

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. IC-26416; File No. 812-12942]

**ING USA Annuity & Life Insurance
Company, et al. April 9, 2004.****AGENCY:** The Securities and Exchange Commission ("SEC" or "Commission").**ACTION:** Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940, as amended, (the "Act") approving certain substitutions of securities and for an order of exemption pursuant to section 17(b) of the Act.**APPLICANTS:** ING USA Annuity & Life Insurance Company ("ING USA"), Separate Account B of ING USA Annuity & Life Insurance Company ("Account B"), Separate Account EQ of ING USA Annuity & Life Insurance Company ("Account EQ"), ING Life Insurance and Annuity Company ("ING Life"), Variable Annuity Account C of ING Life Insurance & Annuity Company ("ING VA C Account") Variable Life Account C of ING Life Insurance & Annuity Company ("ING C Account"), ReliaStar Life Insurance Company ("ReliaStar"), ReliaStar Select Variable Account of ReliaStar Life Insurance Company ("RLS Select VA"), ReliaStar Select Life Variable Account of ReliaStar Life Insurance Company, ("RLS Select LVA"), ReliaStar Life Insurance Company of New York ("ReliaStar New York"), ReliaStar Life Insurance Company of New York—Separate Account NY-B ("RLNY Separate Account B"); Variable Life Separate Account I of ReliaStar Life Insurance Company of New York ("RLNY VL Separate Account I"), Variable Annuity Separate Account II of ReliaStar Life Insurance Company of New York ("RLNY VA II"), Security Life of Denver Insurance Company ("Security Life"), Security Life Separate Account A1 ("Security Life A1"), Security Life Separate Account L1 ("Security Life L1"), Southland Life Insurance Company ("Southland"), Southland Separate Account A1 ("Southland A1"), Southland Separate Account L1 ("Southland L1") and ING Investors Trust (the "Trust") (together, the "Applicants"). Prior to May 1, 2003, ING Investors Trust was known as The GCG Trust. Effective May 1, 2003, the name of The GCG Trust was changed to ING Investors Trust. At the same time, the name of each portfolio of The GCG Trust also was changed.**SUMMARY:** The Applicants have submitted an application for an order of the Securities and Exchange

Commission (the "Commission"), pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the "1940 Act"), permitting the substitutions of securities issued by certain registered investment companies held by Account B, Account EQ, ING VA C Account, ING C Account, RLS Select VA, RLS Select LVA, RLNY Separate Account B, RLNY VL Separate Account I, RLNY VA II, Security Life A1, Security Life L1, Southland A1 and Southland L1 (each, an "Account" and together, the "Accounts") to support certain in force variable life insurance policies and variable annuity contracts (collectively, the "Contracts") issued by ING USA, ING Life, ReliaStar, ReliaStar New York, Security Life and Southland (each a "Company" and together, the "Companies"). More particularly, the Applicants propose to substitute shares of certain investment management companies (each a "Management Company") currently held by sub-accounts of the various Accounts for shares of certain series of the Trust as follows: (1) Shares of Fidelity Variable Insurance Products—Money Market Portfolio (Initial Class) (the "Fidelity Money Fund") for Institutional Class shares of the ING Liquid Asset Portfolio of the Trust, formerly known as the Liquid Asset Portfolio (the "Liquid Asset Portfolio" or the "New Money Market Fund"); (2) Class O shares of The Alger American Fund—Alger American Small Capitalization Portfolio (the "Alger Fund") for Institutional Class shares of the ING J. P. Morgan Fleming Small Cap Equity Portfolio of the Trust (the "Small Cap Portfolio"); (3) Initial Class shares of Fidelity Variable Insurance Products—Index 500 Portfolio (the "Fidelity VIP Fund") for Institutional Class shares of the ING Stock Index Portfolio of the Trust (the "ING Index Portfolio"); (4) shares of Fund for Life Series of the Trust (the "Fund for Life") for Service Class shares of the ING T. Rowe Price Capital Appreciation Portfolio of the Trust, formerly the Fully Managed Portfolio (the "Fully Managed Portfolio"); (5) shares of Institutional Class shares of Janus Aspen Series—Growth Portfolio (the "Janus Institutional Fund") and Service Class Shares of Janus Aspen Series—Growth Portfolio (the "Janus Service Fund") for Institutional Class shares of the ING Van Kampen Equity Growth Portfolio of the Trust, formerly the Equity Growth Portfolio (the "Equity Growth Portfolio"); (6) shares of Neuberger Berman Advisers Management Trust—Partners Portfolio (the "Neuberger Fund") for Institutional Class Shares of the ING Mercury Focus Value Portfolio

of the Trust (the "Focus Value Portfolio"); and (7) Administrative Class shares of PIMCO Variable Insurance Trust—High Yield Bond Portfolio (the "PIMCO Fund") for Service Class shares of the ING PIMCO High Yield Bond Portfolio of the Trust (the "High Yield Portfolio"). Applicants also seek an order of exemption pursuant to section 17(b) of the 1940 Act to permit certain in-kind redemptions and purchases in connection with the substitution.

