

request for extension of the previously approved collection of information discussed below.

The "Penny Stock Disclosure Rules" (Rule 15g-2, 17 CFR 240.15g-2) require broker-dealers to provide their customers with a risk disclosure document, as set forth in Schedule 15G, prior to their first non-exempt transaction in a "penny stock". As amended, the rule requires broker-dealers to obtain written acknowledgement from the customer that he or she has received the required risk disclosure document. The amended rule also requires broker-dealers to maintain a copy of the customer's written acknowledgement for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place.

The risk disclosure documents are for the benefit of the customers, to assure that they are aware of the risks of trading in "penny stocks" before they enter into a transaction. The risk disclosure documents are maintained by the broker-dealers and may be reviewed during the course of an examination by the Commission. The Commission estimates that there are approximately 270 broker-dealers subject to Rule 15g-2, and that each one of these firms will process an average of three new customers for "penny stocks" per week. Thus each respondent will process approximately 156 risk disclosure documents per year. The staff calculates that (a) the copying and mailing of the risk disclosure document should take no more than two minutes per customer, and (b) each customer should take no more than eight minutes to review, sign, and return the risk disclosure document. Thus, the total ongoing respondent burden is approximately 10 minutes per response, or an aggregate total of 1,560 minutes per respondent. Since there are 270 respondents, the annual burden is 421,200 minutes (1,560 minutes per each of the 270 respondents), or 7,020 hours. In addition, broker-dealers will incur a recordkeeping burden of approximately two minutes per response. Thus each respondent will incur a recordkeeping burden of 312 (156 × 2) minutes per year, and respondents as a group will incur an aggregate annual recordkeeping burden of 1,404 hours (270 × 312 / 60). Accordingly, the aggregate annual hour burden associated with Rule 15g-2 is 8,424 hours (7,020 + 1,404).

The Commission does not maintain the risk disclosure document. Instead, it must be retained by the broker-dealer for at least three years following the date on which the risk disclosure document

was provided to the customer, the first two years in an accessible place. The collection of information required by the rule is mandatory. The risk disclosure document is otherwise governed by the internal policies of the broker-dealer regarding confidentiality, etc.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 29, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-14297 Filed 6-6-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25598; File No. 812-12830]

American Skandia Life Assurance Corporation, et al.; Notice of Application

May 30, 2002.

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

ACTION: Notice of Application for an Order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act" or "Act") to amend a prior order of the Commission under Section 6(c) of the 1940 Act which granted exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to permit the recapture of credits applied to purchase payments made under certain deferred variable annuity contracts.

Applicants: American Skandia Life Assurance Corporation ("ASLAC"), American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Accounts), American Skandia Life Assurance Corporation Variable Account B (Class 9 Sub-Accounts) (the "Account" or "Accounts"), and

American Skandia Marketing, Incorporated ("ASM"), referred to collectively herein as "Applicants".

Summary of Application: Applicants seek an order under Section 6(c) of the 1940 Act to amend a prior order under Section 6(c) of the 1940 Act ("Prior Order")¹ that, to the extent necessary, permits, under specified circumstances, the recapture of certain additional credits offered on a promotional basis ("Promotional Credits") applied to purchase payments made under certain deferred variable annuity contracts and certificates described in the application (the "Contracts"), as well as other contracts that ASLAC may issue in the future through the Accounts or any other separate account established in the future by ASLAC to support certain deferred variable annuity contracts issued by ASLAC ("Future Account") and that are substantially similar in all material respects to the Contracts (the "Future Contract(s)"). Any future Promotional Credits ("Future Promotional Credits") will be substantially similar in all material respects to the Promotional Credits described in the application. The Prior Order extends the relief to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with ASLAC, whether existing or created in the future, that serves as a distributor or principal underwriter for the Contracts or Future Contracts offered through the Accounts or any Future Account. The application seeks to amend the Prior Order to permit the recapture of Promotional Credits on purchase payments applied to the Contracts or Future Contracts, under the circumstances described in the application and in detail in the application for the Prior Order ("Prior Application").

Filing Date: The application was filed on March 1, 2002 and amended and restated on May 24, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 24, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service.

