

Dated at Rockville, Maryland this 16th day of August, 2000.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC-24620; File No. 812-11830]

Provident Mutual Life Insurance Company, et al.

August 24, 2000.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("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 permit the recapture of credits applied to contract account value and to premium payments made under certain variable annuity contracts.

Applicants: Provident Mutual Life Insurance Company ("PMLIC"), Provident Mutual Variable Annuity Separate Account ("PMLIC Account"), Providentmutual Life and Annuity Company of America ("PLACA"), Providentmutual Variable Annuity Separate Account ("PLACA Account"), and 1717 Capital Management Company ("1717 Capital").

Summary of application: Applicants seek an order of the Commission, pursuant to section 6(c) of the Act, exempting them from 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 the recapture of certain credits applied to contract account value and to premium payments made in consideration of: (1) certain deferred variable annuity contracts, described herein, that PLACA plans to issue (the "Contracts"), or (2) variable annuity contracts that are substantially similar to the Contracts in all material respects that PLACA may issue in the future ("Future Contracts"). Applicants also seek an order of the Commission, pursuant to section 6(c) of the Act, exempting (1) variable annuity separate accounts, other than the PLACA Account, that PLACA has established or may establish in the future ("Future Accounts"), (2) variable annuity separate accounts, including the PMLIC Account, that PMLIC has

established or may establish in the future (also, "Future Accounts"), and (3) principal underwriters for such Future Accounts that are under common control with PLACA or PMLIC and that are registered as a broker-dealer under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc. ("NASD") ("Future Underwriters"), from 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 the recapture of certain credits applied to contract account value and to premium payments made in consideration of variable annuity contracts issued in the future by PLACA or PMLIC through a Future Account that are substantially similar in all material respects to the Contracts (also, "Future Contracts").

Filing Date: The application was filed on November 1, 1999, and amended and restated on February 23, 2000. A second amended and restated application was filed on August 22, 2000.

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 September 18, 2000, 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 may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants, c/o James G. Potter, Jr., Esq., Provident Mutual Life Insurance Company, 1000 Chesterbrook Boulevard, Berwyn, PA 19312.

FOR FURTHER INFORMATION CONTACT: Jane G. Heinrichs, Senior Counsel, at (202) 942-0699, or Keith E. Carpenter, Branch Chief, at (202) 942-0679, Office of Insurance Products, Division of Investment Management.

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, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. PLACA is a stock life insurance company originally incorporated under the laws of the Commonwealth of Pennsylvania in 1958, and redomiciled as a Delaware insurance company in 1992. It is a wholly owned subsidiary of PMLIC, PLACA is licensed to do business in 48 states and the District of Columbia. As of December 31, 1998, PLACA had assets of approximately \$1.5 billion. for purposes of the Act, PLACA is the depositor and sponsor of the PLACA Account as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

2. PLACA established Account on May 9, 1991, as a segregated investment account under Pennsylvania law.¹ Under Delaware law, the assets of the PLACA Account attributable to the Contracts through which interests in the Account are issued are owned by PLACA but are held separately from all other assets of PLACA for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, such assets are not chargeable with liabilities arising out of any other business that PLACA may conduct. Income, gains and losses, realized or unrealized, from each subaccount of the PLACA Account, are credited to or charged against that subaccount without regard to any other income, gains or losses of PLACA. The PLACA Account is a "separate account" as defined by Rule 0-1(e) under the Act, and is registered with the Commission as a unit investment trust.²

2. The PLACA Account currently is divided into thirty-six subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding investment portfolio (each, a "Portfolio") of one of several series-type open-end management investment companies. The assets of the PLACA Account support several varieties of variable annuity contracts, including the Contracts, and interests in the PLACA Account offered through such contracts are registered under the 1933 Act on Form N-4.³

PMLIC is a mutual life insurance company chartered by the Commonwealth of Pennsylvania in 1865. PMLIC is authorized to transact life insurance and annuity business in

¹ Because PLACA redomiciled as a Delaware insurance company in 1992, the PLACA Account is not subject to regulation by the Delaware insurance department.

