

of receipt of the death claim, or withdrawal request, in proper order. Thus, no dilution will occur upon the recapture of a Credit Enhancement.

11. Applicants also submit that the second practice that rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit Enhancement.

### Conclusion

For the reasons summarized above, Applicants assert that 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 Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-29023 Filed 11-20-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25270; File No. 812-12660]

### John Hancock Variable Series Trust I, et al.

November 15, 2001.

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

**ACTION:** Notice of application under section 17(g) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

*Summary of Application:* Applicants request an order to permit (a) two series of John Hancock Variable Series Trust I ("Trust I") each to acquire all of the assets and liabilities of one of two series of John Hancock Declaration Trust ("Declaration Trust") and (b) four other series of Trust I each to acquire all of the assets and liabilities of one of four additional series of Trust I.

*Applicants:* The Declaration Trust, Trust I, John Hancock Advisers, Inc. ("Hancock Advisers"), and John Hancock Life Insurance Company ("John Hancock").

*Filing Date:* The application ("Application") was filed on October 10, 2001 and amended and restated on November 15, 2001.

*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 December 6, 2001, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification my writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, The Declaration Trust and Hancock Advisers, 101 Huntington Avenue, Boston, MA 02198; Trust I and John Hancock, 197 Charendon Street, Boston, MA 02117.

**FOR FURTHER INFORMATION CONTACT:** Harry Eisenstein, Senior Counsel, or Keith Carpenter, Branch Chief, Division of Investment Management, Office of Insurance Products, 202-942-0670.

**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 Fifth Street, NW., Washington, DC 20549-0102.

### Applicants' Representations

1. The Declaration Trust and Trust I are both Massachusetts business trusts and each is registered as an open-end management investment company. The Declaration Trust is comprised of 15 series (or "Funds"), and Trust I is comprised of 33 such Funds.

2. Hancock Advisers is the investment manager of the Declaration Fund and John Hancock is the investment manager of the Trust I Funds.

3. Two of the Declaration Trust's Funds are party to one of the transactions for which the application seeks exemptive relief: the V.A. International Fund and the V.A. Mid Cap growth Fund ("Declaration Funds").

4. Ten of Trust I's Funds are party to a transaction for which the application seeks exemptive relief: the International Equity Fund, the Fundamental Growth Fund, the Large Cap Value CORE II Fund, the Large Cap Value CORE Fund, the Active Bond II Fund, the Active Bond Fund, the Aggressive Balance Fund, the Managed Fund, the Mid Cap Blend Fund, and the Growth & Income Fund (collectively, the "Trust I Funds").

5. The application requests exemptive relief with respect to mergers of certain

of the Funds listed in 3 and 4 above ("Acquired Funds") into the remaining Funds listed there ("Acquiring Funds") with each Fund listed as an Acquired Fund below to be merged into the corresponding Fund listed as an Acquiring Fund, as follows:

| Acquired fund            | Corresponding acquiring fund |
|--------------------------|------------------------------|
| V.A. International ..... | International Equity.        |
| V.A. Mid Cap Growth      | Fundamental Growth.          |
| Large Cap Value          | Large Cap Value              |
| CORE II.                 | CORE.                        |
| Active Bond II .....     | Active Bond.                 |
| Aggressive Balanced      | Managed.                     |
| Mid Cap Blend .....      | Growth & Income.             |

6. The shares of the Funds are currently sold exclusively to John Hancock and certain insurance companies affiliated with John Hancock (collectively, the "Insurance Companies") for allocation to separate accounts ("Separate Accounts") established to fund benefits under variable annuity contracts and variable life insurance policies (collectively, the "Contracts") issued by these companies. The Separate Accounts are registered as investment companies of the unit investment trust type under the Act. The Insurance Companies no longer are making available any of the Acquired Funds as investment options under new Contracts. Shares held by an investment manager exceed five percent of the outstanding shares of one of the Funds in each of the mergers described above.

