

*Friday, Nov. 1, 2002, Room O-13B4
(North Building, 13th Floor, Room B4)*

8:45 a.m. Check-in front desk.

9:00 Convene meeting, identify essential phenomena/issues associated with TRISO particles during accidents and transients (cont.).

10:30 Break.

10:45 Confirm importance ranking criteria and scale, start performing testing of the PIRT process for a postulated accident.

12:00 Lunch.

1:00 p.m. Perform testing of the PIRT process for a postulated accident.

3:15 Break.

3:30 Confirmation of post-meeting action items (format and content) and due dates.

4:00 Public comment period.

4:15 Adjourn.

[FR Doc. 02-25843 Filed 10-9-02; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, October 24, 2002

Thursday, November 7, 2002

Thursday, November 21, 2002

Thursday, December 5, 2002

Thursday, December 19, 2002

The meetings will start at 10 a.m. and will be held in Room 5A-06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members

may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C.

552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: September 30, 2002.

Mary M. Rose,

Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 02-25847 Filed 10-9-02; 8:45 am]

BILLING CODE 6325-49-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25763; File No. 812-12834]

Acacia National Life Insurance Company, et al.; Notice of application

October 4, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an order pursuant to Sections 17(b) and 11(a) of the Investment Company Act of 1940 ("1940 Act" or "Act"), and Rule 17d-1 thereunder.

APPLICANTS: Acacia National Life Insurance Company ("Acacia National"), Acacia National Variable Annuity Separate Account II ("Acacia VA Account"), Acacia National Variable Life Insurance Separate Account I ("Acacia VUL Account," collectively with the Acacia VA Account, the

"Acacia Accounts"), Ameritas Variable Life Insurance Company ("AVLIC"), Ameritas Variable Separate Account VA ("AVLIC VA Account"), Ameritas Variable Separate Account VL ("AVLIC VUL Account," collectively with the AVLIC VA Account, the "AVLIC Accounts") and The Advisors Group, Inc. ("TAG") (collectively, "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order of the Commission (1) permitting the transfer of assets from the Acacia Accounts to the AVLIC Accounts in connection with the assumption reinsurance by AVLIC from Acacia National of the individual variable annuity contracts (the "Acacia Contracts") and individual variable life insurance policies (the "Acacia Policies") to which those assets relate; (2) permitting any joint arrangement that could be deemed to be associated with those reinsurance transactions; and (3) approving the terms of any offers of exchange that may be deemed to be involved in those reinsurance transactions.

FILING DATES: The application was filed on May 31, 2002 and amended and restated on September 26, 2002, and October 2, 2002.

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 on this Application by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on October 29, 2002, 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 issues 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 Jorden Burt LLP, 1025 Thomas Jefferson Street, NW, Suite 400 East, Washington, DC 20007-5208, Attention: W. Randolph Thompson, Esq.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

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 (tel. (202) 942-8090).

Applicants' Representations

1. Acacia National is a stock life insurance company organized under the laws of the Commonwealth of Virginia and a wholly owned subsidiary of Acacia Life Insurance Company ("Acacia Life"). Acacia Life is wholly owned by Ameritas Holding Company, a subsidiary of Ameritas Acacia Mutual Holding Company ("Ameritas Acacia"). On March 29, 2001, Acacia National was re-domesticated in the District of Columbia. Acacia National is engaged in the business of issuing life insurance and annuities throughout the United States, except Alaska, Maine, New Hampshire and New York.

2. The Acacia VA Account is a separate account established by Acacia National on November 30, 1995, for the purpose of funding certain individual variable annuity contracts ("Acacia Contracts"). The Acacia VA Account is registered as a unit investment trust under the 1940 Act (File No. 811-07627), and registration statements filed pursuant to the Securities Act of 1933 ("1933 Act") are in effect with respect to two Acacia Contracts (File Nos. 333-53732 and 333-03963).

3. The Acacia VUL Account is a separate account established by Acacia National on January 31, 1995, under Virginia law for the purpose of funding certain individual variable life insurance policies ("Acacia Policies"). The Acacia VUL Account is registered as a unit investment trust under the 1940 Act (File No. 811-8998), and registration statements filed pursuant to the 1933 Act are in effect with respect to three Acacia Policies (File Nos. 33-90208, 333-95593 and 333-81057).

