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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–4684 Filed 3–10–08; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–28184; 811–4193]**

## RSI Retirement Trust; Notice of Application

March 5, 2008.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for deregistration under section 8(f) of the Investment Company Act of 1940 (the ''Act'').

*Summary of Application:* Applicant requests an order declaring that it has ceased to be an investment company.

*Filing Date:* The application was filed on March 4, 2008.

*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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 25, 2008, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing request 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 SEC's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090. Applicant, 150 East 42nd St., New York, NY 10017.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus, Paralegal Specialist, at (202)551–6810, or Mary Kay Frech, Branch Chief, at (202)551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850).

### Applicant's Representations and Legal Analysis

Applicant is registered under the Act as an open-end management investment company. On December 27, 2007, applicant's securityholders voted to approve a mandatory redemption of certain of applicant's securityholders and deregistration under the Act.

Applicant's securities are currently owned by 45 persons. Applicant states that its outstanding securities are not currently and will not be beneficially owned by more than 100 persons and it is not now making and does not propose to make a public offering of its securities. Applicant states that it will continue to operate as a company excepted from the definition of investment company pursuant to section 3(c)(1) of the Act. Applicant requests an order under section 8(f) of the Act declaring that it has ceased to be an investment company.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–4750 Filed 3–10–08; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–28181; File No. 812–13423]**

## CUNA Mutual Insurance Society, et al; Notice of Application

March 4, 2008.

**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, as amended (the ''Act'' or ''1940 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:* CUNA Mutual Insurance Society (''Company''), CUNA Mutual Variable Annuity Account (''Variable Account'') and CUNA Brokerage Services, Inc. (''CUNA Brokerage'').

*Summary of Application:* Applicants seek an order under Section 6(c) of the Act, exempting them from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to permit, the recapture of credits previously applied to purchase payments of certain flexible premium deferred variable annuity contracts issued by the Company (the ''Contracts'') under the following circumstances: (1) If the Contract owner (''Owner'') returns the Contract during the right to examine period; or (2) within twelve (12) months of the annuitant's death when the Company pays a death benefit. Applicants further request that the exemptive relief extend to: (1) any other variable annuity contracts that the Company may issue in the future (''Future Contracts'') that are substantially similar in all material respects to the Contracts, and are funded through the Variable Account or through other separate accounts of the Company (''Future Accounts''); and (2) any other broker-dealer, which is a member of the Financial Industry Regulatory Authority, Inc. (''FINRA'') and which in the future may act as distributor of and/or principal underwriter for, the Contracts or Future Contracts offered through the Variable Account or Future Accounts (''Future Underwriters'').

*Filing Date:* The application was filed on September 7, 2007 and amended and restated on February 5, 2008.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 31, 2008, 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 requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, SEC, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Pamela M. Krill, Esq., CUNA Mutual Insurance Society, 5910 Mineral Point Road, Madison, Wisconsin 53705.

**FOR FURTHER INFORMATION CONTACT:** Sally Samuel, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management at 202–551–6795.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Washington, DC 20549 (tel. (202) 551–8090).

### Applicants' Representations

1. The Company is a mutual life insurance company originally organized

under the laws of Wisconsin in 1935. Effective May 3, 2007, the Company was redomesticated in Iowa.

2. Effective January 1, 2008, CUNA Mutual Life Insurance Company merged into the Company. Upon consummation of the merger, CUNA Mutual Life Insurance Company's separate corporate existence ceased by operation of law, and the Company assumed legal ownership of all of the assets of CUNA Mutual Life Insurance Company, including the Variable Account and its assets.

3. The Variable Account was established by CUNA Mutual Life Insurance Company as a separate account on December 14, 1993. The Variable Account is registered with the Commission as a unit investment trust under the 1940 Act. The Variable Account is domiciled in the State of Iowa and is a separate account under Iowa law.

4. The Variable Account is divided into 15 subdivisions (the ''Subaccounts''), each of which invests only in shares of a designated portfolio of certain management investment companies (the ''Funds'') that serve as variable investment options under the Contracts.

5. CUNA Brokerage is an affiliate of the Company. CUNA Brokerage is registered as a broker-dealer with the Commission under the Securities Exchange Act of 1934, as well as with the securities commissions in the states in which it operates. It is a member of FINRA. CUNA Brokerage serves as distributor and principal underwriter for the Contracts.