² File No. 811-6484.

³ File No. 333-88163. Two older registration statements are in effect for other contracts under the PLACA Account, File Nos. 33-65195 and 33-65512.

Pennsylvania and in 50 other jurisdictions. As of December 31, 1998, PMLIC had consolidated assets of approximately \$8.7 billion and consolidated liabilities of approximately \$7.8 billion. For purposes of the Act, PMLIC would be the depositor and sponsor of any Future Account through which is would issue any Future Contract as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

5. PMLIC established the PMLIC Account on May 9, 1999, as a segregated investment account under Pennsylvania law. Under Pennsylvania law, assets of the PMLIC Account attributable to the Contracts through which interests in the PMLIC Account are issued are owned by PMLIC but are held separately from all other assets of PMLIC, for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, such assets are not chargeable with liabilities arising out of any other business that PMLIC may conduct. Income, gains and losses, realized or unrealized, from such subaccount of the PMLIC Account are credited to or charged against that subaccount without regard to any other income, gains or losses of PMLIC. The PMLIC Account is a "separate account" as defined by Rule 0-1(e) under the Act, and is registered with the Commission as a unit investment trust.⁴

6. The PMLIC Account currently is divided into thirty-six subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding investment portfolio (each a "Portfolio") of one of several series-type open-end management investment companies. The assets of the PMLIC Account support several varieties of variable annuity contracts, including the Contracts, and interests in the PMLIC Account offered through such contracts are registered under the 1933 Act on Form N-4.⁵

7. 1717 Capital is a wholly owned subsidiary of PMLIC. It serves as the principal underwriter of a number of PMLIC and PLACA separate accounts registered as unit investment trusts under the Act, including the PLACA Account and PMLIC Account, and is the distributor of the variable life insurance contracts or variable annuity contracts issued through such separate accounts, including the Contracts. 1717 Capital is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a NASD member.

8. The Contracts are flexible premium variable annuity contracts that PLACA may issue to individuals or groups on a "non-qualified" basis or in connection with employee benefit plans that receive favorable federal income tax treatment under sections 401, 403(b), 408, 408A, or 457 of the Internal Revenue Code of 1986, as amended. The Contracts make available a number of subaccounts of the PLACA Account to which owners may allocate net premium payments and associated credits and to which owners may transfer contract account value. The Contracts also offer fixed-interest allocation options under which PLACA credits guaranteed rates of interests for periods of one year or more. Transfers of contract value among and between the subaccounts and, subject to certain restrictions, among and between the subaccounts and the fixed-interest options, may be made at any time. The Contracts offer a variety of non-variable annuity payment options to owners. In the event of an owner's death prior to the annuity date, beneficiaries may elect to received death benefits in the form of one of these annuity payment options instead of a lump sum. In general, the Contracts offer most of the features typically found in variable annuity contracts today.

9. The Contracts may only be purchased with a minimum initial premium of \$10,000. PLACA may deduct a premium tax charge from premium payments in certain states, but otherwise deducts a charge for premium taxes upon surrender or annuitization of the Contract or upon the payment of a death benefit, depending upon the jurisdiction. The Contracts provide for an annual administration fee of \$40 that PLACA deducts on the Contract Anniversary and a daily annuity charge deducted from the assets of the PLACA Account at an annual rate of 1.40% of the Account's average daily net assets. The Contracts also provide for a charge of \$25 for each transfer of contract account value in excess of 12 per contract year. Lastly, the Contracts entail two surrender charges: a contingent deferred sales charge ("CDSC") and a death benefit charge.

10. The CDSC is equal to the percentage of each premium payment surrendered, withdrawn, or annuitized as specified in the table below. The CDSC is separately calculated and applied to each premium payment at any time that the payment (or part of the payment) is surrendered or withdrawn or applied to an annuity payment option. No CDSC applies to contract account value representing a free withdrawal amount or to contract account value in excess of aggregate

premium payments (less prior withdrawals of premium payments). The CDSC is calculated using the assumption that contract account value is withdrawn in the following order: (a) the free withdrawal amount for the contract year, (b) the pro-rata amount of any remaining recurring bonus credit (explained below), (c) premium payments, and (d) any remaining contract account value. In addition, the CDSC is calculated using the assumption that premium payments are withdrawn on a first-in, first-out basis.

