recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Applicants assert that, because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c–1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c–1, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts.

10. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in this Application.

Applicants further submit, for the reasons stated herein, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30649 Filed 12–11–01; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25311; File No. 812–12566]

First Allmerica Financial Life Insurance Co., et al.; Notice of Application

December 5, 2001.

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

ACTION: Notice of an Application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'') approving the proposed substitutions of securities and pursuant to section 17(b) of the Act exempting related transactions from section 17(a) of the Act.

Applicants: First Allmerica Financial Life Insurance Company (''First Allmerica''), Fulcrum Separate Account of First Allmerica Financial Life Insurance Company (the ''First Allmerica Separate Account''), Allmerica Financial Life Insurance and Annuity Company (''Allmerica Financial Life''), Fulcrum Separate Account of Allmerica Financial Life Insurance and Annuity Company (the ''Allmerica Financial Life Separate Account''), Allmerica Investment Trust (''AIT''), The Fulcrum Trust (''Fulcrum''), and Gabelli Capital Series Funds, Inc. (''Gabelli'') (collectively, the ''Applicants'').

Summary of Application: Applicants request an order approving the substitution of shares of three series of AIT and one series of Gabelli for shares of series of Fulcrum held by the First Allmerica Separate Account and the Allmerica Financial Life Separate Account to support variable life insurance contracts or variable annuity contracts (collectively, the ''Variable Contracts'') issued by First Allmerica or Allmerica Financial Life. Applicants also request an order exempting them from section 17(a) of the 1940 Act to the extent necessary to permit the Applicants to, by means of in-kind redemptions and purchases, carry out the above-referenced substitutions of securities.

Filing Date: The application was filed on July 3, 2001 and amended and restated on December 4, 2001.

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 on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 27, 2001, and be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Richard M. Reilly, President, Allmerica Financial Life, 440 Lincoln Street, Worcester, MA 01653, and copy to George M. Boyd, Esq., First Allmerica, Office of the General Counsel, N–440, 440 Lincoln Street, Worcester, MA 01653.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Fang, Attorney, or Keith E. Carpenter, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. First Allmerica was organized under the laws of Massachusetts in 1844. Effective October 16, 1995, First Allmerica converted from a mutual life insurance company known as State Mutual Life Assurance Company of America to a stock life insurance company and adopted its present name. First Allmerica is a wholly-owned subsidiary of Allmerica Financial Corporation (''AFC'').

2. Allmerica Financial Life is a life insurance company organized under the laws of Delaware in July 1974. Allmerica Financial Life is an indirect, wholly-owned subsidiary of First Allmerica, which in turn is a wholly-owned subsidiary of AFC.

3. The First Allmerica Separate Account and the Allmerica Financial Life Separate Account (the ''Applicant Separate Accounts'') are separate accounts for which either First Allmerica or Allmerica Financial Life (the ''Applicant Insurance Companies'') serves as sponsor and depositor. First Allmerica serves as sponsor and depositor of the First Allmerica Separate Account. Allmerica Financial Life serves as sponsor and depositor of the Allmerica Financial Life Separate Account.

4. Each of the two Applicant Separate Accounts is a segregated asset account of the indicated Applicant Insurance Company, and each is registered under the 1940 Act as a unit investment trust. Each of the respective Applicant Separate Accounts is used by the Applicant Insurance Company of which it is a part to fund certain variable annuity or variable life contracts. Certain sub-accounts of the respective Applicant Separate Accounts are

dedicated to owning shares of one of the investment portfolios of Fulcrum. Accordingly, each Fulcrum sub-account reflects the investment performance of that portfolio of Fulcrum in which the sub-account invests.

5. Each Applicant Separate Account is administered and accounted for as part of the general business of the Applicant Insurance Company of which it is a part. The income, gains or losses (realized or unrealized) of each Applicant Separate Account are credited to or charged against the assets of that Separate Account, without regard to income, gains or losses of such Applicant Insurance Company. Each Applicant Separate Account is a ''separate account'' as defined by the 1940 Act.

