

applying unique USPS identification (ID) codes (or "tags") to flat-size mailpieces not bearing POSTNET barcodes. Deployment is scheduled for early 2004. Once the initial ID code is applied to the mailpiece, subsequent sorting will recognize the code and sort the flat-size piece without need for further manual keying. The ID code provides reference to access a database containing the original keying results. The application of these codes onto mailpieces will have no impact on current mailing standards or preparation requirements for flat-size mail.

**FOR FURTHER INFORMATION CONTACT:**

George Coupar, (703) 280-7437, Engineering, United States Postal Service.

**SUPPLEMENTARY INFORMATION:** The manual video keying of nonbarcoded flat-size mailpieces by Postal Service employees represents a significant cost to the Postal Service. Currently, the keying of a mailpiece by video keying operators can occur several additional times as the nonbarcoded piece is sorted through stages of mail processing. In order to reduce the costs associated with this labor-intensive manual keying, the Postal Service has developed a system that should eliminate most of the additional keying.

This new system, called the Flat Mail Identification Code System (FICS), applies a unique USPS identification (ID) code (tag) to flat-size mailpieces not bearing a POSTNET barcode. The ID code, printed on a label, will be mechanically applied to the address side of the mailpiece in the bottom right or top left corner, before the address is manually resolved by a video keying operator. The FICS saves the initially keyed information in a database along with the corresponding ID code assigned to the piece. Once the FICS ID code is generated and a label containing that code is applied to the mailpiece, further manual keying will not be required for that piece as it moves through additional mail processing operations. Moreover, because a label bearing the ID code will be placed on individual flat-size pieces, this new system will provide additional capabilities in tracking and tracing these coded (tagged) flat-size pieces.

The FICS physical ID code consists of a black, International Mailing Standard, 4-state barcode printed on a white pressure-sensitive label measuring 1/2 inch high by 3 inches wide or 1/2 inch high by 4 3/8 inches wide. The label is applied to the address side of nonbarcoded flats. The label, which can be manually peeled from the mailpiece, is made of the same material as is

currently used by the USPS Letter Mail Labeling Machine (LMLM) which affixes labels on certain types of letter mail pieces, such as postcards.

Preproduction testing is currently in progress and the USPS expects to deploy the system nationally in the second quarter of fiscal year 2004. The USPS does not plan to introduce new mailing requirements related to FICS.

**Neva R. Watson,**

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26229; File No. 812-12989]

### Merrill Lynch Life Insurance Company, et al.; Notice of Application

October 22, 2003.

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

**ACTION:** Notice of application (the "Application") for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the "1940 Act") approving a substitution of securities and an order of exemption pursuant to Section 17(b) of the 1940 Act from Section 17(a) of the 1940 Act.

**APPLICANTS:** Merrill Lynch Life Insurance Company ("MLLIC"), Merrill Lynch Variable Life Separate Account ("Separate Account 1"), Merrill Lynch Life Variable Life Separate Account II ("Separate Account 2"), Merrill Lynch Life Variable Annuity Separate Account A ("Separate Account 3"), ML Life Insurance Company of New York ("MLNY"), ML of New York Variable Life Separate Account ("Separate Account 4"), ML of New York Variable Life Separate Account II ("Separate Account 5"), ML of New York Variable Annuity Separate Account A ("Separate Account 6"), and, only for the purpose of seeking an order of exemption pursuant to Section 17(b) of the 1940 Act, MLIG Variable Insurance Trust ("MLIG Trust") (except for MLLIC, MLNY, and MLIG Trust, each a "Separate Account;" Separate Accounts 1 through 6 collectively referred to herein as the "Separate Accounts") (all foregoing parties, with the exception of MLIG Trust, collectively referred to herein as the "Applicants") (all foregoing parties, with the inclusion of MLIG Trust, collectively referred to herein as the "Section 17(b) Applicants").

**SUMMARY OF APPLICATION:** The Applicants request an order pursuant to Section 26(c) of the 1940 Act to permit certain registered unit investment trusts to substitute shares of certain portfolios of the MLIG Trust (the "Replacement Portfolios") for shares of certain portfolios of the AllianceBernstein Variable Products Series Fund, Inc. ("AllianceBernstein Fund"), the Delaware VIP Trust ("Delaware Trust"), and the MFS® Variable Insurance Trust<sup>SM</sup> ("MFS Trust") (collectively, the "Substituted Portfolios") currently held by those unit investment trusts. The Section 17(b) Applicants request an order of the Commission pursuant to Section 17(b) of the 1940 Act exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit MLLIC and MLNY to carry out substitutions by redeeming shares issued by AllianceBernstein Fund, Delaware Trust, and MFS Trust in-kind and using the proceeds to purchase shares issued by MLIG Trust.

