are no significant environmental impacts from the proposed action of terminating HMI's license and releasing for unrestricted use the NRC-licensed areas of the Heritage site, and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

	Summarized document description	ADAMS Accession No.
1	Environmental Assessment for the Proposed Termination of U.S. Nuclear Regulatory Commission Materials License No. SMB–1541, Issued to Heritage Minerals, Inc. in Manchester Township, New Jersey, and Release for Unrestricted Use.	ML062350098
2	''Five Options for NRC Approval of Disposal or Onsite Storage of Thorium or Uranium Wastes From Past Nuclear Operations,'' dated 10/23/81.	ML033630718
3	FC 83–23 ''Termination of Byproduct, Source, and Special Nuclear Materials Licenses,'' dated 11/4/83	ML003745523
4	Letter terminating Heritage plant activities, dated 8/23/90	ML030370350
5	Additional Information for License Application, dated 7/25/90	ML030370324
6	Environmental Assessment and Finding of No Significant Impact for HMI DP, dated 10/19/99	ML003721778
7	HMI Final Status Survey, dated 11/25/01	ML021150357
8	NRC Confirmatory Survey Report, dated 4/10/02	ML021060589
9	HMI proposed additional remediation activities, dated 3/10/03	ML030830547
10	HMI amendment to proposed additional remediation activities, dated 5/6/03	ML031320537
11	NRC Confirmatory Survey Phase 2, dated 12/31/03	ML040250070
12	HMI proposed final remediation activities, dated 6/30/04	ML041910222
13	NRC letter accepting proposed final remediation activities, dated 11/17/04	ML043240049
14	HMI Termination Request, dated 3/04/05	ML050960109
15	Soil Sample Results from HMI, dated 2/14/05	ML050960038
16	NJDEP comments on draft HMI EA, dated 7/12/05	ML052000408
17	Dose Assessment for Unrestricted Future Use Scenarios of the HMI site, dated 8/25/05	ML052410061

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 23rd day of August, 2006.

For the Nuclear Regulatory Commission.

Marie Miller,

Chief Decommissioning Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E6–14519 Filed 8–31–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–27468; File No.812–13273]

Merrill Lynch Life Insurance Company, et al; Notice of Application

August 28, 2006.

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

ACTION: Notice of application for an amended order pursuant to Section 6(c) of the Investment Company Act of 1940 (''Act'') granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

Applicants: Merrill Lynch Life Insurance Company (''MLLIC''), Merrill Lynch Life Variable Annuity Separate Account A, Merrill Lynch Life Variable Annuity Separate Account C, Merrill Lynch Life Variable Annuity Separate Account D, ML Life Insurance Company of New York (''MLNY''), ML of New York Variable Annuity Separate Account A, ML of New York Variable Annuity Separate Account C, ML of New York Variable Annuity Separate Account D, and Merrill Lynch, Pierce, Fenner & Smith Incorporated (''MLPF&S'') (except for MLLIC, MLNY, and MLPF&S, each a ''separate account'' and collectively the ''Separate Accounts'').

Summary of Application: The Applicants request an order amending an existing order to permit the recapture of amounts applied to purchase payments made under certain variable annuity contracts. Applicants also request that the relief under the order extend to any current or future separate accounts of Merrill Lynch and their successors in interest, which may offer or support contracts that are substantially similar in all material respects to the contracts described in the application and to any other NASD registered broker/dealers under common control with Merrill Lynch, that serves as distributor or principal underwriter for the contracts.

Filing Date: The application was filed on February 15, 2006, and amended and restated on August 24, 2006.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested person 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 September 25, 2006, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Kirsty Lieberman, Esq., Merrill Lynch Insurance Group, Inc., 1300 Merrill Lynch Drive, 2nd Floor, Pennington, New Jersey 08534.

FOR FURTHER INFORMATION CONTACT: Robert Lamont, Senior Counsel or Joyce M. Pickholz, Branch Chief, Office of

Insurance Products, Division of Investment Management, at (202) 551–6795.

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, 100 F Street, NE., Washington, DC 20549 (tel. (202) 551–8090).