FILING DATE: The application was filed on March 12, 2003. The application was amended and restated on October 29, 2003, amended and restated on March 24, 2004 and amended and restated on March 31, 2004. Applicants represent that they will file an amendment to the application during the notice period to conform the representations set forth herein.**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 30, 2004, 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 who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.**ADDRESSES:** For the Commission: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. For Applicants, Terrence O. Davis, Esquire, ING Americas U.S. Legal Services, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380.**FOR FURTHER INFORMATION CONTACT:** Curtis A. Young, 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 amended and restated application. The complete amended and restated application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

I. The Proposed Substitution

The Applicants have requested that the Commission issue an order to permit the substitution ("Substitution") of certain shares of various portfolios for shares of similar portfolios offered by the Trust. More particularly, the Applicants propose to substitute shares of certain investment management companies currently held by sub-accounts of the various Accounts for shares of certain series of the Trust as follows: (1) Shares of the Fidelity Money Fund for Institutional Class shares of the Liquid Asset Portfolio; (2) Class O shares of The Alger Fund for Institutional Class shares of the Small Cap Portfolio; (3) Initial Class shares of the Fidelity VIP Fund for Institutional Class shares of the ING Index Portfolio"; (4) shares of Fund for Life for Service Class shares of the Fully Managed Portfolio; (5) shares of the Janus Institutional Fund and the Janus Service Fund for Institutional Class shares of the Equity Growth Portfolio; (6) shares of the Neuberger Fund for Institutional Class Shares of the Focus Value Portfolio; and (7) Administrative Class shares of the PIMCO Fund for Service class shares of the High Yield Portfolio.

II. Applicants' Representations

A. Each of the Companies listed below is a direct or indirect subsidiary of ING Groep, N.V. ("ING"). ING is a global financial services holding company based in The Netherlands which is active in the field of insurance, banking and asset management in more than 60 countries. As a result each of the Companies likely would be deemed to be an affiliate of each other.

1. *ING USA*. ING USA is an Iowa stock life insurance company which originally was organized under the insurance laws of Minnesota. Prior to January 1, 2004, ING USA was known as Golden American Life Insurance Company ("Golden"). Effective on January 1, 2004, Equitable Life Insurance Company of Iowa ("Equitable"), along with several other affiliated companies, was merged with and into Golden and the name of Golden changed to ING USA. Prior to the merger, Golden primarily was engaged primarily in the issuance of variable annuity and variable life insurance products. Subsequent to the merger, ING USA succeeded to business of Golden and became the sponsor and depositor of Account B along with Account EQ.

2. *ING Life*. ING Life is a stock life insurance company organized under the insurance laws of the State of

Connecticut in 1976 and an indirect wholly-owned subsidiary of ING. Through a merger, ING Life succeeded to the business of Aetna Variable Annuity Life Insurance Company (formerly Participating Annuity Life Insurance Company, an Arkansas life insurance company organized in 1954). Prior to May 1, 2002, the ING Life was known as Aetna Life Insurance and Annuity Company. ING Life principally is engaged in the business of issuing life insurance policies and variable annuity contracts. ING Life also is registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and, as such, is the investment adviser for ING Partners, Inc. (prior to May 1, 2002 known as Portfolio Partners, Inc.) ING Life is the depositor of ING VA C Account and ING C Account, each of which is a separate account of ING Life and is registered with the Commission as a unit investment trust.

3. *ReliaStar*. ReliaStar is a stock life insurance company organized in 1885 and incorporated under the laws of the State of Minnesota. ReliaStar is an indirect, wholly-owned subsidiary of ING which principally offers individual life insurance and annuities, employee benefits and retirement contracts.

4. *ReliaStar New York*. ReliaStar New York is a stock life insurance company that was incorporated under the laws of the State of New York in 1917. ReliaStar New York is an indirect, wholly-owned subsidiary of ReliaStar Financial, an indirect, wholly owned subsidiary of ING. ReliaStar New York principally offers individual life insurance and annuities.

5. *Security Life*. Security Life is a stock life insurance company organized under the laws of the State of Colorado in 1929. Security Life is a wholly owned indirect subsidiary of ING and principally is engaged in the business of issuing life insurance policies and annuity contracts.

