

for annual meetings (except to the extent that the Commission may interpret section 16 of the Act not to require such meetings) or comply with section 16(c) of the Act (although the Trust is not, or will not be, the type of Trust described therein), as well as, with section 16(a) of the Act and, if and when applicable, section 16(b) of the Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participating Insurance Companies and all Qualified Plans that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed funding may be appropriate. Each Variable Series will disclose in its prospectus that: (a) Shares of such Variable Series may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Variable Series and the interests of Qualified Plans investing in such Variable Series may conflict, and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any conflict.

10. If and to the extent that Rule 6e-2 or Rule 6e-3(T) under the Act is amended or proposed Rule 6e-3 under the Act is adopted to provide exemptive relief from any provision of the Act, or rules promulgated thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this amended and restated Application, then the Trust and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 or 6e-3(T), as amended, or Rule 6e-3, as adopted, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as the Board may reasonably request so that the Trustees of the Trust may fully carry out the obligations imposed upon them by the conditions contained in this amended and restated Application, and said reports, materials and data will be submitted more frequently if deemed appropriate by the Board. The

obligations of the Participants to provide these reports, materials and data to the Board when it so reasonably requests will be a contractual obligation of all Participants under their agreements governing participation in each Variable Series.

12. All reports of potential or existing conflicts received by the Board of Trustees of the Trust, and all Board action with regard to (a) determining the existence of a conflict, (b) notifying Participants of the existence of a conflict, and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the board meeting minutes of the Trust or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. A Variable Series will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Variable Series unless the Qualified Plan executes an agreement with the Trust governing participation in such Variable Series that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any Variable Series.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consist 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.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47493; File No. SR-Amex-2002-108]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Amend Amex Rule 152 To Provide That a Member That Fails To Execute an Order May Be Compelled To Take or Supply the Securities Named in the Order

March 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² notice is hereby given that on December 18, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to amend Amex Rule 152 to provide that a member that fails to execute an order may be compelled to take or supply the securities named in the order. The text of the proposed rule change is below. Text in brackets indicates material to be deleted, and text in *italics* indicates material to be added.

* * * * *

Taking or Supplying Stock to Fill Customer's Order

Rule 152. (a) No member or member organization shall take or supply for any account in which the member, member organization or any other member, officer or approved person therein has any direct or indirect interest, of which the member knows or should have known, the securities named in a sell or buy order accepted for execution by the member or member organization except as follows:

Error

(1) *A member who neglects to execute an order may be compelled to take or supply for his own account or that of his member organization the securities named in the order.* [A member or member organization which through

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.