

to section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock, \$.03 par value ("Security"), from listing and registration on the American Stock Exchange ("Amex").

As reported by the Company, the Amex halted trading in the Security on August 23, 2000, pending a review of the facts underlying, and the litigation arising from, a Share Purchase Agreement dated July 5, 2000, between the Company and Newtech Broadwidth Ltd., et al. The Company believed it was acquiring under this Share Purchase Agreement a company that owned valuable high technology which was supported by established licensing agreements. On the basis of this acquisition, the Company applied for, and received, a listing for its Security on the Amex.

The Company subsequently determined, however, that the technology and licensing agreements described above did not exist. As mentioned above, the Company has entered into litigation with various parties for, among other things, their failure to meet certain conditions of the Share Purchase Agreement. A description of these proceedings may be found in the Company's current Report on Form 8-K filed with the Commission on September 26, 2000. Pending the outcome of such litigation, and in the light of the Company's diminished eligibility for listing on the Amex as a result of the Share Purchase Agreement's conditions not having been met, the Company has determined to withdraw its Security voluntarily from listing and registration on the Amex and to use best efforts to arrange for its quotation in the unlisted over-the-counter market.

The Company has stated in its application that it has complied with the rules of the Amex governing the withdrawal of its Security and that its application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Company's continued obligation to file reports with the Commission pursuant to sections 12(g) and 13 of the Act.³

Any interested person may, on or before November 30, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in

accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24733; File No. 812-12104]

New England Life Insurance Company, et al.; Notice of Application

November 8, 2000.

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

ACTION: Notice of application for an order pursuant to section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving a substitution of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from section 17(a) of the 1940 Act

Applicants: New England Life Insurance Company ("NELICO"), New England Variable Annuity Separate Account ("Separate Account 1"), New England Variable Life Separate Account ("Separate Account 2"), Metropolitan Life Insurance Company ("MetLife"), The New England Variable Account ("Separate Account 3," and collectively with Separate Account 1 and Separate Account 2, the "Separate Accounts"), the Metropolitan Series Fund, Inc. (the "Metropolitan Series"), and the New England Zenith Fund (the "Zenith Fund"). (NELICO, MetLife and the Separate Accounts are collectively referred to herein as the "Section 26 Applicants." The Section 26 Applicants, the Metropolitan Series, and the Zenith Fund are collectively referred to herein as the "Section 17(b) Applicants.")

SUMMARY OF APPLICATION: The Section 26 Applicants request an order pursuant to section 26(b) of the 1940 Act to permit certain registered unit investment trusts to substitute shares of the Putnam International Stock Portfolio (the "Replacement Portfolio") of the

Metropolitan Series for shares of the Morgan Stanley International Magnum Equity Series (the "Substituted Portfolio") of the Zenith Fund currently held by those unit investment trusts. The Section 17(b) Applicants request an order 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 May 17, 2000, and amended and restated on November 8, 2000.

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 November 30, 2000, 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 Thomas Lenz, Esq. and Marie C. Swift, Esq., New England Life Insurance Company, 501 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Keith A. O'Connell, 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. NELICO is a life insurance company that is domiciled in Massachusetts. Its operations include both life insurance and annuity products as well as financial and retirement services. As of December 31, 1999, NELICO had assets of approximately \$7.1 billion. NELICO is authorized to operate as a life insurance company in all states, the District of Columbia, and Puerto Rico. NELICO was originally organized as New England Variable Life Insurance

¹ 15 U.S.C. 78(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 78j(G) and 15 U.S.C. 78M.

⁴ 17 CFR 200.30-3(a)(1).

Company, a stock life insurance company, in Delaware in 1980, and was a wholly owned subsidiary of New England Mutual Life Insurance Company. On August 30, 1996, New England Mutual Life Insurance Company merged with and into MetLife. MetLife became the parent of New England Variable Life Insurance Company, which changed its name to "New England Life Insurance Company," and changed its domicile from the State of Delaware to the Commonwealth of Massachusetts. NELICO is the depositor and sponsor of Separate Account 1 and Separate Account 2.

