are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–34014 Filed 12–30–99 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24221; File No. 812–11824]

Nationwide Life Insurance Company, et al.

December 23, 1999.

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to purchase payments made under certain variable annuity contracts.

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the 1940 Act to the extent necessary to permit, under specified circumstances, the recapture of credits applied to contributions made under the contracts (the ''Contracts'') that Nationwide will issue through the Separate Accounts, as well as other contracts that Nationwide may issue in the future through Future Separate Accounts that are substantially similar in all material respects to the Contracts (the ''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Nationwide that may in the future serve as general distributor-principal underwriter of variable annuity contracts substantially similar in all material respects to those offered by the Separate Accounts.

APPLICANTS: Nationwide Life Insurance Company (''NLIC''), Nationwide Life and Annuity Insurance Company (''NLAIC'') (NLIC and NLAIC shall be collectively referred to as ''Nationwide''), Nationwide Variable Account—9 and Nationwide Fidelity Advisor Variable Account (collectively, the ''Separate Accounts'') and any current or future separate accounts of Nationwide (''Future Separate Accounts'') that may in the future offer variable annuity contracts substantially similar in all material respects to the contracts and supported by the Separate Accounts, Nationwide Advisory Services, Inc. (''NAS''), Fidelity Investment Institutional Services Company, Inc. (''FIISC''), and any other NASD member broker-dealer controlling or controlled by, or under common control with, Nationwide that may in the future serve as general distributor-principal underwriter of variable annuity contracts substantially similar in all material respects to those offered by the Separate Accounts (collectively ''Applicants'').

FILING DATE: The Application was filed on October 6, 1999, and amended and restated on December 23, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the 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 should be received by the Commission by 5:30 p.m. on January 17, 1999, 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 issue 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 Nationwide Life Insurance Company, One Nationwide Plaza 01–09–V3, Columbus, Ohio 43215, Attn: Heather Harker, Esq.

FOR FURTHER INFORMATION CONTACT: Jane G. Heinrichs, Senior Counsel, at (202) 942–0699, or Susan M. Olson, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. NLIC and NLAIC are stock life insurance companies organized under Ohio law. NLIC is licensed to do business in all fifty states, the District of Columbia and Puerto Rico. NLAIC is licensed to do business in 47 states. NLIC is a wholly owned subsidiary of Nationwide Financial Services, Inc., a holding company. NLAIC is a wholly owned subsidiary of NLIC.

2. Nationwide Variable Account–9 was established on May 21, 1997 and Nationwide Fidelity Advisor Variable Account was established on July 22, 1994. The Separate Accounts are segregated asset accounts of NLIC established under Ohio law for the purpose of funding variable annuity contracts. Any income, gains or losses, realized or unrealized, from assets allocated to the Separate Accounts, are in accordance with the respective Separate Accounts' contracts, credited to or charged against the Separate Accounts without regard to other income, gains or losses of Nationwide. The Separate Accounts are registered with the Commission as unit investment trusts under the 1940 Act.[1] The Separate Accounts fund variable annuity contracts which are registered with the Commission under the Securities Act of 1933 on Forms N–4.[2]

3. NAS and FIISC serve as general distributor-principal underwriter for Nationwide Variable Account–9 and Nationwide Fidelity Advisor Variable Account, respectively. Both entities are registered broker/dealers under the Securities Exchange Act of 1934.

4. The Contracts are sold to individuals as: (i) Non-qualified contracts which are governed for tax purposes by Section 72 of the Internal Revenue Code (the ''Code''); (ii) individual retirement annuities (IRAs), Roth IRAs, SEP IRAs or Simple IRAs which are governed by Section 408 of the Code; (iii) Tax Sheltered Annuities which are governed by Section 403(b) of the Code; or (iv) Investment-Only Contracts, sold to qualified plans governed by Section 401(a) of the Code.

5. The Contracts issued in conjunction with the Separate Accounts are identical in every material respect, except in the array of underlying mutual funds which comprise the variable investment options under the Contracts. Nationwide Variable Account–9 is currently divided into 41 sub-accounts; Nationwide Fidelity Advisor Variable Account is divided into 14 sub-accounts. The Contracts are combination fixed and variable contracts; investment allocations that

[1] File No. 811–8666.

[2] File No. 333–28995 for Nationwide Variable Account–9 and File No. 33–89560 for Nationwide Fidelity Advisor Variable Account.

are not directed to the sub-accounts may by directed to a fixed account supported by the Nationwide general account. In addition, investment allocations may be directed to one or more Guaranteed Term Options which are supported by a non-unitized separate account, effectively functioning as a segmented portion of the Nationwide general account.