4. All assets of the Acacia Accounts are invested in shares of portfolios of various investment companies ("Underlying Portfolios") each of which is registered under the 1940 Act, and the shares of each of which are registered pursuant to the 1933 Act.

5. AVLIC is a stock life insurance company organized under the laws of the State of Nebraska. AVLIC is engaged in the business of issuing life insurance and annuities throughout the United States, except New York. AVLIC is an indirect majority-owned subsidiary of Ameritas Acacia, the ultimate parent of Ameritas Life Insurance Corp. ("Ameritas Life"). In 1996, Ameritas Life entered into a joint venture with AmerUs Life Insurance Company ("AmerUs") forming AMAL Corporation

("AMAL"), a holding company that initially owned the common stock of AVLIC and Ameritas Investment Corporation. As of April 1, 2002, shares of AMAL were also transferred to Acacia Life, Acacia National and Acacia Financial Corp. ("AFCO").

AmerUs is a life insurance company with its principal place of business in Des Moines, Iowa. It is a wholly-owned subsidiary of AmerUs Group Co. and is not affiliated with Ameritas Life other than through the joint ownership of AMAL. Both Ameritas Life and AmerUs now guarantee the obligations of AVLIC through their agreement forming AMAL Corporation ("AMAL"), a holding company that owns the common stock of AVLIC, and is in turn a majority-owned subsidiary of Ameritas Life.

6. The AVLIC VA Account is a separate account newly established by AVLIC under Nebraska law for the purpose of funding certain individual variable annuity contracts ("AVLIC Contracts" collectively with the Acacia Contracts, "Variable Contracts"). The AVLIC VA Account is registered as a unit investment trust under the 1940 Act, and registration statements filed under the 1933 Act are in effect with respect to the AVLIC Contracts.

7. The AVLIC VUL Account is a separate account newly established by AVLIC under Nebraska law for the purpose of funding certain individual variable life insurance policies ("AVLIC Policies" collectively with the Acacia Policies, "Variable Policies"). The AVLIC VUL Account is registered as a unit investment trust under the 1940 Act, and registration statements filed pursuant to the 1933 Act are in effect with respect to the AVLIC Policies.

8. All assets of the AVLIC Accounts, like those of the Acacia Accounts, will be invested in shares of the Underlying Portfolios. There will be no change in the investment advisers, or sub-advisers to, assets of, or charges imposed by, the Underlying Portfolios in connection with, or by virtue of, any of the transactions described below. The AVLIC Contracts are identical to the Acacia Contracts, and the AVLIC Policies are identical to the Acacia Policies in all material respects, including current and maximum permitted charges. The AVLIC Contracts will be issued in exchange for the variable portion of the Acacia Contracts, and the AVLIC Policies will be issued in exchange for the variable portion of the Acacia Policies as part of the assumption reinsurance transactions described below.

9. TAG is an affiliate of Acacia National and wholly owned by AFCO, a subsidiary of Acacia Life, and serves

as the distributor of the Acacia Contracts and Policies. TAG is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the National Association of Securities Dealers, Inc. (the "NASD"). TAG enters into selling group agreements with affiliated and unaffiliated broker-dealers. The Acacia Contracts and Policies are sold by licensed insurance agents who are registered representatives of TAG or other broker-dealers that are registered under the 1934 Act and are members of the NASD.

10. Applicants propose to implement, as part of a larger reorganization plan to consolidate their product lines and corporate organization, a restructuring that would permit AVLIC, through the AVLIC Accounts, to serve as the issuer of the Variable Contracts and Policies. The restructuring would be accomplished through an asset transfer agreement, modified coinsurance agreement and assumption reinsurance agreement.

11. On April 1, 2002, Acacia National entered into a modified coinsurance agreement (the "Coinsurance Agreement") with AVLIC relating to the Acacia Contracts and Policies. Under that agreement, AVLIC agreed to accept, and to reinsure and indemnify, and Acacia National agreed to "cede" (*i.e.*, transfer to) and reinsure with AVLIC, all of Acacia's National's obligations with respect to the variable portion of the Acacia Contracts and the variable portion of the Acacia Policies, including any and all riders and any supplementary contracts associated therewith, and any Acacia Contracts or Policies in the process of 1035 exchanges. AVLIC agreed that the reinsurance under the Coinsurance Agreement would (a) be coinsurance on all of the rights, obligations and liabilities of Acacia National under the Acacia Contracts and Policies, (b) follow the forms of Acacia National, and (c) be in the amount of the benefit provided by the Acacia Contracts and Policies.

