

with the Commission under the 1940 Act. Both the VIP Fund II, on behalf of the Substituted Portfolio, and Metropolitan Series, on behalf of the Replacement Portfolio, must agree on the terms of any in-kind redemption. If an agreement cannot be reached, the VIP Fund II will redeem Substituted Portfolio shares in cash.

62. The proposed substitutions, as described herein, are consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in section 1 of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Securities to be provided by the Substituted Portfolio as redemption proceeds and subsequently contributed to the Replacement Portfolio to effect the in-kind purchases of Replacement Portfolio shares will be valued by the Replacement Portfolio at the values established by the Substituted Portfolio using its normal valuation procedures. Therefore, there will be no change in value to any Contract owner as a result of the Substitution. The Commission has granted relief to others based on similar facts.

63. Applicants submit that, for all of the reasons stated above, (a) the terms of the proposed in-kind redemptions and purchases of shares described above, including the consideration to be paid or received, are reasonable and fair to Contract owners and do not involve overreaching on the part of any person, (b) the proposed in-kind redemptions and purchases of shares described above are consistent with the policies of Metropolitan Series and the Replacement Portfolio, as well as VIP Fund II and the Substituted Portfolio, as recited in the registration statements (and 1940 Act reports filed with the Commission) of each, and (c) the proposed in-kind redemptions and purchases of shares described above are consistent with the general purposes of the 1940 Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25989; File No. 812-12905]

### CUNA Mutual Life Insurance Company, et al.; Notice of Application

April 2, 2003.

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

**ACTION:** Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the "Act") approving certain substitutions of securities.

**APPLICANTS:** CUNA Mutual Life Insurance Company (the "Company"), CUNA Mutual Life Variable Annuity Account (the "Annuity Account"), and CUNA Mutual Variable Life Account (the "Life Account").

**SUMMARY OF APPLICATION:** Applicants request an order to permit the substitutions by the Company of Z Class shares of the Multi-Cap Growth Stock Fund (the "Replacing Fund") of the Ultra Series Fund ("Ultra Series") for Initial Class shares of the MFS Emerging Growth Series (the "Replaced Fund") of the MFS Variable Insurance Trust ("MFS Trust").

**FILING DATE:** The application was filed on November 22, 2002 and was amended and restated on March 28, 2003.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested person 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 must be received by the Commission by 5:30 p.m. on April 25, 2003, 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 Margaret Gallardo-Cortez, Esq., Assistant Vice President and Associate General Counsel, CUNA Mutual Life Insurance Company, 5910 Mineral Point Road, Madison, WI 53701-0391. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004-2415.

**FOR FURTHER INFORMATION CONTACT:** H. Yuna Peng, Attorney, at (202) 942-0676, or Lorna J. MacLeod, Branch Chief, at (202) 942-0670, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

### Applicants' Representations

1. The Company is a mutual life insurance company organized under Iowa law in 1879 and incorporated on June 21, 1882. The Company, first organized as a fraternal benefit society with the name "Mutual Aid Society of the Evangelical Lutheran Synod of Iowa and Other States," changed its name to "Lutheran Mutual Aid Society" in 1911, and reorganized as a mutual life insurance company called "Lutheran Mutual Life Insurance Company" on January 1, 1938. On December 28, 1984, the Company changed its name to "Century Life of America." On January 1, 1997, the Company changed its name to "CUNA Mutual Life Insurance Company." As of December 31, 2002, the Company had assets in excess of \$5 billion.

2. The Company conducts a conventional life insurance business within the context of the credit union system and is authorized to transact the business of life insurance, including annuities, in all states other than New York and in Puerto Rico. For purposes of the Act, the Company is the depositor and sponsor of each of the Accounts as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

3. Each Account is a "separate account" as defined by Rule 0-1(e) under the Act. Each Account is registered with the Commission as a unit investment trust. Each Account is comprised of a number of subaccounts and each subaccount invests exclusively in one of the insurance dedicated mutual fund portfolios made available as investment vehicles underlying the Contracts.

4. The Annuity Account is divided into 11 subaccounts. The assets of the Annuity Account support variable annuity contracts and interests in the Account offered through such contracts have been registered under the Securities Act of 1933.

5. The Life Account is divided into 11 subaccounts. The assets of the Life

Account support variable life insurance contracts and interests in the Account offered through such contracts have been registered under the 1933 Act.