6. The Contracts are flexible purchase payment contracts, meaning that additional purchase payments after the first may be made by Contract owners. Generally, the Contracts may be purchased with an initial purchase payment of $15,000; subsequent purchase payments of at least $1,000 may also be made. The Contracts assess a mortality and expense risk charge of 0.95%. In addition, the Contracts assess a contingent deferred sales charge (''CDSC'') of 7% of invested purchase payments in the first two years after the purchase payment is made. Thereafter, the CDSC declines by 1% each year until the eighth Contract year when the CDSC is eliminated. During each Contract year beginning with the first, the Contracts allow the Contract owner to withdraw 10% of all purchase payments without a CDSC. In addition, the CDSC is waived under a variety of other circumstances: upon the death of the annuitant; upon annuitization of the Contract (more than two years after the issue date of the Contract); whenever distributions from the Contract are necessary in order to meet minimum distribution requirements under the Internal Revenue Code; and, under an age-based ''free-withdrawal'' program, allowing Contract owners to make systematic withdrawals of certain Contract value percentages at specified ages without a CDSC.

7. A death benefit will be paid to a named beneficiary should the annuitant die before the annuity payment period has commenced. After two years from the date the Contract was issued, a Contract owner may elect to begin receiving annuity payments. The Contracts also provide features such as asset Rebalancing, dollar cost averaging and systematic withdrawals.

8. The basic Contract features may be modified or augmented by a number of ''rider options.'' The rider options permit Contract owners to elect certain Contract features or benefits that fit their particular needs. Generally, the election of a particular rider option will result in higher explicit expenses for Nationwide or an increased risk that charges associated with the Contract will be inadequate in relation to expenses. Thus, most of the rider options, once elected, result in an increase in the basic mortality and expense risk charge (0.95%). Rider options must be chosen at the time of application. Such rider options include: (1) A reduced purchase payment option; (2) a five-year CDSC option; (3) an additional withdrawal without charge and disability waiver option; (4) a 10 year and disability waiver; (5) a hardship waiver; (6) a one-year step up death benefit; (7) a 5% enhanced death benefit; and (8) a guaranteed minimum income benefit.

9. Nationwide intends to offer an additional rider option under the Contracts which, if elected at the time of application, will result in the crediting of a 3% bonus (the ''Credit'') on all purchase payments made during the first twelve months of the Contract. The Credit on the Contract owner's remitted purchase payments will be funded from the Nationwide general account and will be credited proportionately among the investment options chosen by the Contract owner. No extra amount will be credited to purchase payments made after the first twelve months of the Contract. For this rider option, an annualized fee of 0.45% of the daily net assets of the variable account will be deducted for the first seven Contract years. The option of either electing the extra Credit or not, allows prospective purchasers to choose between two different Separate Account charge structures over the first seven years of the Contract years. The option of either electing the extra Credit or not, allows prospective purchasers to choose between two different Separate Account charge structures over the first seven years of the Contract. If the Credit is elected, total Separate Account charges under the Contract will be an annualized rate of 1.40% of the daily net assets of the Separate Account for the first seven years of the Contract, assuming no other rider options are elected. If the Credit is not elected, total Separate Account charges will be an annualized rate of 0.95% of the daily net assets of the Separate Account for the first seven years of the Contract, once again assuming that no other rider options are elected. Under such circumstances, the decision to elect or decline the extra Credit option will depend primarily on whether the prospective purchaser believes it is more advantageous to have (a) a 1.40% Separate Account charge for first seven years of the Contract, plus the Credit, or (b) a 0.95% Separate Account charge for the first seven years of the Contract, without the Credit. Applicants state that it can be mathematically demonstrated that electing the Credit will yield a greater accumulated Contract value at the end of seven years when the underlying investment options produce a gross annualized return of greater than 7.75%. In other words, a gross annualized return of 7.755 on assets, assuming a 0.95% Separate Account charge deduction and no Credit, will produce the same accumulated Contract value at the end of seven years as a 7.75% gross annualized return, with a 1.40% Separate Account charge deduction plus the Credit. These figures assume no additional purchase payments are made after the first twelve months.

The following tables demonstrate hypothetical rates of return for Contracts with the extra credit option (1.40% total asset charges) and Contracts without the extra Credit option (0.95% total asset charges). the figures are based upon: (a) A $100,000 initial purchase payment with no additional purchase payments; (b) the deduction of Separate Account charges of an annualized rate of 0.95% (base Contract) and 1.40% (Contract with the Credit option) of the daily net asset value; and (c) an assumed annual rate of return before charges of 5.0%, 7.75% and 10.0% for all years for a period of 10 years.