¹ *American Skandia Life Assurance Corporation, Investment Company Act Release No. 25423 (File No. 812-12698).*

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 by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC, 20549-0609. Applicants, c/o American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, Connecticut 06484, Attn: Scott K. Richardson, Esq.

FOR FURTHER INFORMATION CONTACT:

Patrick Scott, Attorney, or Lorna 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 SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 ((202) 942-8090).

Applicants' Representations

1. ASLAC is a stock life insurance company incorporated under the laws of Connecticut, all of whose issued and outstanding shares of capital stock are directly owned by American Skandia, Inc. ("ASI"), which in turn is ultimately wholly owned by Skandia Insurance Company Ltd., a Swedish corporation. ASLAC is licensed to do business in the District of Columbia and all of the United States.

2. American Skandia Life Assurance Corporation Variable Account B was created pursuant to the laws of the State of Connecticut on November 25, 1987. American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Accounts) filed a Form N-8A Notification of Registration (File No. 811-5438) under the 1940 Act on December 30, 1987. American Skandia Life Assurance Corporation Variable Account B (Class 9 Sub-Accounts) filed a Form N-8A Notification of Registration (File No. 811-09989) on June 22, 2000.

3. Applicants state that the assets of the Accounts are owned by ASLAC, but are held separately from the other assets of ASLAC and are not chargeable with liabilities incurred in any other business operation of ASLAC (except to the extent that assets in the Accounts exceed the reserves and other liabilities of the Accounts). The income, capital gains and capital losses incurred on the assets of the Accounts are credited to or charged against the assets of the Accounts without regard to the income, capital gains or capital losses arising out

of any other business ASLAC may conduct.

4. Applicants represent that the Accounts and all Future Accounts will invest in shares of one or more of the investment portfolios (the "Portfolios") of American Skandia Trust ("AST"), which is registered with the Commission as an open-end, diversified management investment company, and/or any other fund or funds which are registered with the Commission as open-end, diversified or non-diversified management investment companies as may be made available by ASLAC and the Accounts or Future Accounts (which funds, including AST, are referred to as the "Funds"). The Accounts or Future Accounts are divided into separate divisions or "Sub-accounts", each of which invests in a separate Portfolio of a Fund.

5. ASM serves as the distributor and principal underwriter of the Contracts. ASM is a wholly-owned subsidiary of ASI. ASM is registered under the Securities Exchange Act of 1934 and with the NASD as a broker-dealer in securities. The Contracts will be offered through unaffiliated, registered broker-dealers, and other entities that are exempt from registration as broker-dealers, that have entered into sales agreements with ASM and ASLAC. In addition, ASM may offer Contracts directly to potential purchasers. The broker-dealers or sales representatives will be licensed by state insurance departments where required by law or regulation to represent ASLAC. The registered representatives that will solicit sale of the Contracts will be licensed insurance agents appointed by ASLAC.

6. Applicant represents that among the products ASLAC issues are individual and group flexible premium tax deferred variable annuity contracts, such as the Contracts contemplated in the Application, American Skandia XTra CreditSM FOUR ("XT FOUR") offered through American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Accounts) and American Skandia XTra CreditSM SIX ("XT SIX") offered through American Skandia Life Assurance Corporation Variable Account B (Class 9 Sub-Accounts).

Applicants state further that the Contracts are to be used in connection with retirement plans that qualify for favorable federal income tax treatment under the Internal Revenue Code Section 403 as a tax sheltered annuity, or Section 408 as an individual retirement plan ("Qualified Plan"), or the Contracts may be purchased on a non-tax qualified basis ("Non-Qualified

Plan"). The Contracts may also be used for other purposes in the future, or offered only in connection with Qualified or Non-Qualified Plans.

7. On February 20, 2002, the Commission issued the Prior Order exempting certain transactions of Applicants from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder. The Prior Order specifically permits the recapture, under specified circumstances, of an additional amount (a "Credit") of up to 6.0% of purchase payments applied to the Contracts or Future Contracts.

ASLAC now desires to be permitted to recapture Promotional Credits and Future Promotional Credits offered on a promotional basis on purchase payments applied to the Contracts or Future Contracts.