Coinurance involves reinsurance of the obligations of an issuer of insurance contracts where both the issuer of the contracts and the reinsurer remain fully obligated under the contracts, and the owner of the contract may look to either or both for performance of the issuer's obligations under those contracts. If Acacia Contracts or Policies are surrendered or terminated before the effective date of the Coinsurance Agreement but are reinstated before the effective date, those Contracts and Policies will be covered under the Coinsurance Agreement. For all other

incidents occurring at any time, AVLIC is responsible for any and all rights, obligations or liabilities under the Acacia Contracts and Policies, to the extent not paid for prior to the effective date of the Coinsurance Agreement, and for the maintenance of any assets or reserves in connection therewith. Concurrently with the execution of the Coinsurance Agreement, Acacia National and AVLIC also entered into and executed an assumption reinsurance agreement (the "Assumption Agreement"). The Assumption Agreement is a true novation or substitution of one insurer (AVLIC) for the other (Acacia National) after which owners of Acacia Contracts or Policies which have been "assumption reinsured" could look only to AVLIC (and no longer to Acacia National) for performance of the obligations under the AVLIC Contracts and Policies.

12. In accordance with the Agreement of Merger and Plan of Reorganization ("TAG Merger Agreement") with an effective date of April 1, 2002, AMAL will transfer 2.97% of the outstanding stock of AMAL to AFCO. In return, AFCO agrees to transfer all outstanding stock of TAG to AMAL. Following the closing of the TAG Merger Agreement, AMAL will continue to be a directly majority-owned subsidiary of Ameritas Life.

13. In accordance with the Asset Transfer Agreement with an effective date of April 1, 2002, AVLIC will transfer 7.43% of the outstanding stock of AMAL to Acacia National. Following the closing of the Asset Transfer Agreement, AMAL will continue to be a directly majority-owned subsidiary of Ameritas Life.

14. In accordance with the Distribution Commitment Agreement for Variable Business ("Distribution Agreement") with an effective date of April 1, 2002, AVLIC will transfer 3.48% of the outstanding stock of AMAL to Acacia Life. Following the closing of the Distribution Agreement, AMAL will continue to be a directly majority-owned subsidiary of Ameritas Life.

Prior to all stock transfers, 61% of AMAL's stock was owned by Ameritas Life and 39% was owned by AmerUs. When all of these transactions have been completed, AMAL's stock ownership will be: Ameritas Life, 52.53%; AmerUs, 33.59%; Acacia Life, 3.48%; Acacia National, 7.43%; and AFCO, 2.97%.

15. Acacia National and AVLIC entered into the Assumption Agreement with an effective date of April 1, 2002. Assumption reinsurance is reinsurance

where only the company reinsuring the issuing company assumes all of the obligations under the contracts or policies reinsured; the company that issued the contracts or policies would no longer be obligated in any way on those contracts and policies covered by the assumption reinsurance. In the Assumption Agreement, Acacia National agreed to transfer to AVLIC (by way of assumption reinsurance) all of its obligations and liabilities under the Acacia Contracts and Policies and all of its rights thereunder (e.g., the rights to receive contract or policy charges), and AVLIC agreed to assume all of those obligations (e.g., the obligation to pay surrender values and death benefits), liabilities and rights. AVLIC will issue an "assumption certificate" approved for use by the appropriate state insurance regulatory authorities, to each owner of an Acacia Contract or Policy (an "Owner") to be reinsured by it. The assumption certificate will inform the Owner of AVLIC's assumption of Acacia National's obligations, liabilities and rights under the Acacia Contracts and Policies, that the Owner will become a contract or policy owner of AVLIC and that there will be no impact on his or her contract or policy value as a result of the Assumption Agreement. No fee or commission is payable by or to Acacia National or by or to any other party to the Assumption Agreement.