6. The Contracts are flexible premium deferred variable annuity contracts, issued by the Company and funded through the Variable Account, that have been registered with the Commission under the Securities Act of 1933, as amended, (File No. 333–148426). The Contracts may be sold to or in connection with retirement plans that do not qualify for special tax treatment, as well as retirement plans that qualify for special tax treatment under the Internal Revenue Code of 1986, as amended (the ''Code''). During the accumulation period of a Contract, Owners may allocate funds to one or more of the Subaccounts and/or to the fixed account. During the payout period, the Contracts provide for a variety of fixed and variable income payout options.

7. Owners can select one of several different charge structures, each referred to as a ''Class.'' Each Class imposes different levels of surrender charges, and mortality and expense risk charges, as described more fully below. The Class must be selected before a Contract is issued; once the Contract is issued, the Class cannot be changed.

8. The Owner determines at the time of application for a Contract how purchase payments will be allocated among the Subaccounts and/or the fixed account. An allocation to a Subaccount must be for at least 1% of a purchase payment and be in whole percentages. An allocation to the fixed account must be for at least $1,000. The ''Contract Value,'' which is the sum of the amounts of contract value in the fixed account and in the Variable Account as of the end of the valuation period, will vary with the investment performance of the Subaccounts selected. The Owner bears the entire risk for amounts allocated to the Subaccounts.

9. For each net purchase payment of at least $500,000, the Company will enhance the Owner's Contract Value by an amount that varies by the Owner'scumulative net purchase payment level (''Contract Value Increase Enhancement''). The enhancement equals cumulative net purchase payments, multiplied by the applicable increase percentage (0.5% for cumulative net purchase payments between $500,000 and $999,999.99, and 0.7% for cumulative net purchase payments in excess of $1,000,000), minus any prior increases to Contract Value as a result of the Contract Value Increase Enhancement. The Company will allocate the amount of the Contract Value Increase Enhancement according to the Owner's current purchase payment allocation instructions. The Company funds the Contract Value Increase Enhancement from its general account, and does not charge Owners for the Contract Value Increase Enhancement. The Company treats the Contract Value Increase Enhancement as Contract earnings. The Contract Value Increase Enhancement is not subject to any applicable surrender charge and will not be recouped if the Owner returns a Contract during the right to examine period. Nor will the Company recoup a Contract Value Increase Enhancement when the Company pays a death benefit. Accordingly, the Company is not seeking to recapture Contract Value Increase Enhancements.

10. If an Owner elects the Purchase Payment Credit endorsement to the Contract, the Company will enhance an Owner's Contract Value by 4% (for cumulative net purchase payments of up to $250,000) or 5% (for cumulative net purchase payments of at least $250,000) each time the Owner makes a purchase payment. The amount of increase in Contract Value will equal cumulative net purchase payments, multiplied by the applicable credit percentage, minus any prior credits to Contract Value as a result of the endorsement (''Purchase Payment Credits''). The Company will allocate the amount of the Purchase Payment Credits according to the Owner's current allocation instructions for purchase payments. The Contract's mortality and expense risk charges and surrender charges are higher if an Owner elects to receive Purchase Payment Credits. The Company will treat Purchase Payment Credits as Contract earnings for purposes of assessing surrender charges and taxes under the Contract. If an Owner elects the Purchase Payment Credit endorsement, he or she will not receive the Contract Value Increase Enhancement. The Purchase Payment Credit endorsement is not available if an Owner elects L-Share Class or the Earnings Enhanced Death Benefit Rider.

11. During the right to examine period, an Owner has the right to return the Contract within 10 days after receiving it (or longer if required by state law). If an Owner returns a Contract during the right to examine period to which the Purchase Payment Credits endorsement applies, then the Company proposes to recapture any Purchase Payment Credits applied, but not to recapture any gains or to bear any losses attributable to such Purchase Payment Credits.

12. The Company will not assess surrender charges against a Contract returned during the right to examine period nor would it assess any market value adjustments.

