concentrations of Condition 1. A written notification of the event must be provided within 7 days.

9. Envirocare shall obtain NRC approval prior to changing any activities associated with the above conditions.

Based on the staff's evaluation, the Commission has determined, pursuant to 10 CFR 70.14, that the exemption of above activities at the Envirocare disposal facility is authorized by law, and will not endanger life or property or the common defense and security and is otherwise in the public interest. Accordingly, by this Order, the Commission grants an exemption subject to the stated conditions. The exemption will become effective after the State of Utah has incorporated the above conditions into Envirocare's radioactive materials license. In addition, at that time, the Order transmitted on May 24, 1999, will no longer be effective.

Pursuant to the requirements in 10 CFR part 51, the Commission has prepared an Environmental Assessment for the proposed action and has determined that the granting of this exemption will have no significant impacts on the quality of the human environment. This finding was noticed in the **Federal Register** on January 23, 2003; 68 FR 3281.

The requests for the modifying the Order are available for inspection at NRC's Public Electronic Reading Room at <*http://www.nrc.gov/NRC/ADAMS/index.html*> ML021900394 and ML022180270. The staff's Environmental Assessment and Safety Evaluation Report may be obtained at the above web site using ML023470617 and ML023470587. Any questions with respect to this action should be referred to Timothy Harris, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6613, Fax: (301) 415–5398.

Dated at Rockville, Maryland this 30th day of January 2003.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–3571 Filed 2–12–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25929; File No. 812–12576]

Great-West Life & Annuity Insurance Company et al.; Notice of Application

February 7, 2003.

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

ACTION: Notice of Application (the ''Application'') for an order under Sections 12(d)(1)(J), 17(b) and 6(c), of the Investment Company Act of 1940, as amended (the ''Act''), providing exemptions from the limitations of Sections 12(d)(1)(A) and (B) and 17(a) of the Act.

Applicants: Great-West Life & Annuity Insurance Company (''GWL&A''), GW Capital Management, LLC, doing business as Maxim Capital Management, LLC (the ''Adviser''), and Maxim Series Fund, Inc. (the ''Fund'') (collectively with GWL&A and the Adviser, the ''Applicants'').

Relevant 1940 Act Sections: Order requested under Sections 12(d)(1)(J), 17(b) and 6(c) of the Act for exemption from Sections 12(d)(1)(A) and (B) and 17(a) of the Act.

Summary of Application: Applicants seek an order of the Commission permitting any series of the Fund and any other registered open-end investment company that is part of the same ''group of investment companies,'' as defined in Section 12(d)(1)(G)(ii) of the Act, as the Fund and is, or will be, advised by the Adviser or any entity controlling, controlled by, or under common control with GWL&A, lawfully operating as a ''fund of funds'' (the ''Profile Portfolios''), to purchase guaranteed interest annuity contracts issued by GWL&A (''Fixed Contracts''), as well as contracts GWL&A may issue in the future that are substantially similar in all material respects to the Fixed Contracts (''Future Fixed Contracts''), and GWL&A to sell to any Profile Portfolio such Fixed Contracts or Future Fixed Contracts. Applicants request that the relief extend to any future series of the Fund and any other future investment company advised by the Adviser lawfully operating as a ''fund of funds'' (''Future Profile Portfolios'').

Filing Date: The Application was filed on July 16, 2001, and amended and restated on February 6, 2002.

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 on this Application by writing to the Commission's Secretary 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 4, 2003, and should be accompanied by proof of service on the 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 Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; Applicants, c/o Great-West Life & Annuity Insurance Company, GW Capital Management, LLC, and Maxim Series Fund, Inc., 8515 East Orchard Road, Greenwood Village, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Patrick F. Scott, Attorney, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 ((202) 942–8090).

Applicants' Representations

1. GWL&A is a stock life insurance company organized and existing under the laws of the State of Colorado. GWL&A was originally organized udner the laws of the State of Kansas as National Interment Association, and later changed its name to Ranger National Life Insurance Company, and then to Insuramerica Corporation until 1982 when it was changed to GWL&A. In 1990, GWL&A was re-domesticated as a Colorado corporation.

2. GWL&A is an indirect, wholly owned subsidiary of Great-West Lifeco Inc., an insurance holding company. Great-West Lifeco Inc. is a subsidiary of Power Financial Corporation, a financial services holding company based in Montreal, Canada. Power Corporation of Canada, a holding and management company, has voting control of Power Financial Corporation. Mr. Paul Desmarais, through a group of private holding companies, which he controls, has voting control of Power Corporation of Canada.

