

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.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26204; File No. 812-12722]

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

October 8, 2003.

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

ACTION: Notice of application for an order pursuant to Section 11(a) of the Investment Company Act of 1940 (the "Act") approving the terms of an exchange offer to issued and outstanding variable annuity contracts.

APPLICANTS: The Lincoln National Life Insurance Company ("Lincoln Life") and Lincoln National Variable Annuity Account C ("Account C").

FILING DATE: The application was filed on December 13, 2001, and amended and restated on September 22, 2003.

SUMMARY OF APPLICATION: Applicants request an order approving the terms of a proposed offer of exchange of MultiFund® 5 (with contract value death benefit), an existing variable annuity contract issued by Lincoln Life and made available through Variable Annuity Account C ("New Contract"), for MultiFund® 2, 3, and 4 (with contract value death benefit), outstanding annuity contracts issued by Lincoln Life and made available through Variable Annuity Account C ("Old Contracts").

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 November 3, 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 requester'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 Mary Jo Ardington, Esq., Counsel, The Lincoln National Life Insurance Company, 1300 S. Clinton Street, P.O. Box 1110, Fort Wayne, Indiana 46801-1110. Copy to Judith A. Hasenauer, Esq., Blazzard, Grodd & Hasenauer, P.C., Federal Tower, Suite 500, 1600 S. Federal Highway, Pompano Beach, Florida 33062.

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 Fifth Street, NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

Applicants' Representations

1. Lincoln Life is a stock life insurance company that was founded in 1905 under Indiana law, and is a wholly-owned subsidiary of Lincoln National Corporation ("LNC"), which is also organized under Indiana law. LNC's primary businesses are insurance and financial services. Lincoln Life is Account C's depositor within the meaning of the Act.

2. Lincoln Life is the principal underwriter of the contracts issued by Lincoln Life through Account C. Lincoln Life is registered as a broker-dealer under the Securities Exchange Act of 1934.

3. Account C was established on June 3, 1981, as an insurance company separate account under Indiana law. Account C is a segregated investment account and, as such, its assets may not be charged with liabilities resulting from any other business that Lincoln Life may conduct. Income, gains, and losses, whether realized or not, from assets allocated to Account C are, in accordance with applicable annuity contracts, credited to or charged against Account C, and without regard to any other income, gains, or losses of Lincoln Life. Account C satisfies the definition of a separate account under the federal securities law. Account C is registered on Form N-4 under the Act as a unit investment trust (File No. 811-3214).

4. Account C funds the MultiFund® Series of Variable Annuity Contracts including the MultiFund® 2, 3, 4, and

5 Contracts ("MultiFund® Contracts"). Certain MultiFund® Contracts have been offered and sold for a number of years.

5. There are four MultiFund® Contracts which are the subject of this Application: MultiFund® 2, MultiFund® 3, MultiFund® 4 and MultiFund® 5, all with the contract value death benefit. The MultiFund® 2, 3, and 4 Contracts issued through Account C have been registered under the Securities Act of 1933 pursuant to a registration statement on Form N-4 (File No. 33-25990). The MultiFund® 5 Contract issued through Account C has been registered under the Securities Act of 1933 pursuant to a registration statement on Form N-4 (File No. 333-68842).

6. The MultiFund® Contracts are flexible premium deferred annuity contracts under which contract owners may make one or more purchase payments over a period of time (called the "accumulation period"). During the accumulation period, based upon the contract owner's instructions, such purchase payments are allocated to the selected subaccounts of Account C and/or Lincoln Life's general account. To the extent that an owner selects one or more subaccounts, his or her investment in the contract will vary with the investment performance of the selected subaccounts. To the extent that an owner selects the general account, Lincoln Life guarantees that the amount allocated to the general account will be credited with a minimum interest rate and Lincoln Life may credit additional interest that it may declare from time to time.

7. A contract owner can elect to receive annuity payments under his or her contract. Under a contract, annuity payments are based upon the life of an annuitant and in some cases the lives of two (or joint) annuitants. Annuity options are available on a variable basis (*i.e.*, funded by Account C) and/or on a fixed basis (*i.e.*, funded through Lincoln Life's general account). The contracts incorporate other features, some of which are described more fully below under the discussion of the specific contract.

