

year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2003 monthly compensation base of \$1,120 produces \$2,800. Accordingly, the amount determined under section 3 is \$2,800 for calendar year 2003.

Under section 4(a-2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 2003 monthly compensation base of \$1,120 produces \$2,800. Accordingly, the amount determined under section 4(a-2)(i)(A) is \$2,800 for calendar year 2003.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2003, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of \$1, it shall be rounded down to the nearest multiple of \$1.

The calendar year 2002 monthly compensation base is \$1,100. Multiplying \$1,100 by 0.05 yields \$55.00, an even multiple of \$1. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2003, is determined to be \$55.

Dated: November 4, 2002.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02-28459 Filed 11-7-02; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-25792; File No. 812-12875]

Allstate Life Insurance Company, et al.; Notice of Application

November 4, 2002.

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

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940, as amended ("Act") granting exemptions from the provisions of Sections 2(a)(231) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

APPLICANTS: Allstate Life Insurance Company ("Allstate"), Allstate Life Insurance Company of New York ("Allstate Life of New York"), Glenbrook Life & Annuity Company ("Glenbrook"), Lincoln Benefit Life Company ("Lincoln Benefit"), Northbrook Life Insurance Company ("Northbrook," together with Allstate, Allstate Life of New York, Glenbrook and Lincoln Benefit, the "Life Companies"), Allstate Life Insurance Company Separate Account A ("Allstate Separate Account A"), and Allstate Distributors, L.L.C., ("Allstate Distributors") (collectively, the "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order to amend an Existing Order (described below) to grant exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent necessary to permit Applicants to recapture certain bonuses applied to contributions made under (a) certain amended deferred variable annuity contracts and certificates, described herein, including certain amended certificate data pages and endorsements, that Allstate will issue in the future through Allstate Separate Account A (the "Amended Contracts"), and (b) under contracts and certificates, including certain certificate data pages and endorsements, that the Life Companies may issue in the future through any separate account of the Life Companies ("Future Account") and that are substantially similar in all material respects to the Amended Contracts ("Future Contracts"). Applicants also request that the order being sought extend to the Allstate Life Contracts, "Future Contracts" (hereinafter "Future Contracts Covered by the Existing Order"), and "Affiliated Broker-Dealers" as defined in the application for the Existing Order ("Prior Application") which definitions are described below,

and to broker-dealers who are not affiliated with the Life Companies ("Unaffiliated Broker-Dealers").

FILING DATE: The application ("Application") was filed on August 28, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 4, 2002, 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 requester'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 Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, Angela King, Esq., Assistant Counsel, Allstate Life Insurance Company, 3100 Sanders Road, Northbrook, Illinois 60062; with a copy to Richard T. Choi, Esq., Foley & Lardner, 3000 K Street, NW, Suite 500, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, 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 Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549-0102, (202) 942-8090.

Applicant's Representations

1. On June 5, 2001, the Commission issued an order ("Existing Order")¹ exempting certain transactions of the Life Companies, the Existing Separate Accounts (defined below), Allstate Distributors, and ALFS, Inc. ("ALFS") (collectively, the "Prior Applicants"), from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c-1, thereunder. The Existing Order provides relief to the extent necessary to permit the recapture, under specified circumstances, of certain credits

¹ Allstate Life Insurance Company, Investment Company Act Release No. 24998 (June 5, 2001)(File No. 812-12386).

("Credits") applied to contributions made under Contracts or Future Contracts Covered by the Existing Order (defined below).

2. As described in the Prior Application, Allstate, Allstate New York, Lincoln Benefit, and Northbrook are all stock life insurance companies organized under the law of Illinois, New York, Nebraska, and Illinois respectively. Glenbrook is a stock life insurance company organized under the laws of Illinois and redomesticated under the laws of Arizona in 1998.

