reasons, Applicants submit that the provisions for recapture of any Credits under the New Contracts does not violate section 2(a)(32) and 27 (i)(2)(A) of the Act.

16. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, their redeemable securities to accomplish the same purposes as contemplated by section 22(c). 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.

17. Applicants state that Pruco Life's and PLNJ's recapture of the Credit might arguably be viewed as resulting in the redemption of redeemable securities for a price other than the one based on the current net asset value of the Accounts. Applicants contend, however, that the recapture of the Credit does not violate section 22(c) and rule 22c–1.

Conclusion

For the reasons summarized above, Applicants submit that the Exchange Offer and the FlexElite Exchange Program are consistent with the protections provided by section 11 of the Act and that their approval is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants further submit that their request for exemptions from sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and rule 22c–1 thereunder meet the standards set out in section 6(c) of the Act. Applicants submit that the requested order should therefore be granted.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8729 Filed 4–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25993; File No. 812–12913]

National Life Insurance Company, et al.; Notice of Application

April 4, 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: National Life Insurance Company (''NLIC''), National Variable Annuity Account II (''Annuity Account''), and National Variable Life Insurance Account (''Life Account'').

FILING DATE: The application was filed on December 19, 2002, and amended and restated on April 3, 2003.

SUMMARY OF APPLICATION: Applicants request an order to permit NLIC to substitute securities issued by two series of the Sentinel Variable Products Trust (''SVPT'') to support variable annuity contracts or variable life insurance contracts (collectively, the ''Contracts'') issued by NLIC, for securities issued by two series of the Market Street Fund (''MSF''), and currently held by either the Annuity Account or the Life Account (each, an ''Account,'' together, the ''Accounts'').

HEARING OR NOTIFICATION OF HEARING: An order granting the amended and restated 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 must be received by the Commission by 5:30 p.m. on April 29, 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 D. Russell Morgan, Esq., Assistant General Counsel, National Life Insurance Company, National Life Drive, Montpelier, Vermont 05604. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Ellen J. Sazzman, Senior Counsel, or Lorna J. MacLeod, 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 may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. MSF has eleven investment portfolios, two of which are the subject of this application (each, a Portfolio). SVPT currently has five investment portfolios, but is adding two more that are the subject of this application (each, a Fund).

2. NLIC was a mutual life insurance company originally chartered by the State of Vermont in 1848. It is now a stock life insurance company, all of the outstanding stock of which is indirectly owned by National Life Holding Company, a mutual insurance holding company, established under Vermont law in 1999. All owners of NLIC contracts, including the Contracts, are voting members of National Life Holding Company. NLIC is authorized to transact life insurance and annuity business in Vermont and in 50 other jurisdictions. For purposes of the Act, NLIC is the depositor and sponsor of the Annuity Account and the Life Account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

3. NLIC established the Annuity Account on November 1, 1996, and the Life Account on February 1, 1985, as segregated investment accounts under Vermont law. Under Vermont law, the assets of each Account attributable to the Contracts through which interests in that Account are issued are owned by NLIC but are held separately from all other assets of NLIC for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, such assets in each Account equal to the reserves and other liabilities with respect to such Account are not chargeable with liabilities arising out of any other business that NLIC may conduct. Income, gains and losses, realized or unrealized, from assets allocated to each Account are credited to or charged against that Account without regard to the other income, gains or losses of NLIC. Each Account is a ''separate account'' as

defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust.

4. The Annuity Account is divided into twenty-eight subaccounts. Each subaccount invests exclusively in a corresponding investment portfolio of one of twelve series-type management investment companies. 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 (the ''1933 Act'').

5. The Life Account is divided into eighty-six subaccounts. Each subaccount invests exclusively in shares representing an interest in a corresponding investment portfolio of one of fourteen series-type management investment companies. The assets of the Life Account support variable life insurance contracts, and interests in this Account offered through such contracts have been registered under the 1933 Act.

6. *Market Street Fund.* MSF was originally incorporated in Maryland on March 21, 1985, but reorganized into a Delaware business trust on January 26, 2001. MSF is registered under the Act as an open-end diversified management investment company. MSF is a series investment company as defined by Rule 18f–2 under the Act and currently comprises eleven investment portfolios. MSF issues a separate series of shares of beneficial interest in connection with each portfolio and has registered these shares under the 1933 Act. Gartmore Mutual Fund Capital Trust (''Gartmore''), serves as investment adviser to the MSF Balanced and Bond Portfolios, and selects their subadvisers. The subadviser to the MSF Balanced Portfolio is currently Fred Alger Management, Inc., and the subadviser to the Bond Portfolio is currently Western Asset Management Company.