16. The Assumption Agreement is also subject to the satisfaction of various conditions, including the making of all required filings with and obtaining all necessary approvals of applicable state insurance authorities. All of the conditions precedent to the obligations of AVLIC and Acacia National pursuant to the Assumption Agreement are to be fulfilled or satisfied by the closing date of the Assumption Agreement, including the assignment or novation of the Coinsurance Agreement for the benefit of AVLIC. However, it is anticipated that the transfer and assumption will take place in a series of transactions, because all required clearances from state insurance authorities to the assumption reinsurance of the Acacia Contracts and Policies may not have been obtained at the time of the closing date. Until any Acacia Contracts or Policies that cannot be assumption reinsured on the closing date of the Assumption Agreement can be assumption reinsured, they will continue to be governed by the Coinsurance Agreement, under which AVLIC will perform all functions necessary for the proper administration of the Acacia Contracts and Policies, but

Acacia National will remain obligated under those Contracts and Policies.

17. The assumption reinsurance of the Acacia Contracts and Policies is subject to, among other things, the parties having obtained from the Commission any order necessary to permit the transactions; and having effective registration statements under the 1933 Act relating to the AVLIC Contracts and Policies that are to be issued in exchange for the Acacia Contracts and Policies. Consequently, Applicants expect the assumption reinsurance of the Acacia Contracts and Policies to take place at dates subsequent to the closing date of the Assumption Agreement. When all conditions to the closing of the agreement as it relates to the Acacia Contracts and Policies have been satisfied, assets of the Acacia Accounts equal to the contract liabilities attributable to the fixed and variable portions of the Acacia Contracts and Policies being assumption reinsured will be transferred to AVLIC. Because many states require that Owners be given the opportunity to voice their opinion on the assumption of their contracts or policies ("opt in" and "opt out" rights), Applicants expect AVLIC to initially assumption reinsurance Acacia Contracts and Policies in approximately four states, and thereafter to reinsurance Acacia Contracts and Policies in the remaining jurisdictions upon obtaining the necessary state authority or approvals. Subsequent assumption reinsurance with respect to the Acacia Contracts and Policies will take place in a series of transactions as state authority or approvals are obtained and required notifications have been made to Owners.

18. Upon the assumption reinsurance of an Acacia Contract or Policy, AVLIC will issue an assumption certificate to the Owner. The assumption certificate will inform the Owner of the assumption by AVLIC of all of Acacia National's liabilities under the Acacia Contracts and Policies. In addition, because the charges against assets of the AVLIC Accounts (sometimes referred to herein as the "Reinsuring Accounts") under AVLIC Contracts and Policies are identical to the charges against assets of the Acacia Accounts under the corresponding Acacia Contracts and Policies, the assumption certificate will also inform the Owner that there will be no impact on the Owner's contract or policy value because of the assumption reinsurance transactions contemplated in the Assumption Agreement. After receipt of an assumption certificate, an Owner will deal directly with AVLIC, and any further premiums the Owner wishes to apply to an Acacia Contract or

Policy will be forwarded directly to AVLIC for allocation to the appropriate AVLIC Account.

19. The terms of the AVLIC Contracts or Policies are the same as those of the Acacia Contracts and Policies, but for the issuer of the respective Contracts or Policies. The assumption reinsurance of the Acacia Contracts and Policies will not change the number of accumulation or annuity units credited under the Variable Contracts or Policies or the value of such units, which will continue to be affected only by the investment performance of the Underlying Portfolios. Further, because shares of the Underlying Portfolios held by the Acacia Accounts will be transferred to the Reinsuring Accounts on the date a reinsurance transaction is effected, and because both the Acacia Accounts and the Reinsuring Accounts are administered at the same location using the processing system, there will be no interruption of investment performance. No charges or expenses will be incurred by the Acacia Accounts, the Reinsuring Accounts or the Underlying Portfolios in connection with the transfer of shares of the Underlying Portfolios because the transfer will be made by book entry on the shareholder records of the Underlying Portfolios. There will be no change in the values of any amounts allocated to fixed account funding options under the Acacia Contracts or Policies, and no charges to those accounts will be made as a result of the assumption reinsurance transactions. Any costs of the transactions will be born by AVLIC. Accordingly, contract values under AVLIC Contracts and Policies will be the same as they would have been under the Acacia Contracts and Policies had the assumption reinsurance transaction not occurred. The AVLIC Contracts and Policies will be sold through the same principal underwriter (TAG) after the assumption reinsurance transactions. There will be no tax consequences, adverse or otherwise, to Owners as a result of the assumption reinsurance of their Acacia Contracts or Policies. Finally, the fixed guarantee obligations that are not allocated to the AVLIC Accounts (e.g., minimum death benefit and fixed account accumulations) will be supported by the general account assets of AVLIC and by guarantees of AVLIC's obligations by two of its parents, Ameritas Life and AmerUs. These fixed obligations are thus supported by far greater assets than those of Acacia National.