11. The CDSC applicable to each premium payment diminishes as the payment ages beyond five years. A premium payment ages by contract year, such that it is in "year" 1 during the contract year in which it is received and in "year" 2 throughout the subsequent contract year and in "year" 3 throughout the contract year after that, etc.

Age of each premium payment in contract years	Charge (in percent)
1	8.0
2	8.0
3	8.0
4	8.0
5	8.0
6	6.5
7	5.0
8	3.5
9	2.0
10 and over	0.0

During the first contract year, the free withdrawal amount is 10% of the premium payments. For all other contract years, the free withdrawal amount is 10% of the contract account value at the start of that year.

12. The death benefit charge is deducted when computing the death benefit upon the death of any owner prior to the annuity date. The death benefit charge is equal to the dollar amount of standard bonus credits (described below) granted under the Contract during the twelve months preceding the owner's death. During the first nine Contract years, the death benefit equals the greater of:

- contract account value less the death benefit charge, or
 - the total amount of premiums paid reduced by the amount of all withdrawals prior to the date of death.
- During contract years ten and later, the death benefit equals the greater of:
- contract account value less the death benefit charge,
 - total premiums paid as of the ninth Contract anniversary reduced by the amount of all withdrawals prior to the ninth Contract anniversary plus the premiums paid since that anniversary

⁴ File No. 811-7708.

⁵ File No. 33-70926.

reduced, for each withdrawal since that anniversary, by the withdrawal adjustment amount, or

- contract account value on the ninth Contract anniversary plus total premiums paid since that anniversary reduced, for each withdrawal since that anniversary, by the withdrawal adjustment amount.

The withdrawal adjustment amount is determined by multiplying the death benefit prior to the withdrawal by the ratio of the amount of the withdrawal (including any surrender charge) to the contract account value immediately prior to the withdrawal.

13. PLACA intends to offer two types of bonus credits. One is what PLACA refers to as its standard bonus credit provision under the Contracts, pursuant to which it credits an owner's contract account value with an additional amount in most circumstances when a net premium payment is applied. In addition, PLACA intends to offer a rider to the Contracts, described below, that offers a recurring bonus credit mechanism.

14. Under the standard bonus credit provision, PLACA credits contract account value with an amount that is a percentage of each premium payment made by an owner, as shown in the standard bonus credit table below. The percentage is a function of the total amount of premiums received under a Contract less the total amount of all withdrawals (including any CDSC). The amount credited is calculated by multiplying the percentage by the excess of (a) over (b), where:

(a) equals total premiums paid under the Contract (including the current premium payment) less the total withdrawals (including any CDSC);

(b) equals the amount computed for (a) at the time that the most recent previous credit was made.

STANDARD BONUS CREDIT TABLE

Total Premiums (Including the Current Premium) Less Withdrawals (Including Surrender Charges)	Credit (in percent)
From \$10,000 to \$24,999	1.5
From \$25,000 to \$99,999	3.0
From \$100,000 to \$499,999	4.0
From \$500,000 to \$999,999	4.5
\$1,000,000 or more	5.0

15. The standard bonus credit provision also entails a "look-back" feature. On each of the first three contract anniversaries, PLACA determines a calculated credit amount. To the extent that the calculated credit amount exceeds the actual amount credited to contract account value,

PLACA increases the contract account value by the amount of such excess. The calculated credit amount is determined by multiplying (a) by (b) where:

(a) equals the aggregate premiums paid under the Contract minus the amount of withdrawals (including any CDSC);

(b) equals the credit percentage for (a) as shown on the standard bonus credit table.