6. The MFS Trust is registered as an open-end management investment company under the Act and currently offers 15 separate investment portfolios (each, a "Fund"), one of which would be involved in the proposed substitution. The MFS Trust issues a separate series of shares of beneficial interest in connection with each Fund and has registered such shares under the 1933 Act on Form N-1A. Massachusetts Financial Services Company ("MFS") serves as the investment adviser to each Fund, including the Replaced Fund. MFS' principal offices are located at 500 Boylston Street, Boston, Massachusetts 02116.

7. Ultra Series is registered as an open-end management investment company under the Act and currently offers 10 separate investment portfolios, one of which would be involved in the proposed substitution. Ultra Series issues a separate series of shares of beneficial interest in connection with each portfolio (also a "Fund"), and has registered such shares under the 1933 Act on Form N-1A. MEMBERS Capital Advisors, Inc. ("MCA") is the investment adviser of each Fund, including the Replacing Fund. Under a unitary fee arrangement, MCA, at its own expense, also provides or arranges for the provision of substantially all other services required by Ultra Series through service agreements with affiliated and unaffiliated service providers. Such services include all administrative, accounting and legal services as well as the services of custodians, transfer agents and dividend disbursing agents. The Funds of Ultra Series do, however, pay their own auditor's fees, compensation to (and expenses of) trustees who are not interested persons, independent counsel fees, and extraordinary expenses.

8. The Company and CUNA Mutual Investment Corporation ("CMIC") each own a one-half interest in MCA. MCA's principal offices are located at 5910 Mineral Point Road, Madison, Wisconsin 53701.

9. MCA manages the assets of various Funds of Ultra Series, including the Replacing Fund, using a "manager of managers" approach under which MCA may allocate some or all of a Fund's assets among one or more "specialist" subadvisers. MCA monitors the performance of each subadviser to the extent that it deems appropriate to achieve a Fund's investment objective, reallocates portfolio assets among its own portfolio management team and

individual subadvisers, or recommends to the Ultra Series' board of trustees that particular subadvisers be employed or terminated for a Fund.

10. MCA and the Replacing Fund have entered into a subadvisory agreement with Wellington Management Company, LLP ("Wellington Management") to provide portfolio management services pursuant to which Wellington Management selects the Replacing Fund's investments and places orders to buy and sell the Replacing Fund's investments. Wellington Management's principal offices are located at 75 State Street, Boston, Massachusetts, 02109.

11. The Contracts are flexible premium variable annuity and variable life insurance contracts. The variable annuity Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable or fixed basis. The variable life insurance Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, throughout the insured's life, and for a substantial death benefit upon the death of the insured. Under each of the Contracts, the Company reserves the right to substitute shares of one Fund for shares of another, or of another investment portfolio, including a portfolio of a different management investment company.

12. For as long as a variable life insurance Contract remains in force or a variable annuity Contract has not yet been annuitized, a Contract owner may transfer all or any part of the Contract value from one subaccount to any other subaccount or to a fixed account. The Contracts do not limit the number of transfers of Contract value for any period of time or reserve to the Company the right to limit the number of transfers. The Company currently waives applicable fees for Contract value transfers; however, certain of the variable life insurance Contracts reserve to it the right to assess a charge of \$20 for transfers in excess of four per Contract year and certain of the annuity Contracts reserve the right to it to assess a charge of \$10 for transfers in excess of twelve per Contract year.

13. The proposed substitution is part of efforts by the Company to provide a portfolio selection within the Contracts that: (1) Better represents the designated asset class, (2) provides more stability in portfolio management, and (3) exhibits more consistency of periodic returns relative to representative markets.

14. In 1995, when the Company first selected the Replaced Fund as an

investment option under inclusion in the Contracts, the Fund met its desire for a multi-capitalization investment option. In recent years, however, the Replaced Fund has, in the Company's view, become more oriented towards stocks of large-cap growth companies. Although this has been the result of a strategy of successfully identifying and holding as portfolio investments the securities of fast-growing companies and by focusing new purchases in larger companies, the portfolio composition and general orientation of the Replaced Fund has shifted and no longer fits the position in the investment option lineup for the Contracts desired by the Company. In contrast, MCA has recently retained Wellington Management as the Replacing Fund's subadviser in order to manage the Fund to fit this position in the lineup. In recent years, other accounts managed by Wellington Management in this style have generally invested between 20% and 35% of their total assets in small-cap and mid-cap growth stocks, thereby providing more consistent multi-cap exposure. In the Company's judgment, this portfolio orientation better represents the asset class mix of a portfolio originally intended for inclusion in the Contracts.

