in shares of beneficial interest of the Mauritius Company), and the Mauritius Company (by selling its shares to, and redeeming its shares from, the Funds), could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) and rule 17d–1.

7. Applicants request an order pursuant to section 17(d) and rule 17d–1 to permit the proposed transactions with the Mauritius Company. Applicants submit that the investment by the Funds in the Mauritius Company on the basis proposed is consistent with the provisions, policies and purposes of the Act, and that each Fund will invest in shares of beneficial interest of the Mauritius Company on the same basis as any other shareholder (*i.e.*, the other Funds and Accounts). Applicants further submit that all investors in shares of beneficial interest of the Mauritius Company will be subject to the same eligibility requirements imposed by the Mauritius Company, and all shares will be priced in the same manner and will be redeemable under the same terms. Moreover, investing in the Mauritius Company will offer tax advantages to the Funds that would not otherwise be available.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The Funds' investment in shares of the Mauritius Company will be undertaken only in accordance with the Funds' stated investment restrictions and will be consistent with their stated investment policies. For these purposes, the Funds will be treated as owning their pro rata portion of the portfolio securities of the Mauritius Company.

2. NACM and its affiliated persons will receive no advisory fee in connection with the Funds' investment in the Mauritius Company. NACM and its affiliated persons will receive no commissions, fees, or other compensation from a Fund or the Mauritius Company in connection with the purchase or redemption by the Funds of shares in the Mauritius Company. Shares of the Mauritius Company will not be subject to a sales load, redemption fee, distribution fee or service fee.

3. Administrative fees will be paid by the Mauritius Company to NACM only upon a determination by each Fund's Board, including a majority of its Non-Interested Directors, that the fees are (i) for services in addition to, rather than duplicative of, services rendered to the Funds directly, and (ii) fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality. If such determination is not made by a Fund's Board, NACM will reimburse to that Fund the amount of any administrative fee borne by that Fund as an investor in the Mauritius Company.

4. The Mauritius Company will, at all times, limit its investment in illiquid securities to no more than 15% of its assets.

5. Each Fund's Board, including a majority of the Non-Interested Directors, will determine initially and no less frequently than annually that the Fund's investments in the Mauritius Company are, and continue to be, in the best interests of the Fund and the Fund's shareholders.

6. NACM will undertake to make the accounts, books and other records of the Mauritius Company available for inspection by the SEC staff and, if requested, to furnish copies of those records to the SEC staff.

7. The Mauritius Company will comply with the requirements of sections 9, 12, 13, 17(a), 17(d), 17(e), 17(f), 17(h), 18, 21 and 36–53 of the Act and rule 22c–1 under the Act as if the Mauritius Company were an open-end management investment company registered under the Act. In addition, the Mauritius Company will comply with the requirements of the rules under section 17(f) and 17(g) of the Act. With respect to all redemption requests made by a Fund, the Mauritius Company will comply with section 22(e) of the Act. NACM will adopt procedures designed to ensure that the Mauritius Company complies with the aforementioned sections of the Act and rules under the Act. NACM will periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii) and 31a–1(b)(9) under the Act. In addition, in connection with the review required by condition 5 above, NACM will provide annually to each Fund's Board a written report about NACM's and the Mauritius Company's compliance with this condition. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and its staff.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32913 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25875; File No. 812–12914]

ReliaStar Life Insurance Company of New York, et al.

December 23, 2002.

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

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

APPLICANTS: ReliaStar Life Insurance Company of New York (''RLNY''), Separate Account NY–B of ReliaStar Life Insurance Company of New York (the ''Account'') and Directed Services, Inc. (''DSI'') (together, the ''Applicants'').

SUMMARY OF THE APPLICATION: Applicants seek an order of the Commission, pursuant to Section 6(c) of the Act, exempting them from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of certain credits applied to premium payments made in consideration of certain deferred variable annuity contracts, described herein, that RLNY plans to issue (the ''Contracts''). Applicants also hereby apply for an order of the Commission, pursuant to Section 6(c) of the Act, exempting (1) variable annuity separate accounts that RLNY or its successors in interest may establish in the Future (''Future Accounts''), and (2) principal underwriters for such Future Accounts under common control with RLNY or its successors in interest now or in the future (''Future Underwriters''), from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of certain credits applied to premium payments made in consideration of variable annuity contracts issued in the Future by RLNY or its successors in interest through a Future Account that are substantially similar in all material respects to the Contracts (''Future Contracts'').