6. Each of the Applicant Separate Accounts serves as a funding vehicle for certain Variable Contracts. As the Variable Contracts are currently structured, holders of any of the Variable Contracts (''Contractholders'') may select one or more of the investment options available under the Variable Contract held by allocating premiums payable under such contract to that sub-account of the relevant Applicant Separate Account that corresponds to the investment option desired. Thereafter, Contractholders accumulate funds, on a tax-deferred basis, based on the investment experience of the selected sub-account(s). Contractholders may, during the life of the contract, make unlimited transfers of accumulation values among the sub-accounts available under the Variable Contract held. Depending on the type of Variable Contract, the first six or twelve transfers in a contract year are guaranteed to be free of any transfer charge.

7. AIT is registered under the 1940 Act as an open-end diversified investment company and currently consists of 14 different Funds, three of which, the Select Capital Appreciation Fund (''SCAF''), the Select International Equity Fund (''SEIF'') and the Select Growth and Income Fund (''SGIF'') are involved in the proposed substitution. Currently shares of each Fund are purchased only by the separate accounts established by First Allmerica or Allmerica Financial Life for the purpose of funding variable annuity contracts and variable life insurance policies.

8. Allmerica Financial Investment Management Services, Inc. (''AFIMS'' and/or the ''Manager'') serves as the investment adviser to AIT. AFIMS is an indirect, wholly-owned, subsidiary of AFC and maintains its principal offices at 440 Lincoln Street, Worcester, Massachusetts 01653. Under the terms of a management agreement between AIT and AFIMS (the ''Management Agreement''), AFIMS manages AIT's business affairs and has general responsibility for the management of the investments of the Funds, subject to the control of the Board of Trustees of AIT.

9. AFIMS, at its expense, has contracted with investment sub-advisers to manage the investments of the Funds. T. Rowe Price Associates, Inc., (''T. Rowe Price''), 100 East Pratt Street, Baltimore, MD 21202, serves as sub-adviser for SCAF. Bank of Ireland Asset Management (U.S.) Ltd. (''Bank of Ireland''), 26 Fitzwilliam Place, Dublin 2, Ireland and 75 Holly Hill Lane, Greenwich, CT 06830, serves as sub-adviser for SIEF. J.P. Morgan Investment Management Inc. (''J.P. Morgan''), 522 Fifth Avenue, New York, NY 10036, serves as sub-adviser for SGIF.

10. AFIMS is responsible for the payment of all fees to the sub-advisers. Other than the expenses specifically assumed by AFIMS under the Management Agreement, all expenses incurred in the operation of AIT are borne by AIT. For its services, AFIMS is entitled to receive a fee from each Fund of AIT, based on the average daily net asset value of each Fund. In addition, AFIMS has voluntarily undertaken to reimburse each Fund for its fees and expenses that exceed the applicable expense limitation set for that Fund. AFIMS has declared voluntary expense limitations of 1.35% for SCAF, 1.50% for SIEF and 1.10% for SGIF of each Fund's average daily assets through December 31, 2001. The expense limitations may be removed at any time after a Fund's first fiscal year of operations with notice to existing shareholders. Actual expenses have been well below such expense limitations for the three Funds.

11. Fulcrum is registered under the 1940 Act as an open-end diversified investment company and currently consists of four different portfolios, all of which, are involved in the proposed substitution. They are the Global Interactive/Telecomm Portfolio (''GITP''), the International Growth Portfolio (''IGP''), the Growth Portfolio (''GP'') and the Value Portfolio (''VP''). Currently, shares of the Portfolios may be sold only to: (a) Life insurance company separate accounts to serve as the underlying investment medium for variable annuity and variable life insurance contracts; (b) qualified retirement plans, as permitted by Treasury Regulations; and (c) life insurance companies and advisers to the Portfolios and their affiliates.

12. AFIMS serves as overall manager of Fulcrum and is responsible for managing the Trust's daily business and has general responsibility for the management of the investments of the Portfolios. Sub-advisers have been hired to handle the day-to-day investment management of the Portfolios. The sub-advisers' activities are subject to general oversight by the Trustees and AFIMS. GAMCO Investors, Inc. (''GAMCO''), One Corporate Center, Rye, NY 10580–1434 serves as the sub-adviser of both GITP and VP. Bee & Associates (''Bee''), a division of Denver Investment Advisors LLC, serves as the sub-adviser of IGP. Analytic Investors, Inc. (''Analytic'') serves as the sub-adviser of GP.