15. Over time, the Replaced Fund has experienced a series of portfolio manager changes followed by the assignment of several portfolio managers, each with management responsibility over a portion of the Replaced Fund's assets. In the Company's view, this led to a significant increase in the number of portfolio holdings and has correspondingly raised the portfolio turnover rate to over 231% for 2001. It also has resulted, at times, in concentrations of the Fund's investments in one or a few industries or sectors while other industries or sectors have been underrepresented.

16. The Company believes that it is important that Contract investment options perform generally in line with representative markets, particularly given the limited selection of subaccounts available under the Contracts. In the Company's judgment, the changes in portfolio management and investment style experienced by the Replaced Fund have resulted in erratic portfolio performance for the Replaced Fund and the Company has determined that the Fund has not performed in line with those representative markets considered by MCA as providing more diversified multi-cap exposure. In contrast, the Replacing Fund's subadviser's style of management appears to have a much more consistent record in this regard. Based on Wellington Management's three-year

history managing other accounts (mutual funds and other subadvisory clients) using this style and disciplines, the Company believes that the Fund, under Wellington Management's direction, will provide much more consistent performance than the Replaced Fund has provided. Applicants believe that replacing the Replaced Fund with the Replacing Fund will benefit Contract owners and improve the array of investment options available under the Contracts.

17. Replacing the Replaced Fund with the Replacing Fund is appropriate and in the best interests of Contract owners because the stated investment objectives and principal investment strategies of the Replacing Fund are substantially identical to those of the Replaced Fund so that Contract owners will have continuity in investment and risk expectations. In addition, the types of investment advisory and administrative services provided to the Replacing Fund are substantially the same as those

provided to the Replaced Fund. Finally, Applicants note that the net expenses for the Replacing Fund were the same as those for the Replaced Fund for the year ended December 31, 2002.

18. The following chart sets out the investment objective and principal investment strategies of the Replaced Fund and the Replacing Fund, as stated in their respective prospectuses.

Replaced Fund	Replacing Fund
<p><b>MFS Emerging Growth Series</b>                      Investment Objective: Long term growth of capital.                      Principal Investment Strategies:                      The Fund invests, under normal market conditions, at least 80% of its net assets in common stocks and related securities, such as preferred stocks, convertible securities and depositary receipts for those securities, of emerging growth companies. Emerging growth companies may be of any size, and the Fund's investments may include securities listed on a securities exchange or traded in over-the-counter (OTC) markets.                      MFS, the Fund's adviser, uses a bottom-up, as opposed to a top-down, investment style in managing the Fund. This means that securities are selected based upon fundamental analysis (such as an analysis of earnings, cash flows, competitive position and management's abilities) performed by the Fund's manager and MFS' large group of equity research analysts.                      While the Fund is a diversified fund and therefore spreads its investments across a number of issuers, it may invest a relatively large percentage of its assets in a single issuer as compared to other funds managed by MFS. The Fund may invest in foreign securities (including emerging market securities)                      The Fund has engaged and may engage in active and frequent trading to achieve its principal investment strategies.</p>	<p><b>Multi-Cap Growth Stock Fund</b>                      Investment Objective: Long term capital appreciation.                      Principal Investment Strategies:                      The Fund invests generally in common stocks, securities convertible into common stocks and related equity securities. Under normal market conditions, the Fund will maintain at least 80% of its assets in these securities.                      The Fund seeks securities of growth companies across a broad range of market capitalization focusing on those with proprietary technologies, management, or market opportunities that are likely to support earnings growth over extended time periods in excess of the growth rate of the economy and/or the rate of inflation.                      The Fund may also invest in warrants, preferred stocks and debt securities (including non-investment grade debt securities). The Fund may invest up to 25% of its assets in foreign securities, including emerging market securities.</p>

19. The following chart compares advisory fees, other expenses, total operating expenses (before and after any waivers and reimbursements), and portfolio turnover rates for the year

ended December 31, 2002, expressed as an annual percentage of average daily net assets, of the Replaced Fund and the Replacing Fund. Neither the Initial Class shares of the Replaced Fund nor

Z Class shares of the Replacing Fund are subject to a distribution plan or shareholder service plan adopted under Rule 12b-1 of the Act.

