

contract at the time of the exchange. The broker/dealers that will be making recommendations to their customers regarding these offers are required to satisfy the suitability requirements. Therefore, while tacking is not present, the investor protection afforded by the suitability requirements imposed upon the broker/dealer and the additional disclosure will be.

10. By this Application, Applicants are seeking a "level playing field" to permit Lincoln to compete with offers of competitors to its longstanding contract owners. Absent the requested relief, there can be no such offers, as imposition of the Rule 11a-2 tacking requirement would make it unfeasible for the offers to be made.

11. Applicants assert that approval of the terms of the exchange offer is warranted, among other reasons, because it will promote competition in the variable annuity marketplace. Such approval will foster competition by allowing Lincoln Life to make an offer to its own contract owners that would provide an attractive additional option for contract owners' consideration.

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions, which are intended to support the understanding that the 2% Bonus Exchange Offer is being made to contract owners who expect to persist:

1. The Offering document will contain concise, plain English statements that:

(a) the 2% Bonus Exchange Offer is suitable only for contract owners who expect to hold their contracts as long term investments; and

(b) if the new contract is surrendered during the initial surrender charge period:

i. the 2% bonus may be more than offset by the surrender charge; and
ii. the contract owner may be worse off than if he or she had rejected the exchange offer.

2. The Offering Document will disclose in concise, plain English each aspect of the New Contract that will be less favorable than the Old Contract, including the fact that the MultiFund® 5 Contract has a lower, guaranteed minimum interest rate for investments in the fixed account than the MultiFund® 2, 3, and 4 Contracts.

3. Lincoln Life will send the Offering Document directly to eligible contract owners. A contract owner choosing the exchange offer will then complete and sign an internal exchange form, which will prominently restate in concise, plain English the statements required in Condition No. 1, and will return it to Lincoln Life. If the internal exchange

form is more than two pages long, the statements referred to in Condition No. 1 will be restated in a separate document, and Lincoln Life will obtain the contract owner's acknowledgement of receipt of that document.

4. Lincoln Life will maintain the following separately identifiable records in an easily accessible place, for the time periods specified below in this Condition No. 4 for review by the Commission upon request:

(a) Records showing the level of acceptances of the exchange offer and how these acceptances relate to the total number of contract owners eligible to participate in the offers (quarterly as a percentage of the number eligible);

(b) Copies of any form of Offering Document and any other written materials or scripts for presentations by representatives regarding the exchange offer that Lincoln Life either prepares or approves, including the dates that such Offering Document and materials were used;

(c) Records containing information about each exchange transaction that occurs, including the name of the contract owner, Old and New Contract numbers; the amount of surrender charge waived on surrender of the Old Contract; bonus paid; the name and CRD number of the registered representative soliciting the exchange, firm affiliation, branch office address, telephone number, and the name of the registered representative's broker-dealer; commission paid; the internal exchange form (and separate acknowledgement, if any) showing the name, date of birth, address, and telephone number of the contract owner and the date the internal exchange form (or separate acknowledgement) was signed; amount of contract value exchanged; and persistency information relating to the New Contract, including the date of any subsequent surrender and the amount of surrender charge paid on the surrender; and

(d) Logs showing a record of any contract owner complaint about the exchange; state insurance department inquiries about the exchange; or litigation, arbitration or other proceeding regarding any exchange. The logs will include the date of the complaint or commencement of the proceeding, name and address of the person making the complaint or commencing the proceeding, nature of the complaint or proceeding, and the persons named or involved in the complaint or proceeding.

Applicants will retain records specified in (a) and (d) for a period of six years after the date the records are created, records specified in (b) for a

period of six years after the date of last use, and records specified in (c) for a period of two years after the date that the initial surrender charge period of the New Contract ends.

Conclusion

For all the reasons discussed above, Applicants submit that (1) the 2% Bonus Exchange Offer offers substantial benefits to contract owners, will be advantageous for the great majority of owners to whom it will be offered, and does not contravene any policy or purpose of Section 11, and (2) approval of Applicants' offer of the exchange offer as described, and subject to the conditions set forth in this Application, is 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. Therefore, Applicants respectfully submit that the Commission should grant the approval sought by this Application.

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. 34-48596; File No. SR-BSE-2003-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to the Exchange's Instant Liquidity Access Service for Certain Limit Orders

October 7, 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 July 14, 2003, the Boston Stock Exchange, Inc. ("BSE" 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. On September 8, 2003, the Exchange submitted an amendment to the filing.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John Boese, Vice President, Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation,