guaranteed minimum death benefit (''GMDB'') is not chosen the death benefit equals the Contract Value less any bonus amounts credited in the prior six months. If a GMDB is chosen, the death benefit equals the greater of the Contract Value less any bonus amounts credited in the prior six months or the GMDB Base (as defined above). However, in the event the Contract is continued under the spousal benefit continuation option, any bonus amounts not previously recaptured will no longer be subject to recapture as of the spousal continuation date. In the event of partial withdrawal or surrender within three years of MLLIC's or MLNY's receipt and acceptance of a premium payment, the Companies may recapture all or a portion of the corresponding bonus amount based on the bonus recapture percentages presented in the following schedule.

Completed years since receipt and acceptance of premium payment	Bonus recapture percentage for surrenders and partial withdrawals
0	100
1	65
2	30
3+	0

23. The Companies will recapture any bonus amounts subject to recapture from the Owner's Contract Value at the end of the valuation period during which the transaction request is received and accepted at MLLIC's or MLNY's Service Center. For each premium payment, the bonus amount subject to recapture is equal to the applicable bonus recapture percentage multiplied by (a) minus (b) where: (a) is the bonus amount attributable to that premium; and (b) is the sum of each

previously recaptured bonus amount attributable to that premium payment divided by the bonus recapture percentage on the date such amount was recaptured.

24. The Companies will deduct bonus amounts subject to recapture based on the associated premiums withdrawn from the Contract, which are determined on a ''first-in, first out'' (or ''FIFO'') basis. Currently, the Companies do not recapture any bonus amounts on withdrawals that are within the ''free withdrawal amount.'' The Companies reserve the right to recapture bonus amounts on withdrawals that are within the ''free withdrawal amount'' in the future. The amount actually recaptured is based on the bonus amount subject to recapture multiplied by the ratio of: (i) the associated premium payment withdrawn that was subject to a surrender charge to (ii) the total amount of that premium payment remaining in the Contract immediately prior to the withdrawal that was subject to a surrender charge. The Companies will deduct any recaptured bonus amounts on a pro rata basis from among the Subaccounts the Owner is invested in, based on the ratio of the Owner's Subaccount value to his or her total Subaccount value before the partial withdrawal.

25. If the Companies recapture a bonus amount, they will take back the bonus amount as if it had never been applied. However, the accumulated gain or loss on bonus amounts is never subject to recapture. Thus, an Owner bears any investment loss and retains any investment gain attributable to bonus amounts. The Companies will not re-credit any charges, including asset-based insurance charges, imposed on bonus amounts subsequently recaptured.

26. Although not currently permitted, in the future the Companies may permit an Owner to partially annuitize the Contract. Partial annuitizations would be considered to be partial withdrawals for purposes of calculations under the Contract, including bonus recaptures.

27. In addition to the fees and charges discussed above, the Companies deduct various other fees and charges. These currently include an asset-based insurance charge that varies by Subaccount (under the XC Class Contract this charge currently ranges from 1.55% to 1.80% of Subaccount assets (guaranteed not to exceed 2.00%)); a current annual contract fee of $50 (guaranteed not to exceed $75), which will apply if the greater of Contract Value or premiums less withdrawals is less than $50,000; transfer fee of $25 (guaranteed not to exceed $30) for each transfer above 12 per Contract year; premium taxes or other taxes by any governmental entity; and fees for optional benefits or riders.

Applicants' Legal Analysis

1. The Applicants respectfully request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions set forth below to permit the Applicants to recapture all or a portion of bonus amounts attributable to premium payments under the Contract's XC Class when an Owner (1) returns the Contract during the Free Look Period; (2) dies within six months of receipt and acceptance by MLLIC or MLNY of a premium payment (unless the Contract is continued under the spousal benefit continuation option); or (3) surrenders the Contract (in full or in part) or the surrender value is paid to the Owner (because the Contract has been terminated for inactivity) within three years of receipt and acceptance by MLLIC or MLNY of a premium payment (pursuant to a bonus recapture schedule).

2. Because the provisions described below may be inconsistent with a recapture of bonus amounts, the Applicants request exemptions for the Contracts described herein, and for Future Contracts, from Sections 2(a)(32) and 27(i)(2)(a) of the Act, and Rule 22c–1 thereunder, pursuant to Section 6(c), to the extent necessary to recapture the bonus amounts, as described above. The Applicants seek exemptions therefrom in order to avoid any questions concerning the Contracts' compliance with the Act and rules thereunder. For the reasons discussed below, the exemptions requested herein are necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

3. To the extent that the bonus amount recapture might be seen as a discount from the net asset value, or might be viewed as resulting in the payment to an Owner of less than the proportionate share of the issuer's net assets, the bonus amount 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), 22(c), 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 load on any variable annuity contract participating in such account. However, the bonus amount recapture is not a sales load, but a recapture of bonus amounts MLLIC or MLNY previously attributed to an Owner's premium payments. The Companies provide the bonus amounts from their general accounts on a guaranteed basis. The Contracts are designed to be long-term investment vehicles. In undertaking this financial obligation, the Companies contemplate that an Owner will retain a Contract over an extended period, consistent with the long-term nature of the Contracts. The Companies designed the product so that they would recover their costs (including the bonus amounts) over an anticipated duration while a Contract is in force. If an Owner withdraws his money during the Free Look Period, or a death benefit is paid, or a withdrawal or surrender is made, before this anticipated period, the Companies must recapture the bonus amounts subject to recapture in order to avoid a loss.