Applicants' Representations

1. The Existing Order (*Merrill Lynch Life Insurance Company, et al.*, Investment Company Act Release Nos. 26712 (Dec. 20, 2004) (Notice) (FR Dec. 28, 2004) and 26726 (Jan. 21, 2005) (Order)), exempts the Applicants with respect to certain variable annuity contracts described herein (''Contracts'') and other variable annuity contracts that are substantially similar in all material respects to the Contracts, that MLLIC and/or MLNY (together, the ''Companies'') may issue in the future (''Future Contracts''), and any other separate accounts of the Companies and their successors in interest (''Future Accounts'') that support Future Contracts, and certain NASD member broker-dealers which in the future, may act as principal underwriter of such contracts (''Future Underwriters''), from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, pursuant to Section 6(c) of the Act, to the extent necessary to permit the recapture of all or a portion of the bonus amounts (previously attributable to premium payments under the bonus class of the Contracts (''XC Class'')) where the bonus amounts were applied and a contract owner (''Owner'') (1) returns the Contract during the ''Ten Day Right to Review'' period (the ''Free Look Period''); (2) dies within six months of receipt and acceptance by MLLIC or MLNY of a premium payment (unless the Contract is continued under the spousal benefit continuation option); or (3) surrenders the Contract (in full or in part) or the surrender value is paid to the Owner within three years of receipt and acceptance by MLLIC or MLNY of a premium payment (pursuant to a bonus recapture schedule).

2. Applicants now seek to amend the Existing Order by changing the current bonus structure. The Applicants propose to increase the maximum bonus amount percentage during certain promotional periods. However, the Applicants would continue to recapture bonus amounts only at the lower maximum percentage allowed by the Existing Order when an Owner surrenders the Contract (in full or in part) or the surrender value is paid to the Owner within three years of receipt and acceptance by MLLIC or MLNY of a premium payment (pursuant to a bonus recapture schedule). The change in the bonus structure may provide an Owner with an additional bonus amount that is not subject to recapture. However, when an Owner returns the Contract during the Free Look Period or dies within six months of receipt and acceptance by MLLIC or MLNY of a premium payment, then the Applicants propose to recapture the entire bonus amount.

3. The Contracts are individual flexible premium deferred variable annuity contracts issued by the Companies through the Separate Accounts. The Contracts provide for the accumulation of values on a variable basis during the accumulation period, and provide for a variety of annuity settlement options. Certain Contracts may be purchased on a non-qualified tax basis. Certain Contracts also may be purchased and used in connection with plans qualifying for favorable federal income tax treatment. The Contracts currently offer four different charge structures, each referred to as a ''Class.'' Each Class imposes different surrender charges and asset-based insurance charges.

4. The Owner determines at the time of application for a Contract how premium payments will be allocated among the subaccounts of the applicable Separate Account (''Subaccounts''). The Owner generally may allocate premium payments to up to 20 of any of the available Subaccounts. The Contract Value, which is the total value of an Owner's interest in the Contract as of the end of the valuation period, will vary with the investment performance of the Subaccounts selected, and the Owner bears the entire risk for amounts allocated to the Subaccounts.

5. During the Free Look Period, an Owner has the right to return his or her Contract within ten days (or longer if required by state law). In those states that require the return of premium payments in the event of Contract cancellation, the Companies will refund the greater of all premium payments paid into the Contract (less any withdrawals) or the Account Value (less any bonus amounts) as of the date the Owner returns the Contract. The Companies will place premium payments into a predetermined or designated money market Subaccount for the first fourteen days following the Contract Date. After fourteen days, the greater of premium payments or Account Value initially required to be maintained in the money market Subaccount will be reallocated to the Subaccounts the Owner selected. However, if the Owner elected the Asset Allocation Program at the time he/she purchased the Contract, then the premium payments initially required to be maintained in the money market Subaccount will be reallocated according to the asset allocation model the Owner selected. If the Owner has not made any withdrawals and the Companies have placed premium payments in a money market Subaccount for the first fourteen days, the Companies guarantee they will allocate at least the Owner's premium payments to the Subaccounts selected by the Owner after the fourteen day period, regardless of charges or investment performance. The Companies reserve the right to discontinue providing this guarantee for Contracts issued after a specified date.