13. For these services, each Portfolio pays an overall management fee, computed and accrued daily and paid monthly, based on its average daily net assets. The overall fee varies based on the performance of that Portfolio (after expenses) compared to that of an appropriate benchmark. The sub-adviser receives 80% of the fee, and AFIMS receives the remaining 20%. For the period beginning on the effective date of a Portfolio Manager Agreement with a new sub-adviser and ending with the last day of the twelfth full calendar month thereafter, each Portfolio pays a monthly advisory fee calculated at an annual rate of 0.80% of the Portfolio's average daily net assets. After the first 12 full calendar months with a new sub-adviser, as described above, each Portfolio pays a monthly advisory fee equal to a basic fee, plus or minus an incentive fee. The monthly basic fee equals one-twelfth of the annual basic fee rate of 2.0% multiplied by average daily net assets over the previous 12 months. The incentive fee ranges from −2.0% to +2.0% on an annual basis, depending on a comparison of the Portfolio's performance (reflecting a deduction of portfolio expenses) and the performance of a selected benchmark index over the past 12 months.

14. In addition, AFIMS has agreed to limit operating expenses and reimburse those expenses to the extent that each Portfolio's ''other expenses'' (*i.e.,* expenses other than management fees) exceed the expense limitations set for the Portfolios. For the two years following the date that the expense limitations end and subject to certain conditions, each Portfolio will reimburse AFIMS for any Portfolio expenses it reimbursed pursuant to the expense limitations. AFIMS currently limits the ''other expenses'' for GITP and IGP to an annual rate of 1.50% of average daily net assets; the limitation on ''other expenses'' for GP and VP is an annual rate of 1.20% of average daily net assets.

15. Gabelli was organized on April 3, 1993 as a Maryland corporation. Its address is 7 Hanover Square, New York, NY, 10004. Gabelli currently consists of one series, Gabelli Capital Asset Fund (''GCAF'' or a ''Fund'') which is available to the public only through the purchase of certain variable annuity and variable life insurance contracts issued by The Guardian Insurance & Annuity Company, Inc. (''GIAC''). Subject to approval of this application, the Participation Agreement between GCAF and GIAC will be amended to permit the purchase of GCAF shares by the Applicant Separate Accounts. GCAF's primary goal is to seek growth of capital. The Fund's secondary goal is to produce current income. The Fund invests primarily in equity securities of companies that are selling in the public market at a significant discount to their ''private market value.'' Private market value is the value at which the Fund's sub-adviser believes informed investors would be willing to pay for a company.

16. Guardian Investor Services Corporation (''GISC''), located at 7 Hanover Square, New York, NY 10004, supervises the performance of administrative and professional services provided to the Fund by others, including the Fund's sub-adviser. GISC, which also pays the fees of the sub-adviser, serves as investment adviser to 14 funds with aggregate assets of over $7.8 billion as of March 31, 2001. As compensation for its services and related expenses borne by GISC, the Fund pays GISC a fee based on the value of the Fund's average daily net assets. Gabelli Funds, LLC, located at One Corporate Center, Rye, NY 10580–1434, manages the Fund's assets as the Fund's sub-adviser. The sub-adviser is a New York limited liability company organized in 1999 as successor to a company organized in 1980 and is a wholly-owned subsidiary of Gabelli Asset Management, Inc., a publicly held company. As compensation for its services and the related expenses borne by the sub-adviser, GISC pays the sub-adviser a fee based on a percentage of the value of the Fund's average daily nets assets. Neither GISC nor Gabelli Funds, LLC is affiliated with the Applicant Insurance Companies.

17. Applicant Insurance Companies have approved a proposal to make certain substitutions of shares held in sub-accounts of the Applicant Separate Accounts. Specifically, they have proposed to substitute (a) shares of SCAF for shares of GITP (b) shares of the SIEF for shares of IGP, (c) shares of SGIF for shares of GP, and (d) shares of GCAF for shares of VP. Applicants submit that the proposed substitutions are in the best interest of Contractholders.

18. SCAF and GITP have comparable investment objectives and seek to achieve these objectives by investing in equity securities and utilizing similar investment strategies. While recognizing that GITP has a more narrow focus than SCAF, Applicants have concluded that the investment objectives and policies of SCAF are sufficiently similar to those of GITP that the essential objectives and risk expectations of Contractholders can continue to be met. In addition, Applicants state that AIT does not include a fund focusing exclusively on telecommunication investments, and there is no fund advised by Gabelli Funds, LLC, with a telecommunications focus that can serve as an underlying fund for variable contracts. Applicants believe that, to the extent that there are differences between the investment objectives and policies of SCAF and GITP, the proposed substitution represents a transfer to a more conservative and a more diversified portfolio. Applicants believe that the proposed substitution will benefit Contractholders in that (a) SCAF has a larger asset base than GITP which should provide certain economies of scale and lower expenses, and (b) SCAF has better one-year and since inception performance records than GITP. Applicants believe that GITP has not grown to a size to allow it to operate efficiently. As shown in the table below, SCAF has a larger asset base than GITP, which should provide certain economies of scale, resulting in lower expenses, compared to GITP. The net assets of each Fund, as of March 31, 2001 are as follows:

	Net Assets
Select Capital Appreciation Fund	$433.3 Mllion.
Global Interactive/Telecomm Portfolio	$4.3 Million.

Applicants assert that, as a result of the proposed substitution, the Contractholders who currently invest in GITP will benefit from the lower expenses of SCAF. Applicants state that SCAF has a better performance record than GITP for the one-year and since inception periods. For example, for the one-year period ending December 31, 2000, SCAF out-performed GITP with an average annual total return 33.2% higher than that of GITP. Applicants have no reason to believe that, in the near-term, the performance of GITP will match or exceed that of SCAF. Applicants also believe that the substitution would provide for Contractholders a more predictable advisory fee. SCAF's investment advisory fee is an annual rate of 1.00% for the first $100 million of assets, 0.90% on the next $150 million, 0.80% on the next $250 million, 0.70% over $500 million and 0.65% over $1 billion. GITP's fee can vary from 0% to 4.00% depending on performance (for the year ended December 31, 2000, the advisory fee for GITP was 2.47% while the advisory fee for SCAF was 0.87%). For the foregoing reasons, Applicants submit that the proposed substitution of shares of SCAF for shares of GITP is in the best interest of Contractholders.

19. SIEF and IGP have similar investment objectives and seek to achieve these objectives by investing in similar types of equity securities and utilizing comparable investment strategies. While recognizing that SIEF focuses on the stocks of large cap companies and IGP focuses on small cap stocks, Applicants have concluded that the investment objectives and policies of SIEF are sufficiently similar to those of IGP that the essential objectives and risk expectations of Contractholders can continue to be met. Applicants believe that the proposed substitution will benefit Contractholders in that (a) SIEF has a larger asset base than IGP which should provide certain economies of scale and lower expenses, and (b) SIEF has a better long-term performance record. Applicants do not believe that IGP has grown to a size to allow it to operate efficiently. As shown in the table below, SIEF has a larger asset base than IGP, which should provide certain economies of scale, resulting in lower expenses, compared to SIEF. The net assets of each Fund, as of March 31, 2001 are as follows:

	Net Assets
Select International Equity Fund	$571.6 Million.
International Growth Portfolio	$1.6 Million.

Applicants assert that, as a result of the proposed substitution, the Contractholders who currently invest in IGP will benefit from the lower expenses of SIEF. Applicants state that SIEF has a better long-term performance record than IGP. For example, the return for SIEF for the five-year period ended December 31, 2000 was 12.26% compared to 3.26% for IGP for the period of March 2, 1996 through December 31, 2000. Applicants have no reason to believe that, in the near-term, the performance of IGP will match or exceed that of SEIF. Applicants also believe that the substitution would provide for Contractholders a more predictable advisory fee. SIEF's investment advisory fee is an annual rate of 1.00% for the first $100 million of assets, 0.90% on the next $150 million and 0.85% on assets over $250 million. IGP's fee can vary from 0% to 4.00% depending on performance (for the year ended December 31, 2000, the advisory fee for IGP was 3.71% while the advisory fee for SIEF was 0.88%). For the foregoing reasons, Applicants submit that the proposed substitution of shares of SIEF for shares of IGP is in the best interest of Contractholders.