16. Under the standard bonus credit provision, PLACA recaptures or retains the credited amount in the event that the owner exercises his or her cancellation right during the cancellation period. In addition, the death benefit charge can be viewed as a recapture of certain credited amounts under the standard bonus credit provision in as much as it is designed to reimburse PLACA for part of the expense of the bonus credit.

17. Under the recurring bonus credit rider, owners may elect, up to 90 days before the ninth contract anniversary (and separately, 90 days before the 18th, 27th, and 36th contract anniversaries and every 9th contract anniversary thereafter until ten years prior to the maturity date), an additional credit by PLACA to contract account value as of the contract anniversary immediately following the election. There is no charge for the recurring bonus credit rider. The recurring credit is a percentage of the quantity called the recurring credit recapture base ("RCRB"). The RCRB is equal to the contract account value on the appropriate contract anniversary minus the aggregate premiums paid during the five years prior to that contract anniversary. The RCRB is multiplied by the percentages shown in the following table:

RECURRING BONUS CREDIT TABLE

Contract account value (adjusted)	Recurring credit (in percent)
From \$10,000 to \$24,999	1.5
From \$25,000 to \$99,999	3.0
From \$100,000 to \$499,999	4.0
From \$500,000 to \$999,999	4.5
\$1,000,000 or more	5.0

18. Under the recurring bonus credit rider, PLACA recaptures or retains the credited amount in the event that the owner exercises his or her right to surrender the Contract or withdraw surrender value from the Contract or applies all or part of surrender value to an annuity payment option.

19. Although not a charge, in the event of a withdrawal from the Contract, a percentage of a pro-rata amount of any

recurring credit granted during the prior nine contract years is deducted from contract account value. The appropriate percentage is determined from the following schedule:

RECURRING BONUS CREDIT TABLE

Contract years since recurring credit was granted	Percent of recurring credit (in percent)
1-5	100
6	80
7	60
8	40
9	20
10 and greater	0

The pro-rata amount of the recurring credit to which the percentage is applied is the product of (a) and (b) where:

(a) equals the ratio of the amount being withdrawn in excess of any free withdrawal amount to the lesser of (1) the RCRB, or (2) the contract account value as of the withdrawal date; and

(b) equals the amount of recurring bonus credit that has not previously been withdrawn.

20. Notwithstanding the schedule, the amount of this recapture deduction never exceeds the amount of the withdrawal. After any withdrawal, if the entire recurring credit has not been recaptured, then the remaining amount can be recaptured upon subsequent withdrawals. However, the total amount of deductions from contract account value for this purpose never exceeds the amount of the recurring bonus credit. Likewise, in the event that a Contract is surrendered or annuitized, surrender value excludes the same percentage of the amount of any recurring credit granted during the prior nine contract years.

21. Because of the recapture provisions discussed above, the value of a credit only "vests" or belongs to the owner as the recapture period for the credit expires. As to standard bonus credits resulting from premiums paid before the cancellation period, no part of the credit vests for the owner until the expiration of the cancellation period. After the expiration of the cancellation period, all standard bonus credits vest in full for the owner the year after PLACA grants them. Recurring bonus credits vest in full for the owner according to the recurring bonus credit schedule.

22. Under both the standard bonus credit provision and the recurring bonus credit rider, PLACA credits amounts to an owner's contract account value either by "purchasing" accumulation units of

an appropriate subaccount or adding to the owner's fixed interest allocation option values. Both standard and recurring bonus credits are allocated according to the owner's current net premium allocation instructions.

23. With regard to variable account value, several consequences flow from this. First, increases in the value of accumulation units representing standard bonus credits belong to the owner immediately, but the initial value of such units only belongs to the owner when, or to the extent that, each vests. Similarly, the initial value of accumulation units representing recurring bonus credits vests according to the schedule, but the difference, if any, at any time between the "unvested" value and the current value of such units belongs entirely to the owner. Second, decreases in the value of accumulation units representing bonus credits do not diminish the dollar amount of contract account value subject to recapture. Therefore, for both standard and recurring bonus credits, additional units must become subject to recapture as their value decreases. Stated differently, the proportionate share of any owner's variable account value (or the owner's interest in the PLACA Account) that PLACA can "recapture" increases as variable account value (or the owner's interest in the PLACA Account) decreases. This dilutes somewhat, the owner's interest in the PLACA Account vis-a-vis PLACA and, in his or her variable account value vis-a-vis PLACA.

