

reasons, Applicants submit that the provisions for recapture of any Credits under the New Contracts does not violate section 2(a)(32) and 27 (i)(2)(A) of the Act.

16. 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, their redeemable securities to accomplish the same purposes as contemplated by section 22(c). Rule 22c-1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

17. Applicants state that Pruco Life's and PLNJ's recapture of the Credit might arguably be viewed as resulting in the redemption of redeemable securities for a price other than the one based on the current net asset value of the Accounts. Applicants contend, however, that the recapture of the Credit does not violate section 22(c) and rule 22c-1.

### Conclusion

For the reasons summarized above, Applicants submit that the Exchange Offer and the FlexElite Exchange Program are consistent with the protections provided by section 11 of the Act and that their approval is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants further submit that their request for exemptions from sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and rule 22c-1 thereunder meet the standards set out in section 6(c) of the Act. Applicants submit that the requested order should therefore be granted.

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. IC-25993; File No. 812-12913]

### National Life Insurance Company, et al.; Notice of Application

April 4, 2003.

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

**ACTION:** Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the "Act") approving certain substitutions of securities.

**APPLICANTS:** National Life Insurance Company ("NLIC"), National Variable Annuity Account II ("Annuity Account"), and National Variable Life Insurance Account ("Life Account").

**FILED DATE:** The application was filed on December 19, 2002, and amended and restated on April 3, 2003.

**SUMMARY OF APPLICATION:** Applicants request an order to permit NLIC to substitute securities issued by two series of the Sentinel Variable Products Trust ("SVPT") to support variable annuity contracts or variable life insurance contracts (collectively, the "Contracts") issued by NLIC, for securities issued by two series of the Market Street Fund ("MSF"), and currently held by either the Annuity Account or the Life Account (each, an "Account," together, the "Accounts").

**HEARING OR NOTIFICATION OF HEARING:** An order granting the amended and restated 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 must be received by the Commission by 5:30 p.m. on April 29, 2003, 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, NW., Washington, DC 20549-0609. Applicants, c/o D. Russell Morgan, Esq., Assistant General Counsel, National Life Insurance Company, National Life Drive, Montpelier, Vermont 05604. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004-2415.

### FOR FURTHER INFORMATION CONTACT:

Ellen J. Sazzman, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**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 5th Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

### Applicants' Representations

1. MSF has eleven investment portfolios, two of which are the subject of this application (each, a Portfolio). SVPT currently has five investment portfolios, but is adding two more that are the subject of this application (each, a Fund).

2. NLIC was a mutual life insurance company originally chartered by the State of Vermont in 1848. It is now a stock life insurance company, all of the outstanding stock of which is indirectly owned by National Life Holding Company, a mutual insurance holding company, established under Vermont law in 1999. All owners of NLIC contracts, including the Contracts, are voting members of National Life Holding Company. NLIC is authorized to transact life insurance and annuity business in Vermont and in 50 other jurisdictions. For purposes of the Act, NLIC is the depositor and sponsor of the Annuity Account and the Life Account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

3. NLIC established the Annuity Account on November 1, 1996, and the Life Account on February 1, 1985, as segregated investment accounts under Vermont law. Under Vermont law, the assets of each Account attributable to the Contracts through which interests in that Account are issued are owned by NLIC but are held separately from all other assets of NLIC for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, such assets in each Account equal to the reserves and other liabilities with respect to such Account are not chargeable with liabilities arising out of any other business that NLIC may conduct. Income, gains and losses, realized or unrealized, from assets allocated to each Account are credited to or charged against that Account without regard to the other income, gains or losses of NLIC. Each Account is a "separate account" as