

Street, NW., Room 4006, Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meeting.

*Meeting*—The focus of this meeting will be discussions of and voting on any remaining working group findings and recommendations from selected working groups, established at the February 28, 2005 and May 17, 2005 public meetings of the AAP (see <http://acquisition.gov/comp/aap/index.html> for a list of working groups).

(b) *Posting of Draft Reports:* Members of the public are encouraged to regularly visit the Panel's Web site for draft reports. Currently, the working groups are staggering the posting of various sections of their draft reports at <http://acquisition.gov/comp/aap/index.html> under the link for "Working Group Reports." The most recent posting is from the Commercial Practices Working Group. The public is encouraged to submit written comments on any and all draft reports.

(c) *Adopted Recommendations:* The Panel has adopted recommendations presented by the Small Business, Interagency Contracting, and Performance-Based Acquisition Working Groups. While additional recommendations from some of these working groups are likely, the public is encouraged to review and comment on the recommendations adopted by the Panel to date by going to <http://acquisition.gov/comp/aap/index.html> and selecting the link for "Adopted Recommendations."

(d) *Availability of Meeting Materials:* Please see the Panel's Web site for any available materials, including draft agendas and minutes. Questions/issues of particular interest to the Panel are also available to the public on this Web site on its front page, including "Questions for Government Buying Agencies," "Questions for Contractors that Sell Commercial Goods or Services to the Government," "Questions for Commercial Organizations," and an issue raised by one Panel member

regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled "Revised Commercial Practices Proposal for Public Comment." The Panel encourages the public to address any of these questions/issues in written statements to the Panel.

(e) *Procedures for Providing Public Comments:* It is the policy of the Panel to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Panel Staff expects that public statements presented orally or in writing will be focused on the Panel's statutory charter and working group topics, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion.

*Written Comments:* Written comments should be supplied to the DFO at the address/contact information given in this FR Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM-PC/Windows 98/2000/XP format).

**Please note:** Because the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(f) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

**Laura Auletta,**

*Designated Federal Officer (Executive Director), Acquisition Advisory Panel.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. IC-27421; File No. 812-13243]

**AXA Equitable Life Insurance Company, et al.; Notice of Application**

July 20, 2006.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "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)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

**APPLICANTS:** AXA Equitable Life Insurance Company ("AXA Equitable"), AXA Life and Annuity Company ("AXA Life and Annuity," and together with AXA Equitable, "the Company"), Separate Account No. 45 of AXA Equitable, Separate Account No. 49 of AXA Equitable ("SA 49"), Separate Account VA of AXA Life and Annuity (the foregoing separate accounts each an "Account," and collectively, the "Accounts"), AXA Advisors, LLC, and AXA Distributors, LLC (collectively, "Applicants").

**SUMMARY OF APPLICATION:** Applicants seek an order to amend an Existing Order (defined below) to grant exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent necessary to permit Applicants to recapture certain credits applied to contributions made under certain amended deferred variable annuity contracts and certificates ("credits"), described herein, including certain amended certificate data pages and endorsements, that AXA Equitable will issue through the Accounts (the "2006 Amended Contracts"), and under contracts and certificates, including certain certificate data pages and endorsements, that AXA Equitable may issue in the future through the Accounts, and any other separate accounts of AXA Equitable or AXA Life and Annuity (collectively, "Future Accounts") that are substantially similar in all material respects to the 2006 Amended Contracts (the "Future Contracts"). Applicants also request that the order being sought extend to "Equitable Broker-Dealers," as defined in the applications for the Existing Order (defined below) ("Prior Applications").<sup>1</sup>

**FILING DATE:** The application was filed on October 24, 2005, and amended and restated applications were filed on March 29, 2006, and July 11, 2006.

**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 August 18, 2006, and should be accompanied by proof of service on Applicants in the form of an affidavit or,

<sup>1</sup> *The Equitable Life Assurance Society of the United States*, Rel. Nos. IC-23774 (Apr. 7, 1999) (File No. 812-11388), 23889 (July 2, 1999) (File No. 812-11662), 24963 (April 26, 2001) (File No. 812-12392), and 26170 (August 26, 2003) (File No. 812-13010).

