

**SECURITIES AND EXCHANGE COMMISSION****[Release No. IC-26644; File No. 812-13080]****Pacific Life Insurance Company, et al.; Notice of Application**

October 28, 2004.

**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 (the "1940 Act") granting exemption from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act, and Rule 22c-1 thereunder.

*Applicants:* Pacific Life Insurance Company ("Pacific Life"), Separate Account A of Pacific Life ("Pacific Separate Account A"), Pacific Select Variable Annuity Separate Account of Pacific Life ("PSVA Separate Account"), Pacific Life and Annuity Company ("PL&A") (together with Pacific Life and any other life insurance company that is a successor in interest to Pacific Life or PL&A, the "PL Insurers"), Separate Account A of PL&A ("PL&A Separate Account A") (together with Pacific Separate Account A and PSVA Separate Account, and any other separate account of PL Insurers supporting variable annuity contracts, the "Separate Accounts"), and Pacific Select Distributors ("PSD") (together with the PL Insurers and the Separate Accounts, the "Applicants").

*Filing Date:* The application was filed on April 30, 2004, and amended and restated on August 20, 2004.

*Summary of Application:* Applicants seek an amended order to permit, under specified circumstances, (i) the recapture of certain credit enhancements ("Credit Enhancements") applied to the "Contract Value" (as defined herein) of Contractholders<sup>1</sup> under: (a) Pacific Value variable annuity, a flexible premium deferred variable annuity contract that PL&A issues through PL&A Separate Account A ("PL&A Pacific Value"), (b) Pacific Value variable annuity, a flexible premium deferred variable annuity contract that Pacific Life issues through Pacific Separate Account A ("Pacific Value") and (c) other Variable Contracts and any Future Variable Contracts

offered by the PL Insurers that would be funded by a Separate Account or a separate account that will be established in the future by a PL Insurer to support variable annuity contracts issued by a PL Insurer ("Future Account"), provided that any such Variable Contract or Future Variable Contract is substantially similar in all material respects to PL&A Pacific Value and Pacific Value; and (ii) the recapture of any amounts credited under Pacific Portfolios variable annuity ("Pacific Portfolios"), Pacific Innovations Select variable annuity ("Pacific Innovations Select"), and Pacific One variable annuity ("Pacific One"), each a flexible premium deferred variable annuity contract funded by Pacific Separate Account A; Pacific Select Variable Annuity, a flexible premium deferred annuity and variable accumulation contract funded by Pacific Select Variable Annuity Separate Account ("PSVA"), Pacific Innovations Select variable annuity, a flexible premium deferred variable annuity contract funded by PL&A Separate Account A ("PL&A Pacific Innovations Select"), or any Variable Contract or Future Variable Contract that is sold to Contractholders in situations where selling and/or maintenance costs associated with the Variable Contracts are reduced ("Cost Reduction Credit")<sup>2</sup> or to Contractholders who meet certain criteria as established by the relevant PL Insurer ("Eligible Person Credit"),<sup>3</sup> provided that any such Variable Contract or Future Variable Contract is substantially similar in all material respects to PSVA, Pacific Portfolios, Pacific One, Pacific Innovations Select or PL&A Pacific Innovations Select.<sup>4</sup>

<sup>2</sup> Such situations may include the sale of several Contracts to the same Contractholder(s), sales of large Contracts, sales of Contracts in connection with a group or sponsored arrangement or mass transactions over multiple Contracts.

<sup>3</sup> For example, for purposes of Pacific Innovations Select variable annuity, Pacific Select Variable Annuity and Pacific Portfolios variable annuity issued by Pacific Life, and Pacific Innovations Select variable annuity issued by PL&A, an Eligible Person may include current and retired officers, directors and employees of Pacific Life and its affiliates, trustees of Pacific Select Fund, registered representatives and employees of broker/dealers with a current broker/dealers, employees of affiliated asset management firms and certain other service providers, and immediate family members of such persons.

<sup>4</sup> The current order grants Applicants exemptions from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder in order to permit the recapture of Credit Enhancements, Cost Reduction Credit, and Eligible Person Credit applied to a Contract Value when a Contractholder returns a contract during the free-look period. Pacific Life Insurance Company, et al., Investment Company Act Rel. Nos. IC-25998 (April 9, 2003) (Notice) and 26042 (May 2, 2003) (Order).