8. The minimum purchase payment for MultiFund® 2, 3, and 4 Contracts is \$3000 for nonqualified contracts and \$1000 for qualified contracts. The MultiFund® 2, 3 and 4 Contracts impose a surrender charge of up to 7% of any amount by which purchase payments withdrawn in any year exceed 15% of purchase payments. (However, this 15% withdrawal exception does not apply to a surrender of a contract.) The surrender charge associated with each

purchase payment declines 1% each year until it is 0% beginning after the seventh year after the payment was made.

9. The MultiFund® 2, 3 and 4 Contracts also impose the following charges: (a) A daily mortality and expense risk charge for contracts with the contract value death benefit at an annual rate of 1.002% of the daily net asset value of Account C; (b) an annual contract maintenance charge of \$25 (for MultiFund® 2 only); (c) a charge corresponding to any applicable state premium tax or other tax levied by any governmental entity; and (d) fees and charges paid out of the assets of the underlying funds.

10. The minimum purchase payment for the MultiFund® 5 Contract is \$25,000. This minimum payment restriction will be waived for participants in the exchange offer. The MultiFund® 5 Contract also imposes a surrender charge of up to 7% of any amount by which purchase payments withdrawn in any year exceed 15% of purchase payments. (However, this 15% withdrawal exception does not apply to a surrender of a contract.) The surrender charge associated with each purchase payment declines 1% each year until it is 0% beginning after the seventh year after the payment was made.

11. MultiFund® 5 has four contract options with various death benefits. Only the contract value death benefit option is part of the exchange offer. In addition to the surrender charge, the MultiFund® 5 Contract option that is part of the exchange offer imposes the following charges: (a) A daily mortality and expense risk and administrative charge at an annual rate of 1.00% of the daily net asset value of Account C; (b) a charge corresponding to any applicable state premium tax or other tax levied by any governmental entity; and (c) fees and charges paid out of the assets of the underlying funds.

12. Under both the MultiFund® 2, 3, and 4 Contracts and the MultiFund® 5 Contract, if the contract value death benefit option is in effect, the death benefit is equal to the current value of the contract as of the day Lincoln Life approves the claim for payment. However under the MultiFund® 5 Contract, the death benefit would be payable on the death of the owner, joint owner, or, in certain circumstances, the annuitant, and not just on the death of the annuitant as under the MultiFund® 2, 3, and 4 Contracts.

13. Under the MultiFund® 2, 3, and 4 Contracts, Lincoln Life limits transfers to no more than six per contract year although Lincoln Life reserves the right to waive this restriction and current

practice is to allow up to 12 transfers per contract year. Transfers between subaccounts are restricted to once every 30 days, although Lincoln Life may waive this requirement. The minimum amount which may be transferred is \$500 (or the entire subaccount amount if less than \$500). The MultiFund® 5 Contract has the same transfer provisions as the MultiFund® 2, 3, and 4 Contracts except that the MultiFund® 5 Contract contractually allows up to twelve transfers per year during the accumulation phase, and these transfers are not limited to once every thirty days.

14. The MultiFund® 5 Contract has a lower guaranteed minimum interest rate payable on the fixed account than the MultiFund® 2, 3, and 4 Contracts. The MultiFund® 2 and 3 Contracts provide that for contract years 6–10, the guaranteed minimum interest rate is 4% and for years 10 and later, the guaranteed minimum interest rate is 3.5%. The MultiFund® 4 Contract provides for a guaranteed minimum interest rate of 3% in all years. After June 2, 2003, the MultiFund® 5 Contract provides for a guaranteed minimum interest rate of 1.5% for the contract life in some states and 3% for the contract life in the remaining states.

15. Lincoln Life now proposes to make an exchange offer to MultiFund® 2, 3, and 4 contract owners with the contract value death benefit option whose contracts have a contract value of at least \$5000 and who have remaining surrender charges equal to 2% or less of their current contract value. Under the exchange offer, eligible contract owners can elect to exchange their existing MultiFund® 2, 3, or 4 Contracts for a MultiFund® 5 Contract. An immediate bonus credit of 2% of the contract value will be credited to the contract owner's contract on the issue date of the MultiFund® 5 Contract.