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, 100 F Street, NE., Washington, DC 20549-1090. Applicants, c/o AXA Equitable Life Insurance Company, 1290 Avenue of the Americas, New York, NY 10104, Attn: Dodie Kent, Esq., copy to Goodwin Procter LLP, 901 New York Ave., NW., Washington, DC 20001, Attn: Christopher E. Palmer.

**FOR FURTHER INFORMATION CONTACT:** Sonny Oh, Staff Attorney, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 551-6795.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Room 1580, Washington, DC 20549 (tel. (202) 551-8090).

#### Applicants' Representations

1. On May 3, 1999, the Commission issued an order ("May 1999 Order")<sup>2</sup> exempting certain transactions of Applicants from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder. The May 1999 Order specifically permits the recapture, under specified circumstances, of certain 3% Credits applied to contributions made under the Contracts or the Future Contracts as defined in the application for the May 1999 Order. Specifically, the May 1999 Order permits recapture of Credits if the Contract is returned during the free look period or if contributions are made within three years of annuitization.

2. On July 28, 1999, the Commission issued an order of exemption amending the May 1999 Order ("July 1999 Order")<sup>3</sup> to permit the recapture of Credits of up to 5% under the Contracts or the Future Contracts under the same specified circumstances.

3. On May 21, 2001, the Commission issued an order of exemption ("May 2001 Order")<sup>4</sup> amending the July 1999 Order to permit the recapture of Credits

of up to 6% under the Contracts and the Future Contracts under the same and certain two additional circumstances. The additional circumstances include the recapture of Excess Credits when a Contract owner's Net First Year Contributions are lower than Total First Year Contributions, and when a Contract owner fails to fulfill the conditions of a Letter of Intent; all as described in the application for the May 2001 Order.<sup>5</sup>

4. On September 26, 2003, the Commission issued an order of exemption ("September 2003 Order")<sup>6</sup> amending the May 2001 Order (together with the May 1999 Order, the July 1999 Order and the May 2001 Order, the "Existing Order") to permit the recapture of Credits of up to 6% under amended contracts ("Amended Contracts") and Future Contracts, as defined in the application for the September 2003 Order, under the same and one additional circumstance. The additional circumstance includes the recapture of Credits when a Contract owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary, as described in the application for the September 2003 Order.<sup>7</sup>

5. The Amended Contracts provide for a death benefit payment upon the death of the annuitant. The death benefit payment is equal to the greater of: (1) The account value as of the date the Company receives satisfactory proof of death and other required forms and information; or (2) any applicable guaranteed minimum death benefit ("GMDB") on the date of death (adjusted for any subsequent withdrawals, withdrawal charges and taxes that apply). Each GMDB is based on its related benefit base. The GMDB may be based on a benefit base calculated, in whole or in part, on contributions, but contributions for the purposes of this calculation do not include any Credits; or in part, on the highest account value as of particular dates, such as Contract anniversaries. The account value on a particular date includes any previously granted Credits,

with any changes in value due to charges and investment performance.

6. The Amended Contracts provide a benefit option called "Protection Plus." For an additional charge, the optional Protection Plus benefit provides an additional death benefit amount equal to 40% (25% for certain annuity issue ages) of the death benefit amount less total net contributions.

7. The Amended Contracts offer a guaranteed principal benefit ("GPB") with two options. Under the first option ("GPB Type A"), the owner selects a fixed maturity option, and the Company specifies the portion of the initial contribution to be allocated to that fixed maturity option in an amount that will cause the value to equal the amount of the entire initial contribution (including any Credits) on the fixed maturity option's maturity date. Under the second option ("GPB Type B"), the Company specifies the portion of contributions to be allocated to one or more specified investment options. If on the benefit maturity date the account value is less than the amount guaranteed under GPB Type B, the Company increases the account value to be equal to the guaranteed amount. The guaranteed amount under the GPB Type B is equal to the initial contribution adjusted for any additional permitted contributions (excluding any Credits), withdrawals from the Contract, and in some cases transfers out of a specified fixed maturity option.