7. Contract owners may choose to allocate their contract premiums and account values among various investment options, including one or more of the Acquired funds and/or the Acquiring Funds. As a result, owners may participate, indirectly, in the performance of those Funds.

8. With one exception, the investment objective of each Acquired Fund is identical to that of its corresponding Acquiring Fund.

9. The exception involves the proposed merger of the Mid Cap Blend Fund, whose investment objective is "long-term capital appreciation," into the Growth & Income Fund, whose objective is "income and long-term capitalization." Income, however, does not always form a major portion of the Growth & Income Fund's total investment return. The Growth & Income Fund's income was approximately 1% of its average net assets for its two most recent fiscal years.

10. The investment objective of each Fund is non-fundamental.

11. In the case of two of the mergers ("Clone Mergers"), the Acquiring Fund

and the corresponding Acquired Fund follow an identical investment program and share the same investment manager, sub-adviser and portfolio manager: Large Cap Value CORE II Fund into Large Cap Value CORE Fund and Active Bond II Fund into Active Bond Fund.

12. In the case of each of the other four proposed mergers, the investment programs of the Acquired Fund and the corresponding Acquiring Fund are similar but not identical. In one case (V.A. International Fund into International Equity Fund), the Acquiring Fund may be more conservatively managed. Applicants indicate that no definitive generalization can be made about the relative conservatism or aggressiveness of the constituent Funds in any of the three remaining mergers.

13. Except for the Managed and Growth and Income Funds, each of the Funds is "diversified" within the meaning of section 5(b)(1) of the Act.

John Hancock and Trust I assert, however, that neither the Managed Fund nor the Growth and Income Fund exercises its latitude to concentrate in particular issuers in a way that has practical significance for investors, in terms of distinguishing it from its corresponding Acquired Fund (*i.e.*, The Aggressive Balance Fund and the Mid Cap Blend Fund, respectively).

14. Except for the V.A. Mid Cap Growth Fund, each Fund has at least one sub-investment adviser, who is responsible for making and implementing day-to-day investment decisions. The Acquired and Acquiring Funds in each of the Clone Mergers have the same sub-adviser. Two of the Acquiring Funds (the Managed Fund and the Growth & Income Fund) have co-sub-advisers. In each case, one of these co-sub-advisers (Independence Investment LLC) also is the sole sub-adviser to the corresponding Acquired Fund.

15. The approximate net assets of each Acquired Fund and its corresponding Acquiring Fund as of June 30, 2001 were as follows:

| Acquired fund                        | Corresponding acquiring fund       |
|--------------------------------------|------------------------------------|
| V.A. International—\$5 million.      | International Equity—\$21 million. |
| V.A. Mid Cap Growth—\$6 million.     | Fundamental Growth—\$40 million.   |
| Large Cap Value CORE II—\$7 million. | Large Cap Value CORE—\$44 million. |
| Active Bond II—\$7 million.          | Active Bond—\$816 million.         |
| Aggressive Balance—\$20 million.     | Managed—\$2,730 million.           |
| Mid Cap Blend—\$23 million.          | Growth & Income—\$2,800 million.   |

16. The Funds' annualized total returns for the indicated periods ended June 30, 2001 were as follows:

| Fund                            | Twelve months (In percent) | Since fund's inception date |
|---------------------------------|----------------------------|-----------------------------|
| V.A. International .....        | - 31.56                    | .83% (8/29/96)              |
| International Equity .....      | - 25.00                    | - 6.23% (8/31/99)           |
| V.A. Mid Cap Growth .....       | - 36.99                    | 4.50% (1/7/98)              |
| Fundamental Growth .....        | - 35.19                    | 9.51% (8/31/99)             |
| Large Cap Value CORESM II ..... | 7.66                       | 7.66% (6/30/01)             |
| Large Cap Value CORESM .....    | 8.97                       | 4.36% (8/31/99)             |
| Active Bond II .....            | 10.46                      | 10.46% (6/30/00)            |
| Active Bond .....               | 10.73                      | 8.02% (3/29/86)             |
| Aggressive Balanced .....       | - 6.00                     | .74% (8/31/99)              |
| Managed .....                   | - 2.89                     | 11.02% (3/29/86)            |
| Mid Cap Blend .....             | 4.35                       | 16.15% (8/31/99)            |
| Growth & Income .....           | - 20.09                    | 13.13% (3/29/86)            |