8. Applicants state that ASLAC may add an additional Promotional Credit to account value in conjunction with each qualifying purchase payment made during distinct promotional periods equal to 1.0% of purchase payments. ASLAC will disclose the conditions under which Promotional Credits will be granted upon the commencement of each promotional period. Promotional Credits will be applied in addition to the Credit that would otherwise have applied to the purchase payment when made.

9. Under the Prior Order, ASLAC may add a Credit to the account value in conjunction with each purchase payment applied to XT FOUR, and in conjunction with purchase payments made during the first six (6) annuity years applied to XT SIX. Credits are paid for from ASLAC's own general account assets.

In the case of XT FOUR, when total purchase payments are between and \$1,000 and \$10,000, the Credits equal 1.5% of purchase payments. When total purchase payments are at least \$10,000 but less than \$5,000,000, the Credits equal 4.0% of purchase payments. When total purchase payments are greater than \$5,000,000, the Credits equal 5.0% of purchase payments.

In the case of XT SIX, ASLAC may add a Credit to the account value in conjunction with each purchase payment during the first six (6) annuity years. The amount of the Credit depends on the annuity year in which the purchase payment(s) is made, according to the following schedule: In annuity year one (1) the Credit is 6.00%, in annuity year two (2) the Credit is 5.00%, in annuity year three (3) the Credit is 4.00%, in annuity year four (4) the Credit is 3.00%, in annuity year five (5)

the Credit is 2.00%, and in annuity year six (6) the Credit is 1.00%.

10. Currently, ASLAC is offering Promotional Credits only on the XT SIX Contract. The promotional period is February 4, 2002 through August 2, 2002 ("Promotional Period"). Applicants state that during the Promotional Period, ASLAC will apply a Promotional Credit to XT SIX Contracts with a purchase payment of \$75,000 or more. The Promotional Credit will be applied in addition to the Credit that would otherwise apply to the purchase payment made. If the initial purchase payment is \$75,000 or more, ASLAC will apply the additional Promotional Credit to the initial purchase payment and any additional purchase payments made during the Promotional Period. If the initial purchase payment is less than \$75,000 but cumulative purchase payments are made during the Promotional Period of \$75,000 or more, ASLAC will apply a Promotional Credit to each additional purchase payment made during the Promotional Period once cumulative purchase payments exceed \$75,000.

11. Applicants submit that the Promotional Credits are vested when applied, and will be subject to recapture under the identical circumstances as applied to the Credits under the Prior Order, namely (a) an amount equal to any Promotional Credit will be recovered by ASLAC if the Contract owner exercises the right to cancel provision in accordance with applicable state law; (b) the amount available under the medically-related surrender provision of the Contract will not include the amount of any Promotional Credits applied to purchase payments made within 12 months prior to the date the annuitant first became eligible for the medically-related surrender; and (c) any Promotional Credits applied to the account value on purchase payments made within 12 months prior to the date of death will be recovered by ASLAC upon payment of the death benefit, subject to the limitation that Applicants will not exercise their right to recover the Credit to the extent that the death benefit payable is equal to purchase payments minus proportional withdrawals or when the death benefit is equal to the account value but after the recovery of all or a portion of the Credits, the death benefit would be equal to less than purchase payments minus proportional withdrawals.

12. Under the Prior Order, ASLAC was granted exemptive relief allowing it to apply additional Credits on Contracts

owned by a member of a Designated Class.²

13. In the case of XT FOUR, ASLAC applies Credits of 8.5% to any purchase payment made by a member of a Designated Class. In the case of XT SIX, ASLAC applies Credits on purchase payment made by a member of a Designated Class at the following percentage rates in annuity years 1, 2, 3, 4, 5, and 6, respectively: 9%, 9%, 8.5%, 8%, 7%, 6%. During annuity years 7, 8, 9 and 10, respectively, in the case of XT SIX, ASLAC may apply Credits on purchase payments made by a member of a Designated Class at the following percentage rates: 5%, 4%, 3% and 2%. Whereas, under XT SIX generally, subsequent to annuity year six, ASLAC would not apply Credits to any purchase payments.

ASLAC will not offer Promotional Credits on XT SIX Contracts owned by a member of the Designated Class. ASLAC may offer Promotional Credits on XT FOUR Contracts owned by a member of the Designated Class.

14. Applicants state that, as of the date of the Application, the Funds in which the Sub-accounts may invest are AST, Montgomery Variable Series, Wells Fargo Variable Trust, INVESCO Variable Investment Funds, Inc., Evergreen Variable Annuity Trust, ProFunds VP, First Defined Portfolio Fund LLC and The Prudential Series Fund, Inc. The assets of each Portfolio are held separately from the others and each Portfolio has its own investment objective and policies. The investment performance of one Portfolio has no effect on the investment performance of any other Portfolio. The investment

² The designated class of Contract owners includes: (a) Any parent company, affiliate or subsidiary of ASLAC; (b) an officer, director, employee, retiree, sales representative, or in the case of an affiliated broker-dealer, registered representative of such company; (c) a director, officer or trustee of any underlying mutual fund; (d) a director, officer or employee of any investment manager, sub-advisor, transfer agent, custodian, auditing, legal or administrative services provider that is providing investment management, advisory, transfer agency, custodianship, auditing, legal and/or administrative services to an underlying mutual fund or any affiliate of such firm; (e) a director, officer, employee or registered representative of a broker-dealer or insurance agency that has a then current selling agreement with ASLAC and/or with ASM; (f) a director, officer, employee or authorized representative of any firm providing us or our affiliates with regular legal, actuarial, auditing, underwriting, claims, administrative, computer support, marketing, office or other services; (g) the then current spouse of any such person noted in (b) through (f), above; (h) the parents of any such person noted in (b) through (g), above; (i) the child(ren) or other legal dependent under the age of 21 of any such person noted in (b) through (h); and (j) the siblings of any such persons noted in (b) through (h) above. All other terms and conditions of the Contract apply to owners in the designated class.

objectives and policies of each Portfolio are described in the registration statements for the Funds. Each Fund may establish additional Portfolios, or cease offering any Portfolios, existing or as may be established in the future. In addition, the Account may add Sub-accounts, and may add or cease to offer Sub-accounts, which in turn are dedicated to owning shares of a particular Portfolio of a particular Fund.

15. Applicants state that prior to the annuity date, a Contract owner may surrender the Contract in its entirety for the surrender value or withdraw a portion of the surrender value. Applicants do not seek to recover Promotional Credits applied to purchase payments upon surrender or withdrawal of a Contract, other than as described in this paragraph, in the case of a medically-related surrender. Where permitted by law, a Contract owner may request to surrender the Contract prior to the annuity date without application of any contingent deferred sales charge ("CDSC") upon occurrence of a "Contingency Event".³ If a Contingency Event occurs, the amount available for surrender is the account value less an amount equal to any Credit and Promotional Credit applied to purchase payments within twelve months prior to Contingency Event, less the amount of any Credits and Promotional Credits added in conjunction with any purchase payments received after ASLAC's receipt of the Contract owner's request for a medically-related surrender. Applicants do not assess a CDSC on a medically-related surrender that would otherwise apply to a full or partial surrender of the Contract.

16. During the accumulation phase, a death benefit is payable upon the death of the first Contract owner to die (if the Contract is owned by one or more natural persons) or upon the death of the annuitant (if the Contract is owned by an entity and there is no contingent annuitant). The amount of the death benefit is determined when ASLAC obtains satisfactory proof in writing of the applicable death, all representations required or which are mandated by applicable law or regulation to the death claim and the payment of death proceeds, and any applicable election of the mode of payment of the death benefit if not previously elected by the Contract owner.

³ A "Contingency Event" occurs if the annuitant is first confined in a specified medical care facility while the Contract is in force and remains confined for at least 90 days in a row, or is first diagnosed as having a fatal illness while the Contract is in force. Specific definitions in relation to this benefit are provided in the Contract's policy form and may differ in certain jurisdictions.

The basic Death Benefit is the greater of (1) the sum of all purchase payments less the sum of all proportional withdrawals, or (2) the sum of the account value in the variable investment options and the interim value in the fixed allocations (without application of any market value adjustment), less an amount equal to all Credits and Promotional Credits applied within 12 months prior to the date of death. ASLAC does not recover the amount equal to the Credits and Promotional Credits applied to purchase payments when the death benefit payable under the Contract is equal to purchase payments minus proportional withdrawals or when the death benefit is equal to the account value but after the recovery of all or a portion of the Credits and Promotional Credits, the death benefit would be equal to less than purchase payments minus proportional withdrawals.

17. Applicants state that each of the Contracts may offer optional benefits, including optional death benefits, for which the Contract owner may be charged an additional asset-based charge.

18. Applicants represent that, prior to the annuity date and upon surrender, ASLAC will deduct the annual maintenance fee equaling the smaller of 2% of account value or \$35 per annuity year from the Sub-account holdings attributable to any particular Contract in the same proportion as each such Sub-account holding bears to the account value of such Contract. No charges are assessed if no account value is maintained in the Sub-accounts. The annual maintenance fee can be increased only for Contracts issued subsequent to the effective date of any such change. The annual maintenance fee may be waived under certain circumstances as described in the then effective registration statements for the Contracts.

19. An insurance charge ("Insurance Charge") is deducted daily against the average assets allocated to the Account. The Insurance Charge for XT FOUR is the combination of the Mortality & Expense Risk Charge (1.25%) and the Administration Charge (0.15%); the total charge is equal to 1.40% on an annual basis. The Insurance Charge for XT SIX is the combination of the Mortality & Expense Risk Charge (0.50%) and the Administration Charge (0.15%); the total charge is equal to 0.65% on an annual basis. The Insurance Charge is intended to compensate ASLAC for providing the insurance benefits under the Contract, including the Contract's basic death benefit that provides guaranteed

benefits to the Contract owner's beneficiaries even if the market declines and the risk that persons ASLAC guarantees annuity payments to will live longer than ASLAC's assumptions. The charge also covers administrative costs associated with providing the Contract benefits, including preparation of the contract, confirmation statements, annual account statements and annual reports, legal and accounting fees as well as various related expenses. Finally, the charge covers the risk that ASLAC's assumptions about the mortality risks and expenses under the Contract are incorrect and that ASLAC has agreed not to increase these charges over time despite actual costs. ASLAC may increase the portion of the total Insurance Charge that is deducted as an Administration Charge, if permission is received from the appropriate regulatory authorities. However, any increase will only apply to Contracts issued after the date of the increase.

20. Applicants state that a distribution charge ("Distribution Charge") is deducted daily against the average assets allocated to the Sub-accounts under XT SIX. The Distribution Charge is equal to 1.00% on an annual basis in annuity years 1 through 10. After the end of the first ten annuity years, the 1.00% charge for distribution will no longer be assessed. The Distribution Charge is intended to compensate ASLAC for a portion of its sales expenses under the Contract, including promotion and distribution of the Contract. At the end of the 10th annuity year, ASLAC will process a transaction to convert the Contract owner's account value to units of the Sub-accounts that reflect only the Insurance Charge. Because units that only reflect the Insurance Charge are less expensive, the number of units attributed to a Contract is decreased and the unit value of each unit of the Sub-accounts in which the Contract owner was invested is increased. The Contract owner's account value is unchanged by the conversion of the account value to the number of units, and unit values will not affect the Contract owner's account value. Beginning on that date, the Contract owner's account value will fluctuate based on the change in the value of the units that only reflect the Insurance Charge.

21. Applicants represent that no deduction or charge will be made from purchase payments for sales or distribution expenses. However, a CDSC may be assessed on surrender or partial withdrawal from the Contract. The CDSC will be used to compensate ASLAC for sales commissions and other promotional or distribution expenses

incurred by ASLAC which are associated with the marketing of the Contracts. ASLAC does not anticipate that the CDSC will be sufficient to permit it to recoup all its sales and distribution expenses.