*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 should be received by the Commission by 5:30 p.m., on November 22, 2004, 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 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. Applicant: Pacific Life Insurance Company, 700 Newport Center Drive, Newport Beach, CA 92660, Attn: Robin S. Yonis, Esq.

**FOR FURTHER INFORMATION, CONTACT:** Thu Ta, Senior Counsel, or Lorna MacLeod, Branch Chief at (202) 942-0670 (Division of Investment Management, Office of Insurance Products).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549 (tel. (202) 942-8090).

**Applicants' Representations**

1. Pacific Life is a life insurance company that is domiciled in California. Along with subsidiaries and affiliates, Pacific Life's operations include life insurance, annuities, pension and institutional products, group employee benefits, broker/dealer operations and investment advisory services. Pacific Life is authorized to conduct life insurance and annuity business in the District of Columbia and all states except New York. Its principal offices are located at 700 Newport Center Drive, Newport Beach, California 92660.

2. Pacific Separate Account A was established on September 7, 1994, as a segregated asset account of Pacific Life and is registered with the Commission as a unit investment trust under the 1940 Act. Pacific Life is the legal owner of the assets in Pacific Separate Account A. Pacific Separate Account A funds the variable benefits available under Pacific Value, Pacific Innovations Select, Pacific Portfolios, Pacific One, Pacific One Select variable annuity ("Pacific One Select"), Pacific Innovations variable annuity ("Pacific Innovations"),

<sup>1</sup> Unless otherwise designated, the term "Contractholder," for purposes of the Application, refers to contractholders of any variable annuity contract funded by a Separate Account (each a "Variable Contract" and collectively, "Variable Contracts"), and also to contractholders of any variable annuity contract funded in the future by a Separate Account or a Future Account (collectively, "Future Variable Contracts").

and Pacific Odyssey variable annuity ("Pacific Odyssey"). Interests in Pacific Separate Account A under Pacific Value, Pacific Innovations Select, Pacific Portfolios, Pacific One, Pacific One Select, Pacific Innovations, and Pacific Odyssey are registered under the Securities Act of 1933, as amended (the "1933 Act").

3. PL&A Separate Account A currently has 41 subaccounts or "Variable Investment Options." Each Variable Investment Option invests in a corresponding series of Pacific Select Fund ("Select Fund"), an open-end registered management investment company for which Pacific Life serves as investment adviser; or The Prudential Series Fund, Inc., an open-end registered investment company for which Prudential Investments Fund Management LLC ("PIFM") serves as investment adviser; or the One Group Investment Trust, an open-end registered investment company for which Banc One Investment Advisors ("BOIA") serves as investment adviser. It is anticipated that Pacific Life will offer Variable Contracts that will provide Variable Investment Options that invest in funds that are not sponsored or advised by Pacific Life or its affiliates. Neither PIFM nor BOIA is an "affiliated person" of Pacific Life as such term is defined in Section 2(a)(3) of the 1940 Act.

4. PSVA Separate Account was established on November 30, 1989, as a segregated asset account of Pacific Life and is registered with the Commission as a unit investment trust under the 1940 Act. Pacific Life is the legal owner of the assets in PSVA Separate Account. PSVA Separate Account currently has 31 Variable Investment Options. Each Variable Investment Option invests in a corresponding series of Select Fund. PSVA Separate Account currently funds the variable benefits available under a variable annuity contract designated as PSVA. Interests in PSVA Separate Account under PSVA are registered under the 1933 Act.

5. PL&A is a life insurance company domiciled in Arizona. PL&A's operations include life insurance, annuity and institutional products, group life and health insurance and various other insurance products and services. At the end of 2003, PL&A's total statutory assets were \$1,155 million. PL&A is authorized to conduct life insurance and annuity business in Arizona, New York and certain other states. PL&A's principal office is located at 700 Newport Center Drive, Newport Beach, California 92660.

6. PL&A Separate Account A was established on January 25, 1999, as a

segregated asset account of PL&A and is registered with the Commission as a unit investment trust under the 1940 Act. PL&A is the legal owner of the assets in PL&A Separate Account A. PL&A Separate Account A currently has 31 Variable Investment Options. Each Variable Investment Option invests in a corresponding series of Select Fund. PL&A Separate Account A funds the variable benefits available under variable annuity contracts designated as PL&A Pacific Innovations Select and will fund the variable benefits available under variable annuity contracts designated as PL&A Pacific Odyssey and PL&A Pacific Value. Interests in PL&A Separate Account A under PL&A Pacific Innovations Select, PL&A Pacific Odyssey and PL&A Pacific Value are registered under the 1933 Act.