3. The Existing Order covers "Contracts," which the Prior Application defines to mean certain deferred variable annuity contracts and certificates issued by Allstate, Lincoln Benefit, and Glenbrook (hereinafter, the "Allstate Contracts, the "Lincoln Benefit Contracts," and the "Glenbrook Contracts," respectively). The Existing Order also covers "Future Contracts covered by the Existing Order," which the Prior Application defines to mean certain other deferred variable annuity contracts and certificates that the Life Companies may issue in the future through the Existing Separate Accounts (defined below) or through other separate accounts that the Life Companies may establish in the future, and that are substantially similar in all material respects to the Contracts. The Existing Order also covers "Affiliated Broker-Dealers," which, under the Prior Application, means any other NASD member broker-dealer controlling or controlled by, or under common control with, Allstate whether existing or created in the future, that serves as a distributor or principal underwriter for Contracts or Future Contracts Covered by the Existing Order.

4. The Existing Separate Accounts covered by the Existing Order include: Allstate Separate Account A, Allstate Life Insurance Company of New York Separate Account A ("ALNY Separate Account"), Glenbrook Life & Annuity Company Variable Annuity Account, Glenbrook Life Multi-Manager Variable Account, Glenbrook Life & Annuity Company Separate Account A ("Glenbrook Separate Account A"), Glenbrook Scudder Variable Account (A), and Lincoln Benefit Life Variable Annuity Account ("Lincoln Separate Account") (collectively, the "Existing Separate Accounts"). Glenbrook Life & Annuity Company Variable Annuity Account, Glenbrook Life Multi-Manager Variable Account, Glenbrook Separate Account A, and Glenbrook Scudder Variable Account (A) are hereinafter referred to as the "Glenbrook Separate Accounts."

5. Each of the Existing Separate Accounts is a segregated asset account of the corresponding Life Company that serves as its depositor, and each is registered with the Commission as unit investment trust under the 1940 Act. Each of the Existing Separate Accounts is divided into multiple subaccounts, each of which invests in shares of a corresponding portfolio ("Portfolio") that serves as an investment option under Contracts issued through the separate account.

6. As described in the Prior Application, Allstate Distributors and ALFS each serves as distributor of certain deferred variable annuity contracts, including certain Contracts, issued by the Life Companies through the Existing Separate Accounts. Each is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the National Association of Securities Dealers, Inc. ("NASD"). The Contracts issued by Allstate are offered through registered representatives of broker-dealers that are registered under the 1934 Act and members of the NASD, and that have selling agreements with Allstate Distributors. The Contracts (other than the Contracts issued by Allstate) are offered through registered representatives of broker-dealers that are registered under the 1934 Act and members of the NASD, and that have selling agreements with ALFS.

7. As described in the Prior Application, all of the Life Companies, Allstate Distributors, and ALFS are direct or indirect wholly-owned subsidiaries of Allstate Insurance Company.

8. The variable portions of the Lincoln Benefit Contracts, Glenbrook Contracts, and Allstate Contracts are registered under the Securities Act of 1933 (the "1933 Act"). The variable portions of the Future Contracts Covered by the Existing Order also will be registered under the 1933 Act. That portion of the assets of each Existing Separate Account that is equal to the reserves and other contract liabilities with respect to Contracts is not chargeable with liabilities arising out of any other business of the corresponding Life Company. Any income, gains or losses, realized or unrealized, from assets allocated to a Existing Separate Account will be, in accordance with such Account's Contracts, credited to or charged against such Existing Separate Account, without regard to other income, gains or losses of the corresponding Life Company.

9. Under the Allstate Contracts, Glenbrook Contracts, and Lincoln

Benefit Contracts, each time the relevant Life Company receives a purchase payment from an owner of such a Contract, it will add the applicable Credit to the owner's contract value, and will allocate the Credit among the available Portfolios according to the allocation instructions in effect for the purchase payments. Each Life Company will fund Credits from its general account assets.

10. Under the Allstate Contracts and Lincoln Benefit Contracts, the Credit is equal to 4% of the purchase payment amount. Under the Glenbrook Contracts, there are two credit options available as follows:

a. Under option 1, Glenbrook will add to the owner's contract value a Credit equal to 4% of the purchase payment amount.

b. Under option 2, Glenbrook will add to the owner's contract value a Credit equal to 2% of the purchase payment amount. In addition, on every 5th contract anniversary during the accumulation phase, Glenbrook will add to the owner's contract value a Credit equal to 2% of the owner's contract value as of such contract anniversary.