2. Separate Account 1 is a separate investment account of NELICO and is registered under the 1940 Act as a unit investment trust. Separate Account 1 serves as funding vehicle for certain variable annuity contracts issued by NELICO (collectively, "NELICO VA Contracts"). Separate Account 1 is a separate account as that term is defined in Section 2(a)(37) of the 1940 Act.

3. Separate Account 2 is a separate investment account of NELICO and is registered under the 1940 Act as a unit investment trust. Separate Account 2 serves as a funding vehicle for certain variable life insurance contracts issued by NELICO (collectively, "NELICO Life Contracts"). Separate Account 2 is a separate account as that term is defined in Section 2(a)(37) of the 1940 Act.

4. MetLife is a life insurance company that is domiciled in New York, and is a wholly owned subsidiary of MetLife, Inc., a publicly traded company. MetLife is the depositor and sponsor of Separate Account 3.

5. Separate Account 3 is a separate investment account of MetLife and is registered under the 1940 Act as a unit investment trust. Separate Account 3 serves as a funding vehicle for certain variable annuity contracts originally issued by New England Mutual Life Insurance Company, and subsequent to its merger with and into MetLife, by MetLife ("MetLife VA Contracts") (collectively with the NELICO VA Contracts and the NELICO Life Contracts, the "Variable Contracts"). Separate Account 3 is a separate account as that term is defined in Section 2(a)(37) of the 1940 Act.

6. New England Securities Corporation ("NES") serves as principal underwriter and distributor for the Variable Contracts. NES is an indirect wholly owned subsidiary of NELICO. NES is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. NES may enter into selling agreements

with other broker-dealers registered under the Securities Exchange Act of 1934 whose representatives are authorized by applicable law to sell the Variable Contracts.

7. NELICO and MetLife propose to substitute shares of the Replacement Portfolio for shares of the Substituted Portfolio in the Separate Accounts (the "Substitution"). NELICO and MetLife have expressly reserved the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. The prospectus for each contract discloses this reservation.

8. The terms of the NELICO VA Contracts, NELICO Life Contracts, and MetLife VA Contracts funded by Separate Account 1, 2 and 3, respectively, permit owners of a contract to transfer contract value under the contracts among the subaccounts during the accumulation period. Separate Accounts 1 and 3 permit owners of a contract to exchange annuity units in any subaccount to any other subaccount during the annuity period. NELICO and MetLife have reserved the right to limit transfers or to impose a charge in connection with a transfer during the accumulation period. For Separate Account 1, NELICO has not yet imposed any such limit or charge. Exchanges of annuity units in any subaccount to any other subaccount after annuitization are limited to one per contract year. For Separate Account 2, on all but one of the NELICO Life Contracts, NELICO does not currently limit or impose a charge on transfers. On one NELICO Life Contract, NELICO currently imposes a charge on transfers in excess of 12 in a policy year. For Separate Account 3, MetLife currently allows 12 free transfers per year during the accumulation period. Additional transfers are subject to a \$10 charge per transfer. Exchanges of annuity units in any subaccount to any other subaccount after annuitization are limited to one per contract year.

9. The Zenith Fund is registered as an open-end management investment company under the 1940 Act (File No. 811-3728) and currently offers sixteen separate investment portfolios, one of which is the Substituted Portfolio. The Zenith Fund issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the Securities Act of 1933 ("1933 Act") on Form N-1A (File No. 2-83538). New England Investment Management, Inc. ("NEIM") serves as the investment manager to each portfolio except the Capital Growth Series, which is managed by Capital Growth

Management. NEIM is an indirect wholly owned subsidiary of NELICO. NEIM receives an investment advisory fee from each portfolio it manages. NEIM has contracted with subadvisers to make the day-to-day investment decision for all portfolios it manages. Subadvisers are compensated by NEIM, and not by the Zenith Fund. NEIM derives the amounts that it pays the subadvisers from its own investment advisory fees. Morgan Stanley Asset Management ("MSAM") is the subadviser to the Substituted Portfolio.