6. In states that permit the return of Account Value in the event of Contract cancellation, the Companies will refund the Account Value (less any bonus amounts) as of the date the Owner returns the Contract. For Contracts issued in California, for Owners who are 60 years of age or older, the Companies will put all premium payments in a money market Subaccount for the first 35 days following the Contract Date, unless the contract owner directs the Companies to invest the premiums immediately in other Subaccounts. The Companies also will not provide the guarantee to Contracts issued in California for Owners who are 60 years of age or older, whose premium payments are invested in a money market Subaccount. The Companies will invest premium payments immediately in the Subaccounts the Owner selected or according to the composition of the asset allocation model the Owner selected. The Companies will not provide the guarantee discussed above to Owners, in states where the Companies return Account Value, who elect to put their premium payments into a money market Subaccount. The Companies will not assess surrender charges against a Contract returned during the Free Look Period. The Companies will generally pay the refund within seven days after they receive the returned Contract. The Contract will then be considered void. The Companies recapture bonus amounts added to the Account Value if the Owner returns the Contract during the Free Look Period.

7. During the accumulation period, an Owner may transfer Account Value among the Subaccounts up to twelve times per Contract year without charge. An Owner may make additional

transfers, but the Companies currently charge a $25 transfer fee per transfer (guaranteed not to exceed $30) after the first twelve transfers in a Contract year. Currently, the minimum transfer amount is $100 or the total value of the Subaccount if less than $100. The Account Value remaining in a Subaccount after a transfer must be at least $100 or MLLIC or MLNY will transfer the total value of that Subaccount.

8. The Owner may surrender the Contract or make a partial withdrawal from Account Value during the accumulation period. The minimum amount that may be withdrawn is $100, and at least $5,000 surrender value must remain in the Contract after a partial withdrawal (and any associated surrender charge) is made (except if the Guaranteed Minimum Withdrawal Benefit is elected in which case the minimum surrender value after a partial withdrawal requirement is waived.) If an Owner surrenders a Contract or takes a partial withdrawal, the Companies may deduct a surrender charge to compensate them for expenses relating to the sale of the Contracts, such as commissions, preparation of sales literature, and other promotional activity. Upon partial withdrawal, the Companies also may deduct any applicable premium taxes. Upon surrender, the Companies also will deduct any applicable contract fee, accrued but uncollected rider charges, and applicable premium taxes. The surrender charge will be reduced using the ''free withdrawal amount'' provided for in the Contract. The free withdrawal amount is the portion of any partial withdrawal or surrender that is not subject to a surrender charge. The free withdrawal amount is the greater of: (a) 10% of the amount of each premium subject to a surrender charge (not to exceed the amount of each premium that had not been previously withdrawn as of the beginning of the Contract year), less any prior withdrawals during that Contract year; and (b) the ''gain'' in the Contract plus premiums remaining in the Contract that are no longer subject to a surrender charge. Any amount previously withdrawn from the Contract during that Contract year will be taken into account in determining the ''free withdrawal amount'' available as of the date of the withdrawal request. For the purpose of calculating the surrender charge, the Companies make withdrawals as if gain is withdrawn first, followed by premiums. Premium payments are assumed to be withdrawn on a first-in, first-out (''FIFO'') basis. The surrender charge equals a percentage of each premium withdrawn. With regard to the XC Class offered under the Contracts, each premium is subject to the charge for the applicable period specified below from the date it is received and accepted by MLLIC or MLNY, as follows:

Complete years elapsed since payment of premium	Surrender charge percentage (as a percentage of the premium payment)
0 years	8.0
1 year	8.0
2 years	7.0
3 years	7.0
4 years	6.0
5 years	6.0
6 years	5.0
7 years	4.0
8 years	3.0
9 years	0

The Companies recapture all or a portion of the bonus amounts added to the Account Value if the Owner surrenders the Contract or makes a partial withdrawal within three years of MLLIC's or MLNY's receipt and acceptance of a premium payment.

9. Under certain circumstances, the Contract may be terminated due to inactivity. If no premiums have been received during the prior 24 months (36 months in New York), the total of all premiums paid (less any partial withdrawals) is less than $2,000 ($5,000 in New York), and the Account Value is less than $2,000 ($5,000 in New York), then the Contract may be terminated. No Contract will be terminated solely due to negative investment performance. Termination for inactivity is treated as a surrender for purposes of bonus recapture (not applicable if the Guaranteed Minimum Withdrawal Benefit is elected). Also, partial annuitizations would be considered to be partial withdrawals for purposes of calculations under the Contract, including bonus recaptures.

10. A Surrender charge will not be deducted from payments made under any of the death benefits. Upon payment of the death benefit, the Companies may deduct any applicable premium taxes. The Companies will also recapture any bonus amounts added to the Account Value if the Owner (the first Owner to die, if there are Co-Owners, or the first Annuitant, if any Owner is not a natural person) dies within six months of MLLIC's or MLNY's receipt and acceptance of the corresponding premium payment. However, if an Owner dies and the Contract is continued under the spousal benefit continuation option, any bonus amounts not previously recaptured will no longer be subject to recapture as of the spousal continuation date.

11. If an Owner elects the XC Class under the Contracts, then the Companies will add a bonus amount to the Account Value each time the Owner makes a premium payment. With regard to an initial premium payment, the Companies will apply the corresponding bonus amount to an Owner's Account Value on the Contract Date. With regard to each additional premium payment, the Companies will apply a corresponding bonus amount to an Owner's Account Value at the end of the valuation period during which that premium payment is received and accepted at MLLIC's or MLNY's Service Center.

12. Under the Existing Order, to calculate each bonus amount, the Companies allocate the corresponding premium payment to one or more bonus tiers based on the amount of cumulative premium payments made under the Contract, as follows:

Tier	If cumulative premium payments are:	Then maximum bonus amount percentage is:	Then current bonus amount percentage is:	Then minimum guarantee bonus amount percentage is:
1	Less than or equal to $25,000	5.0	4.5	3.0
2	Greater than $25,000 but less than or equal to $125,000	5.5	4.5	3.0
3	Greater than $125,000 but less than or equal to $500,000	5.5	4.5	3.5
4	Greater than $500,000 but less than or equal to $1,000,000	6.0	5.5	4.0
5	Greater than $1,000,000	7.0	5.5	4.5

Under the application, the Applicant's propose to change the bonus structure as follows:

Tier	If cumulative premium payments are:	Then maximum bonus amount percentage is:	Then maximum recapture amount percentage for withdrawals and surrenders is:	Then current bonus amount percentage is:	Then minimum guarantee bonus amount percentage is:
1	Less than or equal to $25,000	7.0	5.0	4.5	3.0
2	Greater than $25,000 but less than or equal to $125,000	7.0	5.5	4.5	3.0
3	Greater than $125,000 but less than or equal to $500,000	7.0	5.5	4.5	3.5
4	Greater than $500,000 but less than or equal to $1,000,000	7.0	6.0	5.5	4.0
5	Greater than $1,000,000	7.0	7.0	5.5	4.5

As is the case under the Existing Order, under this proposed structure, the Companies may apply different bonus percentages to each premium payment (unless cumulative premium payments are less than or equal to $25,000) by breaking out the payment according to the ranges in the above table and multiplying the portion of the payment allocated to each tier by that tier's current bonus amount percentage. However, a premium payment will only be allocated to the first tier if cumulative premium payments are less than or equal to $25,000. If the initial premium payment exceeds $25,000, the first tier will not apply and the second tier will apply to all cumulative premiums less than or equal to $125,000. For example, an initial premium payment of $20,000 would receive a current bonus amount of $900 ($20,000 × 0.045 (tier 1)). If the initial premium payment is $100,000, the current bonus amount would be $4,500 ($100,000 × 0.045 (tier 2)). However, an initial premium payment of $700,000 would receive a current bonus amount of $33,500 ($125,000 × 0.045 (tier 2) + $375,000 × 0.045 (tier 3) + $200,000 × 0.055 (tier 4)). No bonus amount will be based on a percentage that exceeds the maximum bonus amount percentages shown in the above table. In addition, no subsequent recapture of bonus amounts will exceed the maximum recapture amount percentages shown in the above table (except when an Owner dies within six months of a premium payment and under the Free Look Period). When calculating each bonus amount, ''cumulative premium payments'' do not include bonus amounts previously added to Account Value. The bonus amount is allocated among the Subaccounts in the same manner as the corresponding premium payment. The Companies may change the current bonus amount percentage, but it will never be less than the minimum guaranteed bonus amount percentage listed in the table.