11. The Allstate Contracts, Glenbrook Contracts, and Lincoln Benefit Contracts all provide for various surrender options, annuity benefits and annuity payout options, as well as transfer privileges among subaccounts, dollar cost averaging, and other features.

12. The Allstate Contracts contain the following charges: (a) A withdrawal charge as a percentage of purchase payments surrendered, which is 8% in years one, two, and three, 7% in year four, 6% in year five, 5% in year six, 3% in year eight, and 9% thereafter; (b) a mortality and expense risk fee of 1.60% annually; and (c) a transfer fee of .50% of the amount transferred on transfers in excess of twelve within a calendar year. (The Allstate Contract does not assess an annual contract maintenance charge or annual administrative fee.)

13. The Lincoln Benefit Contracts contain the following charges: (a) A contingent deferred sales charge as a percentage of purchase payments surrendered, which is 8% in year one, 7% in years two and three, 6% in years four and five, 5% in year six, 4% in year seven, 3% in year eight, and 0% thereafter; (b) a \$35 annual administrative charge (which is waived if total purchase payments exceed \$50,000); (c) a mortality and expense risk fee of 1.30% annually; (d) an administrative charge of 0.10% annually; and (e) a transfer fee of \$10 per transfer with certain exceptions, which currently is being waived.

14. The Glenbrook Contracts contain the following charges: (a) A withdrawal charge as a percentage of purchase payment surrendered, which is 8% in year one and two, 7% in years three and four, 6% in year five, 5% in year six, 4% in year seven, 3% in year eight, and 0% thereafter; (b) a \$35 annual administrative charge (which is waived if total purchase payments exceed \$50,000); (c) a mortality and expense risk fee of 1.40% annually; and (d) a transfer fee of \$10 on transfers in excess of twelve in any Contract year, which currently is being waived.

15. Under the Allstate Contracts, Glenbrook Contracts and Lincoln Benefit Contracts, each Life Company also deducts any applicable state or local premium taxes up to 4.0%, depending on the owner's state of residence or the state in which the Contract was sold. In addition, assets invested in the subaccounts are charged with the operating expenses of the Portfolios.

16. The Existing Order provides exemptive relief to the extent necessary to permit the recapture of Credits if an Allstate Contract is returned during the free look period.

17. Applicants believe that the Allstate Contracts covered by the Existing Order and the Amended Contracts are substantially similar in all material respects relevant to the Existing Order and that the Amended Contracts would constitute Future Contracts covered by the Existing Order. Nevertheless, Applicants are filing the Application to avoid any uncertainty that may arise as a result of the following differences between the Allstate Contracts and the Amended Contracts:

(a) Separate Account Charges

Allstate Contracts have a mortality and expense risk charge at the annual rate of 1.60% and no administrative expense charge. Amended Contracts have a lower mortality and expense risk charge at the annual rate of 1.40%, and an administrative expense charge of

0.19%. Allstate reserves the right to raise the administrative expense charge to 0.35%. However, Allstate will not increase the charge for a Contract once it issues a Contract.

(b) Death Benefit Options and Death Benefit Charges

Allstate Contracts offer a basic death benefit including a "maximum anniversary value" death benefit at no additional charge, and an "enhanced beneficiary protection option" for an additional morality and expense risk charge at the annual rate of 0.15%.

Amended Contracts offer a basic death benefit. The Amended Contracts also offer the following optional death benefits for the following additional mortality and expense risk charges:

MAV Death Benefit Option.	0.15% (up to 0.30% for Options added in the future).
Enhanced Beneficiary Protection Option.	0.15% (up to 0.30% for Options added in the future).
Earnings Protection Death Benefit Option (issue age 0-70).	0.25% (up to 0.35% for Options added in the future).
Earnings Protection Death Benefit Option (issue age 71-79).	0.40% (up to 0.50% for Options added in the future).
Spousal Protection Benefit Option.	0.00% (up to 0.15% for Options added in the future).