10. The Metropolitan Series is registered as an open-end management investment company under the 1940 Act (File No. 811-3618) and currently offers 18 separate investment portfolios, one of which is the Replacement Portfolio. The Metropolitan Series issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N-1A (File No. 2-80751). The Replacement Portfolio became available for investment under the Contracts on May 1, 2000. MetLife serves as the investment manager to each portfolio, for which it receives investment advisory fees. MetLife has contracted with subadvisers to make the day-to-day investment decisions for certain portfolios it manages, including the Replacement Portfolio. Subadvisers are compensated by MetLife, and not by the Metropolitan Series. MetLife derives the amounts that it pays the subadvisers from its one investment advisory fees.

11. Putnam Investment Management, Inc. ("Putnam") currently serves as the subadviser for the Replacement Portfolio. All of the outstanding voting and nonvoting securities of Putnam are held of record by Putnam Investments, Inc., which is, in turn, except for a minority interest owned by employees, owned by Marsh & McLennan Companies, Inc., a New York Stock Exchange listed public company whose business is insurance brokerage, investment management, and consulting. From November 9, 1998 until January 24, 2000, Santander Global Advisors, Inc. ("Santander") was the subadviser for the Replacement Portfolio (then known as the Santander International Stock Portfolio). On November 29, 1999, Santander notified the Replacement Portfolio that it was resigning as subadviser as of January 28, 2000, and was being closed by its ultimate majority shareholder. On January 11, 2000, the Board of Directors of the Metropolitan Series (the "Met Series Board") voted to terminate the sub-investment management agreement with Santander relating to the

Replacement Portfolios effective January 24, 2000. The Met Series Board also voted to retain Putnam as the new subadviser for the Replacement Portfolio effective the same date. The shareholders of the Replacement

Portfolio approved Putnam as the new subadviser at a special meeting of shareholders on March 31, 2000.

12. The following chart sets out the investment objectives and certain policies of the Substituted Portfolio and

the Replacement Portfolios, as stated in their respective prospectuses and statements of additional information.

Substituted portfolio	Replacement portfolios
<p>Morgan Stanley International Magnum Equity Series of Zenith Fund</p> <p>Investment Objective:</p> <p>Long-term capital appreciation through investment primarily in international equity securities.</p> <p>Investment Policies:</p> <p>MSAM invests the Series' assets in a diversified portfolio of equity securities of foreign issuers domiciled in EAFE countries. MSAM may also invest up to 5% of the Series' total assets in non-EAFE countries, including emerging markets. MSAM seeks to achieve superior long-term returns by creating a diversified portfolio of stock that MSAM believes are undervalued. To achieve this goal, MSAM implements a combination of strategic geographic assets allocation and fundamental, value-oriented stock selection implemented by regional experts around the globe.</p>	<p>Putnam International Stock Portfolio of Metropolitan Series</p> <p>Investment Objective:</p> <p>Long-term growth of capital.</p> <p>Investment Policies:</p> <p>The Portfolio normally invests mostly in the common stocks of companies outside the United States. Putnam selects countries and industries it believes are attractive. Putnam then seeks stocks offering opportunity for gain. These may include both growth and value stocks. The Portfolio invests mainly in mid-sized and large companies, although the Portfolio can invest in companies of any size. The Portfolio will usually be invested in issuers located in at least three countries, not including the U.S. Under normal conditions, the Portfolio will not invest more than 15% of its net assets in the equity securities of companies domiciled in "emerging countries," as defined by Morgan Stanley Capital International.</p>

13. The following chart compares the fees payable for advisory and

subadvisory services, expressed as an annual percentage of average daily net

assets, by the Substituted Portfolio and the Replacement Portfolio.

Substituted portfolio		Replacement portfolio	
Morgan Stanley International Magnum Equity Series		Putnam International Stock Portfolio	
Annual advisory fees	Annual subadvisory fees	Annual advisory fees	Annual subadvisory fees
0.90%	0.75% of the first \$30 million	0.90% of the first \$500 million	0.65% of the first \$150 million
	0.60% of the next \$40 million	0.85% of the next \$500 million	0.55% of the next \$150 million
	0.45% of the next \$30 million	0.80% over \$1 billion	0.45% over \$300 million.
	0.40% over \$100 million		

14. The following chart compares the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 1999,

expressed as an annual percentage of average daily net assets, of the Substituted Portfolio and the Replacement Portfolio. Neither Portfolio

has adopted any plan pursuant to Rule 12b-1 under the 1940 Act.

	Substituted portfolio	Replacement portfolio
	Morgan Stanley International Magnum Equity Series (in percent)	Putnam International Stock Portfolio (in percent)
Management Fees	0.90	0.90
Other Expenses	0.40	0.22
Total Operating Expenses	1.30	1.12
Less Expense Waivers and Reimbursements	(¹)	(¹)
Net Operating Expenses	1.30	1.12

¹ N/A.

Total operating expenses for the Replacement Portfolio have been adjusted to reflect a higher management fee that shareholders of the Replacement Portfolio approved on March 31, 2000. NEIM has voluntarily agreed to reduce its fees or to bear the operating expenses (other than brokerage costs, interest,

taxes, or extraordinary expenses) of the Substituted Portfolio in excess of an annual expense limit of 1.30% of the Series' average daily net assets. This reduction is subject to the obligation of the Series to repay NEIM such expenses in future years, if any, when the Series' total operating expenses fall below this

stated expense limit. Such deferred expenses may be charged to the Series in a subsequent year to the extent the charge does not cause the Series' total operating expenses in such subsequent year to exceed the 1.30% expense limit. The Series, however, is not obligated to repay any expense paid by NEIM more

than two years after the end of the fiscal year in which such expense was incurred. NEIM may discontinue this

expense limitation arrangement at any time.

15. The following table compares the respective asset levels of the two

portfolios as of December 31, 1999, and compares performance data as of June 30, 2000.

Portfolio	Fund Subadviser	Asset levels (as of 12/31/99)	Performance (as of June 30, 2000)
Morgan Stanley International Magnum Equity Series (substituted portfolio).	Morgan Stanley Asset Management	\$99,851,167	1 YEAR: 15.5% 3 YEAR: 6.2% 5 YEAR: 7.8% (Nov. 1, 1994)
Putman International Stock Portfolio (replacement portfolio).	Putnam Investment Management, Inc.	\$317,831,000	1 YEAR: 11.4% 3 YEAR: 7.1% 5 YEAR: 7.3% (May 1, 1991)

16. Following the Substitution, the Separate Accounts will each have two subaccounts holding shares of the Replacement Portfolio. The Separate Accounts will each combine the two subaccounts holding shares of the Replacement Portfolio by transferring shares on the same date from one of the subaccounts holding shares of the Replacement Portfolio to the other subaccount holding shares of the Replacement Portfolio. The net effect will be to eliminate one of the subaccounts in each Separate Account. The Replacement Portfolio would receive monies or in-kind securities from the Substituted Portfolio as a result of the Substitution.

17. NELICO and MetLife will effect the Substitution on or about December 1, 2000 following the issuance of the requested order as follows. As of the effective date of the Substitution ("Effective Date"), shares of the Substituted Portfolio will be redeemed in cash or in-kind by NELCO and MetLife. The proceeds of such redemptions will than be used to purchase shares of the Replacement Portfolio either by cash purchases or in-kind purchases, with each subaccount of the Separate Accounts investing the proceeds of its redemption from the Substituted Portfolio in the Replacement Portfolio.

18. Applicants represent that the in-kind redemptions and purchases will be transacted in a manner consistent with the policies of both the Substituted Portfolio and the Replacement Portfolio, as recited in their registration statements. Putnam will review the securities holdings of the Substituted Portfolio and determine which portfolio holdings of the Substituted Portfolio would be suitable investments for the

Replacement Portfolio in the overall context of such Portfolio's investment objectives and policies and consistent with the management of the Replacement Portfolio.

19. Applicants represent that all redemptions of shares of the Substituted Portfolio and purchases of shares of the Replacement Portfolio will be effected in accordance with Rule 22c-1 of the 1940 Act. The Substitution will take place at relative net asset value with no change in the amount of any Variable Contract owner's contract value or death benefit or in the dollar value of his or her investments in any of the subaccounts. Applicants represent that Variable Contract owners will not incur any additional fees or charges as a result of the Substitution, nor will their rights or NELICO's and MetLife's obligations under the Variable Contracts be altered in any way. All expenses incurred in connection with the Substitution, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by NELICO and MetLife. In addition, Applicants represent that the Substitution will not impose any tax liability on Variable Contract owners. The Substitution will not cause the Variable Contract fees and charges currently paid by existing Variable Contract owners to be greater after the Substitution than before the Substitution. Neither NELICO nor MetLife will exercise any right it may have under the Variable Contracts to impose restrictions on transfers under the Variable Contracts for a period of at least thirty days following the Substitution.

20. The Section 26 Applicants represent that the procedures to be implemented are sufficient to assure

that each Variable Contract owner's cash values immediately after the Substitution shall be equal to the cash value immediately before the Substitution, and that the Substitution will not affect the value of the interests of those owners of other NELICO and MetLife variable contracts (other than the Variable Contracts) who currently have contract value allocated to any of the portfolios of the Zenith Fund or Metropolitan Series.

21. For each period (not to exceed a fiscal quarter) during the 24 months following the date of the Substitution, NELICO and MetLife will reimburse (on the last business day of any such period) any subaccount available through a Variable Contract and investing in the Replacement Portfolio such that the sum of the Replacement Portfolio operating expenses (taking into account expense waivers and reimbursements) together with subaccount expenses for such period on an annualized basis will not exceed the following limits (which equal, for each Variable Contract, the Substituted Portfolio operating expenses, 1.30%, together with any subaccount expenses for the fiscal year prior to the Substitution) for those Variable Contract owners who were Variable Contract owners on the date of the Substitution.¹

¹ Subaccount expenses refer to those asset-based expenses that are deducted on a daily basis from subaccount assets, and either reflected in the calculation of the subaccount unit values (for "unitized" Variable Contracts) or deducted as a percentage of a Variable Contract's share of subaccount assets (for "non-unitized" Variable Contracts). Examples of subaccount expenses may include the morality and expense risk charge or administrative charge.

Variable contract	Expense cap (in percent)
NELICO American Growth Series—Version I	2.65
NELICO American Growth Series—Version II	2.70
NELICO American Forerunner Series	2.30
NELICO Zenith Life One	1.75
NELICO Zenith Flexible Life	1.90
NELICO Zenith Variable Whole Life	1.90
NELICO Zenith Survivorship Life	2.05
NELICO Zenith Survivorship Life Plus	1.30
NELICO Zenith Gateway Series	1.30
NELICO Zenith Life	1.65
NELICO Zenith Life Plus	1.90
NELICO Zenith Life Executive 65	1.90
NELICO Zenith Executive Advantage Plus	1.30
NELICO Zenith Executive Advantage 2000	1.30
NELICO Zenith Life Plus II	1.90
MetLife Zenith Accumulator	2.65

In addition, for those Variable Contract owners who owned a Variable Contract for which morality and expense risk charges are not subaccount expenses (*i.e.*, NELICO Zenith Survivorship Life Plus, NELICO American Gateway Series, NELICO Zenith Executive Advantage Plus, or NELICO Zenith Executive Advantage 2000) on the date of the Substitution, NELICO will not increase current mortality and expense risk charges for a period of 24 months following the date of Substitution.

22. Applicants represent that from the date the application is filed with the Commission to the date 30 days after the Effective Date, Variable Contract owners will have the right to make one transfer of contract value from the subaccounts invested in the Substituted Portfolio (before the Substitution) or the Replacement Portfolio (after the Substitution) to any other subaccount without charge and without that transfer counting toward the number permitted under the Variable Contract (regardless of whether during the accumulation period or the annuity period). Each Variable Contract owner has received a prospectus supplement and will, prior to the Effective Date, have received a prospectus for the Replacement Portfolio and a Pre-Substitution Notice (in the form of an additional prospectus supplement) regarding the Substitution.