FILING DATE: The Application was filed on December 20, 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 the 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 January 20, 2003, and should be accompanied by proof of service on the Applicant 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, 450 Fifth Street NW., Washington, DC 20549–0609. Applicant, c/o Linda Senker, Esq., Golden American Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: Curtis A. Young, Esq., Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

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

Applicants' Representations

1. RLNY is a stock life insurance company originally incorporated under the laws of New York (originally incorporated under the name Morris Plan Insurance Society) on June 11, 1917. RLNY is engaged in the business of writing life insurance and annuities, both individual and group, and is authorized to do business in all 50 states. RLNY is a wholly-owned subsidiary of Security-Connecticut Life Insurance Company, which is a wholly-owned subsidiary of ReliaStar Life Insurance Company. RLNY is ultimately controlled by ING Groep N.V., a global financial services holding company with approximately $624 billion in assets as of December 31, 2001. As of December 31, 2001, RLNY had assets of approximately $83.1 million. For purposes of the Act, RLNY is the depositor and sponsor of the Account as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

2. First Golden American Life Insurance Company of New York (''First Golden'') established the Account as a segregated investment account under New York law on June 13, 1996. Effective April 1, 2002, First Golden was merged into RLNY, an affiliated company of First Golden, and Separate Account NY–B became a separate account of RLNY as a result of the merger. Under New York law, the assets of the Account attributable to the Contracts and any other variable annuity contracts through which interests in the Account are issued are owned by the Account's depositor but are held separately from all other assets of the depositor, for the benefit of the owners of, and the persons entitled to payment under, Contracts issued through the Account. Consequently, such assets are not chargeable with liabilities arising out of any other business that the Account's depositor may conduct. Income, gains and losses, realized or unrealized, from each subaccount of the Account, are credited to or charged against that subaccount without regard to any other income, gains or losses of the Account's depositor. The Account is a ''separate account'' as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust.

3. The Account currently is divided into a number of subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding investment portfolio of one of several series-type open-end management investment companies. The assets of the Account support one or more varieties of variable annuity contacts, including the Contracts. The Account is registered with the Commission as a unit investment trust, and interests in the Account to be offered through the Contracts have been registered under the 1933 Act on Form N–4.

4. DSI is a wholly owned subsidiary of Equitable of Iowa. It serves as the principal underwriter of a number of RLNY and Golden American Life Insurance Company separate accounts registered as unit investment trusts under the Act, including the Account, and is the distributor of variable annuity contracts issued through such separate accounts, including the Contracts. DSI is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (the ''NASD'').

5. The Contracts are deferred combination variable and fixed annuity contracts that RLNY may issue to individuals or groups on a ''non-qualified'' basis or in connection with employee benefit plans that receive favorable federal income tax treatment under Sections 401, 403(b), 408, 408A or 457 of the Internal Revenue Code of 1986, as amended (the ''Code'').

6. The Contracts make available a number of subaccounts of the Account to which owners may allocate net premium payments and associated bonus credits (described below) and to which owners may transfer contract value. The Contracts also offer fixed-interest allocation options under which RLNY credits guaranteed rates of interest for various periods. Transfers of contract value among and between the subaccounts and, subject to certain restrictions, among and between the subaccounts and the fixed-interest options, may be made at any time. The Contracts offer a variety of annuity payment options to owners. In the event of an owner's (or, in certain circumstances, an annuitant's) death prior to the annuity commencement date, beneficiaries may elect to receive death benefits in the form of one of the annuity payment options instead of a lump sum. In general, the Contracts offer all of the features typically found in variable annuity contracts today.

7. The Contracts generally may only be purchased with a minimum initial premium of $15,000 ($1,500 for certain employee benefit plans) under Option Package I and $5,000 ($1,500 for certain employee benefit plans) for Option Packages II and III. RLNY may deduct a premium tax charge from premium payments in certain states, but otherwise deducts a charge for premium taxes upon surrender or annuitization of the Contract or upon the payment of a death benefit, depending upon the jurisdiction. The Contracts provide for an annual administrative charge of $30 that RLNY deducts on each Contract Anniversary and upon a full surrender of a Contract, a daily administrative charge deducted from the assets of the Account at an annual rate of 0.15% of the Account's average daily net assets and a daily mortality and expense risk charge deducted from the assets of the Account at annual rates of 0.90% for Option Package I, 1.10% for Option Package II, and 1.25% for Option Package III, of the Account's average daily net assets. The Contracts also provide for a charge of $25 for each transfer of contract value in excess of 12 transfers per contract year. RLNY currently anticipates waiving this charge for the foreseeable future. Lastly, the Contracts have a surrender charge in the form of a contingent deferred sales charge.