20. Applicants anticipate that one or more jurisdictions may require that Owners of Acacia Contracts or Policies assumption reinsured by AVLIC be

afforded the right to "opt out" of or "opt in" to the assumption reinsurance of their Contracts or Policies. Thus, a state may require that an Owner be permitted to object to the assumption reinsurance of his or her Acacia Contract or Policy within a specified number of days after the Owner receives notice by means of a negative consent ("opt out") or affirmative consent ("opt in") to the assumption reinsurance transaction. If, under such an opt out provision, timely objection from the Owner were received by the reinsuring company, the Acacia Contract or Policy would be not be assumption reinsured, and the Owner would continue to deal directly with Acacia National as to all aspects of his or her Acacia Contract or Policy. However, the Acacia Contract or Policy would continue to be coinsured by AVLIC and AVLIC would perform all administrative services with respect to the Acacia Contract or Policy pursuant to the Coinsurance Agreement. The assumption reinsurance transaction and related requests to Owners for consents in connection with opt in or opt out rights will comply in all respects with applicable state insurance laws.

21. Acceptance of an opt out right after the assumption reinsurance transaction has occurred will result in the Owner being restored to the same position he or she would have had if the transaction had not taken place. The number of accumulation units or annuity units credited under a Variable Contract or Policy will remain unchanged, and the value of such units will be identical to what it would have been had the reinsurance transaction not occurred. In addition, there will be no tax consequences to the Owner resulting from the election of the opt out right.

22. AVLIC may continue to afford Owners who have previously opted out of (or have not opted in to) the assumption reinsurance of their Acacia Contracts or Policies a second opportunity to have their contract or policy assumed by AVLIC by issuing to them a second assumption certificate which would include any state-mandated opt out (or opt in) provision. Owners opting out (or opting in to) the reinsurance of their Acacia Contracts or Policies at this time would thereafter remain with Acacia National and have their contract or policy values based on the applicable Acacia Account. Because Applicants anticipate that only a few Owners will remain with Acacia National, Acacia National may seek at a future date to deregister the Acacia Accounts pursuant to Section 8(f) of the 1940 Act or to take such other steps as it deems appropriate to reduce the

number of Acacia Contracts and Policies outstanding or the administrative burdens presented by such contracts and policies.

23. On or about September 25, 2002, AVLIC sent assumption certificates to Owners in those states where the assumption has received state insurance regulatory approval. Concurrent with this mailing, AVLIC sent, under separate cover letter, the applicable AVLIC prospectus to each Owner. The majority of these states allow for the assumption reinsurance to become effective either: (a) Immediately upon mailing of this notice; or (b) upon the passage of time (anywhere from 10 to 30 days) after the mailing of the certificate, assuming the Owners fail to send an "opt out" notice during this time period. The "opt out" rights were explained in the written materials sent to each Owner with the AVLIC prospectuses. For Owners in such states, the assumption certificate and cover letter stated that Acacia National and AVLIC will assume reinsurance this portion of the Acacia Policies effective November 1, subject to receiving an order from the Commission granting the application. (Any mention of receiving an order in this or other communications stated or will state that there can be no assurance of the order being issued.)

Another category of Owners receiving the mailings made on or about September 25th, including the current prospectus, were those in states that require affirmative election from Owners to "opt in" to the assumption reinsurance transaction. Materials provided to those individuals explained that the reinsurance will become effective only: (a) After receiving an order from the Commission granting the application; (b) after receiving an affirmative ballot from the Owner electing to participate in the assumption transaction; and (c) in any case, not before November 1, 2002.

Finally, Owners in states that had not approved the assumption reinsurance transaction by September 25 will be mailed assumption certificates, current prospectuses, and other appropriate materials as their states approve the transaction. Owners in such states will in all instances receive these materials at least 30 days (assuming reasonable mail delivery) prior to the assumption becoming effective, and always subject to the state opt-in or opt-out requirements and Applicants having received the order requested in their application with the Commission.

Applicants' Legal Analysis

1. Section 17(a)(1) of the 1940 Act, in pertinent part, prohibits any affiliated

person or promoter of or principal underwriter for a registered investment company, or any affiliated person of such an affiliated person, promoter or principal underwriter, acting as principal from knowingly selling to or purchasing from such registered company any security or other property with exceptions not relevant to the transactions described in the application.

2. Section 2(a)(3) of the Act defines "affiliated person" of another person in pertinent part as (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (b) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, such other person; or (d) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

3. Applicants state that the prohibitions of section 17(a) would apply to the Acacia Accounts' sale of shares of the Underlying Portfolios to AVLIC in connection with the assumption reinsurance of the Acacia Contracts and Policies if the Acacia Accounts were deemed to have been at that time under common control with the Reinsuring Accounts and, therefore, an affiliated person of registered investment companies. Similarly, section 17(a) would prohibit the Reinsuring Accounts' purchase of shares of the Underlying Portfolios from the Acacia Accounts if the Reinsuring Accounts were deemed to have been affiliated persons of the Acacia Accounts, also registered investment companies. Moreover, section 17(a) applies to the Reinsuring Accounts' purchases of shares of the Underlying Portfolios because of AVLIC's affiliation with TAG, which will continue to act as principal underwriter for the Acacia Accounts.

4. Section 17(b) of the 1940 Act provides that, notwithstanding section 17(a), a person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more of the prohibitions of section 17(a). The Commission shall grant such application if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person

concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and in reports filed under the Act; and (c) the proposed transaction is consistent with the general purposes of the Act.

5. Applicants seek an order of the Commission under section 17(b) of the 1940 Act granting an exemption from the prohibitions of section 17(a) to the extent necessary to permit the transfer of shares of the Underlying Portfolios from the Acacia Accounts to the Reinsuring Accounts in connection with the assumption reinsurance of the Acacia Contracts and Policies. Applicants submit that the proposed transfer of shares meets the standards for relief imposed by section 17(b) of the Act.

6. Applicants submit that the terms of the proposed arrangement are fair and reasonable and do not involve overreaching. The proposed arrangement is not susceptible to the kinds of serious harms that could result from a violation of section 17(a). Applicants state that there is no possibility of any overreaching or disadvantageous pricing because the only consideration to be received by the Acacia Accounts and to be paid by the Reinsuring Accounts is the Reinsuring Accounts' assumption of the obligations and liabilities held in the Acacia Accounts with respect to the Acacia Contracts and Policies being assumption reinsured. The value of the shares of the Underlying Portfolios to be transferred will equal the amount of the liabilities assumed, and that value will be computed in accordance with provisions of the 1940 Act and the rules thereunder.

7. Applicants also submit that the terms of the transactions will be consistent with the investment objectives and policies of the Acacia Accounts and Reinsuring Accounts because the objectives and policies of the Acacia Accounts and Reinsuring Accounts are to invest exclusively in shares of the Underlying Portfolios.

8. Finally, Applicants submit that the proposed transactions are consistent with the general purposes of the 1940 Act because the interests of the Owners are not adversely affected by the assumption reinsurance of their Acacia Contracts or Policies. As noted, the terms of the Variable Contracts and Policies remain unchanged, and the value of the Variable Contracts and Policies are unaffected by the transactions. AVLIC has been providing administrative services for the Acacia Contracts and Policies, so services

provided will remain the same. Further, the proposed assumption reinsurance of the Acacia Contracts and Policies affords Owners the opportunity to have their contracts and policies remain with a company that is part of the Ameritas Acacia group and that is committed to the issuance of variable annuities and other variable products.

9. Section 17(d) of the 1940 Act, in pertinent part, prohibits any affiliated person of or principal underwriter for a registered investment company, or any affiliated person of such an affiliated person or principal underwriter, acting as principal from effecting any transaction in which such registered company is a joint or joint and several participant with such person, principal underwriter or affiliated person in contravention of rules and regulations adopted by the Commission if the participation of the registered company is on a basis different from or less advantageous than that of other participants.

10. Rule 17d-1 under the Act provides, in pertinent part, that no affiliated person of or principal underwriter for any registered investment company and no affiliated person of such a person or principal underwriter, acting as principal, shall participate in, or effect any transaction in connection with, any "joint enterprise or other joint arrangement or profit-sharing plan" in which such registered company is a participant unless an application with regard thereto has been granted by order of the Commission. Rule 17d-1(c) defines "joint enterprise or other joint arrangement or profit-sharing plan" as any arrangement or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company and any affiliated person of or a principal underwriter for such registered investment company, or any affiliated person of such a person or principal underwriter, have a joint or a joint and several participation, or a share in the profits of such enterprise or undertaking.