8. The Amended Contracts offer an optional guaranteed withdrawal benefit called "Principal Protector" ("GWB"). The GWB permits the owner to withdraw certain guaranteed amounts on an annual basis even if the account value falls to zero. The guaranteed withdrawal amounts are calculated using a GWB benefit base. The GWB benefit base is initially based on the initial contribution (not including any Credit).

9. The Amended Contracts include various options permitting under some circumstances the Amended Contract to be continued after a death of an annuitant that would otherwise trigger a death benefit payment. In those circumstances, the account value will be increased to the amount that would have been paid under a death benefit payment if such death benefit is greater than current account value. These options are described below.

10. Under the successor owner/annuitant option, if a spouse is the sole primary beneficiary or joint owner, and the annuitant dies, the spouse may elect to receive the death benefit or continue the Contract as successor owner/annuitant. If the surviving spouse

<sup>2</sup> *The Equitable Life Assurance Society of the United States*, Rel. No. IC-23822 (May 3, 1999) (File No. 812-11388).

<sup>3</sup> *The Equitable Life Assurance Society of the United States*, Rel. No. IC-23924 (July 28, 1999) (File No. 812-11662).

<sup>4</sup> *The Equitable Life Assurance Society of the United States*, Rel. No. IC-24980 (May 21, 2001) (File No. 812-12392).

<sup>5</sup> *The Equitable Life Assurance Society of the United States*, Rel. No. IC-24963 (April 26, 2001) (File No. 812-12392).

<sup>6</sup> *The Equitable Life Assurance Society of the United States*, Rel. No. IC-26192 (Sept. 26, 2003) (File No. 812-13010).

<sup>7</sup> *The Equitable Life Assurance Society of the United States*, Rel. No. IC-26170 (August 26, 2003) (File No. 812-13010). The prospectus for the Amended Contracts is included in a registration statement on Form N-4 for SA 49, Reg. No. 333-64749. The Amended Contracts covered by that prospectus are referred to as the Accumulator®Plus<sup>SM</sup> 04 Contracts.

decides to continue the Contract, the Company increases the account value to equal any elected GMDB, if greater, plus any amount applicable under the Protection Plus additional death benefit, adjusted for any subsequent withdrawals.

11. The spousal protection option permits, under some circumstances, spouses who are joint owners to increase the account value to equal the GMDB, if greater, plus any amount applicable under the Protection Plus additional death benefit, adjusted for any subsequent withdrawals.

12. The beneficiary continuation option permits an individual to maintain a Contract in the deceased owner's name and receive distributions under the Contract, instead of receiving the death benefit in a single sum. If this election is made, the Company increases the account value to equal any elected GMDB, if greater, plus any amount applicable under the Protection Plus additional death benefit, adjusted for any subsequent withdrawals. If the owner/annuitant dies, and the beneficiary continues GWB under the beneficiary continuation option, the GWB benefit base will be stepped-up to equal the account value, if higher, as of the transaction date that the Company receives the beneficiary continuation option election.

13. Subject to any necessary regulatory approvals, the Company intends to offer a further amended version of the Amended Contracts (the "2006 Amended Contracts"). The 2006 Amended Contracts will provide that, if the owner (or one of the joint owners) or annuitant dies within one year following the Company's receipt of a contribution to which Credit was applied, and that death triggers the calculation of a death benefit payment or recalculation of a benefit based on account value, the Company will reduce the account value by the amount of the Credit (or pro rated amount if required by state law).

14. The 2006 Amended Contracts will be issued through SA 49. Units of interest in SA 49 under the 2006 Amended Contracts will be registered under the Securities Act of 1933.<sup>8</sup> The

Company may issue Future Contracts through SA 49, the other Accounts or Future Accounts.