24. Lastly, because it is not administratively feasible to track the unvested value of bonus credits in the PLACA Account, PLACA deducts the daily annuity charge from the entire net asset value of the Account. As a result, the daily annuity charge paid by any owner is greater than that which he or she would pay without the standard bonus credit and is greater still if he or she elects the recurring bonus rider.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to section 6(c) of the Act exempting them as well as Future Accounts and Future Underwriters from the provisions of sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the recapture of certain credits applied to contract account value and to premium payments made in consideration of the Contracts and Future Contracts.

2. Subsection (i) of section 27 provides that section 27 does not apply to any registered separate account supporting variable annuity contracts,

or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of subsection (i). Paragraph (2) provides that it shall be unlawful for a registered separate account or sponsoring insurance company to sell a variable annuity contract supported by the separate account unless the "contract is a redeemable security; and * * * [t]he insurance company complies with Section 26(e). * * *" Section 26(e)(A)(2) provides that it is unlawful for registered separate accounts or sponsoring insurance companies to sell any variable insurance contract "unless the fees and charges deducted under the contract, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company." Applicants represent that PLACA and PMLIC both comply with section 26(e).

3. Section 2(a)(32) defines a "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company. Rule 22c-1 thereunder imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time as of which such amount is calculated. Specifically, Rule 22c-1, in pertinent part, prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security, except at a price based on the current net asset value of such security, which is next computed after receipt of a tender of such security for redemption, or of an order to purchase to sell such security.

5. Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act and/or any rule under it if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants represent that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

7. Applicants represent that the recapture of both standard bonus credits and recurring bonus credits would not, at any time, deprive an owner of his or her proportionate share of the current net assets of the PLACA Account. Until the appropriate recapture period expires, PLACA retains the right to and interest in each owner's contract account value representing the dollar amount of any invested bonus credits. Therefore, if PLACA recaptures any bonus credit or part of a bonus credit in the circumstances described above, it would merely be retrieving its own assets. PLACA would grant bonus credits out of its general account assets and the amount of the credits (although not the earnings on such amounts) would remain PLACA's until such amounts vest with the owner. Thus, to the extent that PLACA may grant and recapture bonus credits in connection with variable account value, it would not deprive, at the either time, any owner of his or her then proportionate share of PLACA Account assets.

8. Applicants represent that it is the nature of the bonus recapture provisions as they apply to variable account value that an owner would obtain a benefit from a bonus credit in a rising market because any earnings on the bonus credit amount would vest with him or her immediately. Over time, of course, this would cause the owner's share of both the Contract's variable account value and the PLACA Account's net assets to be greater on a relative basis than it would have been without the bonus credit. Conversely, in a falling market an owner would suffer a detriment from a bonus credit because losses on the bonus credit amount would also "vest" with him or her immediately. As explained above, over time this would cause the owner's share of both the Contract's variable account value and the PLACA Account's net assets to decrease on a relative basis.

9. Applicants do not believe that the dynamics of PLACA's proposed bonus credit provisions would violate sections 2(a)(32) or 27(i)(2)(A) of the Act. To begin with, section 2(a)(32) defines a redeemable security as one under the terms of which the holder, *upon presentation to the issuer*, is entitled to receive *approximately* his proportionate share of the issuer's *current* net asset

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

10. PLACA's recapture of any bonus credit could be viewed as the redemption of such an interest at a price other than net asset value. If such is the case, then the bonus credit provisions could be viewed as conflicting with section 22(c) of the Act and Rule 22c-1 thereunder. Applicants contend, however, that the recapture of the bonus credits does not violate section 22(c) of the Act or Rule 22c-1 thereunder. The bonus credit recapture provisions do not give rise to the evils that Rule 22c-1 was designed to address. The Rule was intended to eliminate or reduce, as far as was reasonably practicable, the dilution of the value of outstanding redeemable securities of registered investment companies through their redemption at a price above net asset value, or other unfair results, including speculative trading practices.