7. PSD, a wholly owned subsidiary of Pacific Life, serves as the principal underwriter for the Variable Contracts issued by the PL Insurers. It is also anticipated that PSD will serve as the principal underwriter for any Future Variable Contracts issued by the PL Insurers. PSD is registered with the Commission as a broker/dealer under the Securities Exchange Act of 1934, as amended. The PL Insurers and PSD have entered into selling agreements with various broker/dealers, under which such broker/dealers act as agents of the relevant PL Insurer and PSD in the sale of the relevant PL Insurer's Variable Contracts.

8. Pacific Value and PL&A Pacific Value offer a "Credit Enhancement" feature under which PL Insurers automatically add an amount to each Contractholder's overall "Contract Value" at the time any amount is paid to PL Insurers by or on behalf of the Contractholder as consideration of the benefits provided under the Variable Contract (referred to herein as "Purchase Payments"). For purposes of the Application, the term "Contract Value" refers to the sum (as calculated at the end of each business day) of: (i) The aggregate amount of Purchase Payments and any prior Credit Enhancements, and any earnings or losses thereon, less any fees and charges, held for a Contractholder's Variable Contract in any Variable Investment Option; (ii) the aggregate amount of Purchase Payments and any prior Credit Enhancements, and any interest earned thereon, less any fees and charges held for a Contractholder's Variable Contract in any fixed option available under his or her Variable Contract; (iii) the amount, including any interest accrued, held to secure the principal amount the Contractholder has on any outstanding loan under his

or her Variable Contract; less (iv) the amount, including any associated withdrawal charge, of any withdrawal from the Variable Contract.

9. Credit Enhancements are allocated among a Contractholder's investment options then in effect in the same proportion that the applicable Purchase Payment is allocated. The Credit Enhancement with respect to each Purchase Payment is based on the Contractholder's total Purchase Payments made into Pacific Value and PL&A Pacific Value less total withdrawals, including any withdrawal charges, from Pacific Value and PL&A Pacific Value as of the date the Purchase Payment is applied. The Credit Enhancement available under Pacific Value and PL&A Pacific Value, expressed as a percentage of the relevant Purchase Payment, is set forth below:

**FOR CONTRACTS ISSUED ON OR AFTER  
APRIL 1, 2000**

Total purchase payments less total withdrawals	Credit enhancement (percent)
Less than \$250,000 .....	4.0
\$250,000 or more .....	5.0
Less than \$100,000 .....	3.0
At least \$100,000 but less than \$2.5 million .....	4.0
\$2.5 million or more .....	5.0

10. PL Insurers may agree to credit a Cost Reduction Credit under the Variable Contracts (other than Pacific Innovations), in situations where selling and/or maintenance costs associated with the Variable Contracts are reduced, such as the sale of several Variable Contracts to the same Contractholder(s), sales of large Variable Contracts, sales of Variable Contracts in connection with a group or sponsored arrangement or mass transactions over multiple Variable Contracts.

11. The amount of any Cost Reduction Credit will be determined based upon the amount of reduction in the selling and/or maintenance cost associated with the sale of that particular Variable Contract. A Cost Reduction Credit may be applied at the time that a Purchase Payment is made. Any Cost Reduction Credit applied at that time will not exceed 1.45% of the amount of such Purchase Payment. Alternatively, Cost Reduction Credits may be credited on the basis of Contract Value. Any Cost Reduction Credit credited on the basis of Contract Value will not exceed 1.45% of Contract Value at the time it is credited. The PL Insurers wish to reserve the flexibility to offer the Cost Reduction Credit under Variable Contracts and Future Variable Contracts,

provided that any such Variable Contract or Future Variable Contract is substantially similar in all material respects to Pacific Innovations Select, Pacific Portfolios, PL&A Pacific Innovations Select, Pacific One, or PSVA.