13. During the accumulation period if: (a) An Owner dies, then no death benefit will be paid and any surviving Owner becomes the sole Owner; (b) the sole Owner (who is not also the annuitant) dies, then no death benefit will be paid and the annuitant becomes the new Owner; (c) the sole Owner (who is also an annuitant) dies—and if the deceased Owner is the sole annuitant, then the death benefit proceeds will be paid to the person to whom proceeds are payable on the death of the annuitant (''Beneficiary''), or if the deceased Owner was one of two joint annuitants, then no death benefit will be paid and the Contract will continue with the surviving annuitant as the Owner; or (d) the sole annuitant dies before the date the Owner elects to begin receiving income payments (''Payout Date''), the Company will pay the death benefit proceeds to the Beneficiary named by the Owner in a lump sum or under an income payout option (provided certain conditions are met), as elected by the Beneficiary; if the Beneficiary is the deceased annuitant's

surviving spouse, then the Beneficiary may elect to continue the Contract. (Owners and Beneficiaries also may name successor Beneficiaries.) If there is no surviving Beneficiary, the Company will pay the death benefit to the Owner or the Owner's estate.

14. An Owner may elect a standard death benefit or an enhanced death benefit. The death benefit will be reduced by any outstanding loan amount and any applicable premium expense charges not previously deducted; no surrender charge will apply. The Company proposes to recapture any Purchase Payment Credits applied to the Contract Value within 12 months of the annuitant's death when the Company pays a death benefit. However, the Company will not recapture any investment gains attributable to such Purchase Payment Credits—these gains stay with the Owner.

15. During the accumulation period, an Owner may transfer Contract Value among the Subaccounts or to or from the fixed account. Although no fee is currently charged for transfers, the Company reserves the right to charge $10 for each transfer. Additional restrictions apply to the frequency and amounts of transfers to and from the fixed account, and the Company may impose limitations on transfers in an attempt to detect, deter, and prevent frequent, large, or short-term transfer activity among the Subaccounts that may adversely affect Owners and other Fund shareholders.

16. At any time on or before the date income payments begin (the ''Payout Date''), the Owner may surrender the Contract and receive its surrender value. The surrender value will be paid in a lump sum unless the Owner requests payment under an income payout option. At any time on or before the Payout Date, an Owner may make withdrawals of the surrender value. There is no minimum amount for withdrawals, but the maximum amount is that which would leave the remaining surrender value equal to $2,000. A partial withdrawal request that would reduce the surrender value to less than $2,000 is treated as a request for a full surrender of the Contract.

17. If an Owner surrenders a Contract or makes a partial withdrawal, the Company will withdraw the amount requested and may deduct a surrender charge from the remaining Contract Value. The Company deducts such a surrender charge to compensate it for expenses related to the sale of the Contracts. Upon partial withdrawal (including periodic partial withdrawals made under the systematic withdrawal plan available under the Contract), the Company also may apply a market value adjustment. Upon surrender, the Company will deduct any applicable Contract fee, accrued but uncollected rider charges, applicable premium expense charges, a market value adjustment, and any applicable adjustment or deduction provided for by an endorsement to the Contract.

18. The amount of the surrender charge, and the length of time a surrender charge may be assessed depends on the share Class the Owner elects and whether the Purchase Payment Credits endorsement is elected. The surrender charge is calculated by multiplying the applicable charge percentage (as shown in the table below) by the amount of each purchase payment in excess of the free withdrawal amount that is surrendered.

| Number of full years between date of purchase payment and date of surrender | Charge as a percentage of purchase payment—B-share class | Charge as a percentage of purchase payment—purchase payment credits elected | Charge as a percentage of purchase payment—L-share class |
|---|---|---|---|
| 0 | 8 | 9 | 8 |
| 1 | 7 | 8 | 7 |
| 2 | 6 | 7 | 6 |
| 3 | 5 | 6 | 5 |
| 4 | 4 | 5 | 0 |
| 5 | 3 | 4 | 0 |
| 6 | 2 | 3 | 0 |
| 7 + | 0 | 0 | 0 |

19. The surrender charge is generally calculated using the assumption that earnings are surrendered before any purchase payments and that purchase payments are surrendered on a first-in-first-out (''FIFO'') basis. If the Owner elects to receive Purchase Payment Credits, however, the Company will assume that Contract Value is withdrawn as follows: (a) Purchase payments no longer subject to surrender charges (''old purchase payments''); (b) the free withdrawal amount (*i.e.*, old purchase payments plus 10% of purchase payments subject to surrender charges at the time of the withdrawal—the ''annual free withdrawal amount''); (c) purchase payments subject to surrender charges (''new purchase payments'') on a FIFO basis; and (d) earnings and Purchase Payment Credits.