5.00% RATE OF RETURN

Contract year	Base contract (0.95% total asset charges)	Contract with extra credit rider (1.40% total asset charges)
1	$104,050	$106,708
2	108,264	110,549
3	112,649	114,529
4	117,211	118,652
5	121,958	122,924
6	126,897	127,349
7	132,037	131,934
8	137,384	137,277
9	142,948	142,837
10	148,738	148,622

7.75% RATE OF RETURN

Contract year	Base contract (0.95% total asset charges)	Contract with extra credit rider (1.40% total asset charges)
1	$106,080	$109,541
2	114,062	116,496
3	121,819	123,894
4	130,102	131,761
5	138,949	140,128
6	148,398	149,026
7	158,489	158,489
8	169,266	169,266
9	180,776	180,777
10	193,069	193,069

10.00% RATE OF RETURN

Contract year	Base contract (0.95% total asset charges)	Contract with extra credit rider (1.40% total asset charges)
1	$109,050	$111,858
2	118,919	121,478
3	129,681	131,925
4	141,417	143,270
5	154,216	155,592
6	168,172	168,973
7	183,392	183,504
8	199,989	200,111
9	218,088	218,221
10	237,825	237,970

Applicants state that, to the extent permitted, tables similar to the table above may be shown in the prospectus and supplemental sales literature solely for the purpose of illustrating the breakpoint and the operation of the Contract.

After the end of the first seven Contract years, the 0.45% charge for the rider option will no longer be assessed and the Credit will be fully vested. Nationwide intends to administer the removal of the 0.45% rider option charge by decreasing the number of units and increasing the unit value of the sub-accounts in which the Contract owner was invested at the end of the seventh contract year. The process will be accomplished through the replacement of that class of units corresponding to the aggregate Separate Account charges which include the 0.4% rider option charge, with another class of units associated with aggregate Separate Account charges minus the 0.45% rider option charge. The later class of units will have a greater individual unit value than the former, therefore, a reduction in the number of units is necessary to ensure that Contract values will remain unaffected by this process. Although this is not the only method of accomplishing the elimination of the 0.45% rider option charge, Nationwide intends to use the method to minimize the different unit values that must be tracked and administered. Other than the change in unit values and number of units, the removal of the 0.45% charge of the Credit will be entirely transparent to the Contract owner, except that the Credit will at that time be fully vested, and on-going charges against the assets of the variable account will be reduced by an annualized rate of 0.45% of the daily net assets of the variable account.

During the first seven years of the Contract, the Credit will be fully vested except during the contractual free look period and when certain surrenders of Contract value are made. If the free look privilege is exercised, Nationwide will recapture the Credit. Earnings on the Credit, however, will be retained by the Contract owner.

After the free look period and before the end of the seventh Contract year, certain withdrawals from Contract value will subject the Credit to recapture. During the first seven Contract years only, if an amount withdrawn is subject to a CDSC, then a portion of the Credit may be recaptured. No recapture will take place after the seventh Contract year. The Credit will not be subject to recapture if a free withdrawal (not subject to the CDSC) is being made. For purposes of calculating the CDSC surrenders are considered to first come from the oldest purchase payment made to the Contract, then the next oldest purchase payment and so forth. Earnings to the Contract are not subject to CDSC. Thus, if the Contract owner withdraws 13% of purchase payments made within the first Contract year, 3% of the Credit will be recaptured by Nationwide, since the Contract owner may withdraw 10% of purchase payments without a CDSC. This means that the percentage of the Credit to be recaptured will be determined by the percentage of total purchase payments reflected in the amount surrendered that is subject to CDSC. The recaptured amount will be taken proportionately from each investment option as allocated at the time of the withdrawal. No recapture of the Credit will take place if the Contract is annunitized (annuitization is not permitted during the first two Contract years), if a death benefit becomes payable, if distributions are required in order to meet minimum distributions requirements under the Code, if free withdrawals are being taken pursuant to an aged-based systematic withdrawal program, or in connections with any other type of withdrawal not otherwise subject to a CDSC. As indicated previously, after the end of the seventh Contract year, the Credit will be fully vested without limitation and the 0.45% charge associated with the Credit will be eliminated.

Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to the extent necessary to permit Nationwide to issue contracts from the Separate Accounts and any Future Separate Accounts that provide for (i) the recapture of the Credit when the Contract owner returns the Contract during the free-look period; and (ii) the recapture of a portion of the Credit (as described above) when the Contract owner withdraws any amounts subject to CDSC during the first seven years from the date the Contract is issued.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions outlined above with respect to the Contracts and any Future Contracts underwritten or distributed by NAS, FIISC, or any other NASD member broker-dealer controlling or controlled by, or under common control with, Nationwide. Applicants represent that any such Future Contracts funded by the Separate Accounts or Future Separate Accounts will be substantially similar in all material respects to the Contracts described herein. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants represent that the 0.45% charge associated with the rider option providing the Credit is consistent with the requirements of Section 26(e)(A)(2) of the 1940 Act. Section 26(e)(A)(2) provides that it is unlawful for registered separate accounts or sponsoring insurance companies to sell any variable insurance contract "unless the fees and charges deducted under the contract, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company." Because the Credit associated with the rider option will be funded from the Nationwide general account, the Credit creates an expense for Nationwide. In addition, the risk of not recovering that expense is substantial in light of the fact that under several different contingencies, the Credit will be fully or partially vested long before the charge for the Credit is discontinued at the end of the seventh Contract year. Accordingly, Applicants represent that the 0.45% charge associated with the rider, in addition to the basic mortality and expense risk charge of 0.95%, is reasonable and therefore consistent with the

requirements of section 26(e)(2)(A) of the 1940 Act. A similar representation will be made in the registration statements for the Contracts, as required under section 26(e)(2)(A). Applicants also submit that the risk of not recovering the expense associated with the rider option is substantially diminished if the Contract value, including the Credit, is not surrendered or otherwise distributed prior to the end of the seventh Contract year. Thus, the elimination of the 0.45% rider option charge is entirely warranted and will benefit Contract owners.

3. Applicants represent that it is not administratively feasible to track the Credit amount in the Separate Accounts after the Credit is applied. Accordingly, the asset-based charges applicable (when the rider option providing the Credit is elected) to the Separate Account will be assessed against the entire amounts held in the Separate Accounts, even during those periods when the Credit is not completely vested. Accordingly, the aggregate asset based charges assessed against a Contract owner's Separate Account value will be higher than those that would have been charged if the Contract owner's Separate Account value did not include the Credit and the Contract provided for no rider option charge of 0.45%.

4. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

5. Applicants submit that recapturing the Credit will not deprive an owner of his or her proportionate share of the Separate Accounts' current net assets. Applicants state that an owner's interest in the amount of the Credit allocated to his or her annuity account value is subject to the vesting provisions of the Contracts. Until or unless the Credit is vested, Nationwide retains a right and interest in the Credit, although not in any earnings attributable to the Credit. Contractual provisions allowing Nationwide to recapture the Credit (a) upon the exercise of free look privileges, and (b) during the first seven contract years for any amount distributed subject to CDSC, merely allow Nationwide to recover its own assets. Applicants assert that since amounts subject to recapture are not vested, the Contract owner is not deprived of his or her proportionate share of Separate Account assets.

6. In addition, with respect to Credit recapture upon the exercise of the free-look privilege, Applicants state that it would be unfair to allow a Contract owner to retain the amount credited. Applicants state that if Nationwide could not recapture the Credit upon return of the Contract, individuals could purchase a Contract with the intention of retaining the credited amount for an unjustified profit at the expense of Nationwide.

7. Applicants assert that the Credit will be attractive to and in the interest of investors because it will permit owners to have 103% of contributions made during the first twelve months invested in selected investment options from the date the contribution is received. Also, any earnings attributable to the Credit will be retained by the Contract owner in addition to the principal amount of the Credit, provided the contingencies described herein are satisfied. Further, Applicants believe that the optional Credit rider will be particularly attractive to and in the interest of long-term investors due to the elimination of the charge associated with the Credit rider after the seventh Contract year. Applicants assert that the elimination of the charge associated with the Credit will allow prospective purchasers to assess the value of the optional Credit rider, and elect or decline it, based on their particular circumstances, preferences and expectations.

8. Applicants submit that the provisions for recapture of the Credit under the Contracts do not violate Section 2(a)(32) and 27(i)(2)(A) of the 1940 Act. Nevertheless, to avoid any possible uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described herein with respect to the Contracts and any Future Contracts issued in conjunction with the Separate Accounts or any Future Separate Accounts without loss of the relief provided by Section 27(i).

9. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. 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.

10. It could be argued that Nationwide's recapture of the Credit constitutes a redemption of securities for a price other than the current net asset value of the Separate Accounts. Applicants contend, however, that recapture of the Credits does not violate Section 22(c) and Rule 22c–1. Applicants argue that such recapture does not involve either of the evils or harmful events that Rule 22c–1 was intended to eliminate or reduce, namely: (1) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it; and (2) other unfair results including speculative trading practices. To recapture any Credit, Nationwide will redeem Contract owners' interests in the Separate Accounts at a price determined on the basis of current net asset value of the respective Separate Accounts.