6. *Southland Life*. Southland Life is a stock life insurance company organized under the laws of the State of Texas in 1908. Southland Life principally is engaged in the business of issuing life insurance policies and annuity contracts.

7. Each of the Accounts is a segregated asset account of the applicable Company, and is registered under the 1940 Act as a unit investment trust. Each of the respective Accounts is used by the Company of which it is a part to support the Contracts that it issues.

8. Each Account is administered and accounted for as part of the general business of the Company of which it is

a part. The assets of each Account attributable to the Contracts issued through it are owned by each Company but are held separately from all other assets of that Company for the benefit of the owners of, and persons entitled to benefits under such Contracts. Pursuant to applicable state insurance law, such assets are not chargeable with liabilities arising out of any other business that each Company may conduct. Income, if any, gains and losses, realized or unrealized, from each Account are credited to or charged against the assets of that Account, without regard to other income, gains or losses of its Company or any of its other segregated asset accounts. Each Account is a "separate account" as defined by Rule 0-1(e) under the 1940 Act.

9. Each Account is divided into subaccounts. Each Account has subaccounts, each of which invests exclusively in shares of one investment company portfolio of the Trust, a Replaced Fund or another mutual fund. Each investment company portfolio has its own distinct investment objective(s) and policies. Income, gains and losses, realized or unrealized, of a portfolio are credited to or charged against the corresponding subaccount of each Account without regard to any other income, gains or losses of the applicable Company. Assets equal to the reserves and other contract liabilities with respect to each are not chargeable with liabilities arising out of any other business of the applicable Company.

10. 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 death benefit, upon the death of the insured. Under each of the Contracts, each Company reserves the right to substitute shares of one fund or portfolio for shares of another.

11. A Contract owner may transfer all or any part of the Contract value from one subaccount to any other subaccount or a fixed account as long as the Contract remains in effect for variable life insurance contracts, and at any time up to 30 days before the due date of the first annuity payment for variable annuity contracts. For many of the variable annuity contracts, the Company issuing the Contract reserves the right to

limit the number of transfers during a specified period.

12. Each Company, on behalf of itself and their Accounts propose a series of substitutions of shares held in the

applicable Accounts. The table below summarizes the proposed substitutions.

| Replaced fund | Class of shares (if applicable) | Substitute trust portfolio | Substitute trust portfolio class | Account(s) holding replaced money market fund(s) |
|------------------------------------|---------------------------------|-------------------------------|----------------------------------|---|
| Replaced Money Market Funds | | | | |
| Fidelity Money Fund | Initial | Liquid Asset Portfolio | Institutional | RLS Select VA. RLS Select LVA. RLNY VA II. RLNY VL I. Security Life A1. Southland A1. Southland L1. Security Life L1. |
| Non-Money Market Funds | | | | |
| Alger Fund | Class O | Small Cap Portfolio | Institutional | RLS Select VA. RLS Select LVA. RLNY VA II. RLNY VL I. Security Life A1. Security Life L1. Southland A1. Southland A2. Southland L1. RLNY VA II. RLS Select VA. RLS Select LVA. RLNY VL I. Security Life A1. Security Life L1. Southland A1. Southland L1. |
| Fidelity VIP | Initial | ING Index Portfolio | Institutional | RLS Select VA. RLS Select LVA. RLNY VL I. Security Life A1. Security Life L1. Southland A1. Southland L1. |
| Janus Fund | Institutional | Equity Growth Portfolio | Institutional | ING Acct. C. RLS Select VA. RLS Select LVA. RLNY VA II. RLNY VL I. Southland A1. Southland L1. |
| Janus Fund | Service | Equity Growth Portfolio | Institutional | Southland A1. Southland L1. Security Life L1. |
| Fund for Life | N/A | Fully Managed Portfolio | Service | Account B. |
| Neuberger Fund | N/A | Focus Value Portfolio | Institutional | RLS Select VA. RLS Select LVA. RLNY VA II. RLNY VL I. Security Life A1. Security Life L1. |
| PIMCO Fund | Administrative | High Yield Portfolio | Service | Account B. Account EQ. RLNY Separate. Account B. |

13. Applicants believe that for each proposed substitution, the investment objectives and policies of the replacing Fund(s) or Portfolio(s) are sufficiently similar to those of the replaced Fund(s) or Portfolio(s) that Contract owners will have reasonable continuity in investment expectations. Applicants also believe that the proposed substitutions will better serve the interests of Contract owners because, in each case, the replacing Fund or

Portfolio has either the same or lower fees or expenses.