16. Contract owners who elect the 2% Bonus Exchange Offer will be issued a new MultiFund® 5 Contract with the Contract Value Death Benefit. The current contract value will be withdrawn from the old contract and re-deposited into a MultiFund® 5 Contract based on the then current allocation of contract value. Contract owners will hold the same share class in MultiFund® 5 as in their original contract. Four of the existing underlying funds for MultiFund® 2, 3, and 4 Contracts are not available under the MultiFund® 5 Contract. However, ten new fund choices are available under the MultiFund® 5 Contract that are not available under the MultiFund® 2, 3, and 4 Contracts. If a contract owner has allocated payments to one of the four subaccounts not available under the

MultiFund® 5 Contract, the contract owner will be required to establish a new allocation among subaccounts available under the MultiFund® 5 Contract. All contract owners who have accepted the exchange offer will be given the opportunity to change their allocations at the time of the exchange to any of the subaccounts available under the MultiFund® 5 Contract. These changes in allocations do not count as transfers.

17. The entire contract value of the new MultiFund® 5 Contract (excluding the 2% bonus credit) will be subject to surrender charges under the New Contract as of the date the contract becomes effective. For purposes of calculating surrender charges, the contract value of the Old Contract (excluding the bonus credit) will be treated as a purchase payment. Any remaining surrender charges on the contract owner's MultiFund® 2, 3, or 4 Contract existing prior to the time of the election of the exchange will be waived. All other charges of the new MultiFund® 5 Contract will also apply.

18. As of the effective date of the exchange offer, contract owners who have accepted the exchange offer will pay the MultiFund® 5 Contract charges. After the exchange, the contract owner will be governed by the terms of the New Contract, effective on the date the exchange offer is processed.

19. The exchange offer is only available to nonqualified, IRA and Roth IRA annuity contracts, with at least \$5000 in contract value, in which the named contract owner, joint owner, and annuitant are under age 76, and the remaining surrender charge, as a percent of the current contract value, is 2% or less. The exchange offer will not be made to contract owners who are not eligible to participate.

20. Contract owners may cancel the new MultiFund® 5 Contract for any reason within ten days (in some states longer) of the date of receipt of the new contract in accordance with the terms of the Right to Examine provision of the contract. No surrender charges will be assessed upon exercise of the Right to Examine provision or upon cancellation. Upon cancellation, Lincoln Life will return the contract value to the applicable MultiFund® 2, 3, or 4 Contract. Any surrender charges previously waived on the MultiFund® 2, 3, or 4 Contract will be reinstated as of the date the MultiFund® 2, 3, or 4 Contract was surrendered. Lincoln Life will revoke any bonus credits credited to the contract value. However, Lincoln Life will assume the risk of investment loss on the bonus credits. In other words, the contract owner will be put

back into the same position as if he or she had never elected the 2% Bonus Exchange Offer (except for market gain or loss on contract value). There will be no recapture of the bonus credit upon withdrawal or surrender except under the Right to Examine provision. The election of the 2% Bonus Exchange Offer will have no adverse tax consequences to the contract owner.

21. Applicants represent that the exchange offer is designed to encourage existing contract owners to remain with Lincoln Life rather than surrender their contracts in exchange for a competitor's product offering similar benefits.

22. Applicants propose to make the exchange offer by providing eligible contract owners with an Offering Document mailed directly from Lincoln Life. Eligible contract owners will also receive a MultiFund 5 prospectus. The MultiFund® 5 prospectus will be supplemented to provide disclosure specifically related to the 2% Bonus Exchange Offer. Eligible MultiFund® 2, 3, and 4 contract owners who express an interest in learning the details of the offer can contact either Lincoln Life or their registered representative for further information.

23. Registered representatives who are responsible for a contract owner accepting the exchange offer will be paid a commission. The commission is less than what the registered representative would receive on the sale of a new MultiFund® 5 Contract.