7. The investment objective of the MSF Bond Portfolio is to seek a high level of current income consistent with prudent investment risk. This Portfolio invests in a diversified portfolio of fixed-income securities of U.S. and foreign issuers. The Portfolio's subadviser uses active fixed-income management techniques by focusing on four key areas: (1) Sector and sub-sector allocation, (2) issue selection, (3) duration, and (4) term structure.

8. The investment objective of the MSF Balanced Portfolio is to realize as high a level of long-term total rate of return as is consistent with prudent investment risk. The MSF Balanced Portfolio's equity portion is invested primarily in equity securities, such as common or preferred stocks, which are listed on U.S. exchanges or traded in the over-the-counter markets. The Portfolio's subadviser uses a growth-oriented strategy. Growth-oriented investments involve seeking securities of issuers with above-average recent earnings growth rates and what the subadviser views as a reasonable likelihood of maintaining these rates in the foreseeable future. The subadviser focuses on stocks of companies with growth potential and fixed-income securities, with emphasis on income-producing securities that appear to have some potential for capital appreciation. Normally, the Portfolio invests in common stocks and fixed-income securities that include commercial paper and bonds rated within the four highest rating categories by an established rating agency or if not rated, that are determined by the subadviser to be of comparable quality. Ordinarily, at least 25% of the Portfolio's net assets are invested in fixed-income securities.

9. *Sentinel Variable Products Trust.* SVPT was organized as a business trust in Delaware on March 14, 2000, and is currently registered under the Act as an open-end diversified management investment company. SVPT is a series investment company as defined by Rule 18f–2 under the Act and currently comprises five investment portfolios. It plans to create two new Funds to receive the assets of the MSF Balanced Portfolio and MSF Bond Portfolio in the substitution. SVPT will issue a separate series of shares of beneficial interest in connection with each Fund and will register these shares under the 1933 Act. NL Capital Management, Inc. (''NLCM'') will serve as investment adviser to each of the Funds. NLCM is affiliated with NLIC.

10. The investment objective of the SVPT Bond Fund is to seek high current income while seeking to control risk, by investing mainly in investment grade bonds. The Fund will invest exclusively in fixed-income securities. At least 80% of the Fund's assets will normally be invested in the following types of bonds: (1) corporate bonds which at the time of purchase are rated within the four highest rating categories of Moody's, Standard & Poor's, or any other nationally recognized statistical rating organization, (2) debt securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, including mortgage-backed securities, (3) debt securities (payable in U.S. dollars) issued or guaranteed by Canadian governmental entities, and (4) debt obligations of domestic banks or bank holding companies, even though not rated by Moody's or Standard & Poor's, that NLCM believes have investment qualities comparable to investment grade corporate securities. The remainder of the Fund's assets may be invested in other fixed-income securities, such as straight or convertible debt securities and straight or convertible preferred stocks. The Fund will invest no more than 20% of its total assets in lower quality bonds.

11. The investment objective of the SVPT Balanced Fund is to seek a combination of growth of capital and current income, with relatively low risk and relatively low fluctuations in value. It will seek this goal by investing in common stocks similar to those in the SVPT Common Stock Fund. NLCM tries to select stocks of leading companies that are financially strong and are selling at attractive prices in relation to their values and in investment grade bonds similar to those in the SVPT Bond Fund, with at least 25% of its total assets in bonds. When determining this percentage, convertible bonds and/or preferred stocks will be considered common stocks, unless these securities are held primarily for income. NLCM will divide the Fund's investments among stocks and bonds based on whether it believes stocks or bonds offer a better value at the time.

12. The Contracts are flexible premium variable life insurance Contracts and individual flexible premium deferred variable annuity Contracts. The 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 fixed basis. Under each of the Contracts, NLIC reserves the right to substitute shares of one Fund or Portfolio for shares of another, including a fund or portfolio of a different investment company.