(c) Income Benefit

Allstate Contracts offer nine income plans to receive payments. Amended Contracts offer seven income plans to receive income payments, and allow owners to modify the length and frequency of income payments during the payout phase. Allstate Contracts offer a Retirement Income Guarantee ("RIG") Rider for a rider fee at the annual rate of 0.05% of the income base in effect on each Contract anniversary, and a second RIG Rider for a rider fee at the annual rate of 0.30% of the income base in effect on each Contract anniversary. Amended Contracts offer different RIG options with different charges. Amended Contracts offer a RIG

Option for a rider fee at the annual rate of 0.25% (up to 0.50% for Options added in the future) of the income base in effect on a Contract anniversary, and a second RIG Option for an additional rider fee at the annual rate of 0.45% (up to 0.75% for Options added in the future) of the income base in effect on a Contract anniversary. Amended Contracts also offer an Income Protection Benefit Option for a charge of 0.50% (up to 0.75% for Options added in the future) of the average daily net separate account assets supporting the variable income payments to which the Income Protection Benefit Option applies. The charge for the Income Protection Benefit Option applies during the payout phase.

(d) Contract Maintenance Charge

Allstate Contracts do not impose a contract maintenance fee. Amended Contracts have an annual contract maintenance fee of \$30 (deducted from account value on each contract anniversary, or upon full surrender). The charge is waived once total purchase payments equal \$50,000 or more, or if all money is allocated to the fixed account.

(e) Transfer Charges

Under Allstate Contracts Allstate may assess a charge on transfers among investment options equal to 0.50% of the amount transferred. The charge applies to transfers in excess of 12 in a contract year. The charge is currently waived. Under Amended Contracts Allstate may assess a charge on transfers among investment options equal to 1.00% (up to 2.00% in the future) of the amount transferred. The charge applies to transfers in excess of 12 in a contract year.

(f) Contract Withdrawal Charge

Allstate Contracts and Amended Contracts impose a withdrawal charge equal to a percentage of contributions determined by the contract year in which such contributions are withdrawn as follows:

COMPLETE YEARS SINCE ALLSTATE RECEIVED PAYMENT BEING WITHDRAWN
[In percent]

	0	1	2	3	4	5	6	7	8+
Charge (Allstate Contracts)	8	8	8	7	6	5	4	3	0
Charge (Amended Contracts)	8.5	8.5	8.5	7.5	6.5	5.5	4	2.5	0

Allstate Contracts offer an annual "free withdrawal amount" equal to 15%

of purchase payments. Amended Contracts offer an annual "free

withdrawal amount" equal to 15% of all purchase payments that are subject to a

withdrawal charge as of the beginning of that contract year, plus 15% of the purchase payments added to the contract during the contract year.²

(g) Fixed Investment Options

Allstate Contracts offer a standard fixed account option. Amended Contracts offer a standard fixed account option, a dollar cost averaging fixed account option, and a market value adjusted fixed account option.

(h) Minimum Purchase Payments

Allstate Contracts require a minimum initial purchase payment of \$500 for qualified contracts. Amended Contracts require a minimum initial purchase payment of \$2,000 for qualified contracts. Subsequent purchase payments must be at least \$500 for all Allstate Contracts. Subsequent purchase payments must be at least \$1,000 for all Amended Contracts.

(i) Change of Annuitant

Allstate Contracts permit a new annuitant to be named upon the death of the current annuitant. Amended Contracts do not permit a change of annuitant.