23. Variable Contract owners were notified of the initial application by means of a supplement to the prospectus for each of the Variable Contracts dated March 17, 2000 that disclosed that the Section 26 Applicants intended to file the application and seek approval for the Substitution.

24. Following the date on which this notice for the order requested by the Section 26 Applicants is published, but before the Effective Date, a notice ("Pre-Substitution Notice"), in the form of an additional supplement to the

prospectuses for the Variable Contracts, will be mailed to Variable Contract owners setting forth the scheduled Effective Date and advising Variable Contract owners that contract values attributable to investments in the Substituted Portfolio will be transferred to the Replacement Portfolio, without charge and, when relevant, without counting toward the number of transfers permitted without charge, on the Effective Date. The Pre-Substitution Notice will state that, from the date the application was filed with the Commission through the date 30 days after the substitution, Variable Contract owners may make one transfer of contract value from the subaccount corresponding to the Substituted Portfolio (before the Substitution) or the Replacement Portfolio (after the Substitution) to any other subaccount without charge and without that transfer counting toward the number permitted without charge under the Variable Contract. In addition, within five days after the Substitution, any Variable Contract owners who were affected by the Substitution will sent a written notice informing them that the Substitution was carried out and advising them of their transfer rights ("Post-Substitution Notice").

Applicant's Legal Analysis

1. Section 26(b) of the 1940 Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(b) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the 1940 Act.

2. Section 26(b) was intended to provide for Commission scrutiny of

proposed substitutions which could, in effect, force shareholders dissatisfied with the substitute security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both. The section was designed to forestall the ability of a depositor to present holders of interest in a unit investment trust with situations in which a holder's only choice would be to continue an investment in an unsuitable underlying security, or to elect a costly and, in effect, forced redemption. The Section 26 Applicants assert that the Substitution meets the standards set forth in section 26(b) and that, if implemented, the Substitution would not raise any of the aforementioned concerns that Congress intended to address when the 1940 Act was amended to include this provision.

3. Applicants assert that the replacement of the Substituted Portfolio with the Replacement Portfolio is consistent with the protection of Variable Contract owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to section 26(b) of the 1940 Act. Applicants also assert that the investment objectives and policies of the Replacement Portfolio are sufficiently similar to those of the Substituted Portfolio so that Variable Contract owners will have reasonable continuity in investment and risk expectations. In addition, Applicants assert that the types of investment advisory and administrative services provided to the Replacement Portfolio are comparable to the types of investment advisory and administrative services provided to the Substituted Portfolio.

4. Applicants state that the Substitution is part of efforts by NELICO

and MetLife to make their Variable Contracts more efficient to administer and oversee and, thus, more cost-efficient and attractive to customers. The Applicants assert that replacing the Substituted Portfolio with the Replacement Portfolio (in essence, combining Variable Contract owner assets attributable to an international investment option into one mutual fund) is appropriate and in the best interests of Variable Contract owners. Applicants assert that the proposed Substitution will provide Variable Contract owners with (i) an underlying portfolio having lower expense ratios with the expectation that, after the Substitution, the ratios will remain lower, (ii) a portfolio subadvised by Putnam, which has achieved competitive historical portfolio performance in other international funds and is experienced in managing international funds, and (iii) a portfolio with good prospects for growth.