17. Although the above table shows that the V.A. International Fund has outperformed the International Equity Fund for the life of both Funds, most of the V.A. International Fund's performance was achieved under a different sub-adviser. For the six-months ended June 30, 2001, when both the current sub-advisers were serving the total return of the V.A. International fund was—19.26% and that of the International Equity Fund was—14.56%.

18. Both Acquired Funds in the Clone Mergers (*i.e.*, the Large Cap Value CORE II fund and the Active Bond II Fund) had other sub-advisers and followed somewhat different investment programs prior to January 1, 2001. This may reduce the value of performance comparisons for the period prior to that date.

19. As a contractual commitment in the investment advisory agreements for each of the Trust I Funds, John Hancock reimburses each such Fund for most of

its operating expenses (other than advisory fees) that exceed .10% per annum of the Fund's average daily net asset value.

20. Hancock Advisers, through at least the first four months of 2002 has agreed to reimburse each of the V.A. International Fund and the V.A. Mid Cap Growth Fund for most of its operating expenses (other than advisory fees) that exceed .25% per annum of the Fund's average daily net assets.

21. The terms and conditions of each of the six proposed mergers will be as set forth in an Agreement and Plan of Reorganization ("Plan"). Each merger will occur on a "Closing Date," which is expected to be December 7, 2001 for one of the mergers, December 19, 2001 for another, and December 14, 2001 for the remainder.

22. Under the Plans, each Acquiring Fund will acquire substantially all of the assets, subject to the liabilities, of the corresponding Acquired Fund in consideration of the issuance by the

Acquiring Fund of shares having an aggregate net asset value ("NAV") equal to the aggregate NAV of the Acquired Fund's shares, determined as of 4 p.m. Eastern Time ("Effective Time") on the Closing Date. The NAV of each Fund's shares for these purposes will be computed in the same manner as that Fund normally uses in pricing its shares for purchase and redemption. The aforementioned Acquiring Fund Shares will be delivered pro-rata to the Acquired Fund's shareholders of record as of the close of business on the Closing Date.

23. The Plans are subject to a number of conditions precedent, including that the mergers will have been approved by the vote of shareholders of their respective Acquired Funds. In connection with that vote, the Insurance Companies are soliciting instructions from contract owners as to how to vote each Acquired Fund's outstanding shares. The Insurance Companies will vote their shares of an Acquired Fund

held in a Separate Account based on instructions received from contract owners who are participating in that Fund. Shares of an Acquired Fund for which no instructions are received in time to be voted will be represented by the Insurance Companies at the meeting and voted in the same proportion as shares of that Fund that are being held in the same Separate Account and for which instructions have been received in time to be voted.

24. The Plans may be terminated at any time by mutual agreement between the parties. Applicants have agreed to the relief they are requesting being conditioned on their obtaining period approval from the SEC of any material change in the applicable Plan.

25. Each merger has been structured so as to be a tax-free reorganization.

26. Because of the similarity of each Acquired Fund's investment program to that of its corresponding Acquiring Fund, applicants do not expect it will be necessary to acquire or dispose of portfolio securities outside the normal course in connection with any of the proposed mergers.

27. Whether or not the mergers are consummated, each Fund will incur certain other expenses attributable to the Fund's discharging its role in connection with the mergers. This includes each Fund's attributable portion of such items as (a) the costs of preparing filing, printing and mailing of proxy solicitation materials, (b) the cost of conducting a Fund shareholders

meeting, and (c) the costs of obtaining any appropriate legal opinions and regulatory approvals.