13. The Companies may offer promotional programs with promotional rates for XC Class Contracts issued within specified periods of time (each, a ''Promotional Period''). Such promotional programs may apply to initial and/or subsequent premium payments received during the Promotional Period. Initial and/or subsequent premium payments received after the Promotional Period will receive the current bonus amount percentage in effect at that time. No bonus amount applied pursuant to a promotional program will be based on a percentage that exceeds the maximum bonus amount percentages shown in the above table. In addition, no subsequent recapture of bonus amounts will exceed the maximum recapture amount percentages shown in the above table (except when an Owner dies within six months of a premium payment or under the Free Look Period). The Companies may terminate any promotional programs or offer other promotional programs at any time in their sole discretion.

14. If the Owner returns the Contract during the Free Look Period, then the Owner will not receive any portion of the bonus amounts (i.e., the Companies will ''recapture'' the full amount of each bonus). In the event of the death of the Owner (or upon the death of the first Owner to die if there are Co-Owners, or upon the death of the first Annuitant if any Owner is not a natural person), the Companies will recapture all remaining bonus amounts corresponding to premium payments received and accepted within the previous six months of death. Thus, under the XC Class, if an optional guaranteed minimum death benefit (''GMDB'') is not chosen, the death benefit equals the Account Value less any bonus amounts credited in the prior six months and less uncollected charges. If a GMDB is chosen, the death benefit equals the greater of the Account Value less any bonus amounts credited in the prior six months and less uncollected charges or the GMDB Base. However, in the event the Contract is continued under the spousal beneficiary continuation option, any bonus amounts not previously recaptured will no longer be subject to recapture as of the spousal continuation date. In the event of partial withdrawal or surrender within three years of MLLIC's or MLNY's receipt and acceptance of a premium payment, the Companies may recapture all or a portion of the corresponding bonus amount based on the bonus recapture percentages presented in the following schedule:

Completed years since receipt and acceptance of premium payment	Bonus recapture percentage for surrenders and partial withdrawals up to the maximum recapture amount percentage
0	100
1	65
2	30
3+	0

In the event of partial withdrawal or surrender within three years of MLLIC's or MLNY's receipt and acceptance of a premium payment, the Companies will never exceed the maximum recapture amount of the bonus. For example, if an Owner makes an initial $10,000 premium payment, the Companies will add a $700 bonus amount to the Account Value (assuming the maximum 7.0% bonus amount percentage). In the event of partial withdrawal or surrender, if it has been two years since the receipt and acceptance of this premium payment, then the maximum

bonus amount that the Companies will recapture is $150 ($10,000 × .050 × .30).

15. The Companies will recapture any bonus amounts subject to recapture from the Owner's Account Value at the end of the valuation period during which the transaction request is received and accepted at MLLIC's or MLNY's Service Center. For each premium payment, the maximum bonus amount subject to recapture is equal to the applicable bonus recapture percentage for surrenders and partial withdrawals multiplied by (a) minus (b) where: (a) is the premium applied multiplied by the maximum recapture amount percentage; and (b) is the sum of each previously recaptured bonus amount attributable to that premium payment divided by the bonus recapture percentage on the date such amount was recaptured.

16. The Companies will deduct bonus amounts subject to recapture based on the associated premiums withdrawn from the Contract, which are determined on a ''first-in, first out'' (or ''FIFO'') basis. Currently, the Companies do not recapture any bonus amounts on withdrawals that are within the ''free withdrawal amount.'' The Companies reserve the right to recapture bonus amounts on withdrawals that are within the ''free withdrawal amount'' in the future. The amount actually recaptured is based on the bonus amount subject to recapture multiplied by the ratio of: (i) The associated premium payment withdrawn that was subject to a surrender charge to (ii) The total amount of that premium payment remaining in the Contract immediately prior to the withdrawal that was subject to a surrender charge. The Companies will deduct any recaptured bonus amounts on a pro rata basis from among the Subaccounts the Owner is invested in, based on the ratio of the Owner's Subaccount value to his or her total Subaccount value before the partial withdrawal.