4. The recapture of bonus amounts does not violate Section 2(a)(32) of the Act. The bonus amount recapture provision pursuant to the Contract's XC Class does not deprive the Owner of his or her proportionate share of the issuer's current net assets. In the case of death of the Owner, an Owner will have the full right to any bonus amounts not previously recaptured six months following MLLIC's or MLNY's receipt and acceptance of the corresponding premium payment. In the case of partial or full surrender, an Owner's right to a portion of a bonus amount not previously recaptured will begin one year following MLLIC's or MLNY's receipt and acceptance of the corresponding premium payment, and an Owner will have the full right to any such remaining bonus amount three years following MLLIC's or MLNY's receipt and acceptance of the corresponding premium payment. Until that time, the Companies retain the right and interest in the dollar amount of any bonus amounts subject to recapture. Thus, when the Companies recapture all or a portion of a bonus amount, they are only retrieving their own assets, and because an Owner does not have an interest in the bonus amount, such Owner would not be deprived of a proportionate share of the applicable Separate Account's assets (the issuer's current net assets) in violation of Section 2(a)(32). Therefore, such recapture does not reduce the amount of the applicable Separate Account's current net assets an Owner would otherwise be entitled to receive. However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the

provisions of Sections (2)(a)(32) and 27(i)(2)(A) to the extent deemed necessary to permit them to recapture all or a portion of the bonus amounts under the Contracts and Future Contracts.

5. As a result of the bonus amounts available under the Contract's XC Class, an Owner who made an initial premium payment of $10,000 in the first Contract year could be viewed as having a Contract Value of $10,400 before any earnings accrued. The Companies' addition of bonus amounts might arguably be viewed as resulting in an Owner purchasing a redeemable security for a price below the current net asset value. Further, by recapturing the bonus amounts, the Companies might arguably be redeeming a redeemable security for a price other than one based on the current net asset value of the applicable Separate Account.

6. An Owner's interest in his or her Contract Value would always be offered at a price based on the net asset value next calculated after receipt of the order. The granting of bonus amounts does not reflect a reduction of that price. Instead, the Companies will purchase with their own general account assets an interest in the applicable Separate Account equal to the bonus amounts. Because the bonus amounts will be paid out of MLLIC's or MLNY's assets, not the applicable Separate Account's assets, no dilution will occur as a result of the bonus amounts.

7. The recapture of bonus amounts does not involve either of the two harms that the Commission intended to eliminate or reduce with Rule 22c–1. The Commission's stated purposes in adopting Rule 22c–1 were to avoid or minimize: (1) Dilution of the interests of other security holders; and (2) speculative trading practices that are unfair to such holders. These two concerns 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, and thereby the values of outstanding mutual fund shares were diluted.

8. The proposed recapture of bonus amounts under the Contracts does not pose such threat of dilution. The bonus amount recapture will not alter an Owner's net asset value. The Companies will determine an Owner's surrender value (an amount equal to the Contract Value reduced by any charges (including the surrender charge) and increased by any credits applied upon surrender) under a Contract in accordance with Rule 22c–1 on a basis next computed after receipt of an Owner's request for surrender (likewise, the calculation of death benefits and annuity payment amounts will be in full compliance with the forward pricing requirement of Rule 22c–1). The amount recaptured will equal all or a portion of bonus amounts that MLLIC or MLNY paid out of its general account assets.

It is not administratively feasible to track the bonus amount in the Separate Accounts after the Companies apply the bonus. As a result, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amount held in the Separate Accounts, including the bonus amount, during the time the bonus amount is subject to recapture. During this time, the aggregate asset-based charges assessed against an Owner's Contract Value will be higher than those that would be charged if the Owner's Contract Value did not include the bonus amount, but the increment will obviously be only a small percentage of the bonus amount. On the other hand, an Owner will retain any investment benefit from the bonus amount. Although an Owner will retain any investment gain attributable to the bonus amounts, the Companies will determine the amount of such gain on the basis of the current net asset value of the Subaccount. Thus, no dilution will occur upon the recapture of bonus amounts.

9. Further, the other harm that Rule 22c–1 was designed to address (speculative trading practices calculated to take advantage of backward pricing) will not occur as a result of MLLIC's or MLNY's recapture of a bonus amount. 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 recapture simply does not create the opportunity for speculative trading.

