

been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses

are due 7 days after any such motion is filed. See 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the administrative record regarding this appeal no later than April 12, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than April 12, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this Notice and Order in the **Federal Register**.

PROCEDURAL SCHEDULE

March 28, 2011	Filing of Appeal.
April 12, 2011	Deadline for the Postal Service to file the administrative record in this appeal.
April 12, 2011	Deadline for the Postal Service to file any responsive pleading.
April 25, 2011	Deadline for notices to intervene (see 39 CFR 3001.111(b)).
May 2, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (see 39 CFR 3001.115(a) and (b)).
May 23, 2011	Deadline for answering brief in support of Postal Service (see 39 CFR 3001.115(c)).
June 7, 2011	Deadline for reply briefs in response to answering briefs (see 39 CFR 3001.115(d)).
June 14, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
July 26, 2011	Expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(d)(5)).

By the Commission.

Shoshana M. Grove,
Secretary.

[FR Doc. 2011-8102 Filed 4-5-11; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-29621; File No. 812-13841]

Jackson National Life Insurance Company, et al.

March 31, 2011.

AGENCY: The Securities and Exchange Commission ("Commission")

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to permit the recapture of contract enhancement endorsement credits applied to purchase payments made under certain deferred variable annuity contracts.

APPLICANTS: Jackson National Life Insurance Company ("Jackson"), Jackson National Separate Account—I (the "JNL Separate Account"), Jackson National Life Insurance Company of New York ("JNLNY") and collectively with Jackson, the "Insurance Companies," and individually as made appropriate by the context, an "Insurance Company"), JNLNY Separate Account I (the "JNLNY Separate Account," collectively with the JNL Separate

Account, the "Separate Accounts," and individually as made appropriate by the context, a "Separate Account") and Jackson National Life Distributors LLC ("Distributor," and collectively with the Insurance Companies and the Separate Accounts, "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the Act to exempt certain transactions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the recapture, under specified circumstances, of certain credits under the 6% Contract Enhancements Endorsement (the "6% Contract Enhancement") when those credits have been applied to purchase payments made (a) Under the deferred variable annuity contracts more particularly described in this notice that Jackson has issued through the JNL Separate Account (the "Perspective Contracts"); (b) under other contracts that Jackson has issued through the JNL Separate Account (the "JNL Contracts"); (c) under the contracts that JNLNY has issued through the JNLNY Separate Account (the "JNLNY Contracts"); (d) under the Perspective Contracts as they may be subsequently updated; and (e) under other contracts that the Insurance Companies may issue in the future with the 6% Contract Enhancement ("Future Contracts," and together with the other contracts referred to in this paragraph, the "Contracts"), either through their existing separate accounts or future separate accounts ("Other Accounts"). Applicants also request that the order

being sought extend to any other Financial Industry Regulatory Authority ("FINRA") member broker-dealer controlling or controlled by, or under common control with, Jackson, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts ("Affiliated Broker-Dealers") and any successors in interest to the Applicants.

FILING DATE: The application was filed on November 8, 2010, and amended on March 29, 2011.

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 April 22, 2011, 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, 100 F Street, NE., Washington, DC 20549-1090. Applicants: c/o Jackson National Life Insurance Company, 1 Corporate Way, Lansing, Michigan 48951, Attn: Frank J. Julian, Esq.

FOR FURTHER INFORMATION CONTACT: Ellen J. Sazzman, Senior Counsel, at

(202) 551-6762, or Harry Eisenstein, Senior Special Counsel, at (202) 551-6795, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. Jackson is a stock life insurance company organized under the laws of the state of Michigan. Jackson is admitted to conduct life insurance and annuity business in the District of Columbia and all states except New York. Jackson is ultimately a wholly owned subsidiary of Prudential plc (London, England).

2. JNLNY is a stock life insurance company organized under the laws of the state of New York. JNLNY is admitted to conduct life insurance and annuity business in Delaware, Michigan, and New York. JNLNY is ultimately a wholly-owned subsidiary of Prudential plc (London, England).