8. The contingent deferred sales charge (''CDSC'') is equal to the

percentage of each premium payment surrendered or withdrawn. The CDSC is separately calculated and applied to each premium payment at any time that the payment (or part of the payment) is surrendered or withdrawn. The CDSC applicable to each premium payment diminishes as the payment ages. The schedule is as follows:

Number of full years since payment of each premium	Charge (percent)
Less than 1	6.0
2	6.0
3	6.0
4	5.0
5	4.0
6	3.0
7+	0.0

9. No CDSC applies to contract value representing an annual free withdrawal amount or to contract value in excess of aggregate premium payments (less prior withdrawals of premium payments) (''earnings''). The CDSC is calculated using the assumption that premium payments are withdrawn on a first-in, first-out basis. The CDSC also is calculated using the assumption that contract value is withdrawn in the following order: (1) The annual free withdrawal amount for that contract year, (2) premium payments, and (3) earnings. The annual free withdrawal amount is 10% of contract value, measured at the time of withdrawal, less any prior withdrawals made in that contract year. Under Option Package III, any unused percentage of the 10% free withdrawal amount from a contract year may carry forward into successive contract years, based on the percentage remaining after the last withdrawal in a contract year. However, under Option Package III, the accumulated free withdrawal amount may not exceed 30% of contract value.

10. If an owner dies before the annuity start date, the Contracts provide, under most circumstances, for a death benefit payable to a beneficiary, computed as of the date RLNY receives written notice and due proof of death. The death benefit payable to the beneficiary depends on whether the owner selected Option Package I, II or III. Each option package provides a death benefit upon the death of the owner which death benefit is based upon the highest amount payable under the separate death benefit options available under that option package. The death benefit options available under the option packages include:

(1) The Standard Death Benefit which equals return of premium, less credits applied since or within 12 months prior to death, reduced pro rata for withdrawals;

(2) The contract value on the claim date, less credits applied since or within 12 months prior to death;

(3) The Annual Ratchet death benefit which equals the maximum contract value on each contract anniversary occurring on or prior to attainment of age 90, adjusted for new premiums and credits and reduced pro rata for withdrawals, less credits applied since or within 12 months prior to death; and

(4) Return of premium.

Under Option Package I, the death benefit payable is the greater of (1), (2) and (3). Under Option Package II, the death benefit payable is the greatest of (1), (2), (3) and (4). Under Option Package III, the death benefit payable is the greatest of (1), (2), (3) and (4).

11. RLNY intends to offer a bonus credit provision under the Contracts. At the time of application, an owner may elect the bonus credit provision. Under the bonus credit provision, RLNY credits contract value in the subaccounts and the fixed-interest allocations with an amount that is a percentage of the premium payment. The bonus credit applies upon issuance of the Contract and is based upon premium payments received within the first contract year (''first year premium payments''). RLNY allocates the bonus credit among the subaccounts and fixed-interest allocations the owner selects in proportion to the premium payment in each investment option. The bonus credit equals 4% of the first year premium payments. RLNY reserves the right to increase or decrease the amount of the bonus credit or discontinue the bonus credit provision in the future. The annual charge assessed for the premium credit rider (as a percentage of contract value) is 0.50%. The charge is payable for the first seven contract years. The charge is deducted from the contract value in the subaccounts and is also deducted from amounts in fixed interest allocations by crediting a lower interest rate.

12. Under the bonus credit provision, RLNY recaptures or retains the credited amount in the event that the owner exercises his or her cancellation right during the ''free look'' period. RLNY recaptures bonus credits applied after or within twelve months of the date as of which a death benefit is computed. RLNY also will recapture part or all of the credited amount upon surrender or withdrawal. The portion of the credit deducted is based on the percentage of first year premium withdrawn and the contract year of surrender or withdrawal. The amount recaptured is calculated separately and applied to each premium payment at any time that the payment (or part of the payment) is surrendered or withdrawn. The recapture percentage applicable to each premium payment is level for the first two contract years and diminishes to zero after the seventh contract year. The schedule is as follows:

Contract year of surrender or withdrawal	Percentage of premium credit forfeited (based on percentage of first year premium withdrawn)
Years 1–2	100
Years 3–4	75
Years 5–6	50
Year 7	25
Years 8+	0

13. No recapture percentage applies to contract value representing the annual free withdrawal amount or to contract value representing earnings. Because of the recapture provisions discussed above, the value of a credit only ''vests'' or belongs irrevocably to the owner as the recapture period for the credit expires. As to bonus credits resulting from premiums paid before the ''free look'' period ends, no part of the credit vests for the owner until the expiration of the ''free look'' period. After the expiration of the ''free look'' period, all bonus credits vest in full over the 7 year period after RLNY grants them. Under the bonus credit provision, RLNY credits amounts to an owner's contract value either by ''purchasing'' accumulation units of an appropriate subaccount or adding to the owner's fixed interest allocation option values.