28. The proposed mergers will have no effect on the economic or other rights and interests of contract owners. The rates of fees and charges under the contracts will be unaffected by the mergers.

29. The six tables below show, for each of the mergers as to which applicants request relief, the constituent Funds' fees and expenses for the twelve months ended June 30, 2001, as well as on a "pro-forma" basis as if those Funds had merged at the beginning of that twelve month period. The fees and expenses are expressed as an annual percentage of the Funds' average daily net assets.

| Type of fee or expense  | V.A. International fund (acquired fund) | International equity fund (acquiring fund) | Pro-forma of combined acquired fund and acquiring fund |
|---|---|--|--|
| Investment Management Fees .....                                  | 0.90%                                   | 1.20%                                      | 1.20%  |
| Other Expenses (Before Reimbursement) .....                       | 2.70%                                   | 0.80%                                      | 0.80%  |
| Total Annual Fund Operating Expenses (Before Reimbursement) ..... | 3.60%                                   | 2.00%                                      | 2.00%  |
| Reimbursement From Investment Manager .....                       | 2.45%                                   | .70%                                       | .70%   |
| Total Annual Fund Operating Expenses (After Reimbursement) .....  | 1.15%                                   | 1.30%                                      | 1.30%  |

| Type of fee or expense  | V.A. Mid cap growth fund (acquired fund) | Fundamental growth fund (acquiring fund) | Pro-forma of combined acquired fund and acquiring fund |
|---|--|--|--|
| Investment Management Fees .....                                  | 0.75%                                    | 0.90%                                    | 0.90%  |
| Other Expenses (Before Reimbursement) .....                       | 0.35%                                    | 0.24%                                    | 0.23%  |
| Total Annual Fund Operating Expenses (Before Reimbursement) ..... | 1.10%                                    | 1.14%                                    | 1.13%  |
| Reimbursement From Investment Manager .....                       | .10%                                     | .14%                                     | .13%   |
| Total Annual Fund Operating Expenses (After Reimbursement) .....  | 1.00%                                    | 1.00%                                    | 1.00%  |

| Type of fee or expense  | Large cap value CORE <sup>SM</sup> II fund (acquired fund) (percent) | Large cap value CORE <sup>SM</sup> fund (acquiring fund) (percent) | Pro forma of combined acquired fund and acquiring fund (percent) |
|---|--|--|--|
| Investment Management Fees .....                                  | .75*   | .75  | .75  |
| Other Expenses (Before Reimbursement) .....                       | .66  | .20  | .31  |
| Total Annual Fund Operating Expenses (Before Reimbursement) ..... | 1.41*  | .95  | 1.06   |
| Reimbursement from Investment Manager .....                       | .56  | .10  | .21  |
| Total Annual Fund Operating Expenses (After Reimbursement) .....  | .85*   | .85  | .85  |

\* Restated to reflect a .05% investment management fee decrease effective as of May 1, 2001.

| Type of fee or expense  | Active bond II fund (acquired fund) (percent) | Active bond fund (acquiring fund) (percent) | Pro-forma of combined acquired fund and acquiring fund (percent) |
|---|---|---|--|
| Investment Management Fees .....                                  | .70   | .62*  | .62  |
| Other Expenses (Before Reimbursement) .....                       | .48   | .5  | .15  |
| Total Annual Fund Operating Expenses (Before Reimbursement) ..... | 1.18  | .77*  | .77  |
| Reimbursement from Investment Manager .....                       | .38   | .05   | .05  |
| Total Annual Fund Operating Expenses (After Reimbursement) .....  | .80   | .72*  | .72  |

\* Restated to reflect an increase in the investment management fee (which previously had been .25%) effective as of November 1, 2001.