11. Applicants state that it is possible that the assumption reinsurance arrangements could be deemed to be subject to Rule 17d-1. Accordingly, Applicants request an order pursuant to Rule 17d-1 to permit, to the extent necessary, the proposed assumption reinsurance arrangements. Rule 17d-1 provides that in passing upon an application filed pursuant to the rule, the Commission will consider "whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is

consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants."

12. Applicants assert that if the relief from the provisions of Sections 17(a) and 11 requested herein is granted, the proposed assumption reinsurance agreement will not otherwise be inconsistent with any provision, policy or purpose of the 1940 Act. As noted, the principal effect of the reinsurance transactions will be to substitute a new insurance company responsible for the performance of the obligations of the Acacia Contracts and Policies. Applicants state that although the participation of each registered investment company in the reinsurance arrangement is different from that of the other participants, such difference is attributable to the separate and distinct interests of each party to the transaction. Applicants maintain that because the assumption reinsurance agreement is fair to Owners and will not affect the underlying investments on which the performance of their Variable Contracts or Policies depends, the requested relief should be granted.

13. Section 11(a) of the 1940 Act makes it unlawful for a registered open-end investment company, or its principal underwriter, to offer securities of an open-end investment company in exchange for other securities of the same or another open-end investment company unless the exchange either is based on the respective net asset values of the securities or the terms of the offer have received prior approval of the Commission. Section 11(c) of the Act provides that in the case of a unit investment trust the prohibition of Section 11(a) is applicable regardless of the basis of exchange.

14. Rule 11a-2 under the 1940 Act permits an offer by a registered variable annuity separate account or any principal underwriter for such an account to the holder of a security of any other registered variable annuity separate account having an insurance company depositor or sponsor that is an affiliate of the offering account's depositor or sponsor to exchange his or her security for a security of the offering account when both contracts are subject to a deferred sales load if: (a) The exchange is made at the relative net asset values of the securities to be exchanged, with exceptions not here applicable; (b) the deferred sales load imposed on the acquired security is calculated as if the holder of such security had been the holder thereof from the date on which he or she became the holder of the exchanged

security and purchase payments made for the exchanged security had been made for the acquired security on the dates on which they were made for the exchanged security; and (c) the deferred sales load imposed on the acquired security does not exceed nine percent of the sum of the purchase payments made for the acquired security and the exchanged security.

15. The assumption reinsurance of the Acacia Contracts and Policies by AVLIC will involve the issuance of AVLIC Contracts and Policies in exchange for the Acacia Contracts and Policies. Applicants believe that in most states this may be done without the consent of Owners. However, certain states may require that Owners resident in that state be given the right to object to the exchange by requiring that they be afforded the right to opt out of (or not opt in to) the reinsurance of their Acacia Contracts or Policies. Where such right is provided, an offer of exchange may be deemed to exist to which the provisions of Sections 11(a) and (c) may apply.

16. Applicants assert that any offers of exchange involved in the assumption reinsurance of the Acacia Contracts will satisfy all of the conditions of Rule 11a-2 and will be permitted by that rule. Accordingly, no Section 11 relief is requested in connection with that aspect of the reinsurance transactions. However, Applicants state that there is uncertainty that the relief in Rule 11a-2(b)(2) would extend to an offer of exchange of variable life insurance contracts. Accordingly, Applicants request approval, to the extent necessary, of any exchange offers that may be deemed to be entailed in the assumption reinsurance of the Acacia Policies.

17. Applicants assert that any offers of exchange involved in the assumption reinsurance of the Acacia Policies would satisfy all of the conditions of Rule 11a-2 because they will be made at the relative net asset values of the securities to be exchanged; any deferred sales load imposed on the AVLIC Policies will be calculated as if the Owner had been the holder thereof from the date on which he or she became the holder of the Acacia Policy, and purchase payments applied to the Acacia Policy had been made for the AVLIC Policy on the dates on which they were applied to the Acacia Policy; and the deferred sales load imposed under the AVLIC Policy will not exceed nine percent of the sum of the purchase payments made for the Acacia and AVLIC Policies.