20. SGIF and GP have similar investment objectives and seek to achieve these objectives by investing in similar types of equity securities and utilizing comparable investment strategies. Applicants have concluded that the investment objectives and policies of SGIF are sufficiently similar to those of GP that the essential objectives and risk expectations of Contractholders can continue to be met. Applicants believe that the proposed substitution will benefit Contractholders in that (a) SGIF has a larger asset base than GP, which may provide certain economies of scale and lower expenses, and (b) SGIF has a better long-term performance record. Applicants do not believe that GP has grown to a size to allow it to operate efficiently. As shown in the table below, SGIF has a larger asset base than GP, which should provide certain economies of scale, resulting in lower expenses, compared to GP. The net assets of each Fund, as of March 31, 2001 are as follows:

	Net Assets
Select Growth and Income Fund	$680.1 Million.
Growth Portfolio	$2.5 Million.

Applicants assert that, as a result of the proposed substitution, the Contractholders who currently invest in GP will benefit from the lower expenses of SGIF. Applicants state that SGIF has a better long-term performance record than GP. For example, the return for SGIF for the five-year period ended December 31, 2000 was 12.83% compared to 5.40% for GP for the period of December 1, 1996 through December 31, 2000. Applicants have no reason to believe that in the near-term the performance of GP will match or exceed that of SGIF. Applicants also believe that the substitution would provide for Contractholders a more predictable advisory fee. SGIF's investment advisory fee is an annual rate of 0.75% on the first $100 million of assets, 0.70% on the next $150 million and 0.65% on assets over $250 million. GP's fee can vary from 0% to 4.00% depending on performance (for the year ended December 31, 2000, the advisory fee for GP was 0.14% while the advisory fee for SGIF was 0.67%). For the foregoing reasons, Applicants submit that the proposed substitution of shares of SGIF for shares of GP is in the best interest of Contractholders.

21. GCAF and VP have similar investment objectives and seek to achieve these objectives by investing in similar types of equity securities and utilizing comparable investment strategies. Applicants have concluded that the investment objectives and policies of GCAF are sufficiently similar to those of VP that the essential objectives and risk expectations of Contractholders can continue to be met. Applicants believe that the proposed substitution will benefit Contractholders in that (a) GCAF has a larger asset base than VP which may provide certain economies of scale and lower expenses, (b) GCAF has a comparable performance record to that of VP, and (c) GCAF and VP are served by affiliated companies within the same investment advisory organization. Applicants do not believe that VP has grown to a size to allow it to operate efficiently. As shown in the table below, GCAF has a larger asset base than VP, which should provide certain economies of scale, resulting in lower expenses, compared to VP. The net assets of each Fund, as of March 31, 2001 are as follows:

	Net assets
Gabelli Capital Asset Fund	$156.8 Million.
Value Portfolio	$7.1 Million.

Applicants assert that, as a result of the proposed substitution, the Contractholders who currently invest in VP will benefit from the lower expenses of GCAF. Applicants state that GCAF and VP have comparable long-term performance records, which have resulted in favorable returns for investors. For example for the five-year period ended December 31, 2000, GCAF had a return of 17.46% compared to 18.23% for VP for the period of December 1, 1996 through December 31, 2000. Assuming the proposed substitution is approved, VP shareholders would continue to receive the potential benefits from having the same organization serve as sub-adviser. Applicants also believe that the substitution would provide for Contractholders a more predictable advisory fee. GCAF's investment advisory fee is an annual rate of 1.00%. VP's fee can vary from 0% to 4.00% depending upon performance (for the year ended December 31, 2000, the advisory fee for VP was 2.58% while the advisory fee for SCAF was 1.00%). For the foregoing reasons, Applicants submit that the proposed substitution of shares of GCAF for shares of VP is in the best interest of Contractholders.