10. Rule 22c–1 should have no application to a bonus amount, as neither of the harms that Rule 22c–1 was designed to address are present in the recapture of bonus amounts. However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture bonus amounts available through the XC Class under the Contracts and Future Contracts.

11. The Commission should grant the exemptions requested in this Application, even if the bonus amounts described herein arguably conflicts with Sections 2(a)(32) or 27(i)(2)(A) of the Act or Rule 22c–1 thereunder. The bonus amount provisions are generally beneficial to Owners. The recapture provisions temper this benefit somewhat, but only if an Owner redeems his or her money under the circumstances described herein. While there would be a small downside in a declining market where an Owner would bear any losses attributable to the bonus amounts, it is the converse of the benefits an Owner would receive on the bonus amounts in a rising market. As any earnings on bonus amounts applied would not be subject to recapture and thus would be immediately available to an Owner, likewise any losses on bonus amounts would also not be subject to recapture and thus would be immediately available to an Owner. The bonus amount recapture provision does not diminish the overall value of the bonus amounts.

12. MLLIC's or MLNY's recapture of bonus amounts is designed to prevent anti-selection against it. The risk of anti-selection would be that an Owner could make significant premium payments into the Contract solely in order to receive a quick profit from the bonus amounts. By recapturing the bonus amounts, the Companies protect themselves against the risk that an Owner will make such large premium payments, receive the bonus amounts, and then withdraw his or her money from the Contract. The Companies generally protect themselves from this kind of anti-selection, and recover their costs in situations where an Owner withdraws his or her money early in the life of a Contract, by imposing a surrender charge. However, where an Owner withdraws his money during the Free Look Period or a death benefit is paid, the Companies do not apply this charge.

13. The Applicants seek relief herein not only for themselves with respect to the support of the Contracts, but also with respect to Future Accounts or Future Contracts described herein. The Applicants represent that the terms of the relief requested with respect to any Contracts or Future Contracts funded by the Separate Accounts or Future Accounts are consistent with the standards set forth in Section 6(c) of the Act and Commission precedent. The Commission has previously granted class relief (from certain specified provisions of the Act for separate accounts that support variable annuity contracts) that is materially similar to the relief described in this Application.

14. In addition, the Applicants seek relief herein with respect to Future Underwriters (*i.e.*, a class consisting of NASD member broker-dealers that may also act as principal underwriter of the Contracts and Future Contracts). The Commission has regularly granted relief to ''future underwriters'' that are not named, and are not affiliates of the applicants. The Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in Section 6(c) of the Act and Commission precedent.

15. Without the requested class relief, exemptive relief for any Future Account, Future Contract, or Future Underwriter would have to be requested and obtained separately. These additional requests for exemptive relief would present no issues under the Act not already addressed herein. If the Applicants were to repeatedly seek exemptive relief with respect to the same issues addressed herein, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. The requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the Companies to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would enhance the Applicants' ability to effectively take advantage of business opportunities as such opportunities arise. The Applicants' request for class exemptions 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, and that an order of the Commission including such class relief, should, therefore, be granted. Any entity that currently intends to rely on the requested exemptive order is named as an Applicant. Any entity that relies upon the requested order in the future will comply with the terms and conditions contained in this Application.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–28273 Filed 12–27–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Artec, Inc.; Order of Suspension of Trading

December 23, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Artec, Inc. (''ATKJ'') because of questions regarding the accuracy of assertions by ATKJ and others, on ATKJ's Web site, in ATKJ's press releases, and in public statements to investors concerning, among other things, the testing of ATKJ's Tubercin substance for use in treating cancer patients.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. e.s.t. December 23, 2004 through 11:59 p.m. e.s.t., on January 7, 2005.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–28473 Filed 12–23–04; 11:55 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50894; File No. SR–Amex–2004–93]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to Customer Transaction Charges for the Trading of Nasdaq-100 Index Tracking Stock(®)

December 20, 2004.

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 November 22, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 7, 2004, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

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

The Amex proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules to provide for customer transactions charges for the trading of Nasdaq-100 Index Tracking Stock(®) (Symbol: QQQQ) pursuant to the Nasdaq Unlisted Trading Privileges Plan. The text of the proposed rule change, as amended, is available at the Office of the Secretary, Amex, 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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock(®) listed on the Nasdaq Stock Market, Inc. It trades on Nasdaq under the symbol QQQQ. The Amex trades the QQQQ on an unlisted trading privileges basis. The Amex proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules (''Amex Fee Schedules'') to provide that the customer transaction charges in QQQQ would be $.0015 per share ($.15 per 100 shares), capped at $100 per trade. This would be one-fourth of the regular customer transaction charge for the Nassaq–100 Index Tracking Stock(®) when it was listed on the Amex (although the Amex has suspended

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Amex restated the proposed rule change in its entirety.