11. The evils prompting the adoption of Rule 22c-1 were primarily the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing permitted certain investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding shares. Applicants assert that the proposed bonus credit provisions pose no such threat of dilution.

12. Recaptures of bonus credits result in a redemption of PLACA's interest in an owner's contract account value or in the PLACA Account at a price determined on the basis of the Account's current net asset value and not at an inflated price. Moreover, the amount recaptured will always equal the amount that PLACA paid from its general account for the credits. Similarly, although owners are entitled to retain any investment gains attributable to the bonus credits, the amount of such gains would always be

computed at a price determined on the basis of net asset value.

13. Because the harms that Rule 22c-1 was intended to address do not arise in connection with the proposed bonus credit provisions, the Applicants assert that the provisions do not conflict with the Rule or section 22(c) itself. Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek exemptions from section 22(c) and Rule 22c-1.

14. Applicants also represent that even if the proposed bonus crediting provisions would conflict with sections 2(a)(32), 22(c), or 27(i)(2)(A) of the Act or Rule 22c-1 thereunder, the Commission should grant the exemptions that they request. This is because the bonus credit provisions are generally very favorable for prospective owners. The bonus credits are obviously very beneficial to prospective owners. The recapture provisions of the Contracts and riders temper this benefit somewhat, but owners, unless they die, retain the ability to avoid the recapture. In the case of the recurring bonus, owners do not have to provide any consideration in return for the bonus. They merely elect it and it is granted. Although there is a small downside in declining markets to both standard and recurring bonus credits if the owner withdraws surrender value from the Contract, surrenders the Contract, or annuitizes the Contract, and to the standard bonus credits if the owner dies, the bonus credit provisions and riders (including their dynamic elements) are fully disclosed in the prospectus for the Contracts. They recapture provisions, on balance, do not diminish the overall value of the bonus credit provisions and riders.

15. Applicants represent that the bonus credit recapture provisions are necessary if PLACA is to offer the bonus credits. Applicants assert that it would be obviously unfair to PLACA to permit owners to keep their bonus credits upon their exercise of the Contracts' cancellation right. Because no CDSC applies to the exercise of the cancellation right, the owner could obtain a windfall in the amount of the bonus credit at PLACA's expense by exercising that right. Likewise, because no additional CDSC applies to a withdrawal of contract account value on which a recurring bonus credit is computed, withdrawal or annuitization of such contract account value or surrender of a Contract shortly after the award of recurring bonus credits would afford an owner a similar windfall. In the event of such windfalls to owners, PLACA could not recover the cost of granting the bonus credits. This is

because PLACA intends to recoup the costs of providing the bonus credits through the charges under the Contract, particularly the daily annuity charge. If the windfalls described above are permitted, many owners will take advantage of them, greatly reducing the base from which the daily annuity charge is deducted and greatly increasing the amount of bonus credits that PLACA must provide. Therefore, for both standard bonus credits and recurring bonus credits, the recapture provisions are the price of offering the credits. PLACA simply cannot offer the proposed bonus credits without the ability to recapture those credits in the circumstances described herein.

16. Applicants represent that the Commission's authority under section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, Future Accounts, and Future Underwriters from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder. The exemption of these classes of persons is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. The Commission has previously granted exemptions to classes of similarly situated persons in various contexts and in a wide variety of circumstances, including future exemptions for recapturing bonus credits under variable annuity contracts.

17. Applicants represent that Future Contracts will be substantially similar in all material respects to the Contracts and that each factual statement and representation about the bonus credit provisions of the Contracts (and any recurring bonus credit riders sold with the Contracts) will be equally true of Future Contracts (and any recurring bonus credit riders sold with Future Contracts). Applicants also represent that each material representation made by them about the PLACA Account and 1717 Capital will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in this application. In particular, each Future Account will be established as a segregated asset account under state insurance law, meet the

definition of a "separate account" in Rule 0-1(e) under the Act, and be registered as a unit investment trust. Likewise, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a NASD member.