24. The Offering Document will advise eligible contract owners that the offer is designed for those contract owners who intend to continue to hold their contracts as long-term investments. The Offering Document will state that the offer is not intended for all contract owners, and that it is especially not appropriate for any contract owner who anticipates surrendering an amount of his or her contract value in excess of the annual free withdrawal amount (15% of purchase payments) within the surrender charge period. In this regard, the Offering Document will encourage contract owners to carefully evaluate their personal financial situation when deciding whether to accept or reject the offer. In addition, the Offering Document will explain how a contract owner who elects to participate in the offer may avoid the applicable surrender charge if no more than the annual free withdrawal amount (15% of purchase payments) is surrendered, and any subsequent purchase payments are maintained until expiration of the applicable surrender charge period. In this regard, the Offering Document will state in clear plain English that if the new contract is surrendered during the

initial surrender charge period: (a) The benefits of the 2% Bonus Exchange Offer may be more than offset by the surrender charge; and (b) a contract owner may be worse off than if he or she had rejected the offer.

25. To accept the exchange offer, an eligible contract owner must complete the Lincoln Life internal exchange forms, which will contain the pertinent information so that the exchange will comply with the requirements of Section 1035 of the Internal Revenue Code ("Section 1035"). No adverse tax consequences will be incurred by those contract owners who accept the exchange offer. The exchanges will constitute tax-free exchanges pursuant to Section 1035.

Applicants' Legal Analysis

1. Section 11(a) of the Act makes it unlawful for any registered open-end company or any principal underwriter for such company, to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with Commission rules adopted under Section 11.

2. Section 11(c) of the Act, in pertinent part, requires that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company be approved by the Commission (by order or by rule) or satisfy applicable rules adopted under Section 11, regardless of the basis of the exchange.

3. Account C is registered under the Act as a unit investment trust. Thus, the exchange offer constitutes an offer of exchange of two securities, each of which is offered by a registered unit investment trust.

4. According to the Commission, Congress enacted Section 11 of the Act to prevent "switching," the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges.

5. Section 11(c) of the Act requires Commission approval (by order or by rule) of any exchange, regardless of its basis, involving securities issued by a unit investment trust because investors in unit investment trusts were found by Congress to be particularly vulnerable to switching transactions. Applicants

believe that the potential for harm to investors perceived in switching by Congress was its use to extract additional sales charges from those investors.

6. Applicants represent that, as opposed to providing a means of extracting additional sales charges as contemplated by the prohibitions of Section 11, the proposed exchange offer provides enduring benefits to the contract owners. To the extent that a contract owner ultimately did not benefit from accepting the offer, it would be as a result of his or her own subsequent decision to surrender the exchanged contract in circumstances that would have been the subject of very explicit disclosure.

7. Rule 11a-2, by its express terms, provides for Commission approval of certain types of offers of exchange of one variable annuity contract for another. Other than the relative net asset value requirement, the only other part of Rule 11a-2 that would not be satisfied by the proposed exchange offer is the requirement that payments under the existing MultiFund® 2, 3, and 4 Contracts be treated as if they had been made under the exchanged contracts on the dates actually made. This provision of Rule 11a-2 is often referred to as a "tacking" requirement because it has the effecting of "tacking together" the surrender charge expiration periods of the exchanged and acquired contracts.

8. Applicants believe that tacking should be viewed as a useful way to avoid the need to scrutinize the terms of an offer of exchange to make sure that there is no abuse. Tacking is not a requirement of Section 11. Rather, it is a creation of a rule designed to approve the terms of an offer of exchange "sight unseen." Tacking focuses on the closest thing to multiple deduction of sales loads that is possible in a surrender charge contract—multiple exposure to sales loads upon surrender or redemption. If tacking and other safeguards of Rule 11a-2 are present, there is no need for the Commission or its staff to evaluate the terms of the offer. The absence of tacking in this fully scrutinized Section 11 application will have no import in offers made pursuant to the rule on a "sight unseen" basis.

9. No tacking is required when Lincoln Life's competitors offer their variable annuity contracts to owners of the MultiFund® 2, 3, and 4 Contracts or indeed when Lincoln makes such an offer to competitors' contract owners. In those exchanges, unlike the offer proposed here, the exchanging contract owner actually must pay any remaining surrender charge on the exchanged

contract at the time of the exchange. The broker/dealers that will be making recommendations to their customers regarding these offers are required to satisfy the suitability requirements. Therefore, while tacking is not present, the investor protection afforded by the suitability requirements imposed upon the broker/dealer and the additional disclosure will be.