20. Other available Contract benefits described in the Application are available for an addditonal charge. They include the: Guaranteed Minimum Withdrawal Benefit Rider, Guaranteed Minimum Accumulation Benefit Rider, Income Payment Increase Endorsement, Loan Account Endorsement, Change of Annuitant Endorsement, Spousal Continuation Endorsement, Fixed Account Endorsement, Additional Income Option Endorsement, and Waiver of Surrender Charge Endorsement.

21. Certain other charges are made in connection with the Contracts. Among these charges are: a current annual Contract fee of $30 (currently waived if the Contract Value is $50,000 or more); a mortality and expense risk charge that is computed and deducted on a daily basis and varies by share Class and whether the Owner elected to receive Purchase Payment Credits; a daily administrative charge (annual rate of 0.15% of the average daily net assets of the Variable Account); and Fund fees and expenses. The mortality and expense risk charge is deducted at an annual rate of 1.15% of average daily net assets of the Variable Account for B-Share Class Contracts, 1.6% of the average daily net assets of the Variable Account if an Owner elects to receive Purchase Payment Credits, and 1.65% of the average daily net assets of the Variable Account for L-Share Class Contracts.

**Applicants' Legal Analysis**

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule, or regulation under the 1940 Act to the extent that the 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 1940 Act.

2. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act, granting exemptions from Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act, and Rule 22c–1 thereunder to the extent necessary to permit the recapture of Purchase Payment Credits added to a Contract: (a) When an Owner returns a Contract during the right to examine period, or (b) within 12 months of the annuitant's death when a death benefit is paid.

3. Section 27(i)(2)(A) of the 1940 Act, in pertinent part, makes it unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless such contract is a redeemable security. Section 2(a)(32) of the 1940 Act defines ''redeemable security'' as any security under the terms of which the holder, upon its 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. To the extent that the recapture of the Purchase Payment Credits 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 approximately proportionate share of the issuer's current net assets, the recapture of Purchase Payment Credits would trigger the need for relief absent some exemption from the 1940 Act.

4. Applicants submit that the Contracts are ''redeemable securities'' consistent with Section 2(a)(32) of the 1940 Act. The Contracts provide for withdrawals and surrenders of Contract Value. The contingent nature of Purchase Payment Credit recapture will be disclosed in the prospectuses for the Contracts. Accordingly, there are no restrictions on, or impediments to, withdrawals or surrenders that should cause the Contracts to be considered anything other than redeemable securities within the meaning of the 1940 Act.

5. Applicants further submit that the recapture of the Purchase Payment Credits does not deprive an Owner of his or her approximately proportionate share of the current net assets of the Variable Account. Applicants submit that the Owner's interest in the Purchase Payment Credits does not vest until the expiration of the right to examine period and of the 12-month period following the application of a Purchase Payment Credit to the Owner's Contract: until such time, the Company generally retains the right to and interest in each Owner's Contract Value representing the dollar amount of any unvested bonus amounts. Therefore, when the Company recaptures the unvested Purchase Payment Credits, the Company is only retrieving its own assets. The Company grants Purchase Payment Credits out of its general account assets, and the amount of such Purchase Payment Credits remains assets of the Company until such bonus amounts vest with the Owner. Arguably, then, an Owner is not deprived of his or her proportionate share of the Variable Account's interests when the Company grants and recaptures unvested Purchase Payment Credits in connection with variable Contract Value. Accordingly, the recapture of Purchase Payment Credits could be viewed as a legitimate ''charge'' for a benefit under the Contracts, and not as a means of reducing the amount of the Variable Account assets that an Owner otherwise would be entitled to receive.

6. It is the nature of the Purchase Payment Credits applied to variable Contract Value that an Owner obtains a benefit from Purchase Payment Credits in a rising market because any earnings on the bonus amount vest with him or her immediately. Over time this would, of course, increase the Owner's share of Contract Value in the Variable Account more than it would have increased without the Purchase Payment Credits. Conversely, in a falling market an Owner would suffer a detriment from Purchase Payment Credits because losses on the bonus amount would also ''vest'' with him or her immediately. Over time this would decrease the Owner's share of Contract Value in the Variable Account by more than it would have decreased had the Purchase Payment Credits never been applied.