3. GWL&A is authorized to write annuities and life insurance in forty-nine states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam. As of December 31, 2001,

GWL&A had assets of over $28 billion. GWL&A is the issuer of the Fixed Contracts, which GWL&A will offer for sale to the Profile Portfolios, as described more fully below.

4. The Adviser is a limited liability company organized under the laws of the State of Colorado and a wholly owned subsidiary of GWL&A. The Adviser is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended. The Adviser serves as an investment adviser to the Fund. In addition to the Fund, the Adviser serves as an investment adviser to the Orchard Series Fund, a Delaware business trust that is registered with the Commission under the Act as an open-end management investment company of the series type. The Adviser also serves as investment adviser to Great-West Variable Annuity Account A, a managed separate account of GWL&A. As of December 31, 2001, the Adviser's assets under management totaled $7.5 billion.

5. The Fund is a Maryland corporation registered with the Commission under the Act as an open-end management company of the series type. The Fund is managed under the direction of its board of directors, and is not required to hold annual meetings of shareholders. The Fund currently consists of 36 series. Each series represents a separate investment portfolio (each a ''Portfolio''). Each Portfolio has its own investment objectives and policies. Shares of the Portfolios are offered for sale pursuant to a registration statement filed with the Commission under the Securities Act of 1933, as amended (the ''1933 Act''). Shares of the Portfolios are offered for sale to insurance companies, including GWL&A and its affiliates, for the purpose of funding variable life insurance policies and variable annuity contracts issued by those insurance companies. Shares of the Portfolios are also offered for sale to qualified plans of the type described in Treasury Regulation 1–817.5(f)(3)(iii), as permitted under an order of the Commission granting to the Fund an exemption from certain provisions of the Act.

6. There are currently ten Profile Portfolios, each an existing Portfolio of the Fund. Each Profile Portfolio operates as a ''fund of funds'' pursuant to an order of the Commission permitting the Profile Portfolios to invest in other funds that are part of the same group of investment companies as the Profile Portfolios and in funds that are not part of the same group of investment companies in reliance on Section 12(d)(1)(F) of the Act. Each Profile Portfolio is designed to provide a different asset allocation program based on an investor's investment goals, risk tolerance, and investment horizon. The Profile Portfolios currently pursue their investment objectives by investing in other registered, open-end management companies that are part of the same group of investment companies as the Profile Portfolios (''Underlying Portfolios''). In addition, pursuant to an order of exemption issued in 1999 (the ''1999 Order''), the Profile Portfolios may invest in funds that are not part of the same group of investment companies in accordance with section 12(d)(1)(F) of the Act (''Other Portfolios'').

7. The Profile Portfolios are designated into two groups, Profile I Portfolios and Profile II Portfolios, designed for two different distribution channels. Each group has one Portfolio with one of the following investment objectives: (i) *Aggressive Profile*—seek long-term capital appreciation primarily through investments in Underlying Portfolios that emphasize equity investments; (ii) *Moderately Aggressive Profile*—seek long-term capital appreciation primarily through investments in Underlying Portfolios that emphasize equity investments, and to a lesser degree, in Underlying Portfolios that emphasize fixed income investments; (iii) *Moderate Profile*—seek long-term capital appreciation primarily through investments in Underlying Portfolios with a relatively equal emphasis on equity and fixed income investments; (iv) *Moderately Conservative Profile*—seek capital appreciation primarily through investments in Underlying Portfolios that emphasize fixed income investments, and to a lesser degree, in Underlying Portfolios that emphasize equity investments; and (v) *Conservative Profile*—seek capital preservation primarily through investments in Underlying Portfolios that emphasize fixed income investments.

8. Subject to the supervision of the Board of Directors of the Fund, the Adviser uses a proprietary investment process for selecting Underlying Portfolios and Other Portfolios, which are placed in one of four equity asset classes (International, Small-Cap, Mid-Cap or Large-Cap) or one of two fixed income asset classes (Bond or Short-Term Bond). The assets of each Profile Portfolio are allocated among those asset classes within specified percentages of assets based on the Profile Portfolio's investment objective. Each Profile Portfolio is periodically ''balanced'' to maintain the appropriate asset allocation based on the Profile Portfolio's investment objective, policies and restrictions. Additional Profile Portfolios may be established in the future. Any Future Profile Portfolio that purchases a Fixed Contract as a portfolio investment will be subject to the terms and conditions of this Application.