14. Each Management Company is registered as an open-end management investment company under the Act. Further, each is a series investment company as defined by Rule 18f-2 under the Act and issues separate series of shares of stock (for corporations) or of beneficial interest (for business trusts) in connection with each Fund or Portfolio. The shares of each Fund or

Portfolio are registered under the 1933 Act on Form N-1A.

15. The investment objective of the Fidelity Money Fund is substantially identical to the investment objective of the Liquid Asset Portfolio. More particularly, the investment objective of the Fidelity Money Fund is to seek as a high a level of current income as is consistent with the preservation of capital and liquidity. On the other hand, the investment objective of the Liquid Asset Portfolio is to seek a high level of

current income consistent with the preservation of capital and liquidity. Similarly, the investment policies of the Fidelity Money Fund are substantially similar to the policies of the Liquid Asset Portfolio. Both the Fidelity Money Fund and the Liquid Asset Portfolio have elected to use the amortized cost method to value their respective portfolio securities. As a result, both the Fidelity Money Fund and the Liquid Asset Portfolio are subject to the requirements of Rule 2a-7 adopted under the 1940 Act. Among other features, Rule 2a-7 sets forth certain requirements concerning issuer creditworthiness and diversification standards which must be complied with by money market funds seeking to use the amortized cost method. Thus, the Fidelity Money Fund and the Liquid Asset Portfolio are required to follow substantially identical policies as prescribed by Rule 2a-7.

16. The Alger Fund and the Small Cap Portfolio share the same investment objective. More particularly, both the Alger Fund and the Small Cap Portfolio each seek to achieve long term capital appreciation. Furthermore, both the Alger Fund and the Small Cap Portfolio (each a "Small Cap Fund") have substantially identical policies. Each Small Cap Fund principally invests in stocks of companies included on the Russell 2000 Growth Index or the S&P SmallCap 600 Index.

17. The investment objective of the Fidelity VIP Fund and the ING Index Portfolio (each an "Index Fund") are identical. More specifically, each Index Fund seeks to achieve investment results that correspond to the total return of common stocks publicly traded in the United States, as represented by the S&P 500 Index.

Furthermore, each Index Fund has substantially identical investment policies as the other Index Fund. Each Index Fund invests substantially all of its assets in securities of companies included on the S&P 500 Index.

18. The Janus Fund and the Equity Growth Portfolio have substantially

identical investment objectives. The investment objective of the Janus Fund is to seek long-term growth of capital in a manner consistent with the preservation of capital. While the investment objective of the Equity Growth Portfolio is to achieve long-term capital appreciation. Both the Janus Fund and the Equity Growth Portfolio seek to achieve growth in their investment portfolios over the longer term. Further both the Janus Fund and the Equity Growth Portfolio pursue their respective investment objectives by investing principally in U.S. companies and foreign companies listed on securities exchanges in the United States with larger market capitalizations. The investment policies of the Janus Fund and the Equity Growth Portfolio are nearly identical. Both the Janus Fund and the Equity Growth Portfolio are permitted to invest in a wide range of securities, but each invests the majority of its assets in equity securities.

19. The investment objective of the Neuberger Fund and the Focus Value Portfolio are substantially identical. Both the Neuberger Fund and the Focus Value Portfolio seek growth of capital. However, the Focus Value Portfolio seeks to achieve the growth of capital over the long term. While the language of the investment objective of may not be articulated the same, each fund pursues its respective investment objective by investing in the same types of issuers. More particularly, both the Neuberger Fund and the Focus Value Portfolio seek to find issuers whose stock prices are believed to be undervalued. Furthermore, each fund has the ability to invest in a range of securities in pursuit of its investment objective, including junk bonds.

20. Both the PIMCO Fund and the High Yield Portfolio (each a "Bond Fund") have the same investment objective. More specifically, each Bond Fund seeks maximum total return, consistent with preservation of capital and prudent investment management. The High Yield Portfolio is modeled

after the PIMCO Fund. As a result, the investment objectives and policies of each Bond Fund nearly are identical. Furthermore, it is anticipated that PIMCO will manage the High Yield Portfolio after the Substitution in substantially the same manner as PIMCO manages the PIMCO Fund.

21. While the Fully Managed Portfolio is not a "fund of funds," there is no substitution alternative available among the investment portfolios of the ING Investors Trust for the Fund For Life's structure as a "fund of funds." Both the Fully Managed Portfolio and the Fund For Life share the primary objective of high total investment return. The Fully Managed Portfolio also has the same investment strategy as the Fund For Life, of allocating assets among equity and bond classes of investments, with the majority invested in equity investments. In addition, the Fund For Life is authorized to allocate 10% of its assets to mutual funds investing in international equity securities; the Fully Managed Portfolio is authorized to invest 20% of its net assets in equity securities of foreign issuers. Golden American has, therefore, concluded that the overall investment objectives of the Fund For Life and the Fully Managed Portfolio are sufficiently similar to be appropriate for substitution.