| Type of fee or expense   | Aggressive balanced fund (acquired fund) (In percent) | Managed (acquiring fund) (In percent) | Pro-forma of combined acquired fund and acquiring fund (In percent) |
|--|---|---------------------------------------|---|
| Investment Management Fees .....                                   | .67   | *.67                                  | .67   |
| Other Expenses (Before Reimbursement) .....                        | .28   | *.11                                  | .11   |
| Total Annual Fund Operating Expenses. (Before Reimbursement) ..... | .95   | *.78                                  | .78   |
| Reimbursement from Investment Manager) .....                       | .18   | *.01                                  | .01   |
| Total Annual Fund Operating Expenses. (After Reimbursement) .....  | .77   | *.77                                  | .77   |

\* Restated to reflect an investment management fee increase of approximately .35% effective as of November 1, 2000.

| Type of fee or expense   | Mid cap blend fund (acquired fund) (In percent) | Growth & Income (acquiring fund) (In percent) | Pro-forma of combined acquired fund and acquiring fund (In percent) |
|--|---|---|---|
| Investment Management Fees .....                                   | .75   | *.67  | .67   |
| Other Expenses (Before Reimbursement) .....                        | .23   | .12   | .12   |
| Total Annual Fund Operating Expenses. (Before Reimbursement) ..... | .98   | *.79  | .79   |
| Reimbursement from Investment Manager) .....                       | .13   | .02   | .02   |
| Total Annual Fund Operating Expenses. (After Reimbursement) .....  | .85   | *.77  | .77   |

\* Restated to reflect an investment management fee increase effective as of November 1, 2000. Prior to that date, the fee was .25% per annum.

30. None of the Funds impose any front-end or back-end sales charge.

31. The Declaration Trust's Board of Trustees considered the mergers to which the Declaration Funds are party at a meeting on September 11, 2001. Among other things, the Board considered the following matters:

a. The Declaration Funds are no longer being offered to new Contract purchasers, making it increasingly difficult for those Funds to attract additional assets.

b. Shareholders may be better served by larger Funds (such as the corresponding Acquiring Funds), because those Funds may be able to invest in a broader range of securities and increase diversification.

c. The International Equity Fund shares have performed better than the V.A. International Fund over the twelve months ended June 30, 2001; and the Fundamental Growth Fund has outperformed the V.A. Mid Cap Growth Fund over the life of both Funds. The Trustees believed that each of these Acquiring Funds is better positioned than the corresponding Declaration Fund to generate strong future returns, because of its greater flexibility to choose from among a broader range of investments.

d. The proposed mergers may lead to economics of scale that can lead to better control over expenses than is possible for the Declaration Funds alone.

e. The proposed mergers may also benefit John Hancock and John Hancock Advisers by reducing the amount of resources the John Hancock organization currently expends in the management and administration of these Funds. The Board concluded, however, that any such savings would not be significant.

f. The historical expense ratio of each Declaration Fund and its corresponding Acquiring Fund, as well as the pro-forma expense ratio assuming a combination of the two Funds.

g. Given the Acquiring Funds' current size and historical growth rate, the Trustees did not believe that, under all the circumstances, either Declaration Fund would grow to an asset size that would allow it to realize economics of scale or to significantly broaden diversification of its investment portfolio.

32. Based on such considerations, and all the other information available to them, the Declaration Trust's Board, including all of its trustees who are not "interested persons" of the Declaration Trust or of any of its "affiliated persons" as those terms are defined in section 2(a) of the Act ("Independent Trustees"), unanimously approved both of the mergers to which a Declaration Fund is party. In addition, the Board, including all of the Independent Trustees, in the exercise of their reasonable business judgment, unanimously determined that each such merger would be in the best interest of

the affected Declaration Fund and its shareholders, and that the interests of such shareholders would not be diluted as a result of the merger.

33. Trust I's Board of Trustees considered each merger at a meeting on September 12, 2001.

34. As to each Acquiring Fund, the Trust I Board considered, among other things, the following matters:

a. The mergers would add substantial assets to each Acquiring Fund, which may help the Acquiring Funds to be managed more efficiently and effectively over time.

b. The acquisition of these assets would involve little effort or expense on behalf of the Acquiring Funds.

c. The fact that the mergers will not in any way disadvantage these Funds.

