

back into the same position as if he or she had never elected the 2% Bonus Exchange Offer (except for market gain or loss on contract value). There will be no recapture of the bonus credit upon withdrawal or surrender except under the Right to Examine provision. The election of the 2% Bonus Exchange Offer will have no adverse tax consequences to the contract owner.

21. Applicants represent that the exchange offer is designed to encourage existing contract owners to remain with Lincoln Life rather than surrender their contracts in exchange for a competitor's product offering similar benefits.

22. Applicants propose to make the exchange offer by providing eligible contract owners with an Offering Document mailed directly from Lincoln Life. Eligible contract owners will also receive a MultiFund 5 prospectus. The MultiFund® 5 prospectus will be supplemented to provide disclosure specifically related to the 2% Bonus Exchange Offer. Eligible MultiFund® 2, 3, and 4 contract owners who express an interest in learning the details of the offer can contact either Lincoln Life or their registered representative for further information.

23. Registered representatives who are responsible for a contract owner accepting the exchange offer will be paid a commission. The commission is less than what the registered representative would receive on the sale of a new MultiFund® 5 Contract.

24. The Offering Document will advise eligible contract owners that the offer is designed for those contract owners who intend to continue to hold their contracts as long-term investments. The Offering Document will state that the offer is not intended for all contract owners, and that it is especially not appropriate for any contract owner who anticipates surrendering an amount of his or her contract value in excess of the annual free withdrawal amount (15% of purchase payments) within the surrender charge period. In this regard, the Offering Document will encourage contract owners to carefully evaluate their personal financial situation when deciding whether to accept or reject the offer. In addition, the Offering Document will explain how a contract owner who elects to participate in the offer may avoid the applicable surrender charge if no more than the annual free withdrawal amount (15% of purchase payments) is surrendered, and any subsequent purchase payments are maintained until expiration of the applicable surrender charge period. In this regard, the Offering Document will state in clear plain English that if the new contract is surrendered during the

initial surrender charge period: (a) The benefits of the 2% Bonus Exchange Offer may be more than offset by the surrender charge; and (b) a contract owner may be worse off than if he or she had rejected the offer.

25. To accept the exchange offer, an eligible contract owner must complete the Lincoln Life internal exchange forms, which will contain the pertinent information so that the exchange will comply with the requirements of Section 1035 of the Internal Revenue Code ("Section 1035"). No adverse tax consequences will be incurred by those contract owners who accept the exchange offer. The exchanges will constitute tax-free exchanges pursuant to Section 1035.

Applicants' Legal Analysis

1. Section 11(a) of the Act makes it unlawful for any registered open-end company or any principal underwriter for such company, to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with Commission rules adopted under Section 11.

2. Section 11(c) of the Act, in pertinent part, requires that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company be approved by the Commission (by order or by rule) or satisfy applicable rules adopted under Section 11, regardless of the basis of the exchange.

3. Account C is registered under the Act as a unit investment trust. Thus, the exchange offer constitutes an offer of exchange of two securities, each of which is offered by a registered unit investment trust.

4. According to the Commission, Congress enacted Section 11 of the Act to prevent "switching," the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges.

5. Section 11(c) of the Act requires Commission approval (by order or by rule) of any exchange, regardless of its basis, involving securities issued by a unit investment trust because investors in unit investment trusts were found by Congress to be particularly vulnerable to switching transactions. Applicants

believe that the potential for harm to investors perceived in switching by Congress was its use to extract additional sales charges from those investors.

6. Applicants represent that, as opposed to providing a means of extracting additional sales charges as contemplated by the prohibitions of Section 11, the proposed exchange offer provides enduring benefits to the contract owners. To the extent that a contract owner ultimately did not benefit from accepting the offer, it would be as a result of his or her own subsequent decision to surrender the exchanged contract in circumstances that would have been the subject of very explicit disclosure.

7. Rule 11a-2, by its express terms, provides for Commission approval of certain types of offers of exchange of one variable annuity contract for another. Other than the relative net asset value requirement, the only other part of Rule 11a-2 that would not be satisfied by the proposed exchange offer is the requirement that payments under the existing MultiFund® 2, 3, and 4 Contracts be treated as if they had been made under the exchanged contracts on the dates actually made. This provision of Rule 11a-2 is often referred to as a "tacking" requirement because it has the effecting of "tacking together" the surrender charge expiration periods of the exchanged and acquired contracts.

8. Applicants believe that tacking should be viewed as a useful way to avoid the need to scrutinize the terms of an offer of exchange to make sure that there is no abuse. Tacking is not a requirement of Section 11. Rather, it is a creation of a rule designed to approve the terms of an offer of exchange "sight unseen." Tacking focuses on the closest thing to multiple deduction of sales loads that is possible in a surrender charge contract—multiple exposure to sales loads upon surrender or redemption. If tacking and other safeguards of Rule 11a-2 are present, there is no need for the Commission or its staff to evaluate the terms of the offer. The absence of tacking in this fully scrutinized Section 11 application will have no import in offers made pursuant to the rule on a "sight unseen" basis.

9. No tacking is required when Lincoln Life's competitors offer their variable annuity contracts to owners of the MultiFund® 2, 3, and 4 Contracts or indeed when Lincoln makes such an offer to competitors' contract owners. In those exchanges, unlike the offer proposed here, the exchanging contract owner actually must pay any remaining surrender charge on the exchanged