18. Applicants request an order pursuant to Section 11(a) under the 1940 Act to the extent necessary to

permit the offers of exchange that may be deemed to be involved in the assumption reinsurance of the Acacia Policies. Applicants assert that, because no new sales or other charges will be assessed in connection with the assumption reinsurance of the Acacia Policies by AVLIC, the principal abuse at which Section 11(a) is directed will not be present. Section 11(c) of the 1940 Act requires Commission approval, irrespective of the basis of exchange, where a unit investment trust security is exchanged for another investment company security. The requirement of approval of such exchanges appears to have been designed to avoid possible unfairness latent in such exchanges, even if they are made at net asset value.

19. Applicants submit that the terms of any offers of exchange involved in the proposed assumption reinsurance of the Acacia Policies by AVLIC are fair and should be approved by the Commission. As previously stated, no new sales or other charges will be assessed at the time of, or as a result of, the assumption reinsurance of the Acacia Policies, and no provisions of the Variable Policies will be changed at the time of, or as a result of, assumption reinsurance of the Policies. Owners will have the same opportunity as they currently have to invest in the same Underlying Portfolios, and the number and value of the accumulation and annuity units credited under an AVLIC Policy at the time an Acacia Policy is assumption reinsured will be the same as they would have been if the assumption reinsurance transaction had not taken place. If an Owner should elect to opt out of the assumption reinsurance of his or her Acacia Policy after the transaction has occurred, the number and value of the accumulation units and annuity units credited under his or her Acacia Policy upon its reissue will be the same as if the reinsurance had not taken place. As noted, neither the reinsurance of the Acacia Policies nor the election to opt out of (or not opt in to) the reinsurance transaction will have any adverse tax consequences to Owners. Finally, any exchange of variable life policies will be made at the relative net asset values of the securities to be exchanged and any deferred sales loads imposed under the AVLIC Policies will comply with the provisions of Rule 11a-2(d) under the 1940 Act.

20. Applicants state that, in effect, the only material change resulting from the reinsurance of the Acacia Policies is a change in the insurance company directly responsible to Owners for the performance of Variable Policy obligations, for under the Coinsurance Agreement described above, AVLIC will

not only perform all administrative services with respect to the Acacia Policies not assumption reinsured but it will bear any gain or loss that Acacia National would otherwise incur with respect to such Acacia Policies.

Applicants state that AVLIC has substantial assets, and capital and surplus to assure the performance of its respective obligations under the Variable Policies. Further, Owners will receive current prospectuses for the AVLIC Policies and will have sufficient information on which to base any opt-in or opt-out decision.

Conclusion

For the reasons stated herein, Applicants submit that the terms of the proposed transaction meet all of the requirements of Sections 17(b) and 11(a) of the 1940 Act, and of Rule 17d-1 thereunder and that an order should, therefore, be granted.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02-25743 Filed 10-9-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46587; File No. SR-CHX-2002-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Reinstate and Extend a Pilot Rule Interpretation Relating to Trading of Nasdaq/NM Securities in Subpenny Increments

October 2, 2002.

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 October 1, 2002, the Chicago Stock Exchange, Incorporated (“CHX” 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. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6)⁴ thereunder, which renders the proposal effective

upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reinstate and extend through January 31, 2003, the pilot rule interpretation relating to the trading of Nasdaq/NM securities in subpenny increments. The pilot expired on September 30, 2002. The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is a reinstatement and extension of the pilot’s expiration date through January 31, 2003. The text of the proposal is available at the Commission and at the CHX.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (CHX Article XXX, Rule 2, Interpretation and Policy .06 “Trading in Nasdaq/NM Securities in Subpenny Increments”)⁵ that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer (“NBBO”) by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot was extended on three occasions and expired on September 30, 2002.⁶ The CHX now proposes to

⁵ See Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001)(SR-CHX-2001-07).

⁶ See Securities Exchange Act Release No. 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (SR-CHX-2001-15); Securities Exchange Act Release No. 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (SR-CHX-2001-21); Securities Exchange Act Release No. 45386

reinstate and extend the pilot through January 31, 2003. The CHX proposes no other changes to the pilot, other than reinstating and extending it through January 31, 2003.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).⁷ In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act⁸ in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

(February 1, 2002), 67 FR 6062 (February 8, 2002) (SR-CHX-2002-02); Securities Exchange Act Release No. 45755 (April 15, 2002) 67 FR 19607 (April 22, 2002) (SR-CHX-2002-10).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6). The Commission waived the 5-day pre-filing notice requirement.