14. With regard to variable contract value, several consequences flow from the foregoing. First, increases in the value of accumulation units representing bonus credits accrue to the owner immediately, but the initial value of such units only belongs to the owner when, or to the extent that, each vests. Second, decreases in the value of accumulation units representing bonus credits do not diminish the dollar amount of contract value subject to recapture. Therefore, additional accumulation units must become subject to recapture as their value decreases. Stated differently, the proportionate share of any owner's variable contract value (or the owner's interest in the Account) that RLNY can ''recapture'' increases as variable contract value (or the owner's interest in the Account) decreases. This dilutes somewhat the owner's interest in the Account vis-a-vis RLNY and other owners, and in his or her variable

contract value vis-a-vis RLNY. Lastly, because it is not administratively feasible to track the unvested value of bonus credits in the Account, RLNY deducts the daily mortality and expense risk charge and the daily administrative charge from the entire net asset value of the Account. As a result, the daily mortality and expense risk charge and the daily administrative charge paid by any owner is greater than that which he or she would pay without the bonus credit.

15. Applicants respectfully request that the Commission issue an order pursuant to Section 6(c) of the Act, exempting them 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 the recapture of certain credits applied to premium payments made in consideration of the Contracts.

Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act and/or any rule under it 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. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account supporting variable annuity contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of subsection (i). Paragraph (2) provides that it shall be unlawful for a registered separate account or sponsoring insurance company to sell a variable annuity contract supported by the separate account unless the ''* * * contract is a redeemable security; and * * * [t]he insurance company complies with Section 26(e) * * *'' RLNY, of course, complies with Section 26(e). Section 2(a)(32) defines a ''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.

3. Applicants submit that the recapture of bonus credits would not, at any time, deprive an owner of his or her proportionate share of the current net assets of an Account. Until the appropriate recapture period expires, RLNY retains the right to and interest in each owner's contract value representing the dollar amount of any unvested bonus credits. Therefore, if RLNY recaptures any bonus credit or part of a bonus credit in the circumstances described above, it would merely be retrieving its own assets. RLNY would grant bonus credits out of its general account assets and the amount of the credits (although not the earnings on such amounts) would remain RLNY's until such amounts vest with the owner. Thus, to the extent that RLNY may grant and recapture bonus credits in connection with variable contract value, it would not, at either time, deprive any owner of his or her then proportionate share of the Account's assets. It is the nature of the bonus recapture provisions as they apply to variable contract value that an owner would obtain a benefit from a bonus credit in a rising market because any earnings on the bonus credit amount would vest with him or her immediately. Over time this would, of course, cause the owner's share of both the Contract's variable contract value and the Account's net assets to be greater on a relative basis than it would have been without the bonus credit. Conversely, in a falling market an owner would suffer a detriment from a bonus credit because losses on the bonus credit amount also would ''vest'' with him or her immediately. As explained above, over time this would cause the owner's share of both the Contract's variable contract value and the Account's net assets to decrease on a relative basis.

4. Applicants do not believe that the dynamics of RLNY's proposed bonus credit provisions would violate Sections 2(a)(32) or 27(i)(2)(A) of the Act. To begin with, Section 2(a)(32) defines a redeemable security as one ''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 asset value. Taken together, these two sections of the Act do not require that the holder receive the exact proportionate share that his or her security represented at a prior time. Therefore, the fact that the proposed bonus credit provisions have a dynamic element that may cause the relative ownership positions of RLNY and a Contract owner to shift due to Account performance and the vesting schedule of such credits, would not cause the provisions to conflict with Sections 2(a)(32) or 27(i)(2)(A). Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek exemptions from these two sections.

5. 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. Rule 22c–1 thereunder imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time as of which such amount is calculated. Specifically, Rule 22c–1, in pertinent part, 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.