13. Under all of the variable life insurance Contracts, a Contract owner may make unlimited transfers of accumulated value in a contract year between and among the subaccounts of the Life Account and NLIC's general account. Currently there is no charge for transfers, however, NLIC reserves the right to assess a $25 charge for each transfer in excess of twelve in any Contract year. Under the variable annuity Contracts, a Contract owner may make unlimited transfers of Contract value between and among the subaccounts of the Annuity Account and NLIC's general account. Currently there is no charge for transfers, however, NLIC reserves the right to assess a $25 charge for each transfer in excess of twelve in any Contract year.

14. NLIC, on its behalf and on behalf of the Accounts, proposes to substitute shares of the SVPT Bond Fund for shares of the MSF Bond Portfolio, and shares of the SVPT Balanced Fund for shares of the MSF Balanced Portfolio. NLIC believes that by making the proposed substitutions in each of the Accounts, they can better serve the interests of owners of the Contracts.

15. During 2000, NLIC and the Accounts applied for and received an order approving a number of substitutions of SVPT Funds for MSF Portfolios. At the time of that application, Sentinel Advisors Company (''SAC'') served as the investment manager and adviser to a number of the MSF Portfolios, including the Bond and Balanced Portfolios. SAC is a general partnership which at that time was owned and controlled by affiliates of NLIC, Provident Mutual Life Insurance Company (''PMLIC''), and The Penn Mutual Life Insurance Company (''Penn Mutual''). NLIC's affiliate controls the managing general partner and is entitled to a majority of the profits earned by SAC. NLIC, PMLIC, and Penn Mutual are not affiliated persons of each other. Effective June 30, 2002, NLCM (affiliated with NLIC) purchased all the stock of PMLIC's affiliates which owned PMLIC's interests in SAC, and as a result, NLIC's affiliates are now entitled to more than 90% of the profits of SAC. SAC's officers and investment personnel are all employees of NLCM, and they are the same officers and investment personnel who provide investment management services to the SVPT Funds. SAC, like NLCM, is located at NLIC's premises, in Montpelier, Vermont.

16. With the substitutions applied for in the previous order, PMLIC and NLIC intended to end their joint use of MSF as an investment vehicle for both companies' variable life insurance and variable annuity contracts (including the Contracts). NLIC originally intended to substitute independently managed funds for the MSF Bond and Balanced (then Managed) Portfolios, at the time of the substitutions effected in late 2000. However, the available independently managed funds did not meet the conditions that the SEC would impose on the substitutions and SVPT did not have the Bond or Balanced Funds to receive the Accounts' assets in the MSF Bond and Balanced Portfolios. NLIC chose to proceed with the substitutions that the SEC would approve at the time and the Accounts have continued to invest in the MSF Bond and Balanced Portfolios.

17. After the initial substitutions, SAC stepped down as investment adviser to all of the MSF Portfolios of which it had been the investment adviser. Market Street Investment Management Company (''MSIM'') became the investment manager to the MSF Portfolios, and selected subadvisers to manage the assets on a day-to-day basis, including Western Asset Management Company for the Bond Portfolio and Fred Alger Management, Inc., for the Balanced Portfolio. New investment advisory contracts were approved by the shareholders, and management fees and overall expense ratios rose significantly.

18. In addition, effective September 30, 2002, PMLIC was acquired by Nationwide Financial Services, Inc. (''Nationwide''), in a sponsored demutualization transaction. PMLIC's name changed to Nationwide Life Insurance Company of America (''NLICA'') as part of this transaction. Also, effective October 1, 2002, Gartmore, an affiliate of Nationwide Financial, replaced MSIM as the MSF investment adviser. NLICA, under Nationwide's control, has proposed another reorganization of MSF, under which the MSF Balanced and Bond Portfolios would be acquired by series of the GVIT Trust, another series investment company offering shares to variable insurance product separate accounts, for which Gartmore also serves as investment adviser. Specifically, the MSF Balanced Portfolio would be acquired by the J.P. Morgan GVIT Balanced Fund, a series of the GVIT Trust, and the MSF Bond Portfolio would be acquired by the Gartmore GVIT Government Bond Fund. As a result of this proposed reorganization, the subadviser to the MSF Balanced Portfolio would be J.P. Morgan Investment Management, Inc. and Gartmore would directly manage the MSF Bond Portfolio.