22. Applicants state that, as of the effective date of the substitutions, shares of GITP, IGP, GP and VP (the ''Replaced Portfolios'') held by the various Applicant Separate Accounts will be redeemed by the Applicant Insurance Companies. The proceeds of such redemptions, which may be effected in-kind, will then be used to purchase the appropriate number of shares of SCAF, SIEF, SGIF and GCAF (the ''Replacement Funds''). Since it is anticipated that the proposed substitution will be effected by in-kind transfer of assets, Contractholders will be fully invested at all times. The proposed substitutions will take place at net asset value with no change in the amount of any Contractholder's account value, cash value or death benefit or in the dollar value of his or her investment in either of the Applicant Separate Accounts. Contractholders will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or the Applicant Insurance Companies' obligations under the Variable Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, including brokerage fees, if any, will be paid by the Applicant Insurance Companies. In addition, the proposed substitutions will not impose any tax liability on Contractholders. The proposed substitutions will not cause the Variable Contract fees and charges currently being paid by existing Contractholders to be greater after the proposed substitutions than before the proposed substitutions. Applicant Insurance Companies agree that, for those Contractholders who are Contractholders on the Effective Date of the substitutions, Applicant Insurance Companies will not increase the asset-based or non-asset-based charges under the Variable Contracts for a period of 24 months following the Effective Date of the substitution, except to the extent of any increase in premium taxes charged by one or more states. The Applicant Insurance Companies further agree that if the total operating expenses for any Replacement Fund (net of any expense waiver or reimbursement) for any period (not to exceed a fiscal quarter) during the 24 months following the Effective Date of the substitution exceeds on an annualized basis the relevant Maximum Fund Expense Limit as stated below (which is the net expense ratio for each corresponding Replaced Portfolio for the fiscal year ended December 31, 2000), the Applicant Insurance Companies will make a corresponding reduction in the expenses for the relevant sub-account(s) of the Applicant Separate Accounts (either by reducing or waiving sub-account expenses for that corresponding period or by reimbursing the sub-account on the last day of the period). The Maximum Fund Expense Limits for the Replacement Funds are: 3.97% for the SCAF sub-account; 5.21% for the SIEF sub-account; 1.34% for the SGIF sub-account; and 3.78% for the GCAF sub-account. The proposed substitutions (and any transfer in advance of the substitution) will not be subject to a transfer charge and will not be counted toward any limit on transfers guaranteed not to be subject to a transfer charge.

23. By supplements to the various prospectuses for the Variable Contracts and Applicant Separate Accounts, all owners of the Variable Contracts have been notified of the Applicant Insurance Companies' intention to take the necessary actions, including seeking the order requested by the application to substitute shares of the Underlying Funds as described herein. The supplements for the Applicant Separate Accounts advised Contractholders that from the date of the supplement until a date at least 30 days after the proposed substitution, each owner may make one transfer, free of charge and without limitation, of all amounts allocated to the GITP, IGP, GP or VP sub-accounts, respectively, to another sub-account. That transfer will not be counted toward the limit on transfers guaranteed not to be subject to a transfer charge. Contractholders will also receive a current prospectus relating to SCAF, SIEF, SGIF and GCAF (unless the Contractholder has already received that prospectus).

24. In addition to the prospectus supplements distributed to owners of Variable Contracts, within five days after the proposed substitutions, any Contractholders who were affected by the substitutions will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer, free of charge for at least 30 days after the proposed substitution and without limitation, of all account value under a Variable Contract invested in any one of the affected sub-accounts on the date of the notice to another sub-account available under their Variable Contract. That transfer will not count as one of the number of transfers per year guaranteed to be free of charge. The notice will also state that the Applicant Insurance Companies will not exercise any rights reserved by either under any of the Variable Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, Contractholders who are affected by the substitutions may exchange their Variable Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by the Applicant Insurance Companies (or one of their affiliates) during the 60 days following the proposed substitutions.

25. The Applicant Insurance Companies are also seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Section 26(c) was added to the 1940 Act by the Investment Company Amendments Act of 1970. Prior to the enactment of the 1970 amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval. Congress responded to the Commission's concerns by enacting section 26(b) (now (c)) to require that the Commission approve all substitutions by the depositor of investments held by the unit investment trusts.

2. The proposed substitutions appear to involve substitutions of securities within the meaning of section 26(c) of the Act. Applicants therefore request an order from the Commission pursuant to section 26(c) approving the proposed substitutions.