Applicants' Conditions

Applicants represent that PMLIC and PLACA will only offer recurring bonus credit riders subject to the following conditions:

1. *Election letter.* In connection with the recurring bonus credit, PMLIC or PLACA will send a letter (the "Letter") that prominently discloses in concise plain English that (a) the credit is most suitable for owners who expect to continue their Contracts for five or more years, and (b) if the Contract is surrendered or if contract account value is withdrawn while the recurring bonus remains subject to recapture, then the owner may be worse off in certain circumstances than if he or she had not elected the recurring bonus credit. The Letter will disclose exactly how an owner who surrenders a Contract or makes a withdrawal while the recurring bonus credit remains subject to recapture could be worse off as a result of poor separate account investment performance than if he or she had not elected the recurring bonus credit.

2. *Written Election.* PMLIC or PLACA will send the Letter directly to owners eligible to elect the recurring bonus credit and elections to receive the credit will only be effective upon receipt by PMLIC or PLACA of an election signed by the owner on a duplicate copy of the Letter. PMLIC and PLACA will distribute such duplicate Letters with election signature forms along with the Letter. If the Letter is more than two pages in length, PMLIC and PLACA will use a separate document to obtain owners' elections of the recurring bonus credit; which document will prominently disclose in concise plain English the statements required in condition one above.

3. *Records.* PMLIC and PLACA will maintain the following separately identifiable records in an easily accessible place for review by the Commission staff: (a) Copies of any form of the Letter and any other written materials or scripts for presentations by representatives regarding the recurring bonus credit, including the dates used, (b) records showing the number and percentage (on a calendar quarter basis) of eligible owners that elect the recurring bonus credit, (c) records showing the name and Contract number of each owner who elects a recurring bonus credit, the amount of that owner's

contract account value at the time the bonus credit is elected, the amount of the credit, the owner's name, address, telephone number and date of birth, the date that the owner signed the letter or election form, the signed Letters or separate documents that reflect owners' election of the recurring bonus credit, and where a commission (or other compensation) is paid to a registered representative on or after the date of the election of the credit, the amount of such commission (or other compensation), and the name of any sales representative involved with the solicitation of the election of the credit or who receives any compensation in connection with the contract after the date of the election of the credit and his or her CRD number, firm affiliation, telephone number, and branch office address, (d) records of persistency information for Contracts whose owners have elected the recurring bonus credit, including the date(s) of any subsequent surrender or withdrawal of contract account value and the amount of any recaptured bonus credit, and (e) logs recording any owner complaints about the recurring bonus credit riders, state insurance department inquiries about the same, or litigation, arbitration or other proceedings regarding the riders. The logs will include the date of the complaint (or of commencement of any proceeding), the name and address of the person making the complaint or commencing the proceeding, the nature of the complaint or proceeding and the persons involved in the complaint or proceeding. The foregoing records will be retained for the longer of: (1) six years after the later of their creation or last use, or (2) two years after the recapture period ends.

Conclusion

Applicants request that the Commission issue an order pursuant to section 6(c) of the Act exempting them as well as Future Accounts and Future Underwriters from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the recapture of certain credits applied to contract account value and to purchase payments made in consideration of the Contracts and Future Contracts.

Applicants assert, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the 1940 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.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-22272 Filed 8-30-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24622]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 25, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August, 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549-0102 (tel. 202-942-8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 19, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549-0609.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, at (202) 942-0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549-0506.

Dreyfus Retirement Income Fund [File No. 811-8889]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 31, 1999, applicant made a final liquidating distribution to its sole remaining shareholder based on net asset value. Expenses of \$1,500 incurred in connection with the liquidation were paid by The Dreyfus Corporation, applicant's investment adviser.

Filing Date: The application was filed on August 3, 2000.