19. NLIC continues to desire to end the joint use of the remaining MSF Portfolios by separate accounts of both companies. NLIC continues to believe that the manner of accomplishing this separation which would involve the least confusion and disruption to owners of the Contracts would be for it to substitute shares of new SVPT Funds for those of the MSF Bond and Balanced Portfolios held by the Accounts. This would avoid the possibility that MSF may propose future changes which NLIC and NLICA could not support. Such a disagreement could create unnecessary expense and confusion for owners of both the Contracts and NLICA contracts, and could result in one or more material irreconcilable conflicts between the interests of Contract owners and owners of other NLICA contracts. NLIC had no role in the selection of the current subadvisers to the MSF Balanced and Bond Portfolios, no role in the planning for the reorganization now proposed by NLICA, and does not anticipate that it would have any role in future decisions to continue to engage or to replace such subadvisers.

20. The majority of the assets in the MSF Bond and Balanced Portfolios belong to owners of variable annuity and variable life insurance contracts issued by NLICA and its affiliates and only relatively small portions of each consist of assets beneficially owned by owners of the Contracts.

Portfolios	Approximate percent represented by NLIC contracts	Approximate percent represented by contracts issued by NLICA or its affiliates
MSF Bond	24.5	75.5
MSF Balanced	16.1	83.9

21. NLIC believes that many of the owners of the Contracts who invested in the MSF Bond and Balanced Portfolios did so at the time these Portfolios were managed by SAC, and that most would prefer to invest in funds or portfolios selected by NLIC and over which NLIC has some influence.

22. Projected expense levels for the SVPT Bond and Balanced Funds are the same as those currently experienced by the MSF Bond and Balanced Portfolios because each will be capped by NLIC for two years at levels equal to the percentage expense levels experienced by its corresponding MSF Portfolio for the 2002 fiscal year. Likewise, the management fee rates (including breakpoints) of the SVPT Bond and Balanced Funds are the same as that of their corresponding MSF Portfolios. In addition, for those Contract owners who were Contract owners on the date of the proposed substitutions, NLIC will not increase Account or other asset-based expenses under the Contracts for a period of 24 months following the date of the proposed substitutions.

23. NLIC notes that the equity portion of the SVPT Balanced Fund would be managed in a different style from that currently employed by the MSF Balanced Portfolio, utilizing a more value-oriented style similar to that employed by Sentinel Balanced Fund, as contrasted with the more growth-oriented style employed by Fred Alger Management. It expects that the fixed-income portion of the SVPT Balanced Fund would be comparable to the fixed-income portion of the MSF Balanced Portfolio, as currently managed. However, if the Portfolio is acquired by

J.P. Morgan GVIT Balanced Fund, the investment style for the equity portion of the Portfolio will change anyway, and furthermore, the fixed-income portion of the Portfolio would have greater flexibility to invest in lower quality debt instruments and emerging market securities. NLIC also notes that it already has available to the Accounts three equity portfolios managed by Fred Alger Management, the Alger American Growth Portfolio, the Alger American Leveraged AllCap Portfolio, and the Alger American Small Capitalization Portfolio. As a result, any Contract owners who wish to invest a portion of their Contract value using Alger's equity investment style would be able to participate by allocating assets to one of these investment choices.

24. NLIC expects that the SVPT Bond Fund would be similar in investment style and categories of investments to the MSF Bond Portfolio as currently operated, and certainly similar to the MSF Bond Portfolio as managed by SAC prior to 2001. In contrast, if the proposed reorganization occurs, the Gartmore GVIT Government Bond Fund will be limited to investments in U.S. government and agency bonds, bills, and notes, while the SVPT Bond Fund would, like the current MSF Bond Portfolio, be able to invest in investment grade corporate issuers.

25. As the two new SVPT Portfolios will initially be relatively small in size (the SVPT Bond Fund is expected to initially have net assets of approximately $19 million, and the SVPT Balanced Fund is expected to initially have net assets of approximately $12 million), NLIC does not anticipate earning material profits from the management of these assets in the first few years after the proposed substitutions. Rather, its motivation is to complete the termination of the joint use of the MSF Portfolios which it initially sought in 2000, and to regain a level of control over its Contract owner assets which it lost as its joint venture with PMLIC ended.