3. The Variable Contracts expressly reserve for the Applicant Insurance Companies the right, subject to compliance with applicable law, to substitute shares of another investment company for shares of an investment

company held by a Separate Account or a sub-account of a Separate Account. The prospectuses for the Variable Contracts and the Separate Accounts contain appropriate disclosure of this right. The Applicant Insurance Companies each reserved this right of substitution both to protect themselves and their Contractholders in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contractholders.

4. Under the proposed substitution of shares of SCAF for shares of GITP, shares of SIEF for shares of IGP, shares of SGIF for shares of GP and shares of GCAF for shares of VP, the interests of Contractholders will be better served primarily because each of the current funds would be replaced by a fund with a comparable investment objective, but with a significantly larger asset base, potentially resulting in lower expenses. In addition each of the proposed replacement funds has a superior or matching performance record compared to the respective current funds.

5. Applicants anticipate that Contractholders will be at least as well off with the proposed array of separate accounts and sub-accounts after the proposed substitutions as they have been with the array of separate accounts and sub-accounts offered prior to the substitutions. The proposed substitutions retain for Contractholders the investment flexibility, which is a central feature of the Variable Contracts.

6. None of the proposed substitutions is of the type that section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Variable Contracts provide each Contractholder with the right to exercise his or her own judgment and transfer account values into other sub-accounts. Moreover, the Variable Contracts will offer Contractholders the opportunity to transfer amounts out of the affected sub-accounts into any of the remaining sub-accounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption, which section 26(c) was designed to prevent.

7. The proposed substitutions also are unlike the types of substitutions which section 26(c) was designed to prevent in that by purchasing a Variable Contract, Contractholders select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by either or both of the Applicant Insurance Companies under their Variable Contract as well as numerous other rights and privileges set forth in the Variable Contract. Contractholders may also have considered each or both Applicant Insurance Companies' size, financial condition, type and its reputation for service in selecting their Variable Contract. These factors will not change as a result of the proposed substitutions.

8. Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

9. Applicants also request an order under section 17(b) exempting them from the provisions of section 17(a) to the extent necessary to effect the proposed substitutions by means of in-kind redemptions and purchases of shares.

10. Section 17(a)(1) and (2) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, or any principal underwriter for such company (collectively, ''Transaction Affiliates''), acting as principal, from knowingly selling or purchasing any security or other property to that company. Applicants may be deemed to be Transaction Affiliates of one another based upon this definition.

11. Because the proposed substitutions may be effected by means of an in-kind redemption and a subsequent purchase of shares, also in an in-kind transaction, the substitutions may be deemed to involve one or more purchases or sales of securities or property between Transaction Affiliates. Because the Applicant Separate Accounts (as well as other separate accounts of the Applicant Insurance Companies) are registered collectively with the Commission as a single unit investment trust of which the Applicant Insurance Companies are the depositors, the Applicant Separate Accounts are affiliated persons of each other. Further, because each of the Applicant Separate Accounts are under the common control of the Applicant Insurance Companies, they are all affiliated persons of each other.

12. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of section 17(a) if the evidence establishes that: the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and the proposed transaction is consistent with the general purposes of the 1940 Act.

13. Applicants submit that, to the extent that the substitutions are deemed to involve principal transactions among Transaction Affiliates, the manner in which such substitutions are to be implemented are sufficient to assure that such transactions do not involve overreaching on the part of any Applicant or other person, and are fair and reasonable and consistent with the policies and purposes underlying the 1940 Act. Applicants further submit that neither the Underlying Funds nor either of the Applicant Separate Accounts will be participating in the substitutions or subsequent combination on a basis less advantageous than that of any other participant. Finally, Applicants state that, but for the fact that the substitutions may be effected by means of in-kind redemption and purchase transactions, rather than in cash, the procedures would comply with all of the conditions of rule 17a–7 under the 1940 Act. Accordingly, Applicants request an order of the Commission pursuant to section 17(b) of the 1940 Act to permit the substitutions and related transactions described in this Application. Applicants also submit that the proposed substitutions are consistent with the policies of each of the Applicant Separate Accounts and the Underlying Funds and with the general purposes of the 1940 Act.

