

Congress was its use to extract additional sales charges from those investors.

7. As opposed to providing a means of extracting additional sales charges, as contemplated by the prohibitions of Section 11, Applicants argue that the proposed Offers provide 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 enhanced contract in circumstances that would have been the subject of very explicit disclosure. If the contract is owned by three or more persons an owner who is not the named contract owner or a pre-designated joint owner dies during the new surrender charge period, the remaining contract owners also could be worse off having accepted the Enhancement Offer because the new CDSC will apply. This disclosure provided in the offering materials will give contract owners sufficient information to determine what is best for them.

8. 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 for the Bonus Offer, the only part of Rule 11a-2 that would not be satisfied by the proposed Offers is the requirement that payments under the existing Legacy contracts be treated as if they had been made under the enhanced 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 CDSC expiration periods of the exchanged and acquired contracts.

9. 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 offers of exchange "sight unseen." Tacking focuses on the closest thing to multiple deduction of sales loads that is possible in a CDSC 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.

10. In addition to providing extensive disclosure, the Offers will only be made

to contract owners who are at or close to the expiration of their surrender charge period.

11. No tacking is required when Lincoln Life's competitors offer their variable annuity contracts to owners of the Legacy I and Legacy II contracts or indeed when Lincoln makes such an offer to competitors' contract owners. In those exchanges, unlike the Offers proposed here, the exchanging contract owner actually must pay any remaining CDSC on the exchanged 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. The contract owner who is fully informed of the advantages and disadvantages of the proposed offers is the person who knows best whether the benefits of the offer are appropriate for him or her.

12. 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. Applicants assert that approval of the terms of the Offers 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 which would provide an attractive additional option for contract owners' consideration. Applicants argue that the Offers do not remove choices available; rather competition is increased if Lincoln Life is able to compete on a "level playing field" with its competitors.

#### Applicants' Conditions

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

1. The Offering Document will contain, as relevant, concise, plain English statements that:

(a) The Enhancement Offer is suitable only for contract owners who expect to hold their contracts as long term investments; and

(b)(i) if a contract owner surrenders contract value over and above the free

withdrawal amount before the expiration of the new surrender charge period that applies to the contract value as of the date the Enhancement Offer is accepted, the contract owner will pay surrender charges, which may be substantial, that he or she would not have paid had the offer not been accepted;

(ii) if the contract is owned by three or more persons and an owner who is not the named contract owner or a pre-designated joint owner dies during the new surrender charge period, the remaining contract owners could be worse off having accepted the Enhancement Offer because a new surrender charge will apply; and

(iii) the contract owner may be worse off than if he or she had rejected the Enhancement Offer.

2. Lincoln Life will send the Offering Document directly to eligible contract owners. A contract owner choosing either the Bonus Offer or the EGMDDB Offer will then complete and sign an election 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 election form or the internal exchange form is more than two pages long, Lincoln Life will use a separate document to obtain the contract owner's acknowledgment of the statements referred to in Condition No. 1.

3. Lincoln Life will maintain the following separately identifiable records in an easily accessible place, for the time periods specified below in this Condition 3 for review by the Commission upon request:

(a) Records showing the level of acceptances of the Enhancement Offer and how these acceptances relate to the total number of contract owners eligible to participate in the offer (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 Enhancement 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 Enhancement Offer election that occurs, including the name of the contract owner; the old and new contract numbers; the amount of CDSC waived on the transaction; bonus credit paid; if the EGMDDB is elected or the EGMDDB fee is waived; the name and CRD number of the registered representative soliciting the Enhancement Offer, firm affiliation, branch office address and telephone number of the registered representative