5. Section 17(a)(1) and (a)(2) of the 1940 Act generally prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, from selling any security or other property to such registered investment company and from purchasing any security or other property from such registered investment company. NELICO and MetLife anticipate that, to the extent Putnam determines at that time that portfolio holdings of the Substituted Portfolio would be suitable investments for the Replacement Portfolio in the overall context of such portfolios' investment objectives and policies and consistent with its management of the Replacement Portfolio, the Substitution will be done by redeeming shares of the Substituted Portfolio in-kind rather than in cash and then using those assets to purchase shares of the Replacement Portfolio. Redemptions and purchases in-kind involve the purchase of property from a registered investment company and the sale of property to a registered investment company and the sale of property to a registered investment company by NELICO and MetLife, each an affiliated person of those investment companies. The Substitution, therefore, may be deemed to involve one or more purchases or sales of securities or property between affiliates. The Section 17(b) Applicants request that the Commission issue an order pursuant to section 17(b) of the 1940 Act exempting the Substitution from the provisions of section 17(a) to the extent necessary to permit the Substitution effected, in part, by means of in-kind redemptions and

purchases of shares, and also by means of in-kind transactions.

6. Section 17(b) of the Act authorizes the Commission may, upon application, exempt a proposed transaction from the prohibitions of Section 17(a) if the evidence establishes that:

(i) 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;

(ii) 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 1940 Act; and

(iii) The proposed transaction is consistent with the general purposes of the 1940 Act.

7. NELICO and MetLife assert that the terms under which the in-kind redemptions and purchases will be affected are reasonable and fair and do not involve overreaching on the part of any person. Applicants state that the use of in-kind redemptions of such subaccounts is intended to reduce costs and thereby benefit Variable Contract owners. The transactions will not cause Variable Contract owner interests to be diluted. The proposed transactions will take place at relative net asset value in conformity with the requirements of Section 22(c) of the 1940 Act and Rule 22c-1 thereunder with no change in the amount of any Variable Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Separate Accounts.

8. Applicants represent that the in-kind redemptions and purchases will be transacted in a manner consistent with the policies of both the Substituted Portfolio and the Replacement Portfolio, as recited in their registration statements. Putnam will review the securities holdings of the Substituted Portfolio and determine which portfolio holdings of the Substituted Portfolio would be suitable investments for the Replacement Portfolio in the overall context of such Portfolio's investment objectives and policies and consistent with the management of the Replacement Portfolio.

9. Applicants assert that the Substitution, as described herein, is consistent with the general purposes of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Securities to be paid out as redemption proceeds and subsequently contributed to the Replacement

Portfolio to effect the contemplated in-kind purchases of shares will be valued based on the normal valuation procedures of the redeeming Substituted Portfolio and purchasing Replacement Portfolio.

Applicants' Conditions

For purposes of the approval sought pursuant to Section 26(b) of the 1940 Act, the Substitution described in this amendment 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 Substitution under Section 26(b) of the 1940 Act, and (ii) exempting any in-kind redemptions and purchases from the provisions of section 17(a) of the 1940 Act as necessary to carry out the transactions described in this amended and restated application.

2. Each Variable Contract owner will have been sent (i) a copy of the effective prospectus relating to the Replacement Portfolio and any necessary amendments to the prospectuses relating to the Variable Contracts, (ii) as soon as reasonably possible after the notice for the order has been published and prior to the Effective Date, a Pre-Substitution Notice describing the terms of the Substitution and the rights of the Variable Contract owners in connection with the Substitution, and (iii) if affected by the Substitution, a Post-Substitution Notice within five days after the Substitution informing them that the Substitution was carried out and advising them of their transfer rights.

3. NELICO and MetLife shall have satisfied themselves that (i) the Variable Contracts allow the substitution of portfolios in the manner contemplated by the Substitution and related transactions described in the application, (ii) the transactions can be consummated as described in the amended and restated application under applicable insurance laws, and (iii) that any applicable regulatory requirements in each jurisdiction where the Variable Contracts are qualified for sale, have been complied with to the extent necessary to complete the transaction.

Conclusion

Applicants assert that, for the reasons stated above, the requested order approving the Substitution and exempting in-kind redemptions should be granted.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43516; File No. SR-Amex-95-45]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange LLC Relating to the Maximum Size of Option Orders That May Be Executed Automatically

November 3, 2000.