The Applicants represent that, for all the reasons stated above, the terms of the proposed substitutions as set forth in the application, including any consideration to be paid and received, are reasonable and fair to: (a) The Applicant Insurance Companies; (b) AIT, Fulcrum and Gabelli and their funds/portfolios; and (c) the Contractholders invested in such funds/portfolios; and do not involve overreaching on the part of any person concerned. Furthermore, the Applicants represent that the proposed substitutions will be consistent with the policies of the Applicant Insurance Companies, AIT, Fulcrum and Gabelli as stated in the current registration statement and reports filed under the 1940 Act by each and with the general purposes of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30648 Filed 12–11–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45133; File No. SR–OPRA–2001–04]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan to Make Technical Corrections to Section V(c)

December 5, 2001.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 24, 2001, the Options Price Reporting Authority (''OPRA''),[2] submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed amendment would make technical corrections to section V(c) of the OPRA Plan. OPRA has stated that the proposed OPRA Plan amendment involves solely technical or ministerial matters and is, therefore, effective upon filing, pursuant to Rule 11Aa3–2(c)(3)(iii) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed OPRA Plan amendment from interested persons.

I. Description and Purpose of the Amendment

The proposed OPRA plan amendment would make technical corrections to Section V(c) of the OPRA Plan, as that section was recently amended.[4] These proposed corrections consist of the deletion of an inappropriate reference in paragraph (ii) of section V(c) and the redesignation of subparagraphs (i)–(iv) of paragraph (iv) of section V(c) as subparagraphs (A)–(D) in order to conform their designation to the style of the OPRA Plan. OPRA represents that the proposed OPRA Plan amendment would make no substantive change to the provisions of the OPRA Plan.

II. Implementation of the Plan Amendment

OPRA represents that the proposed OPRA Plan amendment involves solely technical or ministerial matters and is, therefore, effective upon filing, pursuant to Rule 11Aa3–2(c)(3)(iii) under the Act.[5] At any time within 60 days of the filing of the OPRA Plan amendment, the Commission may summarily abrogate the amendment and require that such amendment be filed in accordance with Rule 11Aa3–2(b)(1) under the Act[6] and reviewed in accordance with Rule 11Aa3–2(c)(2) under the Act[7] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2001–04 and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30651 Filed 12–11–01; 8:45 am]

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[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to section 11A of the Exchange Act, 15 U.S.C. 78k–1, and Rule 11Aa3–2 thereunder, 17 CFR 240.11Aa3–2. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[3] 17 CFR 240.11Aa3–2(c)(3)(iii).

[4] *See* Securities Exchange Act Release No. 44580 (July 20, 2001), 66 FR 39218 (July 27, 2001) (order approving File No. SR–OPRA–2001–02).

[5] 17 CFR 240.11Aa3–2(c)(3)(iii).

[6] 17 CFR 240.11Aa3–2(b)(1).

[7] 17 CFR 240.11Aa3–2(c)(2).

[8] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45130; File No. SR–Amex–2001–17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Increasing Regular Memberships and Creating Two-Year Permits

December 5, 2001.

I. Introduction

On March 19, 2001, the American Stock Exchange LLC (''Exchange'' or ''Amex'') submitted to 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 increasing the number of regular memberships on the Exchange and creating two-year permits. The Exchange submitted Amendment Nos. 1, 2, and 3 to the proposed rule change on May 3, 2001,[3] May 16, 2001,[4] and May 18, 2001,[5] respectively. The

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

[2] 17 CFR 240.19b–4.

[3] Letter from Ivonne Natal, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission dated April 30, 2001 (''Amendment No. 1''). Amendment No. 1 states that on April 30, 2001, a majority of the regular and options principal members, voting as a single class, voted in favor of the proposed rule change.

[4] Letter from Ivonne Natal, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 14, 2001 (''Amendment No. 2''). Amendment No. 2 requests the Commission to consider the Plan on a pilot basis for a minimum of two years and a maximum of four years, in the event the Seat Fund Committee exercises its discretion to extend the Plan. Amendment No. 2 also states that there are approximately 300 members trading equities on the Exchange floor.

[5] Letter from Ivonne Natal, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 17, 2001 (''Amendment No. 3''). Amendment No. 3 clarifies that the administrative fee that the Amex would receive for administering the Plan would be $750.00 per sale/lease and that the administrative fee will be collected out of the sale proceeds, prior to their distribution to the members. Amendment No. 3 also states that Amex members and the Board of Governors have approved this fee.