26. In light of the significant beneficial ownership position of NLICA (and affiliate) contract owners, Contract owners and future NLIC contract owners cannot expect to command a majority voting position in either of the MSF Bond or Balanced Portfolios in the event that they, as a group, desire that a Portfolio move in a direction different from that generally desired by owners of NLICA (or its affiliates'') contracts. In addition, unless the growth in the number of Contracts or the assets supporting them increases at a much greater rate than those of similar contracts issued by PMLIC and its affiliates, owners of Contracts have no prospects of ever gaining a position capable of influencing the future direction of these Portfolios.

27. NLIC also notes that it has had no prior business relationship with Nationwide, which now controls NLICA and the investment advisor to MSF. NLIC has never selected a Nationwide-controlled entity to provide investment advisory services to its Contract owners, and while it has no particular problem with Nationwide, NLIC feels that it should not be forced into a position of offering investment portfolios managed by Nationwide-affiliated entities simply because Nationwide has acquired PMLIC.

28. The following charts show the approximate year-end size (in net assets), expense ratio (ratio of operating expenses as a percentage of average net assets), and annual total returns for each of the past three years for each of the Funds and Portfolios involved in the proposed substitutions.

SVPT bond fund	Anticipated net assets after substitution (in millions)	Anticipated expense ratio after substitution (percent)	Total return
	$19	0.67	N/A

MSF bond portfolio	Net assets at year-end (in millions)	Expense ratio (percent)	Total return (percent)
2000	$39.0	0.52	9.68
2001	53.4	0.67	7.40
2002	67.0	0.67	9.09

SVPT balanced fund	Anticipated net assets after substitution (in millions)	Anticipated expense ratio after substitution	Total return
	$12	0.79	N/A

MSF balanced portfolio	Net assets at year-end (in millions)	Expense ratio (percent)	Total return (percent)
2000	$71.5	0.57	8.75
2001	69.0	0.82	(7.02)
2002	58.4	0.79	(10.26)

29. The following charts show the approximate annual management fees, other expenses and total expenses of each of the Funds or Portfolios involved in the proposed substitutions both before and after any reimbursement or fee waivers. The management fees and expenses shown for the MSF Bond and Balanced Portfolios are for the last complete fiscal year, 2002.

Fund	In percent		Revenue sharing percentage
	Before reimbursement or fee waiver	After reimbursement or fee waiver	
MSF Bond	0.40	0.40	N/A
	0.29	0.27	
	0.69	0.67	
SVPT Bond	0.40	0.40	N/A
	0.29	0.27	
	0.69	0.67	
MSF Balanced	0.55	0.55	N/A
	0.27	0.24	
	0.82	0.79	
SVPT Balanced	0.55	0.55	N/A
	0.32	0.24	
	0.87	0.79	

30. By disclosure added to supplements to the various May 1, 2002 prospectuses for the Contracts and the Accounts, all owners of the Contracts have been notified of NLIC's intention to take the necessary actions, including seeking the order requested by this application, to substitute shares of the SVPT Bond and Balanced Funds for the MSF Bond and Balanced Portfolios as described herein.

31. The additional prospectus disclosure (and any subsequent supplements) about the proposed substitutions will advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in either of the affected subaccounts to another subaccount available under a Contract other than one of the other affected subaccounts without that transfer counting as a ''free'' transfer permitted under a Contact. The prospectus disclosure also informs (and any subsequent supplements will inform) Contract owners that NLIC will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The supplements will also advise Contract owners that if the proposed substitutions are carried out, then each Contract owner affected by a substitution will be sent a written notice (described below) informing them of the fact and details of the substitutions.

32. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's account 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 NLIC's obligations under the Contracts be altered in any way. All applicable expenses incurred in connection with the proposed substitutions, including brokerage commissions, legal, accounting and other fees and expenses, will be paid by NLIC. 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.

33. The proposed substitutions will not, of course, 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. NLIC will not exercise any right it may have under the Contracts to impose restrictions on or charges for Contract value transfers or annuity unit exchanges under the Contracts for a period of at least 30 days following the substitutions. One exception to this is that NLIC may impose restrictions on transfers to prevent or limit ''market timing'' activities by Contract owners or agents of Contract owners.