(j) Credits

Allstate Contracts offer 4% Credits on purchase payments. Under Allstate Contracts, the oldest contract owner and oldest annuitant must be age 85 or younger on the date Allstate receives the completed application for the contract ("Application Date"). Amended Contracts offer credits of up to 5% ("5% Credits") as follows:

- 4% credits on purchase payments if the oldest contract owner and oldest annuitant are age 85 or younger on the Application Date,
- 2% credits on purchase payments if the oldest contract owner or oldest annuitant is age 86 or older and both are 90 or younger on the Application Date,
- an additional 0.5% credit on purchase payments if the cumulative purchase payments less cumulative withdrawals exceed \$500,000, and
- an additional 1% credit on purchase payments if the cumulative purchase payments less cumulative withdrawals exceed \$1,000,000.

18. Allstate Separate Account A will fund the variable benefits available under the Amended Contracts. Units of interest in Allstate Separate Account A under the Amended Contracts they fund will be registered under the 1933 Act. Allstate may issue Future Contracts

through Allstate Separate Account A. Allstate also may issue Future Contracts through Future Accounts.

19. That portion of the assets of Allstate Separate Account A that is equal to the reserves and other Amended Contract liabilities with respect to Allstate Separate Account A is not chargeable with liabilities arising out of any other business of Allstate. Any income, gains or losses, realized or unrealized, from assets allocated to Allstate Separate Account A are, in accordance with Allstate Separate Account A's Amended Contracts, credited to or charged against Allstate Separate Account A, without regard to other income, gains or losses of Allstate. The same will be true of any Future Account of the Life Companies.

20. Allstate will recapture the 5% Credit if the owner returns the Amended Contract for a refund during the free look period applicable under state law. Allstate will not seek to recapture 5% Credits under Amended Contracts under any other circumstance.

21. The free look period is the period during which an owner may return an Amended Contract after it has been delivered and received a full refund of the contract value, less any 5% Credits. No other charges will apply to the refund, but the owner bears the investment risk from the time of purchase until he or she returns the Amended Contract. The owner also will bear any expenses charged with respect to the credit amount incurred prior to return of the Amended Contract, e.g., any mortality and expense risk charge. The refund amount may be more or less than the purchase payment the owner made, unless state insurance law requires that the full amount of the purchase payment be refunded.

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.

2. Applicants submit that the recapture of 5% Credits under the Amended Contracts will not raise concerns under sections 2(a)(32) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder, for the same reasons given in support of the Existing order, namely:

(a) It is not administratively feasible to track the 5% Credit amount in the

subaccounts of Allstate Separate Account A. Accordingly, the asset-based charges applicable to the subaccounts will be assessed against the entire amounts held in the subaccounts, including the 5% Credit amount, during the "free look" period. As a result, during such period, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's contract value did not include the 5% Credit.

(b) The 5% Credit recapture provisions of the Amended Contracts would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the 5% Credit amount allocated to his or her contract value upon receipt of a purchase payment is not vested until the applicable free-look period has expired without return of the Amended Contract. Until the free look period has expired and any 5% Credit amount is vested, Applicants submit that Allstate retains the right and interest in the 5% Credit amount, although not in the earnings attributable to the amount. Thus, Applicants argue that when Allstate recaptures any 5% Credit, it is merely retrieving its own assets, and the owner has not been deprived of a proportionate share of Allstate Separate Account A's assets.

(c) Permitting an owner to retain a 5% Credit under a contract upon the exercise of the free look period would not only be unfair, but would also encourage individuals to purchase an Amended Contract with no intention of keeping it, and simply to return it for a quick profit.

(d) The 5% Credit will be attractive to and in the interest of investors because it will permit owners to put from 102% to 105% of their purchase payments to work for them in the selected subaccounts. In addition, the owner will retain any earnings attributable to the 5% Credit, as well as the principal amount of the 5% Credit if he or she does not cancel the Amended Contract.

(e) The recapture of a 5% Credit does not involve either of the evils that Rule 22c-1 was intended to eliminate or reduce, namely: (a) 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 (b) other unfair results including speculative trading practices. To effect a recapture of a 5% Credit, Allstate will redeem an owner's interest in a subaccount at a price determined on the basis of current net asset value

² The free withdrawal amount applicable to Charitable Remainder Trusts is described in the prospectus for the Amended Contracts (File No. 333-96115).

of the subaccount. The amount recaptured will equal the amount of the 5% Credits paid out of its general account assets. Although the owner will be entitled to retain any investment gain attributable to the 5% Credit, the amount of such gain will be determined on the basis of the current net asset value of the relevant subaccounts. Thus, no dilution will occur upon the recapture of the 5% Credit. Also, 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 5% 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 the recapture of the 5% Credits under the Amended Contracts and Future Contracts.