15. That portion of the assets of each Account that is equal to the reserves and other contract liabilities with respect to that Account is not chargeable with liabilities arising out of any other business of AXA Equitable or AXA Life and Annuity. Any income, gains or losses, realized or unrealized, from assets allocated to an Account is, in accordance with the relevant contracts, credited to or charged against the Account, without regard to other income, gains or losses of AXA Equitable or AXA Life and Annuity. The same will be true of any Future Account of AXA Equitable or AXA Life and Annuity.

16. Applicants assert that the Amended Contracts and the 2006 Amended Contracts are substantially similar in all respects material to the Existing Order and to the relief requested by the application, except for the addition of one additional circumstance under which the Company will recapture Credits applied to contributions. In particular, under the 2006 Amended Contracts, if a death of an owner (or one of the joint owners) or annuitant that would trigger a death benefit occurs during the one-year period following the Company's receipt of a contribution to which a Credit was applied, the Company will reduce the account value by the amount of such Credit. However, the Credit recapture does not vary based on whether the benefit is triggered by the death of an owner or an annuitant and applies to any death that would trigger a death benefit. This account value reduction may affect the calculation of any death benefit payment, any supplemental death benefit payment under the Protection Plus benefit and account value and benefit calculations made at time of death when the Contract is continued under the successor owner and annuitant option, the spousal protection option, or the beneficiary continuation option. Each of these effects of the Credit recapture is discussed below.

17. Under the 2006 Amended Contracts, the account value used in the calculation of the death benefit payment will be reduced by the amount of any Credit applied within one year prior to the death of the owner/annuitant. The calculation of the GMDB will not be affected by the Credit recapture. A Credit recapture will reduce the death benefit payment if it causes the account value to fall below the GMDB or if the GMDB was already less than the account value. The Credit recapture will not affect the death benefit payment if the GMDB was greater than the account value before the Credit recapture.

18. To the extent that the recapture of the Credit reduces the death benefit payment amount, the recapture will also reduce the amount of the Protection Plus additional death benefit payment.

19. If a surviving spouse decides to continue the Contract under the successor owner/annuitant option, before calculating any possible increase in account value, the current account value will be reduced by the amount of any Credit applied within one year prior to the death of the owner/annuitant.

20. Under the spousal protection option, before calculating any possible increase in account value, the current account value will be reduced by the amount of any Credit applied within one year prior to the death of the owner/annuitant.

21. If the beneficiary continuation option is elected, the Company increases the account value to equal any elected GMDB, but before calculating any possible increase in account value, the current account value will be reduced by the amount of any Credit applied within one year prior to the death of the owner/annuitant.

22. Under the GWB benefit, if the owner/annuitant dies, and the beneficiary continues GWB under the beneficiary continuation option, the GWB benefit base will be stepped up to equal the account value. However, in calculating the step-up, the account value will be reduced by the amount of any Credit applied within one year prior to the death of the owner/annuitant.

Therefore, the GWB benefit base under the step-up provision in connection with the beneficiary continuation option may be lower due to the Credit recapture (under some Contracts, the GWB ends if the beneficiary continuation option is selected; therefore, there is no step-up in the benefit base and the Credit recapture has no effect on the GWB benefit).

23. If a Contract continues under any successor owner/annuitant feature, the account value may be reduced by the amount of any recaptured Credit (as

<sup>8</sup> On March 6, 2006, AXA Equitable and SA 49 filed a prospectus supplement for the Accumulator@Plus<sup>SM</sup> 04 Contracts (Reg. No. 333-64749) reflecting the Credit recapture within one year of death (and noting that any such recapture is subject to obtaining the exemptive order requested). See footnote 7 for information identifying the prospectus for the Accumulator@Plus<sup>SM</sup> 04 Contracts.

In addition, on or about July 10, 2006, AXA Equitable plans to file in Reg. No. 333-64749 a new prospectus for a new generation of the Accumulator@Plus<sup>SM</sup> Contract, which will be

referred to as the Accumulator@Plus<sup>SM</sup> 06 Contract, which is designed to replace the Accumulator@Plus<sup>SM</sup> 04 Contracts as necessary state approvals are obtained. The Accumulator@Plus<sup>SM</sup> 06 Contract will also include the Credit recapture within one year of death.