17. If the Companies recapture a bonus amount, they will take back the bonus amount as if it had never been applied. However, the accumulated gain or loss on bonus amounts is not subject to recapture. Thus, an Owner bears any investment loss and retains any investment gain attributable to bonus amounts. The Companies will not re-credit any charges, including asset-based insurance charges, imposed on bonus amounts subsequently recaptured. The Applicants propose to amend the Existing Order by increasing the maximum bonus amount percentage during certain promotional periods. However, the Applicants would continue to recapture bonus amounts only at the lower maximum percentage allowed by the Existing Order when an Owner surrenders the Contract (in full or in part) or the surrender value is paid to the Owner within three years of receipt and acceptance by MLLIC or MLNY of a premium payment (pursuant to a bonus recapture schedule). Thus, when an Owner surrenders the Contract, the change in the bonus structure would provide an Owner with an additional bonus amount that is not subject to recapture. However, when an Owner returns the Contract during the Free Look Period or dies within six months of receipt and acceptance by MLLIC or MLNY of a premium payment, then the Applicants propose to recapture the entire bonus amount. Thus, under the application, even though the Companies would increase the maximum bonus amount percentage up to 7.0%, the bonus amount recaptured would remain the same as it is under the Existing Order with the exception of the Free Look Period and when an Owner dies within six months of a premium payment. For example, under the Existing Order, if the Owner makes a premium payment of $10,000, which is allocated to Tier 2, he would receive a maximum bonus of $550. If the Owner surrenders the Contract within one year of the Companies' receipt and acceptance of that premium payment, the Companies recapture $550, the entire bonus amount. Under the application, if the bonus amount percentage is 7% and the Owner makes a premium payment of $10,000 and is in Tier 2, he would receive a maximum bonus of $700. If the Owner surrenders the Contract within one year of the Companies' receipt and acceptance of that premium payment, the maximum amount the Companies would be permitted to recapture would still be $550 (the amount of premium paid multiplied by the maximum recapture amount percentage allocated to Tier 2). Thus, under the application, $150 of the bonus would not be subject to recapture (except during the Free Look Period and when an Owner dies within six months of a premium payment as described above). If the Owner withdrew the premium payment, the recapture would still be based on the bonus recapture schedule in the Existing Order (which recaptures 100% of the maximum recapture amount percentage in the first year, 65% in the second year, and 30% in the last year).

Applicants' Legal Analysis

1. The Applicants request that the Commission amend the Existing Order and, pursuant to Section 6(c) of the Act, grant the exemptions to permit the Applicants (1) to recapture all bonus amounts attributable to premium payments under the Contract's XC Class when an Owner returns the Contract during the Free Look Period; (2) to recapture all bonus amounts attributable to premium payments under the Contract's XC Class when an Owner dies within six months of receipt and acceptance by MLLIC or MLNY of a premium payment (unless the Contract is continued under the spousal benefit continuation option); or (3) to recapture all or a portion of bonus amounts attributable to premium payments under the Contract's XC Class when an Owner surrenders the Contract (in full or in part) or the surrender value is paid to the Owner (because the Contract has been terminated for inactivity) within three years of receipt and acceptance by MLLIC or MLNY of a premium payment (pursuant to a bonus recapture schedule).

2. Because the provisions may be inconsistent with a recapture of bonus amounts, the Applicants request exemptions for the Contracts described herein, and for Future Contracts, from Sections 2(a)(32) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder, pursuant to Section 6(c), to the extent necessary to recapture the bonus amounts. The Applicants seek exemptions in order to avoid any questions concerning the Contracts' compliance with the Act and rules thereunder. The exemptions requested herein are necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

3. To the extent that the bonus amount recapture might be seen as a discount from the net asset value, or might be viewed as resulting in the payment to an Owner of less than the proportionate share of the issuer's net assets, the bonus amount recapture would trigger the need for relief absent some exemption from the Act. Rule 6c-8 provides, in relevant part, that a registered separate account, and any depositor of such account, shall be exempt from Sections 2(a)(32), 22(c), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c-1 thereunder to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account. However, the bonus amount recapture is not a sales load, but a recapture of bonus amounts MLLIC or MLNY previously attributed to an Owner's premium payments. The Companies provide the bonus amounts from their general accounts on a guaranteed basis. The Contracts are

designed to be long-term investment vehicles. In undertaking this financial obligation, the Companies contemplate that an Owner will retain a Contract over an extended period, consistent with the long-term nature of the Contracts. The Companies designed the product so that they would recover their costs (including the bonus amounts) over an anticipated duration while a Contract is in force. If an Owner withdraws his money during the Free Look Period, or a death benefit is paid, or a withdrawal or surrender is made, before this anticipated period, the Companies must recapture the bonus amounts subject to recapture in order to avoid a loss. However, if a withdrawal or surrender is made, the Companies will absorb the loss for the bonus amount that exceeds the maximum recapture amount percentage.