3. The JNL Separate Account was established by Jackson pursuant to the provisions of Michigan law and the authority granted under a resolution of Jackson's Board of Directors. The JNLNY Separate Account was established by JNLNY pursuant to the provisions of New York law and the authority granted under a resolution of JNLNY's Board of Directors. Jackson and JNLNY are the depositors of their respective Separate Accounts. Each of the Separate Accounts meets the definition of a "separate account" under the federal securities laws and each is registered with the Commission as a unit investment trust under the Act (File Nos. 811-8664 and 811-8401, respectively). JNL Separate Account and JNLNY Separate Account will fund, respectively, the variable benefits available under the JNL Contracts and the JNLNY Contracts.

4. The assets of each Separate Account legally belong to the Insurance Company of which it is a segregated asset account and the obligations under the Contracts are obligations of that Insurance Company. However the Contract assets in the Separate Accounts are not chargeable with liabilities arising out of any other business the Insurance Companies may conduct. All of the income, gains, and losses resulting from these assets are credited to or charged against the Contracts and not against any other contracts the

Insurance Companies may issue. The registration statements relating to the offering of the Perspective Contracts were filed under the Securities Act of 1933 (the "1933 Act") (File No. 333-70472 ("Perspective II Contracts") and File No. 333-119656 ("Perspective L Contracts")).

5. The Distributor is a wholly owned subsidiary of Jackson and serves as the distributor of the Contracts. The Distributor is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of FINRA. The Distributor enters into selling group agreements with affiliated and unaffiliated broker-dealers. The Contracts are sold by licensed insurance agents, where the Contracts may be lawfully sold, who are registered representatives of broker-dealers that are registered under the 1934 Act and are members of FINRA.

6. The Perspective Contracts (Perspective II Contracts and Perspective L Contracts) are the only Contracts that will rely immediately on the relief requested. However, Applicants represent that the JNL Contracts, the JNLNY Contracts, the Perspective Contracts as they may be subsequently updated, and the Future Contracts (the "Contracts") are or will be substantially similar in all material respects to the Perspective Contracts.

7. The Perspective Contracts require a minimum initial premium payment of \$5,000 or \$10,000 under most circumstances depending on the contract (\$2,000 for a qualified plan contract). Subsequent payments may be made at any time during the accumulation phase. Each subsequent payment must be at least \$500 (\$50 under an automatic payment plan). Prior approval of the Insurance Company is required for aggregate premium payments of over \$1,000,000.

8. The Perspective Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of six fixed accounts (the "Fixed Accounts"). Fixed Account allocation and transfer restrictions initially will be imposed in connection with the subject 6% Contract Enhancement during the first seven contract years. In addition, if the optional Jackson Select Guaranteed Minimum Withdrawal Benefit ("GMWB") or the optional Jackson Select with Joint Option Guaranteed Minimum Withdrawal Benefit ("GMWB") is elected in the JNL Contracts, automatic transfers of an owner's contract value may be allocated to a fixed account designated for these guaranteed minimum withdrawal benefits ("GMWB Fixed Account").

9. The Perspective Contracts also permit owners to accumulate contract values on a variable basis, through allocations to one or more of the sub-accounts, also referred to as investment divisions, of the Separate Accounts (the "Investment Divisions," collectively with the Fixed Account and the GMWB Fixed Account, the "Allocation Options"). Under the Perspective Contracts, ninety-nine Investment Divisions currently are expected to be offered but additional Investment Divisions may be offered in the future and some could be eliminated or combined with other Investment Divisions in the future. Similarly, future Perspective Contracts may offer additional or different Investment Divisions. Each Investment Division will invest in shares of a corresponding series ("Series") of JNL Series Trust ("Trust") or JNL Variable Fund LLC ("Fund") (collectively the "Trust and Fund"). The Trust and Fund are open-end management investment companies registered under the Act and their shares are registered under the 1933 Act.

10. Transfers among the Investment Divisions are permitted. Certain transfers to, from and among the Fixed Account Options are also permitted during the Perspective Contracts' accumulation phase, but are subject to certain adjustments and limitations.