35. As to the Acquired Funds, the Board considered, among other things, the following matters:

a. The fact that the investment programs of the constituent Funds in each proposed merger are similar (or identical), except for the relative size of each Fund.

b. The fact that, due to their relatively small size, the Acquired Funds are not economic to operate, and there is no reasonable prospect for any of these Funds, by itself, to remedy this.

c. The fact that a merger of each of these Funds with its corresponding Acquiring Fund would address this problem in a way that permits the shareholder of the Acquired Fund to continue to have the same or similar

investment program, as well as the expected benefits of lower expenses over time and more effective management.

d. The relative performance records of the Large Cap Value CORE and Active Bond Funds, since their respective commencements of operations. The performance records of the Acquired Funds corresponding to these two Acquiring Funds were less relevant to the Board, for two reasons. First, in each case, part of the acquired Fund's historical performance was achieved by a sub-adviser that has since been terminated and that follow a somewhat different investment program. Second, because the investment program and sub-adviser of each of these two Acquired Funds are now the same as those of its corresponding Acquiring Fund, the future performance of either of these Acquired Funds should not differ from that of its corresponding Acquiring Fund, except to the extent that the Acquired Fund cannot be managed as efficiently and effectively due to its smaller size.

e. The investment performance records of the Managed Fund and the Growth & Income Funds over the relatively long period of their existence. The investment performance record of the corresponding Acquired Funds was less relevant to the Board, because each of those Funds commenced operations only on August 31, 1999.

f. The fact that the merger will afford Aggressive Balanced and Mid Cap Blend Fund shareholders an opportunity to benefit from the investment expertise of a second sub-adviser, in addition to that of their current sub-adviser.

g. The fact that the proposed transactions will not in any way disadvantage any of the Trust I constituent Funds.

36. Based on such considerations, and all other information available to them, Trust I's Board, including all of its Independent Trustees, unanimously approved each merger. In addition, the Board, including all of the Independent Trustees, in the exercise of their reasonable business judgment, unanimously determined that each such merger for which this application seeks relief would be in the best interest of each affected Trust I Fund and its shareholders, and that the interests of such shareholders would not be diluted as a result of any of the mergers for which the application seeks relief.

37. Each Fund will be charged with those expenditures incurred in connection with the mergers described above that are properly attributable to it. The expenses for a Fund are expected to range from \$12,000 to \$22,500. These

costs are within the category of reimbursable expenses under the Funds' expense reimbursement arrangements. Applicants assert that, as a practical matter only the Managed, Growth and Income, and Active Bond Funds may bear any merger costs and expenses. Applicants also assert that the amount of expenses that they would bear is insufficient to affect their per share net asset value or their published expense ratios.

#### Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person % or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person is an investment company, any investment adviser of that company. Applicants state that each Acquired Fund and its corresponding Acquiring Fund may be deemed affiliated persons and, thus, absent an exemption, the reorganization may be prohibited by section 17(a).

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rules are satisfied.

3. Applicants believe that rule 17a-8 may be unavailable in connection with the mergers, because one of the constituent Funds in each merger may be deemed to be affiliated for reasons other than those set forth in the rule. Most particularly, the investment manager of one of the Funds in each of the mergers is an affiliated person of that Fund, because that Fund's shares held by the investment manager and reflecting "seed money" that the investment manager has maintained in the Fund constitute more than 5% of the Fund's outstanding shares. These shares will be voted in accordance with

Contract owner instructions (*i.e.*, in the same manner as if they were shares attributable to Contracts as to which voting instructions have not been received from the Contract owners).

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the mergers. Applicants submit that the mergers satisfy the standards of section 17(b) of the Act.