34. NLIC will permit Contract owners to make one transfer of Contract value (or annuity unit exchange) out of the MSF Bond Portfolio subaccount to another subaccount, and out of the MSF Balanced Portfolio 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, NLIC will permit Contract owners affected by the substitutions to make one transfer of Contract value (or annuity unit exchange) out of the SVPT Bond Portfolio subaccount to another subaccount, and out of the SVPT Balanced Portfolio 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. All Contract owners, even those who are ''market timers,'' may avail themselves of the ''free'' transfer privilege both before and after the proposed substitutions.

35. To the extent that the annualized expenses of the SVPT Bond and Balanced Portfolios exceeds, for each fiscal period (such period being less than 90 days) during the twenty-four months following the substitutions, the 2002 net expense level of the MSF Bond and Balanced Portfolios, NLIC will, for each Contract outstanding on the date of the proposed substitutions, make a corresponding reduction in separate account (or subaccount) expenses on the last day of such fiscal period, such that the amount of the SVPT Balanced and Bond Portfolios' net expenses, together with those of the corresponding separate account (or subaccount) will, on an annualized basis, be no greater than the sum of the net expenses of the MSF Balanced and Bond Portfolios' and the expenses of the separate account (or

subaccount) for the 2002 fiscal year. In addition, for twenty-four months following the substitutions, NLIC will not increase asset-based fees or charges for Contracts outstanding on the day of the proposed substitutions.

36. In addition to the prospectus disclosure (and supplements) distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all accumulation or contract value under a Contract invested in any one of the affected subaccounts on the date of the notice to another subaccount available under their Contract without that transfer counting as one of a limited number transfers permitted in a Contract year free of charge. The notice will also reiterate the fact that NLIC will not exercise any rights reserved by it under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, Contract owners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by NLIC during the 60 days following the proposed substitutions. Current prospectuses for the new Funds will precede or accompany the notices.

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

Applicants' Legal Analysis

1. The proposed substitutions appear to involve substitutions of securities within the meaning of section 26(c) of the Act.

2. Applicants state that the Contracts expressly reserve for NLIC the right, subject to compliance with applicable law, to substitute shares of one Portfolio or Fund held by a subaccount of an Account for another. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right.

3. Applicants state that NLIC reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners. The prospectuses for the Contracts and Accounts contain appropriate disclosure of this right.

4. In the case of the proposed substitutions, the MSF Portfolios would be replaced by funds with substantially similar investment objectives, and management would return to the investment management team which managed the MSF Portfolios prior to the reorganization in late 2000 (in the case of many of the Contract owners, the management team that was in place at the time they made the decision to allocate Contract value to the MSF Portfolios). The substitutions would also prevent Contract owners from being affected by any additional reorganization of MSF as it adapts to Nationwide's acquisition of PMLIC.

5. In addition to the foregoing, Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

6. Applicants anticipate that Contract owners will be at least as well off with the proposed array of subaccounts offered after the proposed substitutions as they have been with the array of subaccounts offered prior to the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer accumulated values and contract values between and among the same number of subaccounts as they could before the proposed substitutions.

7. Applicants argue that each of the proposed substitutions is not the type of substitution which 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 accumulation and 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 other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(c) was designed to prevent.

8. In addition, Applicants argue that the proposed substitutions are unlike the type of substitution which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select the specific type of insurance coverage offered by NLIC under their Contract as well as numerous other rights and privileges set forth in the Contract. Therefore, Applicants contend that Contract owners may also have considered NLIC's size, financial condition, type and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed substitutions.

9. Applicants submit that, for all the reasons stated above, the proposed substitutions are 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. 03–8811 Filed 4–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47628; File No. SR–CBOE–00–55]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 Thereto by the Chicago Board Options Exchange, Incorporated to Establish Rules for a Screen-Based Trading System Known as CBOE*direct*

April 3, 2003.

On November 9, 2000, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and rule 19b–4 thereunder,[2] a proposal to establish rules for a screen-based trading system known as CBOE*direct*. Subsequently, CBOE submitted three amendments to the proposed rule change.[3] On May 8,

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

[2] 17 CFR 240.19b–4.

[3] *See* letters from Angelo Evangelou, Legal Division, CBOE, to Nancy Sanow, Division of Market Regulation, Commission, dated October 25, 2001 (''Amendment No. 1''); April 1, 2002 (''Amendment No. 2''); and April 18, 2002 (''Amendment No. 3''). Amendment No. 1 superceded the original submission in its entirety and made substantial changes to the proposed rule

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