4. Applicants submit that the recapture of bonus amounts does not violate Section 2(a)(32) of the Act. The bonus amount recapture provision pursuant to the Contract's XC Class does not deprive the Owner of his or her proportionate share of the issuer's current net assets. In the case of death of the Owner, an Owner will have the full right to any bonus amounts not previously recaptured six months following MLLIC's or MLNY's receipt and acceptance of the corresponding premium payment. In the case of partial or full surrender, an Owner's right to a portion of a bonus amount not previously recaptured will begin one year following MLLIC's or MLNY's receipt and acceptance of the corresponding premium payment, and an Owner will have the full right to any such remaining bonus amount three years following MLLIC's or MLNY's receipt and acceptance of the corresponding premium payment. Until that time, the Companies generally retain the right and interest in the dollar amount of any bonus amounts subject to recapture. Thus, when the Companies recapture all or a portion of a bonus amount, they are only retrieving their own assets, and because an Owner does not have an interest in the bonus amount, such Owner would not be deprived of a proportionate share of the applicable Separate Account's assets (the issuer's current net assets) in violation of Section 2(a)(32). Therefore, such recapture does not reduce the amount of the applicable Separate Account's current net assets an Owner would otherwise be entitled to receive. However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the provisions of Sections (2)(a)(32) and 27(i)(2)(A) to the extent deemed necessary to permit them to recapture all or a portion of the bonus amounts under the Contracts and Future Contracts.

5. As a result of the bonus amounts available under the Contract's XC Class, an Owner who made an initial premium payment of $10,000 in the first Contract year could be viewed as having an Account Value of $10,450 before any earnings accrued. The Companies' addition of bonus amounts might arguably be viewed as resulting in an Owner purchasing a redeemable security for a price below the current net asset value. Further, by recapturing the bonus amounts, the Companies might arguably be redeeming a redeemable security for a price other than one based on the current net asset value of the applicable Separate Account.

6. Applicants argue that an Owner's interest in his or her Account Value would always be offered at a price based on the net asset value next calculated after receipt of the order. The granting of bonus amounts does not reflect a reduction of that price. Instead, the Companies will purchase with their own general account assets an interest in the applicable Separate Account equal to the bonus amounts. Because the bonus amounts will be paid out of MLLIC's or MLNY's assets, not the applicable Separate Account's assets, no dilution will occur as a result of the bonus amounts.

7. Applicants submit that the recapture of bonus amounts does not involve either of the two harms that the Commission intended to eliminate or reduce with Rule 22c-1. The Commission's stated purposes in adopting Rule 22c-1 were to avoid or minimize: (1) Dilution of the interests of other security holders; and (2) speculative trading practices that are unfair to such holders. These two concerns 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, and thereby the values of outstanding mutual fund shares were diluted.

8. According to Applicants, the proposed recapture of bonus amounts under the Contracts does not pose such threat of dilution. The bonus amount recapture will not alter an Owner's net asset value. The Companies will determine an Owner's surrender value (an amount equal to the Account Value reduced by any charges (including the surrender charge) and increased by any credits applied upon surrender) under a Contract in accordance with Rule 22c–1 on a basis next computed after receipt of an Owner's request for surrender (likewise, the calculation of death benefits and annuity payment amounts will be in full compliance with the forward pricing requirement of Rule 22c–1). The amount recaptured will equal all or a portion of bonus amounts that MLLIC or MLNY paid out of its general account assets. It is not administratively feasible to track the bonus amount in the Separate Accounts after the Companies apply the bonus. As a result, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amount held in the Separate Accounts, including the bonus amount, during the time the bonus amount is subject to recapture. During this time, the aggregate asset-based charges assessed against an Owner's Account Value will be higher than those that would be charged if the Owner's Account Value did not include the bonus amount, but the increment will obviously be only a small percentage of the bonus amount. On the other hand, an Owner will retain any investment benefit from the bonus amount. Although an Owner will retain any investment gain attributable to the bonus amounts, the Companies will determine the amount of such gain on the basis of the current net asset value of the Subaccount. Thus, no dilution will occur upon the recapture of bonus amounts.