Nationwide will only recapture amounts credited when withdrawals are taken subject to a CDSC and when the contractual Free Look right is exercised. The percentage of the Credit recaptured will be determined by the ratio of the amount withdrawn (subject to a CDSC and the contractual Free Look) to the sum of all purchase payments. If, for example, the amount withdrawn (subject to CDSC) equals 50% of purchase payments, 50% of the Credit will be recaptured. Nationwide will not recapture Credits for amounts withdrawn under the Contract due to the following: withdrawals taken in order to meet minimum distribution requirements under the Code; annuitization; payment of a death benefit; free-withdrawals taken as allowed under the contract; or any other type of withdrawal not subject to a CDSC. In no event will the amount recaptured equal more than the amount of the Credit that Nationwide paid out of its general account. Although Contract owners will be entitled to retain any investment gain attributable to the Credit the amount of such gain will be determined on the basis of the current net asset value of the respective Separate Account.

Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. To avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and any Future Contracts (that are substantially similar in all material respects to the Contracts described herein) issued in conjunction with the Separate Accounts or any Future Separate Accounts.

Section 6(c) of the Act provides: The Commission, by rules and regulations upon its own motion, or by Order upon application, may conditionally or unconditionally exempt any person, security, or transactions, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

Applicants assert that their request for an Order is appropriate in the public interest. Applicants state that such an Order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 Act that has not already been addressed in their amended Application described herein. Applicants assert that having them file additional applications would impair their ability to effectively take advantage of business opportunities as they arise. Further Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the amended Application described herein, investors would not receive any benefit or additional protection thereby.

Conclusion

Applicants assert, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the 1940 Act, namely, that the exemptions requested are necessary or appropriate in the public interest and 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.

[FR Doc. 99–34015 Filed 12–30–99 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42272; File No. SR–Phlx–99–42]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change on an Accelerated Basis Relating to Exchange Rule 98, Emergency Committee

December 23, 1999.

On October 13, 1999 the Philadelphia Stock Exchange. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to Exchange Rule 98, Emergency Committee. The proposed rule change was published for comment in the **Federal Register** on November 29, 1999.[3] The Commission received no comments on the proposal. On December 22, 1999 the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change, requesting that the proposed rule be approved for a 120 day pilot to expire on April 21, 2000.[4] This order approves the proposal, as amended, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Exchange Rule 98, *Emergency Committee* (''Emergency Committee'') to update certain of its provisions. First, the composition of the Emergency Committee is to be updated to correspond with previous revisions to the Exchange's governance structure. In 1997, various amendments to the Exchange's Certificate of Incorporation and By-Laws dealing with the governance structure of the Exchange were approved by the Commission.[5] Among other things, a provision was added authorizing the Board of Governors to appoint a Chairman of the Board who would be the full-time, paid Chief Executive Officer of the Exchange, and the President position was eliminated.[6] The proposed rule change, therefore, would replace the ''Chairman of the Exchange'' with the current ''Chairman of the Board'' designation; delete the word ''President'' from the rule as the Exchange no longer has a ''President''; and include the Exchange's On-Floor Vice Chairman [7] as a member of the Emergency Committee.[8]

Second, the proposed rule change deletes a provision authorizing the Emergency Committee to take action regarding CENTRAMART, an equity order entry system which is no longer used on the Exchange's equity trading floor.

Finally, the Exchange is proposing to clarify that the Emergency Committee is authorized to take action if any emergency condition is created by the Year 2000 date change.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–42156 (November 19, 1999), 64 FR 66684.

[4] *See* letter from Richard S. Rudolph, Counsel, Exchange, to Rebekah Liu, Special Counsel, Division of Market Regulation (''Division''), Commission, dated December 22, 1999. Because Amendment No. 2 only requests that the proposed rule be approved for a 120-day pilot, the Amendment is non-substantive in nature. Therefore, the Commission will not solicit comments on Amendment No. 2.

[5] *See* Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997).

[6] *Id.* Other corresponding amendments to the By-Laws were made in connection with the 1997 changes to the Exchange's governance structure. For example, references to ''President'' were changed to ''Chief Executive Officer'' or ''Chairman of the Board.'' *See* PHLX By-law Article IV, Section 4–1 and PHLX By-Law Article V, Section 5–1.

[7] *See* PHLX By-Law, Article IV, Section 4–2.

[8] Thus, under the proposed rule, the Emergency Committee would include five individuals: the Chairman of the Board of Governors; the On-Floor Vice Chairman of the Board of Governors; and the Chairmen of the Floor Procedure Committee, the Options Committee, and the Foreign Currency Options Committee .