	Replaced Fund	Replacing Fund
	MFS Emerging Growth Series (Initial Class)	Multi-Cap Growth Stock Fund (Z Class)
Advisory Fees .....	0.75%	0.85%
Other Expenses .....	0.11	0.01
Total Operating Expenses .....	0.86%	0.86%
Less Expense Waivers and Reimbursements .....	N/A	N/A
Net Operating Expenses .....	0.86%	0.86%
Portfolio Turnover .....	114.67%	156.51%

20. The Replaced Fund has an expense offset arrangement that reduces the Fund's custody fee based upon the amount of cash maintained by the Portfolio with its custodian and dividend disbursing agent. "Other Expenses" do not take into account

these expense reductions, and are therefore higher than the actual expenses of the series. Had these fee reductions been taken into account, "Net Expenses" for the Replaced Fund would equal 0.85%.

21. The following chart compares the fees paid for advisory and subadvisory services for the fiscal year ending December 31, 2002, expressed as an annual percentage of average daily net assets, by the Replaced Fund and the Replacing Fund.

Replaced Fund		Replacing Fund	
MFS Emerging Growth Series (Initial Class)		Multi-Cap Growth Stock Fund (Z Class)	
Annual Advisory Fee	Annual Subadvisory Fee (paid by the Adviser)	Annual Unitary Management Fee	Annual Subadvisory Fee (paid by the Adviser)
0.75%	NA	0.85%	Wellington Management First \$100M—0.50% Above \$100M—0.40%

22. The following table compares the respective asset levels, expense ratios, and performance data of the two Funds for each of the past three fiscal years. Wellington Management has been the Replacing Fund’s subadviser since May 1, 2002.

MFS Emerging Growth Fund	Net assets at end of period	Expense ratio	Total return
2000 .....	\$2,312,406,000	.85%	– 19.61%
2001 .....	1,462,000,000	.86	– 33.49
2002 .....	774,775,000	.85	– 33.76
Multi-Cap Growth Fund			
2000 .....	\$9,897,000	.91%	– 9.52%
2001 .....	13,923,000	.86	– 30.89
2002 .....	75,326,000	.86	– 25.21

23. Applicants believe that the Replacing Fund is an appropriate replacement for the Replaced Fund for each Contract. The Replacing Fund has a substantially identical investment objective as that of the Replaced Fund. Both pursue their investment objective by investing primarily in companies, of various sizes, which are expected to grow faster than the general economy. The investment adviser for the Replaced Fund and the subadviser for the Replacing Fund both rely on internal research and use a “bottom-up” stock selection approach to portfolio management (as opposed to a “top-down,” economic forecasting oriented approach). There are, however, some distinctions between the way in which the principal investment strategies are pursued by the Replaced Fund and the Replacing Fund.

24. The primary differences in the implementation of investment strategies of the Replaced Fund and the Replacing Fund manifest in the degree of flexibility exercised by their adviser or subadviser in implementing the strategies. For example, whereas the Replaced Fund’s investment adviser employs no firm guidelines limiting the size of its capitalization exposures, the Replacing Fund’s subadviser typically limits large-cap exposure to a range of 60%–90% of total assets, mid-cap exposure to 25% or less of total assets, and small-cap exposure to 20% or less of total assets. Similarly, the Replaced Fund’s adviser does not limit its

exposure to any single industry; in contrast, the Replacing Fund’s subadviser generally limits its industry exposure to no more than 15 percentage points in excess of that industry’s weight in the Fund’s benchmark index. Moreover, the Replaced Fund has often concentrated its portfolio in relatively few large holdings, with some exceeding 10% of total assets, while much of the rest of its portfolio is often scattered over a few hundred very small holdings. In contrast, the Replacing Fund’s subadviser has generally managed other accounts with the same style as the Replacing Fund with few holdings representing more than 5% of the Fund’s total assets and fewer than 110 holdings overall. Finally, the annual portfolio turnover rate for the Replaced Fund has ranged from 114% to 231% over the last three years as it has tried to respond to current market conditions. In contrast, other accounts managed by the Replacing Fund’s subadviser with the same style as the Replacing Fund have experienced annual turnover rates ranging from 90% to 140% during the past three years. The Company believes that this likely is a reflection of Wellington Management’s longer-term perspective on the stocks it has purchased. In addition, the Replacing Fund has available to it transactional advantages attributable to achieved economies of scale comparable to that of the Replaced Fund’s manager and has the same expense ratio as the Replaced Fund.