22. A significant difference in the configuration of the funds is how the fees are structured by each portfolio together with the fact that the overall expenses are lower or comparable under the Trust Portfolio fee structure. Each Trust Portfolio is part of the unified fee structure of the Trust, under which DSI, which receives a fixed management fee, pays almost all of the operating expenses incurred by each Trust Portfolio. In contrast, each Replaced Fund pays both a management or advisory fee and all of its own operating expenses. The following tables compare the expenses of each Replaced Fund with the expenses of the corresponding Trust Portfolio (as a percentage of average daily net assets):

REPLACED MONEY MARKET FUND VS. LIQUID ASSET PORTFOLIO

[In percent]

| | Replaced fund Fidelity money fund (Initial class) | Expenses | Trust portfolio Liquid asset portfolio (Instit. class) |
|----------------------------------|---|----------|---|
| Management Fee | | 0.20 | 0.27 |
| Other Expenses, 12b-1 Fees | | 0.10 | 0.01 |
| Total Expenses | | 0.30 | 0.28 |

NON-MONEY MARKET REPLACED FUNDS VS. CORRESPONDING TRUST PORTFOLIO

[In percent]

| | Replaced fund Alger Fund | Trust portfolio Small cap port- folio (Institutional class) |
|----------------------|---|---|
| Management Fee | 0.85 | 0.90 |
| Other Expenses | 0.11 | 0.0 |
| 12b-1 Fees ..... | ..... | ..... |
| Total Expenses | 0.96 | 0.90 |
| | Fidelity VIP (Initial class) | ING Index Portfolio (Institutional class) |
| Management Fee | 0.24 | 0.27 |
| Other Expenses | 0.10 | 0.01 |
| 12b-1 Fees ..... | ..... | ..... |
| Total Expenses | 0.34 | 0.28 |
| | Fund for Life | Fully Managed Portfolio (Service class) |
| Management Fee | 0.10 | 0.68 |
| Other Expenses | 2.95 | 0.25 |
| 12b-1 Fees ..... | ..... | 0.01 |
| Total Expenses | 13.05 | 0.94 |
| | Janus Fund (Institutional class) | Equity Growth Portfolio (Institutional class) |
| Management Fee | 0.65 | 0.65 |
| Other Expenses | 0.02 | 0.02 |
| 12b-1 Fees ..... | ..... | ..... |
| Total Expenses | 0.67 | 0.67 |
| | Janus Fund (Service class) | Equity Growth Portfolio (Institutional class) |
| Management Fee | 0.65 | 0.65 |
| Other Expenses | 0.02 | 0.02 |
| 12b-1 Fees | 0.25 | ..... |
| Total Expenses | 0.92 | 0.67 |
| | Neuberger Fund | Focus Value Fund (Institutional Class) |
| Management Fee | 0.82 | 0.80 |
| Other Expenses | 0.13 | 0.00 |
| 12b-1 Fees ..... | ..... | ..... |
| Total Expenses | 0.95 | 0.80 |
| | PIMCO Fund (Administrative class) | High Yield Portfolio (Service class) |
| Management Fee | 0.25 | 0.49 |
| Other Expenses | 0.25 | 0.01 |
| 12b-1 Fees | 0.25 | 0.25 |
| Total Expenses | 0.75 | 0.75 |

NON-MONEY MARKET REPLACED FUNDS VS. CORRESPONDING TRUST PORTFOLIO—Continued
[In percent]

| | Replaced fund Alger Fund | Trust portfolio Small cap port- folio (Institutional class) |
|--------------------------|---|---|
| Total Net Expenses | PIMCO Fund (Administrative class) 0.75 | High Yield Portfolio (Service class) 0.75 |

¹ DSI has agreed to waive and/or assume 0.55% of the annual expenses of the Fund for Life.

23. The accompanying chart shows 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 the past year for each of the Funds and Portfolios involved in the proposed substitutions.

COMPARISON OF THE REPLACED FUNDS TO THE TRUST PORTFOLIOS

| Replaced fund | As of | Net assets | Expense ratio | Total return |
|--|---------------------|-----------------|---------------|--------------|
| Replaced Money Market Fund | | | | |
| Fidelity Money Fund | Dec. 31, 2003 | \$1,817,439,610 | 0.29% | 1.00% |
| Trust Portfolio | | | | |
| Liquid Asset Portfolio (Institutional Class) ² | | | | |
| Non-Money Market Funds | | | | |
| Alger Fund | Dec. 31, 2003 | \$469,076,000 | 0.97% | 42.34% |
| Trust Portfolio | | | | |
| Small Cap Portfolio (Institutional Class) ³ | | | | |
| Fidelity VIP (Initial Class) | Dec. 31, 2003 | \$3,031,540,423 | 0.34% | 28.41% |
| Trust Portfolio | | | | |
| ING Index Portfolio ⁴ | | | | |

² As of the date of this Application, the Institutional Class shares of the Liquid Asset Portfolio had not yet commenced operation.