10. By this Application, Applicants are seeking a "level playing field" to permit Lincoln to compete with offers of competitors to its longstanding contract owners. Absent the requested relief, there can be no such offers, as imposition of the Rule 11a-2 tacking requirement would make it unfeasible for the offers to be made.

11. Applicants assert that approval of the terms of the exchange offer is warranted, among other reasons, because it will promote competition in the variable annuity marketplace. Such approval will foster competition by allowing Lincoln Life to make an offer to its own contract owners that would provide an attractive additional option for contract owners' consideration.

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions, which are intended to support the understanding that the 2% Bonus Exchange Offer is being made to contract owners who expect to persist:

1. The Offering document will contain concise, plain English statements that:

(a) the 2% Bonus Exchange Offer is suitable only for contract owners who expect to hold their contracts as long term investments; and

(b) if the new contract is surrendered during the initial surrender charge period:

- i. the 2% bonus may be more than offset by the surrender charge; and
- ii. the contract owner may be worse off than if he or she had rejected the exchange offer.

2. The Offering Document will disclose in concise, plain English each aspect of the New Contract that will be less favorable than the Old Contract, including the fact that the MultiFund® 5 Contract has a lower, guaranteed minimum interest rate for investments in the fixed account than the MultiFund® 2, 3, and 4 Contracts.

3. Lincoln Life will send the Offering Document directly to eligible contract owners. A contract owner choosing the exchange offer will then complete and sign an internal exchange form, which will prominently restate in concise, plain English the statements required in Condition No. 1, and will return it to Lincoln Life. If the internal exchange

form is more than two pages long, the statements referred to in Condition No. 1 will be restated in a separate document, and Lincoln Life will obtain the contract owner's acknowledgement of receipt of that document.

4. Lincoln Life will maintain the following separately identifiable records in an easily accessible place, for the time periods specified below in this Condition No. 4 for review by the Commission upon request:

(a) Records showing the level of acceptances of the exchange offer and how these acceptances relate to the total number of contract owners eligible to participate in the offers (quarterly as a percentage of the number eligible);

(b) Copies of any form of Offering Document and any other written materials or scripts for presentations by representatives regarding the exchange offer that Lincoln Life either prepares or approves, including the dates that such Offering Document and materials were used;

(c) Records containing information about each exchange transaction that occurs, including the name of the contract owner, Old and New Contract numbers; the amount of surrender charge waived on surrender of the Old Contract; bonus paid; the name and CRD number of the registered representative soliciting the exchange, firm affiliation, branch office address, telephone number, and the name of the registered representative's broker-dealer; commission paid; the internal exchange form (and separate acknowledgement, if any) showing the name, date of birth, address, and telephone number of the contract owner and the date the internal exchange form (or separate acknowledgement) was signed; amount of contract value exchanged; and persistency information relating to the New Contract, including the date of any subsequent surrender and the amount of surrender charge paid on the surrender; and

(d) Logs showing a record of any contract owner complaint about the exchange; state insurance department inquiries about the exchange; or litigation, arbitration or other proceeding regarding any exchange. The logs will include the date of the complaint or commencement of the proceeding, name and address of the person making the complaint or commencing the proceeding, nature of the complaint or proceeding, and the persons named or involved in the complaint or proceeding.

Applicants will retain records specified in (a) and (d) for a period of six years after the date the records are created, records specified in (b) for a

period of six years after the date of last use, and records specified in (c) for a period of two years after the date that the initial surrender charge period of the New Contract ends.

Conclusion

For all the reasons discussed above, Applicants submit that (1) the 2% Bonus Exchange Offer offers substantial benefits to contract owners, will be advantageous for the great majority of owners to whom it will be offered, and does not contravene any policy or purpose of Section 11, and (2) approval of Applicants' offer of the exchange offer as described, and subject to the conditions set forth in this Application, is 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. Therefore, Applicants respectfully submit that the Commission should grant the approval sought by this Application.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-26040 Filed 10-14-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48596; File No. SR-BSE-2003-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to the Exchange's Instant Liquidity Access Service for Certain Limit Orders

October 7, 2003.

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 July 14, 2003, the Boston Stock Exchange, Inc. ("BSE" 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. On September 8, 2003, the Exchange submitted an amendment to the filing.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John Boese, Vice President, Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation,