

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 Contacts.

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]

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## 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]

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## 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"),<sup>1</sup> 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

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