22. Applicants state that XT FOUR offers a free withdrawal privilege. This privilege permits a Contract owner to withdraw account value without any CDSC being imposed at the time of withdrawal. The maximum amount available as a free withdrawal during annuity year one through eight is 10% of all purchase payments. The 10% free withdrawal is not cumulative. After annuity year eight, the maximum free withdrawal amount is the sum of (a) 10% of any purchase payments applied to the Contract after the initial purchase payment, (b) 100% of the initial purchase payment and (c) 100% of any growth in the Contract, which equals the current account value minus all purchase payments that have not been previously withdrawn. The Credit and Promotional Credit amounts, which are applied to the purchase payments when applicable, are not considered growth and are not available as a free withdrawal. Amounts withdrawn under the free withdrawal provision do not reduce the CDSC that may apply to a subsequent surrender. XT SIX offers a free withdrawal privilege as well. This privilege permits a Contract owner to withdraw account value without any CDSC being imposed at the time of withdrawal. The maximum amount available as a free withdrawal during annuity year one through ten is 10% of all purchase payments. The 10% free withdrawal is not cumulative. After annuity year ten, the maximum free withdrawal amount is 100% of the account value, including any Credits and Promotional Credits.

23. Applicants represent that on full or partial surrenders under XT FOUR, the CDSC on any purchase payments surrendered in excess of the free withdrawal privilege is based on a schedule of 8.5% in year one to 0.0% in year nine and beyond. The amount of the CDSC applicable to each purchase payment decreases over time, measured from the date each purchase payment is applied.

Applicants further represent that on full or partial surrenders under the XT SIX, the CDSC on any purchase payments surrendered in excess of the free withdrawal privilege is based on a schedule of 9.0% in year one to 0.0% in year eleven and beyond. The CDSC is measured from the issue date, not from the date that each purchase payment is applied.

Applicants state that for purposes of calculating the CDSC, withdrawals will be considered to come first from any amount available as a free withdrawal, then, to the extent the amount withdrawn exceeds the free withdrawal, from purchase payments that have not previously been withdrawn subject to a CDSC. If there are multiple new purchase payments, the one received earliest is liquidated first, then the one received next, so that the lowest CDSC percentage will apply to the amount withdrawn.

Applicants Legal Analysis

1. 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 amend the Prior Order to permit Applicants to rely on the exemption provided thereby from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder, to recapture, under the same circumstances described in the Prior Application, Promotional Credits and Future Promotional Credits for all Contracts and Future Contracts.

2. Applicants submit that the relief requested hereby is identical to the relief granted in the Prior Order, except that it covers Promotional Credits.

3. 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 Accounts or Future Accounts, that are issued by ASLAC and underwritten or distributed by ASM. Applicants undertake that Future Contracts funded by the Account or any Future Account will be substantially similar in all material respects to the Contracts. Likewise, any Future Promotional Credits will be substantially similar in all material respects to the Promotional Credits described herein. 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.

4. Applicants represent that it is not administratively feasible to track the actual Promotional Credit amount in one or the other of the Accounts after the Promotional Credit is applied to

purchase payments in the Contract. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire account value held in the respective Accounts, including the Promotional Credit amount, during the right to cancel period, for a medically-related surrender and when purchase payments are made within 12 months prior to the date of death. As a result, the aggregate asset-based charges assessed against a Contract owner's account value will be higher than that which would be charged if the Contract owner's account value did not include the Credit and the Promotional Credit. ASLAC has agreed to provide such disclosure in the prospectus.

5. Subsection (i) of Section 27 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) of the subsection 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 "(A) 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.

6. Applicants submit that the Promotional Credit recapture provisions, like the Credit recapture provisions, would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the amount of the Promotional Credit allocated to his or her annuity account value is not vested until the applicable right to cancel period has expired without return of the Contract. Similarly, a Contract owner's interest in the amount of the Promotional Credit allocated to his or her annuity account value will vest, unless ASLAC receives purchase payments within the first 12 months of the date the annuitant first became eligible for the medically-related surrender. And lastly, a Contract owner's interest in the amount of the Promotional Credit allocated to his or her annuity account value will not vest if the Promotional Credits applied to the account value are on purchase payments

made within 12 months prior to the date of death.