3. Applicants submit that their request for an order, which applies to any Future Contracts that are substantially similar in all material respects to the Amended Contracts described herein, to Contracts described herein, and Future Contracts Covered by the Existing Order, that are substantially similar in all material respects to the Contracts, is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the viable annuity market by eliminating the need to file redundant exemptive applications in the future, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants state that requiring them to file additional Applications would impair their ability effectively to take advantage of business opportunities as they arise, and that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in this Application.

Conclusion

Applicants submit that their request for an order of exemption that applies to the recapture of bonus credits paid on the Amended Contracts described herein or Future Contracts that are substantially similar in all material respects to the Amended Contracts and underwritten or distributed by Allstate Distributors, Affiliated Broker-Dealers, or Unaffiliated Broker-Dealers, and to Future Accounts Covered by the Existing Order, Contracts and Future Contracts Covered by the Existing Order, is appropriate in the public

interest for the reasons described above. Applicants submit, based on the ground 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. 02-28484 Filed 11-7-02; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46759; File No. SR-BSE-2002-14]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to an Interpretation of its Execution Guarantee Rule

November 1, 2002.

I. Introduction

On September 5, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to render voluntary a CHX specialist's obligation to fill limit orders in the specialist's book following a primary market trade-through, if such trade-through occurs in an exchange-traded funds ("ETFs") tracking the Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDS"), and the Standard & Poor's 500 Index ("SPDRs").

The proposed rule change was published for comment in the **Federal Register** on October 8, 2002.³ No

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46580 (October 1, 2002), 67 FR 62839. The proposed rule change is currently in effect as a pilot. See Securities Exchange Act Release Nos. 46482 (September 10, 2002), 67 FR 58662 (September 17, 2002) (notice of immediate effectiveness of pilot for the period September 4, 2002 to October 4, 2002); 46651 (October 11, 2002), 67 FR 64669 (October 21,

comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

A. Background

The BSE is a participant in the Intermarket Trading System ("ITS"). The ITS is an order routing network designed to facilitate intermarket trading in exchange-listed equity securities among participating self-regulatory organizations ("SROs") based on current quotation information emanating from their markets. The terms of the linkage are governed by the ITS Plan, a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3-2 thereunder.⁴

Section 8(d)(i) of the ITS Plan provides that absent reasonable justification or excuse, a member of a Participant Exchange should not effect trade-throughs.⁵ If, however, a trade-through does occur and a complaint is received through ITS from the party whose bid or offer was traded through, the party who initiated the trade-through may be required to satisfy the bid or offer traded through or take other remedial action.⁶ Each Participant Exchange, including the Phlx,⁷ has adopted and obtained Commission approval of a "trade-through rule," which is substantively the same as that provided in the ITS Plan.

In a recent Order, the Commission recognized that the ITS trade-through provisions were designed to encourage market participants to display their trading interest, and to help achieve best execution for customer orders in exchange-listed securities.⁸ The Commission also acknowledged, however, that these rules were designed at a time when "the order routing and

2002) (notice of immediate effective of extension of pilot to November 3, 2002.)

⁴ See Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983). The SROs participating in ITS include the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CSE"), the Cincinnati Stock Exchange, Inc. ("Cincinnati"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PCX"), and the Phlx (collectively "Participant Exchanges").

⁵ A trade-through results when a member purchases (or sells) a security at a price that is higher (lower) than the price offered in one or more of the other ITS participant's markets. See ITS Plan, Section 8(d)(i).

⁶ See ITS Plan, Exhibit B.

⁷ See Phlx Rule 2001A.

⁸ See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) at 56607 ("ITS Exemption Order").