12. PL Insurers may agree to credit an Eligible Person Credit under the Variable Contracts (other than Pacific One Select) owned by persons who meet criteria established by the relevant PL Insurer. These persons may include current and retired officers, directors and employees of Pacific Life and its affiliates, trustees of Pacific Select Fund, registered representatives and employees of broker/dealers with a current selling agreement with Pacific Life or PL&A, respectively, and the affiliates of those broker/dealers, employees of affiliated asset management firms and certain other service providers, and immediate family members of such persons (collectively referred to as "Eligible Persons"). Under the Eligible Person Credit Program, the relevant PL Insurer credits additional amounts to Pacific Innovations Select, Pacific Portfolios, PSVA or PL&A Pacific Innovations Select Variable Contracts owned by Eligible Persons if such Variable Contracts are purchased directly through PSD. Under these circumstances, Eligible Persons will not be afforded the benefit of services of any other broker/dealer nor will any commission be payable to any broker/dealer in connection with such purchases. Rather, Eligible Persons must contact the relevant PL Insurer or PSD directly with servicing questions, changes in their Variable Contracts and related matters.

13. The amount currently credited to Variable Contracts owned by Eligible Persons will approximate the reduction in expenses realized by the relevant PL Insurer by not incurring brokerage commission in selling such Variable Contracts, with the determination of the expense reduction and of such crediting being made in accordance with administrative procedures established by the relevant PL Insurer. Eligible Persons are currently credited with a 5% Eligible Person Credit on each Purchase Payment plus a .25% (annualized) Credit of Contract Value, payable quarterly in advance, from the second Contract Year through the third Contract Year for Pacific Innovations Select and PL&A Pacific Innovation Select and a 1% (annualized) Credit of Contract Value, payable quarterly in advance from the fourth Contract Year until annuitization, on an annual basis. The PL Insurers wish to reserve the flexibility to offer the Eligible Person

Credit under Variable Contracts and Future Variable Contracts, provided that any such Variable Contract or Future Variable Contract is substantially similar in all material respects to Pacific Portfolios, Pacific One, PSVA, Pacific Innovations Select or PL&A Pacific Innovations Select.

14. In the future, PL Insurers may credit Contracts issued to Eligible Persons with Eligible Persons Credit greater than 5% of each Purchase Payment, except that with respect to the Purchase Payments made during: (i) The relevant free-look period; and (ii) after the relevant free-look period has expired, but during the first Contract month, the amount of any Eligible Person Credit will be limited to no more than 9% of such Purchase Payment.

15. Although the PL Insurers currently offer Credit Enhancements, Eligible Person Credits and Cost Reduction Credits (collectively, "Credits") through Variable Contracts and Future Variable Contracts, no PL Insurer currently applies, and no PL Insurer will apply in the future, more than one Credit to the Contract Value of a Contractholder's Variable Contract or Future Variable Contract. Thus if a PL Insurer applies the Credit Enhancement Credit to the Contract Value of a particular Variable Contract or Future Variable Contract, it will not also apply an Eligible Person Credit or a Cost Reduction Credit. Similarly, if a PL Insurer applies the Eligible Person Credit to the Contract Value of a particular Variable Contract or Future Variable Contract, it will not also apply a Cost Reduction Credit or a Credit Enhancement. If a PL Insurer offers a Cost Reduction Credit to the Contract Value of a particular Variable Contract or Future Variable Contract, it will not also apply an Eligible Person Credit or a Credit Enhancement.

16. Under the Variable Contracts issued by the PL Insurers, death benefit proceeds may be payable prior to the Annuity Date as of the date that a PL Insurer receives, in proper form: (i) Proof of death of the sole surviving annuitant, or of the first Contractholder who is also an annuitant; and (ii) instructions regarding payment of death benefit proceeds ("Notice Date"). Unless the Contractholder has purchased an optional rider that would provide a larger death benefit, the amount of the death benefit ("Death Benefit Amount") will equal the greater of: (i) A Contractholder's Contract Value as of the Notice Date; or (ii) the Contractholder's aggregate Purchase Payments reduced by an amount for each withdrawal, which is calculated by multiplying the aggregate Purchase

Payments received prior to each withdrawal by the ratio of the amount of the withdrawal, including any withdrawal charge, to the Contract Value immediately prior to each withdrawal.