6. In support of their claim that the mergers satisfy the standards of section 17(b) of the Act, Applicants state that (a) the aggregate value of the interest of a contract owner participating in an Acquired Fund or an Acquiring Fund will not change as a result of the proposed merger; (b) the investment program and fundamental investment policies of each Acquired Fund and the corresponding Fund are substantially similar (or in some cases identical); (c) the Board of Trustees of each Fund, including all Independent Trustees have determined that each merger is in the best interest of that Fund and its shareholders; (d) no sales charges will be imposed in connection with the mergers; (e) the mergers will impose no direct or indirect tax liability upon any Fund or its shareholders or participating contract owners; (f) the requirements of rule 17a-8 relating to the actions of the Boards of Trustees for the Declaration Trust and Trust I will be satisfied (g) the mergers will be submitted to shareholders of the Acquired Funds pursuant to registration statements on Form N-14; (h) the transfer of securities will be made on the basis of relative net asset value; (i) those merger related costs that will be borne by a Fund will not affect the value of its per share net asset value or their published expense ratios; (j) the total annual operating expense ratio of each of the Acquiring Funds, before reimbursement, is lower (or, in the case of Fundamental Growth Fund, no more than a few basis point higher) than the Fund it is acquiring; and (k) the investment manager for each Fund votes all of its shares in the same proportion as the instruction received

from contract owners who are participating in that Fund.

7. Specifically, Applicants believe the fairness, reasonableness and absence of overreaching are evidenced and supported by the Board determinations set out above and the factors that the Boards considered in connection with that determination; by the terms of the mergers, as described above; by the absence of any negative impact on the value of any shareholder's or contract owner's interest; by the expected benefits to all of the Funds from the proposed mergers; and by the fact that, as applicants represent in the application, the mergers will be effected in compliance with all the requirements of Rule 17a-8, except for the existence of an impermissible affiliation through ownership of seed money shares by an investment adviser.

8. In view of the similarity of each Acquired Fund to its corresponding Acquiring Fund, Applicants contend that each merger will be consistent with the constituent Funds' policies as recited in their respective registration statements and reports filed under the Act.

9. Applicants also believe that each merger is consistent with the policies and purposes of the Act, particularly in view of the fact that each merger is subject to approval by the Acquired Fund's shareholders and that none of the mergers will result in any diminution or dilution of the value of any security holder's interests or any other loss or diminution of his or rights or privileges.

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-29164 Filed 11-20-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 26, 2001: Closed meetings will be held on Tuesday, November 27, 2001, and Thursday, November 29, 2001, at 10:00 a.m.

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

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (6), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (6), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matters of the closed meeting scheduled for Tuesday, November 27, 2001 will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; and formal orders.

The subject matters of the closed meeting scheduled for Thursday, November 29, 2001, will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; and consideration of amicus participation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: November 19, 2001.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-29307 Filed 11-19-01; 3:52 pm]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45059; File No. SR-CHX-2001-20]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated to Extend Pilot Rules for Decimals

November 15, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 30, 2001, the Chicago Stock Exchange, Incorporated ("CHX" 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 November 6, 2001, the Exchange filed an amendment that completely

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

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

replaces and supersedes the original proposal.<sup>3</sup> The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>4</sup> and rule 19b-4(f)(6)<sup>5</sup> thereunder, 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 amended, from interested persons.

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

The Exchange proposed to extend through January 14, 2002, the pilot amendments to certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment. The pilot rules are due to expire on November 5, 2001. The CHX does not propose any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through January 14, 2002. The text of the proposed rule change is available at the Commission and at the CHX.

### 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 CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

On August 24, 2000, the Commission approved, on a pilot basis through February 28, 2001, changes proposed by the Exchange to amend certain CHX rules that would be impacted by the securities industry transition to a

<sup>3</sup> See October 31, 2001 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Alton S. Harvey, Division of Market Regulation ("Division"), Commission and attachments ("Amendment No. 1"). See November 13, 2001 telephone conversation between Kathleen M. Boege, CHX, and Joseph Morra, Special Counsel, Division, Commission.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6). The Commission waived the 5-day pre-filing notice requirement.