³ As of the date of this Application, the Institutional Class shares of the Small Cap Portfolio had not yet commenced operation.

⁴ As noted above, the ING Index Portfolio is being created in anticipation of the substitutions contemplated by this Application. Thus, there is no operating history to report for this Trust Portfolio.

| Replaced fund | As of | Net assets | Expense ratio | Total return |
|---|---------------------|-----------------|---------------|--------------|
| Janus Fund | Dec. 31, 2003 | \$1,666,317,000 | 0.67% | 31.73% |
| Trust Portfolio | | | | |
| Equity Growth Portfolio ⁵ (Institutional Class) | | | | |
| Janus Fund | Dec. 31, 2003 | \$211,100,000 | 0.92% | 31.49% |
| Trust Portfolio | | | | |
| Equity Growth Portfolio ⁶ (Institutional Class) | | | | |
| Neuberger Fund | Dec. 31, 2003 | \$669,639,353 | 0.91% | 35.09% |

| Replaced fund | As of | Net assets | Expense ratio | Total return |
|---|---------------------|-----------------|---------------|--------------|
| Trust Portfolio | | | | |
| Focus Value Portfolio ⁷ (Institutional Class) PIMCO Fund | Dec. 31, 2003 | \$955,599,000 | 0.75% | 22.85% |
| Trust Portfolio | | | | |
| High Yield Portfolio ⁸ (Service) Fund for Life | Dec. 31, 2003 | \$108,405 | 3.05% | 18.40% |
| New Portfolio | | | | |
| Fully Managed (Service) | Dec. 31, 2003 | \$1,413,027,000 | 0.94% | 25.23% |

⁵ The Equity Growth Portfolio has not yet commenced operations.

⁶ *Id.*

⁷ The Focus Value Portfolio has not yet commenced operations.

⁸ The High Yield Portfolio has not yet commenced operations.

24. Applicants propose to rationalize and consolidate their underlying investment portfolio and fund offerings among the Contracts. The rationalization and consolidation effort and resulting proposed substitutions arise from two factors. First, as a consequence of several acquisitions and/or mergers over the past several years involving ING and one or more of the Companies, there are several asset management divisions/groups being offered by each of the various Companies. Second, contemporaneously, the various Companies conducted a reevaluation of the array of investment options offered within each Contract. The goal of the reevaluation was to identify and establish an updated, current array of investment options for the Contracts and respond to distributor feedback regarding offerings in various variable annuity and life insurance contracts.

25. As a result of the review process described above, the Applicants determined that maintaining and servicing such a large array of often redundant investment options unnecessarily uses resources which could be better directed elsewhere, including the servicing of existing Contracts. Furthermore, Applicants believe that such a large array of underlying fund options is inefficient and not necessary in light of the investment options offered by the Trust which have investment objectives and policies that, in most cases, are substantially identical to those of the Replaced Fund. Thus, a plan was developed to realign some of the underlying fund/portfolio offerings and/or to rationalize such offerings of which

the proposed substitutions are an essential component.

26. The Trust, in anticipation of the proposed consolidation formed several new Portfolios, including the Equity Growth Portfolio, Focus Value Portfolio and ING Index Portfolio. In addition, the Companies began adding several new options to the certain Contracts this past May 1 and, where possible, closed off the proposed Replaced Fund to new investments as of that date. The Applicants believe that Contract owners will benefit from these efforts in several respects.

27. Apart from the substitution of the underlying mutual funds, the rights of affected Contract owners and the obligations of the Companies under the Contracts would not be altered by the Substitutions. Affected Contract owners will not incur any additional tax liability or any additional fees or expenses as a result of the Substitutions.

28. The Substitutions will take place at relative net asset value (in accordance with Rule 22c-1 under the 1940 Act) with no change in the amount of any affected Contract owner's accumulation value or death benefit or in dollar value of his or her investment in the Accounts. Affected Contract owners will not incur any fees or charges as a result of the Substitutions nor will their rights or the Companies' obligations under the affected Contracts be altered in any way. The Companies or their affiliates will pay all other expenses incurred with the Substitutions, including legal, accounting, and other fees and expenses. In addition, the Substitutions will not impose any tax liability on affected Contract owners. The Substitutions will not cause the affected Contract fees and charges currently

being paid by affected Contract owners to be greater after the Substitutions than before the Substitutions. In addition, while the Companies do not anticipate increasing Contract fees and/or charges paid by any current Contract owners, the Companies have agreed not to increase the Contract fees and charges currently being assessed by the Contracts for a period of at least two years following the Substitutions.