17. PL Insurers may make further deductions from the death benefit proceeds in the following two situations. First, if any Pacific Value or PL&A Pacific Value Contractholder or sole surviving annuitant dies before the annuity date, then the relevant PL Insurer will deduct the amount of any Credit Enhancement added to the Contract Value of a Pacific Value or PL&A Pacific Value Contractholder during the 12-month period prior to the date of death. The death benefit proceeds will be reduced by the amount of any such deduction. Second, the amount of any Cost Reduction Credit or Eligible Person Credit that is added to the Contract Value of a Pacific One, Pacific Portfolios, PSVA, Pacific Innovations Select, and PL&A Pacific Innovations Select Contractholder during the 12-month period prior to the date of death of the Contractholder or sole surviving annuitant may be deducted from the death benefit proceeds. Applicants seek relief to permit PL Insurers to deduct from the death benefit proceeds the amounts of any Credit Enhancement, Cost Reduction Credit or Eligible Person Credit added to the Contract Value of any Variable Contract or Future Variable Contract, funded by a Separate Account or a Future Account added to the Contract Value, during the 12-month period prior to the date of death of the sole surviving annuitant, or of the first Contractholder who is also an annuitant.

#### **Applicants' Legal Analysis**

1. Applicants seek exemptive relief pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to the extent deemed necessary to permit the PL Insurers to recapture Credit Enhancements, Cost Reduction Credits and Eligible Person Credits in the manner described herein.

2. Subsection (i) of Section 27 of the 1940 Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such separate account, except as provided in paragraph (2) of that subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless

“(A) such contract is a redeemable security.” Section 2(a)(32) of the 1940 Act defines “redeemable security” as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate shares of the issuer’s current net assets, or the cash equivalent thereof.

3. Because the death benefit proceeds may not include the amount of any Credit Enhancement, Cost Reduction Credit or Eligible Person Credit added to the Contractholder’s Contract Value during the 12-month period prior to the date of death, the Contractholder arguably is not receiving his or her proportionate share of the applicable Separate Account’s then-current net assets. Applicants submit, however, that the recapture of the Credit Enhancement offered under Pacific Value and PL&A Pacific Value or the Cost Reduction Credit and the Eligible Person Credit offered under the Variable Contracts, as described in this Application, would not deprive a Contractholder of his or her proportionate share of the issuer’s current net assets.

4. The recapture of any Credit Enhancement, Cost Reduction Credit or Eligible Person Credit is intended only to protect the relevant PL Insurer against anti-selection under certain specified contingencies. “Anti-selection” can generally be described as a risk that persons obtain coverage based on knowledge that a contingency that triggers payment of an insurance benefit is likely to occur, or is to occur shortly. In the case of the Variable Contracts, the Credit Enhancement, Cost Reduction Credit or Eligible Person Credit is provided on a guaranteed issue basis. The protection against anti-selection by persons who are ill is the reduction of the death benefit proceeds by the amount of the Credit Enhancement, Cost Reduction Credit or Eligible Person Credit applied to Purchase Payments made within 12 months prior to the date of death of the Contractholder or sole surviving annuitant.

5. A Contractholder’s interest in the amount of a Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit allocated to his or her Contract Value will not vest if the credits applied to the Contract Value relate to Purchase Payments made within 12 months of the date of death of the Contractholder or sole surviving annuitant. Unless and until the amount of the Credit Enhancement, Cost Reduction Credit or Eligible Person Credit is vested, the relevant PL Insurer retains the right and interest in the amount of the Credit Enhancement, Cost Reduction Credit or

the Eligible Person Credit. Thus, when the relevant PL Insurer recaptures any Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit, it is simply retrieving its own assets, and because a Contractholder’s interest in the Credit Enhancement, Cost Reduction Credit and/or Eligible Person Credit is not vested, the Contractholder is not deprived of a proportionate share of the net assets of the applicable Separate Account. Based on the foregoing, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit Enhancement, Cost Reduction Credit and Eligible Person Credit in the manner described above with respect to the Variable Contracts and any Future Variable Contracts, without losing the relief from Section 27 provided by Section 27(i).

6. Section 22(c) of the 1940 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 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.