I. Introduction

On October 25, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change amending its rules regarding the automatic execution of options orders to increase the maximum number of contracts that may be designated for automatic execution from fifty contracts to seventy-five contracts. Notice of the proposal was published in the **Federal Register** on June 21, 2000.³ The Commission received no comments on the proposal. On November 1, 2000, the Exchange submitted Amendment No. 1 to the proposal.⁴ On November 3, 2000, the Exchange submitted Amendment No. 2 to the proposal.⁵ This order

approves the proposal and grants accelerated approval of Amendment Nos. 1 and 2.

II. Description of the Proposal

The Exchange's AUTO-EX system automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the order is entered into the Amex Order File ("AOF"). Generally, public customer market and marketable limit orders for up to fifty options contracts may be automatically executed through the Exchange's AUTO-EX system.⁶ Recently, AOF, which handles limit orders routed to the specialist's book as well as those orders routed to AUTO-EX, was increased to allow for the entry of orders of up to 250 option contracts.⁷ Because AUTO-EX is only allowed to execute equity option orders and index orders of up to fifty contracts, any market and marketable limit orders for between fifty and 250 option contracts are generally routed by the AOF to the specialist's book.

The Exchange proposes to increase the maximum AUTO-EX order size eligibility for equity and index option contracts orders from fifty contracts to seventy-five contracts.⁸ The proposed increase in permissible order size will be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate.

The Exchange represents that it has sufficient systems capacity to accommodate implementation of the proposed increase in permissible order size and that AUTO-EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other non-emergency situations for certain options classes. The Exchange believes that automatic executions of orders for up to seventy-five contracts will enhance its overall operational

efficiency and give the Exchange better means of competing with other options exchanges for order flow.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act.⁹ Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national securities system; and protect investors and the public interest.¹⁰

While increasing the maximum order size limit from fifty contracts to seventy-five contracts for AUTO-EX eligibility by itself does not raise concerns under the Act,¹¹ the Commission believes that this increase raises collateral issues that the Amex will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for the Exchange's automatic execution system. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed onto the AUTO-EX system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through AUTO-EX, the greater the risk market makers must be willing to accept. The Commission does not believe that, because Amex

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 42931 (June 13, 2000), 65 FR 38615 (June 21, 2000).

⁴ See letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission dated October 31, 2000 ("Amendment No. 1"). In Amendment No. 1, the Amex proposes to codify its rules regarding the AUTO-EX parameters for option contracts under Amex Rule 933, Commentary .02.

⁵ See letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Amex to Nancy Sanow, Assistant Director, Division of Market Regulation Commission dated November 2, 2000 ("Amendment No. 2"). In Amendment No. 2, the Amex corrects the language in Amex Rule 933, Commentary .02 to state that the eligible orders for options on the Institutional, Japan and S&P MidCap 400 Indices must be for "fewer than 100 contracts" for series subject to AUTO-EX.

⁶ See Securities Exchange Act Release No. 42094 (November 3, 1999), 64 FR 61675 (November 12, 1999). Although the maximum permissible number of contracts in an option order executable through AUTO-EX is generally fifty contracts, there are three exceptions that allow ninety-nine contract orders; the Institutional, Japan and S&P MidCap 400 Indexes.

⁷ See Securities Exchange Act Release No. 42128 (November 10, 1999), 64 FR 63836 (November 22, 1999).

⁸ The Exchange is codifying its rules, under Amex Rule 933, Commentary .02, regarding the maximum option order size eligibility for its AUTO-EX system. See Amendment No. 1, *supra* note 4. Order size maximum levels for the Institutional, Japan, and S&P MidCap 400 Indexes would remain at ninety-nine contracts under this proposal. See Amendment No. 2, *supra* note 5.

⁹ The Commission has considered the proposed rule's impact of efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ The Commission notes that it is concurrently approving similar proposals filed by the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Stock Exchange, Inc. ("PCX") and the Philadelphia Stock Exchange, Inc. ("Phlx"). See Securities Exchange Act Release No. 43517 (November 3, 2000) (SR-CBOE-99-51); Securities Exchange Act Release No. 43518 (November 3, 2000) (SR-PCX-00-32); and Securities Exchange Act Release No. 41515 (November 3, 2000) (SR-Phlx-99-32).