25. To the extent that the annualized ratio of expenses to average net assets of the Replacing Fund exceeds, for each fiscal period (such period being less than 90 days) during the twenty-four months following the substitutions, 0.85%, the Company will, for each Contract outstanding on the date of the proposed substitutions, make a corresponding reduction in separate account expenses (or subaccount) expenses on the last day of such fiscal period, such that the ratio of the Replacing Fund’s expenses to average net assets, together with the ratio of expenses to average net assets of the corresponding separate account (or subaccount) will, on an annualized basis, be no greater than the sum of 0.85% and the ratio of expenses to average net assets of the separate account (or subaccount) for the fiscal year ended December 31, 2002. In addition, for twenty-four months following the substitutions, the Company will not increase asset-based fees or charges for Contracts outstanding on the day of the proposed substitutions.

26. By supplements to the May 1, 2002 prospectuses for the Contracts and the Accounts (substantially in the form attached as Exhibit C to the initial application), the Company will notify owners of the Contracts of their intention to take the necessary actions, including seeking the order requested

by this application, to carry out the proposed substitution as described herein.

27. The supplements about the proposed substitution will advise Contract owners that from the date of the supplement until the date of the proposed substitution, the Company will not (except as described in the next section) suspend its current waivers of transfer charges or exercise any rights reserved by it under any Contract to impose additional charges for transfers until at least 30 days after the proposed substitution. Similarly, the supplements will disclose that, from the date of the supplement until the date of the proposed substitution, the Company will permit Contract owners to make one transfer of Contract value out of the subaccount currently holding shares of the Replaced Fund to another subaccount without the transfer being treated as one of a limited number of transfers permitted without a transfer charge. The supplements also will advise Contract owners that if the proposed substitution is carried out, then each Contract owner affected by the substitution will be sent a written notice (described immediately below) informing them of the fact and details of the substitution.

28. Within five days after the proposed substitution, any Contract owners who are affected by the substitution will be sent a written notice informing them that the substitution was carried out. Current prospectuses for the Replacing Fund will be sent to Contract owners on or before the time the notices are sent. The notice as delivered in certain jurisdictions also may explain that, under insurance regulations in those jurisdictions, Contract owners affected by the substitutions may exchange their Contract for a fixed-benefit life insurance contract or fixed-benefit annuity contract during the 60 days following the substitutions.

29. The Company will carry out the proposed substitutions by redeeming Initial Class shares of the Replaced Fund held by the Accounts for cash and applying the proceeds to the purchase of Z Class shares of the Replacing Fund. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or the Company's obligations under the Contracts be altered in any way. All applicable expenses incurred in

connection with the proposed substitutions, including brokerage commissions and legal, accounting, and other fees and expenses, will be paid by the Company. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

30. The proposed substitution will not be treated as a transfer of Contract value or an exchange of annuity units for the purpose of assessing transfer charges or for determining the number of remaining "free" transfers or exchanges in a Contract year. The Company will not exercise any right it may have under the Contracts to impose charges for Contract value transfers or annuity unit exchanges under the Contracts for a period of at least 30 days following the proposed substitutions. Similarly, the Company will permit Contract owners to make one transfer of Contract value (or annuity unit exchange) out of the Replaced Fund subaccount to another subaccount without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge. Likewise, for at least 30 days following the proposed substitutions, the Company will permit Contract owners affected by the substitutions to make one transfer of Contract value (or annuity unit exchange) out of Replacing Fund subaccount to another subaccount without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge.

31. The Company is also seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

32. The proposed substitution appears to involve the substitution of securities within the meaning of section 26(c) of the Act. Applicants therefore request orders from the Commission pursuant to section 26(c) approving the proposed substitution.

33. All the Contracts expressly reserve for the Company the right, subject to compliance with applicable law, to substitute shares of one fund or portfolio held by a subaccount of an Account for another. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right. The Company has reserved this right of substitution both to protect itself and its Contract owners in situations where it believes a fund is no longer

appropriate for Contract owners or where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of its separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners.