7. PL Insurers’ deduction of the amount of certain Credit Enhancements, Cost Reduction Credits or Eligible Person Credits applied to Contract Value from the death benefit proceeds of the Contract if those Credit Enhancements, Cost Reduction Credits or Eligible Person Credits were applied to the Contract Value during the 12-month period prior to the date of death, might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the applicable Variable Investment Option of a Separate Account. In other words, because any such Credit Enhancements, Cost Reduction Credits and Eligible Person Credits credited by a PL Insurer are immediately added, on a conditional basis, to the Contract Value of certain Contractholders, and further because these amounts are allocated by the Contractholder to certain Variable Investment Options for the benefit of the participating Contractholder, the net

asset value of each Variable Investment Option arguably is affected by these credits. Applicants contend, however, that the recapture of the Credit Enhancement, Cost Reduction Credit and Eligible Person Credit under the circumstances described in this Application should not be deemed to be a violation of Section 22(c) and Rule 22c-1.

8. The recapture of the Credit Enhancement, Cost Reduction Credit and the Eligible Person Credit does not involve either of the practices that Rule 22c-1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. Those practices were the result of backward pricing, the practice of basing the price of mutual fund shares on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding mutual fund shares.

9. The proposed recapture of the Credit Enhancement, Cost Reduction Credit and the Eligible Person Credit poses no such threat of dilution. To effect a recapture of a Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit, PL Insurers redeem interests in a Contractholder’s Variable Investment Option at a price determined on the basis of the current net asset value of each of the Variable Investment Options of the Separate Account in which the Contractholder’s Contract Value is allocated. The amount recaptured will be equal to the amount of the Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit paid out of the general account assets of the relevant PL Insurer. Although Contractholders will be entitled to retain any investment gain attributable to the Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit, the amount of such gain will be determined based upon the current net asset value of each of the Variable Investment Options of the Separate Account in which the Contractholder’s Contract Value is allocated. Thus, no dilution will occur upon the recapture of a Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit.

10. Applicants also submit that the second practice 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 Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit.

11. Because neither of the practices that Rule 22c-1 was meant to address is found in the recapture of the Credit Enhancement, Cost Reduction Credit, or the Eligible Person Credit, Rule 22c-1 and Section 22(c) of the 1940 Act are not implicated. However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c-1 to the extent deemed necessary to permit the recapture of any Credit Enhancement, Cost Reduction Credit and Eligible Person Credit in the manner described above.

### Conclusion

Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to the extent deemed necessary to permit the PL Insurers to recapture Credit Enhancements, Cost Reduction Credits and Eligible Person Credits in the manner described herein. Applicants submit that their request for an order for the exemptive relief described above is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E4-2991 Filed 11-2-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50596; File No. SR-NSCC-2004-06]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the National Securities Clearing Corporation's Fee Schedule To Eliminate Reference to the PC Data Entry Fee and To Incorporate Fees for its Mutual Fund Profile and Fund/SPEED Service

October 27, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 8, 2004, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of revisions to Addendum A to NSCC's Rules relating to (i) the deletion of fees for PC Data Entry, which was a Web interface that is no longer offered by NSCC, and (ii) the incorporation of revised Mutual Fund Service fees that were previously approved by the Commission.<sup>2</sup>

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

<sup>2</sup> Securities Exchange Act Release No. 50095 (July 27, 2004), 69 FR 46611 [File No. SR-NSCC-2004-03].

<sup>3</sup> The Commission had modified the text of the summaries prepared by NSCC.

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Addendum A of NSCC's Rules (i) to delete fees for PC Data Entry, which was a Web interface that is no longer offered by NSCC, and (ii) to incorporate revised fees for Mutual Fund Services that were previously approved by the Commission.

PC Data Entry was a Web interface to NSCC's systems that is no longer available. PC Data Entry was replaced in 1999 by PC Web Direct for which there is no fee apart from the fees applicable to NSCC services which are accessed through PC Web Direct. The fee schedule, Addendum A to NSCC's Rules, is therefore amended to delete reference to the PC Data Entry fee.

The revised Mutual Fund Service fees which are incorporated in Addendum A by this proposed rule change were approved by the Commission by order dated July 27, 2004.<sup>4</sup> These fees relate to Fund/SPEED Account Maintenance transactions and revised Profile subscription fees.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to NSCC because the proposed change provides for the equitable allocation of dues, fees and other charges among NSCC's participants.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

#### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder because the

<sup>4</sup> Securities Exchange Act Release No. 50095, 69 FR 46611 [File No. SR-NSCC-2004-03].

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).