29. Affected Contract owners will have the right to surrender their affected Contracts or reallocate accumulation value of each Replaced Fund in accordance with the terms and conditions of their Contract prior to (and after) the Effective Date.

30. Each affected Contract owner will receive a copy of (i) a supplement informing shareholders of the proposed substitution; (ii) a prospectus for the appropriate Trust portfolio, and (iii) a second supplement setting forth the Effective Date and advising affected Contract owners of their right to reconsider the Substitutions and, if they so choose, any time prior to the Effective Date, they may withdraw or reallocate accumulation value under the affected Contract or otherwise terminate their interest thereof in accordance with the terms and conditions of their Contract; and (iv) within five business days of the Effective Date, a Post-Substitution Notice. If affected Contract owners reallocate accumulation value prior to the Effective Date, or within 30 days after the Effective Date, there will be no charge for the initial reallocation of accumulated value from each Affected Subaccount and the initial reallocation will not be counted toward the total number of reallocations made

within the Contract year for purposes of determining whether the number of reallocations which may be made without incurring administrative or transfer fees, if any, under the relevant Contract has been exceeded. The Companies will not exercise any right they may have under the Contracts to impose additional restrictions or fees on transfers from the Replaced Funds under the Contracts for a period of at least thirty days following the proposed substitutions.

III. Applicant's Legal Analysis

1. Section 26(c) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Each of the Contracts expressly reserved to the Companies the right, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a subaccount of an Account. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right.

2. The Companies 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 its separate accounts and to afford the opportunity to replace such shares where to do so could benefit the Contract owners and Companies.

3. Applicants maintain that Contract owners will be better served by the proposed substitutions. Applicants anticipate that the replacement of certain unpopular Portfolios or Funds will result in a Contract that is administered and managed more efficiently, and one that is more competitive with other variable products in both wholesale and retail markets. Applicants state that for all of the proposed substitutions, the new Portfolios or Funds are either substantially the same or more conservative in their investment objective(s) or strategies or both, than the Portfolios or Funds that they would replace. Likewise, Applicants believe that a majority of the new Portfolios or Funds have a substantially similar or lower investment risk profile than the Portfolios or Funds each would replace.

4. 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.

5. Applicants anticipate that Contract owners will be at least as well off with the proposed array of subaccounts to be offered after the proposed substitutions as they have been with the array of subaccounts offered before the substitutions. The proposed substitutions retain for Contract owners the investment flexibility that 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 remaining subaccounts as they could before the proposed substitutions.

6. Applicants assert that each of the proposed substitutions 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 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 that Section 26(c) was designed to prevent.

7. Applicants maintain that the proposed substitutions also are 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 account values. They also select the specific types of insurance coverages offered by the various Companies under the Contracts as well as numerous other rights and privileges set forth in each Contract. Contract owners may also have considered the size, financial condition, type, and reputation of ING and the various Companies. These factors will not change because of the proposed substitutions.

8. 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.

9. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment

company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the Act; and (3) the proposed transaction is consistent with the general purposes of the Act.

10. Applicants maintain that the terms of the proposed transactions, including the consideration to be paid and received by each Portfolio or Fund involved, are reasonable, fair and do not involve overreaching principally because the transactions do not cause owners' interests under a Contract to be diluted and because the transactions will conform with the principal conditions enumerated in Rule 17a-7. The proposed transactions will take place at relative net asset value with no change in the amount of any Contract owner's Contract or cash value or death benefit or in the dollar value of his or her investment in any of the Accounts. Even though the Applicants may not rely on Rule 17a-7, Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

11. Applicants submit that the Substitutions by the Companies are consistent with the policies of each Portfolio and each Replaced Fund, as recited in the current registration statements and reports filed by each under the 1940 Act. Finally, Applicants submit that the Substitutions are consistent with the general purposes of the 1940 Act.