7. Applicants state that the recapture of any Promotional Credit, like the recapture of Credits, is intended only to protect ASLAC against anti-selection under certain specified contingencies. "Anti-selection" can generally be described as a risk that persons obtain coverage based on knowledge that the contingency that triggers payment of an insurance benefit is likely to occur, or is to occur shortly. In the case of the Contracts, Promotional Credits and Credits are provided on a guaranteed issue basis. The protection against anti-selection by persons who are ill is the reduction of the death benefit or the amount available as a medically-related surrender by the amount of a Credit and a Promotional Credit applied to purchase payments made within 12 months prior to the applicable Contingency Event. With respect to Credits and Promotional Credits allocated prior to the end of the Contract's right to cancel provision, the amount payable when such provision is exercised must be reduced by an amount equal to the Credits and Promotional Credits allocated. Otherwise, purchasers would apply for annuities for the sole purpose of making a quick profit and then exercise the right to cancel provision.

8. Applicants represent that, until or unless the amount of any Promotional Credit is vested, ASLAC retains the right to, and interest in, the Promotional Credit amount, although not in the earnings attributable to that amount. Thus, when ASLAC recaptures any Promotional Credit it is simply retrieving its own assets, and because a Contract owner's interest in the Promotional Credit is not vested the Contract owner has not been deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the Contract owner's account value (including the Promotional Credit).

9. For the foregoing reasons, Applicants state, the provisions for recapture of any Promotional Credit or Future Promotional Credit under the Contracts do not, and any such Future Contract provisions will not, violate Section 2(a)(32) and 27(i)(2)(A) of the Act. Indeed, a contrary conclusion would be inconsistent with a stated purpose of NSMIA, which is "to amend the [Act] to * * * provide more effective and less burdensome regulation." Sections 26(e) (now renumbered as Section 26(f)) and 27(i) were added to the Act pursuant to Section 205 of NSMIA to implement the

purposes of NSMIA and the Congressional intent. Thus, as with the application of a Credit, the application of a Promotional Credit to contributions made under the Contracts should not raise any questions as to ASLAC's compliance with the provisions of Section 27(i). Nevertheless, to avoid any uncertainties, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Promotional Credit under the circumstances described herein with respect to Contracts and any Future Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

10. 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 thereunder 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.

11. ASLAC's recapture of the Promotional Credit arguably might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Sub-accounts. The recapture of the Promotional Credit is not violative of Rule 22c-1. The recapture of the Promotional Credit does not involve either of the evils that Rule 22c-1 was 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 their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. These evils were the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet

reflected in the price, thereby diluting the values of outstanding mutual fund shares.

12. Applicants state that the proposed recapture of the Promotional Credit poses no such threat of dilution. To effect a recapture of a Promotional Credit, ASLAC will redeem interests in a Contract owner's account at a price determined on the basis of the current net asset value of the respective Sub-Accounts. The amount recaptured will equal the amount of the Credit and the Promotional Credit that ASLAC paid out of its own general account assets. Although Contract owners will be entitled to retain any investment gain attributable to the Promotional Credit, the amount of such gain will be determined on the basis of the current net asset value of the respective Sub-accounts. Thus, no dilution will occur upon the recapture of the Promotional Credit. 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 Promotional Credit.

Because neither of the harms that Rule 22c-1 was meant to address is found in the recapture of the Promotional Credit, Rule 22c-1 should have no application to any Promotional Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Rule 22c-1 to the extent deemed necessary to permit them to recapture the Promotional Credit under the Contracts and Future Contracts.

In addition, Applicants state that the Commission has previously granted exemptive relief to permit the recapture of credits under variable annuity contracts with total credits exceeding the combination of the Credits described in the Prior Order and any Promotional Credits described in the Application.

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14135 Filed 6-6-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [67 FR 38529, June 4, 2002]

Status: Closed Meeting.

Place: 450 Fifth Street, NW., Washington, DC.

Date and Time of Previously Announced Meeting: Wednesday, June 5, 2002, at 2 p.m.

Change in the Meeting: Deletion of Item.

The following item will not be considered at the closed meeting scheduled for Wednesday, June 5, 2002: Litigation matter.

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: June 5, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14526 Filed 6-5-02; 2:40 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45994; File No. SR-DTC-2002-02]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Modifications to the Existing Operational Arrangements

May 29, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 26, 2002, The Depository Trust Company ("DTC") 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 primarily by DTC. The Commission is publishing this notice to

¹ 15 U.S.C. 78s(b)(1).