9. Further, the other harm that Rule 22c–1 was designed to address (speculative trading practices calculated to take advantage of backward pricing) will not occur as a result of MLLIC's or MLNY's recapture of a bonus amount. Variable annuities are designed for long-term investment, and by their nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was designed to prevent. More to the point, the bonus recapture simply does not create the opportunity for speculative trading.

10. Applicants assert that rule 22c–1 should have no application to a bonus amount, as neither of the harms that Rule 22c–1 was designed to address are present in the recapture of bonus amounts. However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture bonus amounts available through the XC Class under the Contracts and Future Contracts.

11. Applicants submit that the bonus amount provisions are generally beneficial to Owners. The recapture provisions temper this benefit somewhat, but only if an Owner redeems his or her money under the circumstances described herein. While there would be a small downside in a declining market where an Owner would bear any losses attributable to the bonus amounts up to the maximum recapture amount percentage, it is the converse of the benefits an Owner would receive on the bonus amounts in a rising market. As any earnings on bonus amounts applied would not be subject to recapture and thus would be immediately available to an Owner, likewise any losses on bonus amounts would also not be subject to recapture and thus would be immediately available to an Owner. The bonus amount recapture provision does not diminish the overall value of the bonus amounts.

12. MLLIC's or MLNY's recapture of bonus amounts is designed to prevent anti-selection against it. The risk of anti-selection would be that an Owner could make significant premium payments into the Contract solely in order to receive a quick profit from the bonus amounts. By recapturing the bonus amounts, the Companies protect themselves against the risk that an Owner will make such large premium payments, receive the bonus amounts, and then withdraw his or her money from the Contract. The Companies generally protect themselves from this kind of anti-selection, and recover their costs in situations where an Owner withdraws his or her money early in the life of a Contract, by imposing a surrender charge. However, where an Owner withdraws his money during the Free Look Period or a death benefit is paid, the Companies do not apply this charge.

13. The Applicants seek relief herein not only for themselves with respect to the support of the Contracts, but also with respect to Future Accounts or Future Contracts described herein. The Applicants represent that the terms of the relief requested with respect to any Contracts or Future Contracts funded by the Separate Accounts or Future Accounts are consistent with the standards set forth in Section 6(c) of the Act and Commission precedent. The Commission has previously granted class relief (from certain specified provisions of the Act for separate accounts that support variable annuity contracts) that is materially similar to the relief described in the application.

14. In addition, the Applicants seek relief herein with respect to Future Underwriters (*i.e.*, a class consisting of NASD member broker-dealers that may also act as principal underwriter of the Contracts and Future Contracts). The Commission has regularly granted relief to ''future underwriters'' that are not named, and are not affiliates of the applicants. The Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in Section 6(c) of the Act and Commission precedent.

15. Applicants argue that without the requested class relief, exemptive relief for any Future Account, Future Contract, or Future Underwriter would have to be requested and obtained separately. These additional requests for exemptive relief would present no issues under the Act not already addressed herein. If the Applicants were to repeatedly seek exemptive relief with respect to the same issues addressed herein, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. The requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the Companies to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would, the Applicants opine, enhance the Applicants' ability to effectively take advantage of business opportunities as such opportunities arise. The Applicants' request for class exemptions 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, and that an order of the Commission including such class relief, should, therefore, be granted. Any entity that currently intends to rely on the requested exemptive order is named as an Applicant. Any entity that relies upon the requested order in the future will comply with the terms and conditions contained in the application.

Conclusion

Applicants submit that their request for an amended order meets the standards set out in Section 6(c) of the Act and that an order amending the Existing Order should, therefore, be granted.

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

Nancy M. Morris,

Secretary.

[FR Doc. E6–14538 Filed 8–31–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 54374; File No. SR–BSE–2005–09]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Its Minor Rule Violation Plan

August 28, 2006.

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 February 7, 2005, the Boston Stock Exchange, Inc. (''BSE'' 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. The Exchange filed Amendment No. 1 to the proposed rule change on July 7, 2006, and Amendment No. 2 on August 18, 2006.[3] 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 seeks to amend and make additions to its minor rule violation plan (''MRVP''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.bostonstock.com/legal/index.html*), at the Exchange's principal office, and at the Commission's Public Reference Room.

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 proposal, and discussed any comments it received on the proposed rule change. The text of these statements

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing, and Amendment No. 2 superseded and replaced Amendment No. 1.