

subaccount) for the 2002 fiscal year. In addition, for twenty-four months following the substitutions, NLIC will not increase asset-based fees or charges for Contracts outstanding on the day of the proposed substitutions.

36. In addition to the prospectus disclosure (and supplements) distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all accumulation or contract value under a Contract invested in any one of the affected subaccounts on the date of the notice to another subaccount available under their Contract without that transfer counting as one of a limited number transfers permitted in a Contract year free of charge. The notice will also reiterate the fact that NLIC will not exercise any rights reserved by it under any of the 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, Contract owners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by NLIC during the 60 days following the proposed substitutions. Current prospectuses for the new Funds will precede or accompany the notices.

37. NLIC also is seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

1. The proposed substitutions appear to involve substitutions of securities within the meaning of section 26(c) of the Act.

2. Applicants state that the Contracts expressly reserve for NLIC the right, subject to compliance with applicable law, to substitute shares of one Portfolio or Fund held by a subaccount of an Account for another. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right.

3. Applicants state that NLIC reserved this right of substitution both to protect themselves and their Contract owners 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 Contract owners. The prospectuses for the Contracts and Accounts contain appropriate disclosure of this right.

4. In the case of the proposed substitutions, the MSF Portfolios would be replaced by funds with substantially similar investment objectives, and management would return to the investment management team which managed the MSF Portfolios prior to the reorganization in late 2000 (in the case of many of the Contract owners, the management team that was in place at the time they made the decision to allocate Contract value to the MSF Portfolios). The substitutions would also prevent Contract owners from being affected by any additional reorganization of MSF as it adapts to Nationwide's acquisition of PMLIC.

5. In addition to the foregoing, Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

6. Applicants anticipate that Contract owners will be at least as well off with the proposed array of subaccounts offered after the proposed substitutions as they have been with the array of subaccounts offered prior to the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer accumulated values and contract values between and among the same number of subaccounts as they could before the proposed substitutions.

7. Applicants argue that each of the proposed substitutions is not the type of substitution which 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 Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer accumulation and contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts 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.

8. In addition, Applicants argue that the proposed substitutions are unlike the type of substitution which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select the specific type of insurance coverage offered by NLIC under their Contract as well as numerous other rights and privileges set forth in the Contract. Therefore, Applicants contend that Contract owners may also have considered NLIC's size, financial condition, type and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed substitutions.

9. 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 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. 34-47628; File No. SR-CBOE-00-55]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 Thereto by the Chicago Board Options Exchange, Incorporated to Establish Rules for a Screen-Based Trading System Known as CBOEdirect

April 3, 2003.

On November 9, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² a proposal to establish rules for a screen-based trading system known as CBOEdirect. Subsequently, CBOE submitted three amendments to the proposed rule change.³ On May 8,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letters from Angelo Evangelou, Legal Division, CBOE, to Nancy Sanow, Division of Market Regulation, Commission, dated October 25, 2001 ("Amendment No. 1"); April 1, 2002 ("Amendment No. 2"); and April 18, 2002 ("Amendment No. 3"). Amendment No. 1 superceded the original submission in its entirety and made substantial changes to the proposed rule

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