The references in the application to the "2006 Amended Contracts" includes both Accumulator@Plus<sup>SM</sup> 04 Contracts with the addition of the Credit recapture within one year of death and all the Accumulator@Plus<sup>SM</sup> 06 Contracts (because all such Contracts will include the Credit recapture within one year of death).

described above). If any portion of the Credit is recaptured from the fixed maturity option selected under GPB Type A, the amount in that fixed maturity option may not grow to equal the initial contribution plus the Credit. If any portion of the Credit is recaptured from a fixed maturity option under GPB Type B, the account value in that option would be reduced, but the guaranteed amount under GPB Type B would not be affected by the Credit recapture.

#### 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 request that the Commission issue an amended order pursuant to Section 6(c) of the Act, granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit Applicants to recapture Credits under 2006 Amended Contracts under the same circumstances covered by the Existing Order, and if a death benefit is payable due to a death during the one-year period following the Company's receipt of a contribution to which a Credit was applied, as described above.

3. Applicants submit that the recapture of Credits under the 2006 Amended Contracts will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder for the same reasons given in support of the Existing Order. Applicants submit that when the Company recaptures any Credit, it is simply retrieving its own assets. Applicants submit that a Contract owner's interest in any Credit allocated on contributions made within one-year of the owner or annuitant's death is not vested. Rather, the Company retains the right to, and interest in, the Credit, although not any earnings attributable to the Credit.

4. Applicants state that because a Contract owner's interest in any recapturable Credit is not vested, the owner will not be deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the Contract owner's annuity account value (taking into account the investment experience

attributable to any Credit). The amounts recaptured will never exceed the Credits provided by the Company from its own general account assets, and the Company will not recapture any gain attributable to the Credit.

5. Furthermore, Applicants submit that the recapture of Credits relating to contributions made within one year of death is designed to provide the Company with a measure of protection against "anti-selection." The risk here is that rather than investing contributions over a number of years, a Contract owner could make a contribution to receive the benefits of the Credit shortly before the death (either through an increased death benefit payment or an increased account value or other benefit to a continuing owner), leaving the Company less time to recover the cost of the Credit applied.

6. Like the recapture of Credits permitted by the Existing Order, the amounts recaptured will equal the Credits provided by the Company from its own general account assets, and any gain associated with the Credit will remain part of the Contract owner's Contract value. Applicants are aware of no reason why the relief provided by the Existing Order should not also extend to the 2006 Amended Contracts.

7. For the foregoing reasons, Applicants submit that the provisions for recapture of any Credit under the 2006 Amended Contracts do not violate Section 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder, and that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

#### Conclusion

Applicants submit, based on the grounds summarized above, that their request for an order that applies to the Accounts or any Future Account in connection with the issuance of 2006 Amended Contracts described herein and Future Contracts that are substantially similar in all material respects to the 2006 Amended Contracts and underwritten or distributed by AXA Advisors, LLC, AXA Distributors, LLC, or the Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order. Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the

Commission should grant the requested order.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6-11897 Filed 7-25-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54171; File No. SR-CBOE-2006-01]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Regarding a Disaster Recovery Facility

July 19, 2006.

On January 3, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change regarding the establishment of a disaster recovery facility ("DRF"). On June 2, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on June 26, 2006.<sup>4</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

The Exchange proposes to adopt new Exchange Rule 6.18, which contains the rules that would govern the operation of the DRF in the event of a disaster or other unusual circumstance that renders the Exchange's trading floor inoperable. As set forth in the Notice, the DRF would allow CBOE's members to operate remotely in a screen-based-only environment until the Exchange's trading floor again became available. Prior to the commencement of trading on the DRF, the Exchange would announce all classes of securities that would be traded on the DRF with priority given to those classes exclusively listed on the Exchange. The Exchange represents that it is able to

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, CBOE made minor revisions to the proposed rule text and clarified certain details of its proposal.

<sup>4</sup> See Securities Exchange Act Release No. 54014 (June 19, 2006), 71 FR 36367 ("Notice").