12. The boards of trustees or directors, as applicable of each Replaced Fund and the Trust have adopted procedures, as required by paragraph (e)(1) of Rule 17a-7, pursuant to which the portfolios or funds of each may purchase and sell

securities to and from their affiliates. The Companies and the investment advisers will carry out the Substitutions in conformity with the principal conditions of Rule 17a-7 and each Replaced Fund's and the Trust's procedures thereunder. Although the transaction may not be entirely for cash, with the exception of the substitution involving the PIMCO Fund and the High Yield Portfolio as described below, it will be effected based upon (i) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a-7, and (ii) the net asset value per share of each Portfolio and the corresponding Replaced Fund valued in accordance with the procedures disclosed in the registration statements for each Fund and as required by Rule 22c-1 under the 1940 Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. In addition, the Trust Board will subsequently review the Substitutions and make the determinations required by paragraph (e)(3) of Rule 17a-7.

13. With regard to the substitution involving the PIMCO Fund and the High Yield Portfolio, DSI and the investment adviser to the PIMCO Fund and the investment sub-adviser to the High Yield Portfolio, PIMCO, intend to value securities selected for transfer between the two funds in a manner that is consistent with the current methodology used to calculate the daily net asset value of the PIMCO Fund. Currently, PIMCO employs certain third party, independent pricing services to value securities held by the PIMCO Fund ("vendor pricing"). DSI and PIMCO intend to employ vendor pricing to value securities held by the PIMCO Fund that are selected for transfer to the High-Yield Portfolio. Securities will be selected for transfer to the High Yield Portfolio on a pro-rata basis.

14. After the assets have been contributed to the Trust, responsibility for valuation of the securities held by the High Yield Portfolio will shift to the valuation committee of the Board of the Trust. At the end of the first trading following the transfer, the valuation agent and custodian for the Trust, the Bank of New York, will value the securities held by the High-Yield Portfolio. The foregoing notwithstanding, the Board of the Trust will retain ultimate responsibility for the valuation of the securities held by the High Yield Portfolio.

15. DSI and PIMCO believe that the use of neutral, third party vendor prices will ensure that both portfolios utilize unbiased evaluations in determining

respective security and, ultimately, portfolio market values. In the event that independent pricing services do not provide valuations for a specific security selected for transfer, DSI and PIMCO, in accordance with paragraph (b)(4) of Rule 17a-7 under the 40 Act, will rely on the "average of highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry * * *" in valuing such security.

16. The Substitutions are consistent with the general purposes of the 1940 Act, as enunciated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. The proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent. Moreover, the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors, as required by Section 6(c) of the 1940 Act. Contract owners will be fully informed of the terms of the Substitutions through the supplements and the Post-Substitution Notice and will have an opportunity to withdraw from the Replaced Fund through reallocation to another subaccount or otherwise terminate their interest thereof in accordance with the terms and conditions of their Contract prior to the Effective Date.

IV. Applicant's Conditions

For purposes of the approval sought pursuant to Section 26(c) of the Act, the substitutions described in the amended and restated application will not be completed, unless all of the following conditions are met:

1. The Commission shall have issued an order (i) approving the Substitutions under Section 26(c) of the 1940 Act; and (ii) exempting the in-kind redemptions from the provisions of Section 17(a) of the 1940 Act as necessary to carry out the transactions described in this Application.

2. Each affected Contract owner will have been sent a copy of (i) a supplement informing shareholders of this Application; (ii) a prospectus for the appropriate Trust Portfolio, and (iii) a second supplement setting forth the Effective Date and advising affected Contract owners of their right to reconsider the Substitutions and, if they so choose, any time prior to the Effective Date, they may reallocate or withdraw amounts under their affected Contract or otherwise terminate their interest thereof in accordance with the terms and conditions of their Contract. If affected Contract owners reallocate accumulation value prior to the Effective Date, or within 30 days after the Effective Date, there will be no

charge for the initial reallocation of accumulated value from each affected Subaccount and the initial reallocation will not be counted toward the total number of reallocations made within the Contract year for purposes of determining whether the number of reallocations which may be made without incurring administrative or transfer fees, if any, under the relevant Contract has been exceeded. The Companies will not exercise any right they may have under the Contracts to impose additional restrictions or fees on transfers from the Replaced Funds under the Contracts for a period of at least thirty days following the proposed substitutions.

3. The Companies shall have satisfied themselves, that (a) the Contracts allow the substitution of investment company shares in the manner contemplated by the Substitutions and related transactions described herein; (b) the transactions can be consummated as described in this Application under applicable insurance laws; and (c) that any regulatory requirements in each jurisdiction where the Contracts are qualified for sale, have been complied with to the extent necessary to complete the transactions.

Within five business days of the Effective Date of the Substitutions, the Applicants will forward to affected Contract owners a Post-Substitution Notice.

V. Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and related transactions involving redemptions should be granted.

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. 34-49548; File No. SR-Amex-2004-02]

Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Select Utility Index

April 9, 2004.

On January 8, 2004, the American Stock Exchange LLC ("Amex" or