11. If the owner dies during the accumulation phase of the Perspective Contracts, the beneficiary named by the owner is paid a death benefit by the Insurance Company. The Perspective Contracts' base death benefit, which applies unless an optional death benefit has been elected, is a payment to the beneficiary of the greater of: (i) Contract value on the date the Insurance Company receives proof of death and completed claim forms from the beneficiary or (ii) the total premiums paid under the Perspective Contract minus any prior withdrawals (including any withdrawal charges, recapture charges or other charges or adjustments applicable to such withdrawals).

12. The owner may be offered optional death benefit endorsements that can change the death benefit paid to the beneficiary. The optional death benefit endorsements, in general, provide that withdrawals (including any withdrawal charges, recapture charges and other charges or adjustments to such withdrawal) will reduce the benefit base that determines the amount of the death benefit. The Perspective Contracts may also offer various GMWB optional endorsements.

13. The Perspective Contracts offer fixed and variable versions of the

following four types of annuity payment or “income payment”: life income, joint and survivor, life annuity with at least 120 or 240 monthly payments guaranteed to be paid (although not guaranteed as to amount if variable), and income for a specified period of 5 to 30 years. The Insurance Companies may also offer other income payment options.

14. Perspective Contracts currently offer contract enhancement endorsements (“Contract Enhancement(s)”), all of which are optional although Future Contracts may have Contract Enhancements which are not optional. The Contract Enhancements provide for Jackson to add from its general account assets an additional amount to the owner’s

contract value upon receipt of the initial premium payment, and for each subsequent premium payment received within the first seven contract years (five for the 2% Contract Enhancement). The Contract Enhancements that may be elected at issue currently vary in amount between 2% and 5%. The Contract Enhancement percentages that are credited in each case also vary, depending upon the applicable percentage and contract year in which the premium payment is received. The Contract Enhancements offered under the Perspective Contracts may vary depending upon the design of the contract, the date of issue of a contract or the distribution channel. The 6% Contract Enhancement would not be available if the 20% Additional Free

Withdrawal endorsement is elected and vice versa. Also if a Contract Enhancement is elected, allocations and transfers to the Fixed Account Options currently will be restricted, as fully described in the prospectus. The restrictions apply during the first seven contract years (five contract years for the 2% Contract Enhancement). These restrictions will also apply to the 6% Contract Enhancement.

15. Following is the table for the existing 5% Contract Enhancement that shows the variation in the percentages based upon the year of receipt of the applicable premium payment. This table shows how existing 5% Contract Enhancements are structured and how the 6% Contract Enhancement will be structured.

5% CONTRACT ENHANCEMENT
[In percent]

	Contract year premium is received							
	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7+
Contract Enhancement Percentage of the Premium Payment	5.00	4.50	3.75	3.00	2.25	1.75	1.00	0

16. Applicants are proposing to add a 6% Contract Enhancement to the

Perspective Contracts that is modeled on the above 5% structure, as follows:

6% CONTRACT ENHANCEMENT
[In percent]

	Contract year premium is received							
	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7+
Contract Enhancement Percentage of the Premium Payment	6.00	5.50	4.75	4.00	3.25	2.50	1.25	0

17. Jackson will allocate the 6% Contract Enhancement to the Fixed Accounts and/or Investment Divisions in the same proportion as the premium payment allocation. The 6% Contract Enhancement is available only to owners 87 years old and younger. There is an asset-based charge for the 6% Contract Enhancement. The asset-based charges for the 6% Contract Enhancement applies only for the first seven contract years, as opposed to seven years from the date of the premium payment, and is 0.832%, based on the average daily net asset value of the allocations to the Investment Divisions. A charge equal to the asset-based charge will also be assessed against any amounts contract

owners have allocated to the Fixed Accounts, through a reduction in the annual credited rate of interest resulting in a lower annual credited interest rate that would apply to the Fixed Account if the Contract Enhancement had not been elected.

18. Jackson will recapture all or a declining portion of the 6% Contract Enhancement by imposing a recapture charge whenever an owner: (i) Makes a total withdrawal within the recapture charge period up to seven years after a premium payment, or a partial withdrawal of corresponding premiums within the recapture charge period in excess of those permitted under the Perspective Contracts’ free withdrawal provisions, unless the withdrawal is

made for certain health-related emergencies specified in the Perspective Contracts; (ii) elects to receive payments under an income payment option within the recapture charge period; or (iii) returns the Perspective Contract during the free-look period.

19. The amount of the 6% Contract Enhancement recapture charge varies depending on the corresponding declining amount of the Contract Enhancement based on the contract year when the premium payment being withdrawn was received and when the charge is imposed based on the Completed Years since the receipt of the related premium, as follows:

6% CONTRACT ENHANCEMENT RECAPTURE CHARGE

[In percent]

Completed years since receipt of premium	Contract year premium is received							
	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7+
0-1	5.00	4.75	4.00	3.75	2.50	2.00	0.75	0.00
1-2	4.75	4.25	3.60	3.00	2.25	1.25	0.00	0.00
2-3	4.00	3.75	3.00	2.25	1.25	0.00	0.00	0.00
3-4	3.75	3.00	2.25	1.25	0.00	0.00	0.00	0.00
4-5	3.00	2.00	1.25	0.00	0.00	0.00	0.00	0.00
5-6	2.25	1.25	0.00	0.00	0.00	0.00	0.00	0.00
6-7	1.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00
7+	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

20. A "Completed Year" is the succeeding twelve months from the date on which the Insurance Companies receive a premium payment. Completed Years specifies the years from the date of receipt of the premium and does not refer to contract years. If the premium receipt date is on the issue date of the Contract, then Completed Year 0-1 does not include the first contract anniversary. The first contract anniversary begins Completed Year 1-2 and each successive Completed Year begins with the contract anniversary of the preceding contract year and ends the day before the next contract anniversary. If the premium receipt date is other than the issue date or a subsequent contract anniversary, there is no correlation of the contract anniversary date and Completed Years. For example, if the issue date is January 15, 2010 and a premium payment is received on February 28, 2010 then, although the first contract anniversary is January 15, 2011, the end of Completed Year 0-1 for that premium payment would be February 27, 2011, and February 28, 2011 begins Completed Year 1-2. The first contract year (contract year 0-1) starts on the issue date and extends to, but does not include, the first contract anniversary. Subsequent contract years start on an anniversary date and extend to, but do not include, the next anniversary date.

21. The recapture charge percentage will be applied to the corresponding premium reflected in the amount withdrawn or the amount applied to income payments that remain subject to a recapture charge. Earnings are withdrawn first without charge and the oldest purchase payments are withdrawn first. The amount recaptured will be taken from the Investment Divisions and the Fixed Account in the proportion their respective values bear to the contract value. The dollar amount recaptured will never exceed the dollar

amount of the 6% Contract Enhancement added to the Perspective Contract. Recapture charges will be applied upon electing to commence income payments, even in a situation where the withdrawal charge is waived.

22. Jackson does not assess the recapture charge on any payments paid out as: Death benefits; withdrawals of earnings; withdrawals taken under the free withdrawal provision, which allows for free withdrawals (where a withdrawal is taken that exceeds the free withdrawal amount, the recapture charge is imposed only on the excess amount above the free withdrawal amount); withdrawals necessary to satisfy the required minimum distribution of the Internal Revenue Code (if the withdrawal requested exceeds the required minimum distribution, the recapture charge will not be waived on the required minimum distribution); if permitted by the owner's state, withdrawals of up to \$250,000 from the JNL Separate Account, the Fixed Account or the GMWB Fixed Account in connection with the owner's terminal illness or if the owner needs extended hospital or nursing home care as provided in the Perspective Contract; or if permitted by the owner's state, withdrawals of up to 25% (12.5% for each of two joint owners) of contract value from the JNL Separate Account, the Fixed Account or the GMWB Fixed Account in connection with certain serious medical conditions specified in the Perspective Contract.

23. The contract value will reflect any gains or losses attributable to the 6% Contract Enhancement described above. The 6% Contract Enhancement and any gains or losses attributable to the 6% Contract Enhancement will be considered earnings under the Perspective Contracts for tax purposes and for purposes of calculating the free

withdrawal amounts and the Earnings Protection Benefit.

24. The Perspective Contracts have a "free-look" period of ten days after the owner receives the Perspective Contract (or any longer period required by state law). Contract value (or premiums paid, as may be required by state law), less the full amount of any Contract Enhancement(s) is returned upon exercise of free look rights by an owner. Therefore, 100% of the 6% Contract Enhancement will be recaptured under all circumstances if an owner returns the Perspective Contract during the free-look period, but any gain or loss on investments of the 6% Contract Enhancement would be retained by the owner. The dollar amount recaptured will never exceed the dollar amount of the 6% Contract Enhancement added to the Perspective Contract. A withdrawal charge will not be assessed upon exercise of free look rights.

25. In addition to the 6% Contract Enhancement charge and 6% Contract Enhancement recapture charge, the Perspective Contracts may have a mortality and expense risk charge, an administration charge, a contract maintenance charge, a charge for the Earnings Protection Benefit, an optional GMWB charge, a fee for the five-year withdrawal charge period, an optional death benefit charge, a transfer fee for transfers in excess of 15 in a contract year, a commutation fee that applies only upon withdrawals from income payments for a fixed period, and a withdrawal charge that applies to total withdrawals, partial withdrawals in excess of amounts permitted to be withdrawn under the Perspective Contract's free withdrawal provision and on the income date (the date income payments commence) if the income date is within a year of the date the Perspective Contract was issued.

26. The withdrawal charges shown in the table below apply to Perspective II

Contracts with and without the five-year withdrawal charge option and the Perspective L Contracts. The amount of the withdrawal charge depends upon when the charge is imposed based on the Completed Years since the receipt of the related premium, as follows:

Withdrawal Charge (as a percentage of premium payments). Completed Years Since Receipt of Premium	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7+
Withdrawal Charge (Base Withdrawal Charge Schedule for Offerings Under File No. 333-70472) (Perspective II)	8.5%	7.5%	6.5%	5.5%	5%	4%	2%	0%
Withdrawal Charge if Five-Year Period is elected (Optional Five-Year Withdrawal Charge Schedule for Offerings Under File No. 333-70472) (Perspective II)	8%	7%	6%	4%	2%	0%	0%	0%
Withdrawal Charge (Base Withdrawal Charge Schedule for Offerings Under File No. 333-119656) (Perspective L Series)	8%	7.5%	6.5%	5.5%	0%	0%	0%	0%

27. Jackson does not assess the withdrawal charge on any payments paid out as: Death benefits; election to begin income payments after the first contract year under JNL Contracts; cancellation of the Contract upon exercise of free look rights by an owner; withdrawals of earnings; withdrawals taken under the free withdrawal provision, which allows for free withdrawals up to 10% of remaining premium, less earnings (where a withdrawal is taken that exceeds the free withdrawal amount, the withdrawal charge is imposed only on the excess amount above the free withdrawal amount); withdrawals necessary to satisfy the required minimum distribution of the Internal Revenue Code (if the withdrawal requested exceeds the required minimum distribution, the withdrawal charge will not be waived on the required minimum distribution); if permitted by the owner's state, withdrawals of up to \$250,000 from the Investment Divisions, Fixed Account or GMWB Fixed Account available under the Perspective Contracts in connection with the terminal illness of the owner of a Contract, or in connection with extended hospital or nursing home care for the owner (this withdrawal charge waiver is not available under JNLNY Contracts); and if permitted by the owner's state, withdrawals of up to 25% (12.5% each for two joint owners) of contract value from the Investment Divisions, Fixed Account or GMWB Fixed Account available under the Perspective Contracts in connection with certain serious medical conditions specified in the Contract.

Applicants' Legal Analysis

1. Applicants state that 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 funded by the Separate Accounts or Other Accounts that are issued by the Insurance Companies and underwritten or distributed by the Distributor or Affiliated Broker-Dealers. Applicants undertake that the Contracts will be substantially similar in all material respects to the Perspective Contracts described in the Application. 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 state that Section 27 of the Act regulates and imposes certain restrictions on the sales of periodic payment plan certificates issued by any registered investment company. 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 proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of the 6% Contract Enhancement in the circumstances set forth in the Application would not deprive an owner of his or her proportionate share of the issuer's

current net assets. A Contract owner's interest in the amount of the 6% Contract Enhancement allocated to his or her contract value upon the Insurance Companies' receipt of a premium payment is not fully vested until seven complete years following a premium payment. Until or unless the amount of any 6% Contract Enhancement is vested, the Insurance Companies retain the right and interest in the 6% Contract Enhancement amount, although not in the earnings attributable to that amount. Applicants urge that when one of the Insurance Companies recaptures the 6% Contract Enhancement, it is simply retrieving its own assets, and because a Contract owner's interest in the Contract Enhancement is not vested, the Contract owner has not been deprived of a proportionate share of the Separate Account's assets, *i.e.*, a share of the Separate Account's assets proportionate to the Contract owner's contract value.

4. In addition, Applicants represent that it would be particularly unfair to allow a Contract owner exercising the free-look privilege to retain the 6% Contract Enhancement amount under a Contract that has been returned for a refund after a period of only a few days. If the Insurance Companies could not recapture the Contract Enhancement, individuals could purchase a Contract with no intention of retaining it and simply return it for a quick profit. Furthermore, Applicants state that the recapture of the 6% Contract Enhancement relating to withdrawals and to income payments within the first seven contract years is designed to protect the Insurance Companies against Contract owners not holding the Contract for a sufficient time period. This recapture of the Contract Enhancement within the first seven contract years provides the Insurance Companies with sufficient time to recover the cost of the Contract Enhancement and to avoid the financial detriment that would result from a shorter recapture period.

5. Applicants represent that it is not administratively feasible to track the Contract Enhancement amount in the

Separate Accounts after the 6% Contract Enhancement is applied. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the Separate Accounts, including any 6% Contract Enhancement amounts. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the Contract owner's contract value did not include any Contract Enhancement.

6. Applicants submit that the provisions for recapture of any Contract Enhancement under the 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 6% Contract Enhancement to premium payments made under the Contracts should not raise any questions as to compliance by the Insurance Companies with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an order granting an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of the 6% Contract Enhancement under the circumstances described in the Application, without the loss of relief from Section 27 provided by Section 27(i).

7. Applicants state that Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c-1 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 which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

8. Applicants state that it is possible that someone might view the Insurance Companies' recapture of the 6% Contract Enhancement as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend,

however, that the recapture of the 6% Contract Enhancement does not violate Rule 22c-1. The recapture of some or all of the 6% Contract Enhancement does not involve either of the evils that Section 22(c) and Rule 22c-1 were intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. To effect a recapture of a 6% Contract Enhancement, the Insurance Companies will redeem interests in a Contract owner's contract value at a price determined on the basis of the current net asset value of the Separate Accounts. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that the Insurance Companies paid out of their general account assets. Although Contract owners will be entitled to retain any investment gains attributable to the 6% Contract Enhancement and to bear any investment losses attributable to the 6% Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the Separate Accounts. Thus, no dilution will occur upon the recapture of the Contract Enhancement. 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 6% Contract Enhancement. Because neither of the harms that Rule 22c-1 was meant to address is found in the recapture of the Contract Enhancement, Applicants assert that Rule 22c-1 should not apply to the 6% Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c-1, Applicants request an order granting an exemption from the provisions of Rule 22c-1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts.

9. Applicants also submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Applicants assert that investors would receive no benefit or additional protection by requiring

Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in the Application.

10. Applicants submit, for the reasons stated herein, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested 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 and that, therefore, the Commission should grant the requested order.

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

Cathy H. Ahn,
Deputy Secretary.

[FR Doc. 2011-8081 Filed 4-5-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64166; File No. SR-FINRA-2010-035]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Discovery Guide and Rules 12506 and 12508 of the Code of Arbitration Procedure for Customer Disputes

April 1, 2011.

I. Introduction

On July 12, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Discovery Guide, which includes Document Production Lists, and to make conforming changes to Rules 12506 and 12508 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code"). The proposed rule change was published for comment in the *Federal Register* on August 3, 2010.³ The Commission received 55 comment letters on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 62584 (July 28, 2010), 75 FR 45685 (August 3, 2010).