6. RLNY's granting of a bonus credit would have the result of increasing an owner's contract value in a way that could be viewed as the purchase of an interest in the Account at a price below net asset value. Similarly, RLNY's recapture of any bonus credit could be viewed as the redemption of such an interest at a price above net asset value. If such is the case, then the bonus credit provisions could be viewed as conflicting with Rule 22c–1 under the Act. Applicants contend, however, that the bonus credits do not violate Rule 22c–1 under the Act. The bonus credit provisions do not give rise to either of the evils that Rule 22c–1 was designed to address. The Rule was intended to eliminate or reduce, as far as was reasonably practicable, 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 at a price above net asset value, or other unfair results, including speculative trading practices.

7. The evils prompting the adoption of Rule 22c–1 were primarily 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 permitted certain 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 shares. The proposed bonus credit provisions pose no such threat of dilution. An owner's

interest in his or her contract value or in the Account would always be offered under the Contracts at a price determined on the basis of net asset value. The granting of a bonus credit does not reflect a reduction of that price. Instead, RLNY will purchase with its own money on behalf of the owner, an interest in the Account equal to the bonus credit. Because any bonus credit will be paid from RLNY's general account and not from the assets of the Account, no dilution will occur as a result of the credit. Likewise, because RLNY will use general account assets to increase an owner's total contract value, no dilution will occur from such an increase.

8. Recaptures of bonus credits result in a redemption of RLNY's interest in an owner's contract value or in the Account at a price determined on the basis of the Account's current net asset value and not at an inflated price. Moreover, the amount recaptured will always equal the amount that RLNY paid from its general account for the credits. Similarly, although owners are entitled to retain any investment gains attributable to the bonus credits, the amount of such gains would always be computed at a price determined on the basis of net asset value. Because neither of the harms that Rule 22c–1 was intended to address arise in connection with the proposed bonus credit provisions, the provisions do not conflict with the Rule. Nonetheless, in order to avoid any uncertainty as to hill compliance with the Act, Applicants seek exemptions from Rule 22c–1.

9. The bonus credit recapture provisions are necessary for RLNY to offer the bonus credits. It would be unfair to RLNYto permit owners to keep their bonus credits upon their exercise of the Contracts' ''free look'' provision. Because no CDSC applies to the exercise of the ''free look'' provision, the owner could obtain a quick profit in the amount of the bonus credit at RLNY's expense by exercising that right. Similarly, the owner could take advantage of the bonus credit by taking withdrawals within the recapture period, because the cost of providing the bonus credit is recouped through charges imposed over a period of years. Likewise, because no additional CDSC applies upon death of an owner (or annuitant), a death shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at RLNY's expense. In the event of such profits to owners or beneficiaries, RLNY could not recover the cost of granting the bonus credits. This is because RLNY intends to recoup the costs of providing the bonus credits through the charges under the Contract, particularly the daily mortality and expense risk charge and the daily administrative charge. If the profits described above are permitted, certain owners could take advantage of them, reducing the base from which the daily charges are deducted and greatly increasing the amount of bonus credits that RLNY must provide. Therefore, the recapture provisions are a price of offering the bonus credits. RLNY simply cannot offer the proposed bonus credits without the ability to recapture those credits in the limited circumstances described herein.

10. Applicants state that the Commission's authority under Section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, RLNY's successors in interest, Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. The exemption of these classes of persons is 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 because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to persons that in all material respects are the same as the Applicants.

11. Applicants represent that Future Contracts will be substantially similar in all material respects to the Contracts and that each factual statement and representation about the bonus credit provisions of the Contracts will be equally true of Future Contracts. Applicants also represent that each material representation made by them about the Account and DSI will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in this application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a NASD member.

Conclusion

Applicants request that the Commission issue an order pursuant to Section 6(c) of the Act exempting them as well as Future Accounts and Future Underwriters 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 the recapture of certain credits applied to purchase payments made in consideration of the Contracts. Applicants submit that, for all the reasons stated above, 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.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32914 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXHANGE COMMISSION

[Release No. 34–47078; File No. SR–Amex–2001–07]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the American Stock Exchange LLC Relating to the Review of a Floor Official's Market Decision

December 20, 2002.

On February 14, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 amend Amex Rule 22 to change the procedure for reviewing a Floor Official's market decision and to eliminate the right of appealing a Floor Official's market decision or ruling to the Board of Governors (''Board''). The Amex amended the proposed rule change on August 27, 2001 [3] and October 8, 2002.[4]

The proposed rule change and Amendment Nos. 1 and 2 thereto were published for comment in the **Federal Register** on November 15, 2002.[5] The

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 24, 2001, replacing Form 19b–4 in its entirety (''Amendment No. 1'').

[4] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 7, 2002, replacing Form 19b–4 in its entirety (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 34–46779 (November 6, 2002), 67 FR 69271.