34. Applicants maintain that Contract owners will be better served by the proposed substitution and that the proposed substitution is appropriate given the Funds and other investment options available under the various Contracts. Since its inception, the Replacing Fund has had investment performance superior to that of the Replaced Fund. More significantly, the Replacing Fund has had substantially similar levels of expenses over this same period (substantially identical for each of the past two years) as the Replaced Fund. Applicants believe that the Replacing Fund and Replaced Funds are substantially the same in their stated investment objectives and principal investment strategies as to afford investors continuity of investment experience, relative to management style. In addition, Applicants generally submit that the proposed substitution meets the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

35. Although the Replaced Fund has substantially more assets than the Replacing Fund, the Replaced Fund's assets have declined significantly in recent periods. Although the Replaced Fund benefits from an expense offset arrangement that reduces the Fund's custody fees and thus has the effect, along with other arrangements to reduce expenses, of reducing the Replaced Fund's expenses to slightly lower than those of the Replacing Fund, there is no assurance that this expense reduction will continue. Because of the expense limits on the Contracts discussed above, for two years following the proposed substitution, Contract owners affected by the proposed substitution will benefit from a subaccount and underlying Fund with aggregate expenses that are no higher than the aggregate annualized expenses of the subaccount and the Replaced Fund for the fiscal year ended December 31, 2002.

36. Applicants believe that Contract owners will be at least as well off with the Replacing Fund as with the Replaced Fund. The proposed substitution retains for Contract owners the investment flexibility that is a central feature of the Contracts. If the proposed substitution is carried out, all Contract owners will be permitted to

allocate purchase payments and transfer Contract values between and among the remaining subaccounts as they could before the proposed substitution.

37. The proposed substitution is not the type of substitution that section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which section 26(c) was designed to prevent.

38. The proposed substitution also is unlike the type of substitution that section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their Contract values. They also select the specific type of coverage offered by the Company under the Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered the size, financial condition, type and reputation for service of the Company, from whom they purchased their Contract in the first place. These factors will not change because of the proposed substitution.

39. Applicants submit that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

*Conclusion:*

Applicants assert that, for the reasons stated above, the requested order approving the Substitution should be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-8439 Filed 4-7-03; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47613; File No. SR-Amex-2003-19]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Amend the Price Criteria for Securities That Underlie Options Traded on the Exchange**

April 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 25, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. 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 amend its initial listing guidelines in Commentary .01 and .05(d)(ii) to Amex rule 915 to allow options to be listed on "covered securities," when, among other things, the trading price of the underlying security was at least \$3 for the five business days prior to certification with The Options Clearing Corporation ("OCC"). The text of the proposed rule change follows. Additions are in italics. Deleted text is in [brackets].

\* \* \* \* \*

**Rule 915. Criteria for Underlying Securities**

- (a) No Change  
(b) No Change

*Commentaries*

.01 The Board of Governors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to items 1, 2, 3 or 4 listed below, at the time the Exchange selects an underlying security for Exchange options transactions, the following guidelines with respect to the issuer shall be met:

1. No Change  
2. No Change

3. No Change

4. (a) *If the underlying security is a "Covered Security" as defined under section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least \$3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; or*

(b) *If the underlying security is not a "Covered Security," [E]ither (i) the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days or (ii) (a) the underlying security meets the guidelines for continued listing in rule 916; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts.*

5. No Change

.02-.04 No Change

.05 (a)-(c) No Change

(d) In the case of a restructuring transaction that satisfies either or both of the conditions of subparagraph (a) above in which shares of a Restructured Security are sold in a public offering or pursuant to a rights distribution;

(i) No Change

(ii) the Exchange may certify that the market price of the Restructured Security satisfies guideline 4 of Commentary .01 above by relying on the market price history of the original security prior to the ex-date for the Restructure Transaction in the manner described in paragraph (a) above, but only if the Restructured Security has traded "regular way" on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as at the opening of trading on the date of selection the market price of the Restructured Security was at least \$7.50, *or if the Restructured Security is a "Covered Security," as defined in Commentary .01(4) to rule 915, the market price of the Restructured Security was at least \$3.00; and*

(iii) No Change

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.