9. GWL&A will issue the Fixed Contracts from its general account. As owner of a Fixed Contract, a Profile Portfolio will have the right to deposit funds from time to time with GWL&A. The deposits will accrue interest at a declared rate of interest, adjustable on a calendar quarter or other periodic basis, which is guaranteed to be no less than 3% on an annual basis. A Profile Portfolio or GWL&A will be able to terminate a Fixed Contract at any time upon seven-days' written notice to the other party. Upon termination, GWL&A will be obligated to pay the Profile Portfolio within seven days the amount of the Profile Portfolio's deposits, plus interest earned thereon.

10. The Profile Portfolios will pay no sales load of any kind in purchasing a Fixed Contract, and the guaranteed interest rate paid on the Fixed Contract will be at least as favorable as the guaranteed interest rate paid on other similar Fixed Contracts issued by GWL&A or other comparable companies. In addition, each Profile Portfolio will also be permitted to terminate a Fixed Contract at any time without the imposition of a market value adjustment or other charge or reduction.

11. The Profile Portfolios currently pursue their investment objectives by investing exclusively in Underlying Portfolios and Other Portfolios. At a special meeting of shareholders held on April 4, 2002, the Fund sought and obtained shareholders' approval of a proposal that would allow the Profile Portfolios to pursue their overall investment objectives by investing primarily in Underlying Portfolios, and also in liquid, short-term fixed income investments, the Fixed Contracts, and ''government securities'' as defined in Section 2(a)(16) of the Act. Applicants believe that they will be able to implement the asset allocation programs of the Profile Portfolios more efficiently and cost-effectively, and therefore at less expense to shareholders, if the Profile Portfolios are able, consistent with their investment objectives, to invest in Fixed Contracts and other short-term fixed income investments.

12. The registration statement for each Profile Portfolio will describe the nature and extent of the Profile Portfolio's permissible investments in Underlying Portfolios and Other Portfolios, subject

to receipt of the order granting the requested exemption, in Fixed Contracts and other short-term fixed income investments. Each Profile Portfolio will limit its investments in Fixed Contacts and other short-term fixed income investments to the amount of portfolio assets that the Profile Portfolio may allocate to the ''Short-Term Bond'' asset class, as specified in the Profile Portfolio's then-current registration statement, subject to such other limitations as may apply under the Act or the Profile Portfolio's other investment policies and restrictions. Currently, the percentages of portfolio assets allocable to the Short-Term Bond asset class based on overall investment objective are as follows: (i) 25–40% for the Conservative Profile; (ii) 5–25% for the Moderately Conservative Profile; (iii) 5–250% for the Moderate Profile; (iv) 0–10% for the Moderately Aggressive Profile; and (v) 0–10% for the Aggressive Profile.

Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that Section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to Section 22(b) or Section 22(c) of the Act by a securities association registered under Section 15A of the Securities Exchange Act of 1934, or the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on Section 12(d)(1)(F) or (G). Section 12(d)(1)(G)(ii) defines the term ''group of investment companies'' to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Profile Portfolios will invest in shares of Other Portfolios, they cannot rely on the exemption from Sections 12(d)(1)(A) and (B) afforded by Section 12(d)(1)(G).

3. Section 12(d)(1)(F) of the Act provides that Section 12(d)(1) shall not apply to securities purchased by an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, Section 12(d)(1)(F) provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

4. Applicants may not rely on the exemption provided by Section 12(d)(1)(G) for several reasons. First, Section 12(d)(1)(G)(i)(I) requires that a fund of funds relying on subparagraph (G), as well as all underlying funds, be part of the same ''group of investment companies'' as defined in Section 12(d)(1)(G)(ii). Pursuant to the 1999 Order, the Profile Portfolios may invest not only in shares of Underlying Portfolios, but also, subject to the limitations described above, in shares of Other Portfolios. Second, Section 12(d)(1)(G)(i)(II) limits the types of investments which a fund of funds relying on subparagraph (G) may hold to securities of funds that are part of the same ''group of investment companies'' as the fund of funds, Government securities and short-term paper. The Profile Portfolios, however, propose to invest not only in the types of securities that are described in Section 12(d)(1)(G)(i)(II) and in Other Portfolios, but also in shares of the Fixed Contracts.

5. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of Section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

6. Applicants request relief under Section 12(d)(1)(J) of the Act from the limitations of Sections 12(d)(1)(A) and (B) to permit the Profile Portfolios to invest in the Underlying Portfolios and the Fixed Contract. Applicants are not requesting relief from any provision of Section 12(d)(1)(F), upon which the Profile Portfolios rely to invest in Other Portfolios.

7. Applicants state that the Profile Portfolios' investments in the Underlying Portfolios do not raise the concerns about undue influence that Sections 12(d)(1)(A) and (B) were designed to address. Applicants further state that the proposed conditions would appropriately address any concerns about the layering of sales charges or other fees.

8. The Profile Portfolios will invest in Other Portfolios only within the limits of Section 12(d)(1)(F).

9. Section 17(a)(1) prohibits any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling any security or other property to such registered company. Section 17(a)(2) of the Act prohibits any of the persons described in subsection (a)(1) from purchasing any security or other property from such registered investment company.

10. Section 2(a)(3) of the Act defines ''affiliated person'' of another person in pertinent part as (i) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (ii) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the other person; (iii) any person directly or indirectly controlling, controlled by, or under common control with, such other person; or (iv) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

11. The Applicants submit that the Adviser may be deemed to be an affiliated person of the Fund because the Adviser is an investment adviser of the Fund and GWL&A may be deemed to be an affiliated person of the Adviser because GWL&A owns more than five percent of the outstanding voting securities of the Adviser, a wholly owned subsidiary of GWL&A. Therefore, any sale by GWL&A of a Fixed Contract to the Profile Portfolios could be deemed, absent relief, to be a principal transaction between the Fund and an affiliated person of an affiliated person

of the Fund in violation of Section 17(a)(1). The Applicants also submit that the Commission may determine that control by GWL&A over the Profile Portfolios exists because a wholly owned subsidiary of GWL&A, the Adviser, serves as an investment adviser of the Fund. Thus, any sale by GWL&A of a Fixed Contract to the Profile Portfolios could also be deemed, absent relief pursuant to Section 17(b), to be a principal transaction between the Fund and an affiliated person of the Fund in violation of Section 17(a)(1).

12. Section 17(b) of the Act provides that, notwithstanding Section 17(a), a person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of that subsection. The Commission shall grant such application and issue such order of exemption if evidence establishes that: (i) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of each registered investment company concerned as recited in its registration statement and reports filed under the Act; and (iii) the proposed transaction is consistent with the general purposes of the Act.

13. Section 6(c) of the Act provides that the Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or of any rule or regulation thereunder. The Commission shall grant such exemption 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.

14. Applicants seek an order of the Commission under Section 17(b) and Section 6(c) of the Act, granting an exemption from the prohibitions of Section 17(a), that would permit GWL&A to sell, and any Profile Portfolio to purchase, from time to time, one or more Fixed Contracts in a manner consistent with the applicable Profile Portfolio's investment objective, policies and restrictions. Applicants are seeking relief pursuant to Section 6(c) in addition to Section 17(b) because Section 17(b) could be interpreted as giving the Commission power to exempt only a single transaction from Section 17(a), as opposed to an ongoing series of future transactions. Applicants contend that relief is appropriate under Section 17(b) because the proposed arrangement meets the requirements of that section, for the reasons set forth herein. Applicants also contend that relief under Section 6(c) is appropriate for the same reasons.

15. Applicants assert that the terms of the proposed arrangement are fair and reasonable and do not involve overreaching. The proposed arrangement is not susceptible to the kinds of serious harms that could result from a violation of Section 17(a). For example, Section 17(a) was intended to guard against the possibility that ''an unscrupulous investment company might ''dump'' undesirable securities on a registered investment company or transfer desirable securities from a registered investment company to another more favored advisory client in the complex.'' Therefore, the Applicants contend that, under the facts presented in this Application, there is no likelihood of any overreaching in this regard because the Fixed Contracts will not be transferable. A Profile Portfolio will only invest in a Fixed Contract in a manner consistent with its investment policies and restrictions, and will not be permitted to transfer its ownership of a Fixed Contract to any other Profile Portfolio or other person. Rather, each Profile Portfolio will be permitted to remove its assets from a Fixed Contract at any time without imposition of any market value adjustment or other charge or deduction.

16. Applicants further assert that Section 17(a) was also designed to guard against the possibility that an affiliated transaction might be effected at a price that is disadvantageous to the registered investment company. Under the proposed arrangement, however, the Applicants emphasize that the Profile Portfolios will pay no type of sales load in purchasing a Fixed Contract, and the guaranteed rate paid on the Fixed Contract will be at least as favorable as the guaranteed rate paid on other similar Fixed Contracts issued by GWL&A or other comparable companies, leaving no likelihood of overreaching by an affiliated person.

17. Applicants assert that subject to any necessary shareholder approvals, the proposed transaction will be consistent with the investment objectives and policies of each Profile Portfolio. The assets of each Profile Portfolio will be invested in the Fixed Contracts in accordance with the investment policies and restrictions of the applicable Profile Portfolio, as set forth in its then-current registration statement.

18. Applicants assert that the proposed arrangement is consistent with the general purposes of the Act. Section 17(a) is intended to prohibit affiliated persons in a position of influence or control over an investment company from furthering their own interest by selling securities or property that they own to an investment company at an inflated price, purchasing securities or property from an investment company at less than its fair value, or selling or purchasing securities or property on terms that involve other types of self-dealing or overreaching by the affiliated person. For the reasons discussed above, Applicants contend that the proposed arrangement does not involve any such overreaching or self-dealing.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. All Underlying Portfolios will be part of the same ''group of investment companies,'' as defined in Section 12(d)(1)(G)(ii) of the Act, as the Profile Portfolios.

2. No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent that such Underlying Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions. No Profile Portfolio will acquire securities of an Other Portfolio if, at the time of acquisition, the Other Portfolio owns securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act.

3. No Profile Portfolio will impose a front-end sales charge in excess of one and one-half percent. Furthermore, any sales charges, distribution-related fees and service fees relating to the shares of the Profile Portfolios, when aggregated with any sales charges, distribution-related fees and service fees paid by the Profile Portfolios relating to their

acquisition, holding or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in Rule 2830 of the National Association of Securities Dealer Conduct Rules.

4. Before approving any advisory contract under Section 15 of the Act, the Board, including a majority of the Directors who are not ''interested persons,'' as defined in Section 2(a)(19), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund.

Conclusion

For the reasons stated herein, the Applicants submit that the terms of the contemplated transaction meet all of the requirements of Sections 12(d)(1)(J), 17(b) and 6(c) of the Act. Pursuant to Section 12(d)(1)(J), exemption of this transaction is consistent with the public interest and the protection of investors. Pursuant to Section 17(b), the terms of the proposed transaction are reasonable and fair and do not involve overreaching, the proposed transaction is consistent with the investment objectives and policies of each Profile Portfolio, and the proposed transaction is consistent with the general purposes of the Act. Similarly, under Section 6(c) of 3 the Act, Applicants submit that their request for an order 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. Furthermore, Applicants seek relief relating to Future Profile Portfolios and Future Fixed Contracts in order to avoid incurring the expense and effort of drafting, and to relieve the Commission from the corresponding burden of reviewing, duplicative exemptive applications. Applicants submit that an order should, therefore, be granted.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3579 Filed 2–12–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47330; File No. SR–PCX–2003–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges for Options Intermarket Linkage Orders

February 6, 2003.

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 January 31, 2003, the Pacific Exchange, Inc. (''PCX'' 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 PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

In connection with the launch of the options intermarket linkage (''Linkage''), the PCX proposes to amend its Schedule of Fees and Charges for Exchange Services in order to clarify that unless otherwise provided, executions resulting from Linkage orders will be subject to the same billing treatment as current executions.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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 July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage Plan'' or ''Plan'')[3] which linkage now includes participation by the five option exchanges (''Participant Exchanges'').[4] The PCX proposed to adopt new rules relating to the operation of the Linkage on September 26, 2002 and filed an amendment to the proposal on January 30, 2003. Along with all of the Participant Exchanges, the Exchange launched phase I of Linkage on January 31, 2003.

In connection with the launch of the Linkage, the Exhange seeks to clarify its Schedule of Fees and Charges for Exchange Services in order to add a provision stating that executions resulting from Linkage orders will be subject to the same billing treatment as current executions. Accordingly, executions arising from either a Principal Acting as Agent (''P/A'') Linkage order, or a Principal Linkage Order that are routed to the Exchange from other market centers will be subject to the same trade related charges assessed on market maker executions originating from the PCX. The proposal specifies that no fees will apply to Satisfaction Orders, which result after a trade-through.[5]

The Exchange does not seek to make any other changes to its Schedule of Fees and Charges for Exchange Services.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act, [7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The Exchange 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.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[4] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) and 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).

[5] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

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

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