7. Applicants submit that the operation of the Purchase Payment Credits endorsement and the proposed method of recapturing Purchase Payment Credits do not violate Section 2(a)(32) or 27(i)(2)(A) of the 1940 Act. Taken together, these two sections of the 1940 Act do not require that the holder receive the exact proportionate share that his or her security represented at a prior time. Under these circumstances, the fact that the application of Purchase Payment Credits has a dynamic element that may cause the relative ownership positions of the Company and an Owner to shift as a result of Variable Account performance and the vesting schedule of such Purchase Payment Credits does not cause the proposed operation of the Purchase Payment Credit endorsement and the proposed method of recapturing Purchase Payment Credits to conflict with Section 2(a)(32) or 27(i)(2)(A) of the 1940 Act. Nonetheless, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants seek exemptions from the provisions of Sections (2)(a)(32) and 27(i)(2)(A) of the 1940 Act to the extent deemed necessary to permit them to recapture the Purchase Payment Credits.

8. Rule 22c–1, promulgated under Section 22(c) of the 1940 Act, in pertinent part, prohibits a registered investment company issuing a redeemable security (and a person designated as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, any 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. As a result of the Purchase Payment Credits available under the Contract, an Owner who made an initial purchase payment of $10,000 in the first Contract year, for example, could be viewed as having a Contract Value of $10,400 before any earnings accrued. The Company's addition of a Purchase Payment Credit 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 Purchase Payment Credits, the Company might arguably be redeeming a ''redeemable security'' for a price other than one based on the current net asset value of interests in the Variable Account. Applicants contend that these interpretations and applications of the relevant statutory and regulatory provisions are incorrect, and that the Purchase Payment Credit provisions do not conflict with Section 22(c) and Rule 22c–1.

9. Applicants submit that the recapture of Purchase Payment Credits would not trigger either of the two harms that the Commission intended to eliminate with Rule 22c–1: (a) Dilution of the interests of other security holders; and (b) speculative trading practices that are unfair to such holders. The proposed recapture of Purchase Payment Credits under the Contracts does not pose such threat of dilution. The recapture will not alter an Owner's interest in his or her Contract Value or in the Variable Account. An Owner's interest in his or her Contract Value or in the Variable Account would always be offered under the Contracts at a price determined on the basis of net asset value. The granting of a bonus amount (here, a Purchase Payment Credit) does not reflect a reduction of that price. Instead, the Company will purchase with its own money and on behalf of an Owner an interest in the Variable

Account equal to the amount of the Purchase Payment Credits. Because the Company funds Purchase Payment Credits with its own general account assets and not with Variable Account assets, no dilution will occur from the awarding of Purchase Payment Credits under the Contracts. The amount recaptured will equal the amount that the Company paid out of its general account assets for Purchase Payment Credits. (Applicants represent that it is not administratively feasible to track the bonus amount in the Variable Account after the Company applies a Purchase Payment Credit. As a result, the asset-based charges applicable to the Variable Account will be assessed against the entire amount held in the Variable Account, including the bonus amount, during the time the Purchase Payment Credit 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 be only a small percentage of the bonus amount.) An Owner will retain any investment gains and bear any investment losses attributable to recaptured Purchase Payment Credits. The Company will determine the amount of any gain or loss attributable to Purchase Payment Credits on the basis of the current net asset value of Subaccount units. Thus, no dilution will occur under the proposed method for recapture of Purchase Payment Credits.

10. Applicants further submit that 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 the Company's recapture of the Purchase Payment Credits. 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. Even if they could be so used, the recapture of Purchase Payment Credits would discourage, rather than encourage, any such trading.

11. For the reasons set forth above, Applicants submit that Rule 22c–1 should have no application to the Purchase Payment Credits because neither of the harms that Rule 22c–1 was designed to address arise in connection with the proposed recapture of Purchase Payment Credits. However, to avoid uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Purchase Payment Credits available under the Contracts under the circumstances noted above.

12. Applicants submit that the Commission should grant the exemptions requested in this Application, even if the bonus amounts described herein arguably conflict with Section 2(a)(32) or 27(i)(2)(A) of the 1940 Act, or Rule 22c–1 thereunder. The application of Purchase Payment Credits under the Contracts is generally very favorable and very beneficial to Owners. Owners who elect the Purchase Payment Credits endorsement invest not only their net purchase payments but also any Purchase Payment Credits, and receive any positive investment experience from these bonus amounts. The Company's proposed method of recapturing Purchase Payment Credits tempers this benefit somewhat, but only if an Owner cancels his or her Contract during the right to examine period, or ifthe Company pays Purchase Payment Credits and a death benefit during the same 12-month period. Although in a declining market, the Owner bears the downside risk of incurring losses attributable to the Purchase Payment Credits, in a rising market, the Owner receives any gains attributable to any Purchase Payment Credits applied. Applicants submit that, on balance, the Company's proposed method of recapturing Purchase Payment Credits does not diminish the overall value of the Purchase Payment Credits.

13. The Company's recapture of Purchase Payment Credits is designed to prevent anti-selection—the risk that an Owner would make significant purchase payments into the Contract solely to receive a quick profit from the Purchase Payment Credits and then withdraw his or her money. By recapturing the Purchase Payment Credits, the Company protects itself against such behavior. Likewise, if a Beneficiary were to receive death benefit proceeds under the Contract before the 12-month period after a Purchase Payment Credit had been applied without the Company's recapture of those Purchase Payment Credits, that Beneficiary, too, would profit at the Company's expense. The Company typically protects itself from this kind of anti-selection by imposing a surrender charge to recover its costs, but the Company does not apply a surrender charge when an Owner withdraws his or her money during the right to examine period or when a death benefit is paid.

14. Applicants established the charge structure for the Contracts so that the Company could recover its costs of offering the Contract over the life of the Contract. If the Company were unable to recapture the Purchase Payment Credits and instead raised other Contract charges to cover the costs of offering Purchase Payment Credits, then the Company would be charging long-term Owners for costs actually attributable to Owners who surrender their Contracts quickly. Applicants submit, therefore, that the Purchase Payment Credits recapture should be viewed as the price of offering Purchase Payment Credits.

15. Applicants submit that the application of the Purchase Payment Credits and their recapture involve none of the abuses to which the provisions of the 1940 Act, and the rules thereunder (cited above) are directed. An Owner will always retain any investment experience attributable to Purchase Payment Credits and, except in the limited circumstances described herein, will also retain the principal amount of any Purchase Payment Credits applied. Further, the Company should be able to recapture all of its Purchase Payment Credits, paid out of its general account assets, to limit potential losses associated with offering such bonus amounts as benefits to Owners.

16. Applicants seek relief requested herein not only for themselves with respect to the Contracts, but also with respect to Future Accounts or Future Contracts described herein.

17. In addition, Applicants seek relief herein with respect to Future Underwriters (*i.e.*, a class consisting of FINRA-member broker-dealers that may also act as distributor and/or principal underwriter of the Contracts and Future Contracts).

18. Applicants state that, without the requested class relief, exemptive relief for any Future Account, Future Contract, or Future Underwriter would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed herein. Applicants state that if they 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. Applicants contend that 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 Company 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, Applicants opine, enhance their ability to effectively take advantage of business opportunities as such opportunities arise.

19. Any entity that intends to rely on the requested exemptive order currently 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.

**Conclusion**

For the reasons summarized above, Applicants represent that: (a) The requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act; and

(b) their 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 1940 Act.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–4686 Filed 3–10–08; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57424; File No. SR–CBOE–2008–22]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Extending the Dividend, Merger, and Short Stock Interest Strategies Fee Cap Pilot Program

March 4, 2008.

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 February 29, 2008, Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by CBOE. On March 3, 2008, the Exchange filed Amendment No. 1 to the proposal.[3] CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

CBOE proposes to amend its Fees Schedule to extend until March 1, 2009, the dividend, merger, and short stock interest strategies fee cap program. Thetext of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.cboe.org/legal.*

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

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE 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

The Exchange currently caps market-maker, firm, and broker-dealer transaction fees associated with dividend, merger, and short stock interest strategies, as described in Footnote 13 of the CBOE Fees Schedule (''Strategy Fee Cap''). The Strategy Fee Cap is in effect as a pilot program that expired on March 1, 2008.

The Exchange proposes to extend the Strategy Fee Cap pilot program until March 1, 2009. No other changes are proposed. The Exchange believes that extension of the Strategy Fee Cap pilot program would enable the Exchange to remain competitive for these types of strategies by keeping fees low.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. The Exchange believes that the proposed extension of the Strategy Fee Cap pilot program will continue to benefit market participants who trade these strategies by lowering their fees.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made clarifying changes to the statutory basis section of the original filing.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 3, 2008, the date on which CBOE filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).