**FILING DATE:** The Application was filed on July 18, 2003 and was amended and restated on October 9, 2003.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the Commission orders a hearing. Interested person may request a hearing by writing to the Secretary of the Commission and serving Applicants (including Section 17(b) 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 12, 2003, and should be accompanied by proof of service on Applicants (including Section 17(b) 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 (including Section 17(b) Applicants), c/o Edward W. Diffin, Jr., Esq., Merrill Lynch Insurance Group, Inc., 1300 Merrill Lynch Drive, 2nd Floor, Pennington, New Jersey 08534. Copies to Stephen E. Roth, Esq. and Mary E. Thornton, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Ave., NW., Washington, DC 20004.

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

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

### Applicants' Representations

1. MLLIC is a stock life insurance company that is domiciled in Arkansas. Its operations include both life insurance and annuity products. MLLIC was incorporated under the laws of the State of Washington on January 27, 1986 and redomesticated to the State of Arkansas on August 31, 1991. As of December 31, 2002, MLLIC had assets of approximately \$13.1 billion. MLLIC is authorized to operate as a life insurance company in forty-nine states, the District of Columbia, the U.S. Virgin Islands, Guam, and Puerto Rico. MLLIC is a wholly owned subsidiary of Merrill Lynch Insurance Group, Inc. ("MLIG, Inc."). MLLIC is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc., a publicly held company whose shares are traded on the New York Stock Exchange. MLLIC is the depositor and sponsor of Separate Accounts 1 through 3.

2. Separate Account 1 is a separate investment account of MLLIC and is registered under the 1940 Act as a unit investment trust. Separate Account 1 serves as a funding vehicle for certain variable life insurance contracts issued by MLLIC (the "Second Generation MLLIC VLI Contracts"). Under the Second Generation MLLIC VLI Contracts and in the prospectuses for the Second Generation MLLIC VLI Contracts, MLLIC reserves the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. Separate Account 1 is a "separate account" as defined in Section 2(a)(37) of the 1940 Act.

3. Separate Account 2 is a separate investment account of MLLIC 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 MLLIC (the "First Generation MLLIC VLI Contracts"). Under the First Generation MLLIC VLI Contracts and in the prospectuses for the First Generation MLLIC VLI Contracts, MLLIC reserves the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. Separate Account 2 is a "separate account" as defined in Section 2(a)(37) of the 1940 Act.

4. Separate Account 3 is a separate investment account of MLLIC and is registered under the 1940 Act as a unit investment trust. Separate Account 3 serves as a funding vehicle for variable annuity contracts issued by MLLIC (the "MLLIC Annuity Contracts"). Under the MLLIC Annuity Contracts and in the prospectuses for the MLLIC Annuity Contracts, MLLIC reserves the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. Separate Account 3 is a "separate account" as defined in Section 2(a)(37) of the 1940 Act.

5. MLNY is a stock life insurance company that is organized under the laws of the State of New York. MLNY is a wholly owned subsidiary of MLIG, Inc. MLNY is also an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc. MLNY had approximately \$1.1 billion of assets under management as of December 31, 2002. MLNY is authorized to sell life insurance and annuities in nine states. MLNY is the depositor and sponsor of Separate Accounts 4 through 6.

6. Separate Account 4 is a separate investment account of MLNY and is registered under the 1940 Act as a unit investment trust. Separate Account 4 serves as a funding vehicle for certain variable life insurance contracts issued by MLNY (the "First Generation MLNY VLI Contracts"). Under the First Generation MLNY VLI Contracts and in the prospectuses for the First Generation MLNY VLI Contracts, MLNY reserves the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. Separate Account 4 is a "separate account" as defined in Section 2(a)(37) of the 1940 Act.

7. Separate Account 5 is a separate investment account of MLNY and is registered under the 1940 Act as a unit investment trust. Separate Account 5 serves as a funding vehicle for certain variable life insurance contracts issued by MLNY (the "Second Generation MLNY VLI Contracts"). Under the Second Generation MLNY VLI Contracts and in the prospectuses for the Second Generation MLNY VLI Contracts, MLNY reserves the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. Separate Account 5 is a "separate account" as defined in Section 2(a)(37) of the 1940 Act.

8. Separate Account 6 is a separate investment account of MLNY and is registered under the 1940 Act as a unit investment trust. Separate Account 6 serves as a funding vehicle for variable annuity contracts issued by MLNY (the

"MLNY Annuity Contracts"). Under the MLNY Annuity Contracts and in the prospectuses for the MLNY Annuity Contracts, MLNY reserves the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. Separate Account 6 is a "separate account" as defined in Section 2(a)(37) of the 1940 Act.

9. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") serves as principal underwriter and distributor for the Variable Contracts. MLPF&S was organized in 1958 under the laws of the State of Delaware and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act"). It is a member of the NASD. MLPF&S may enter into selling agreements with other broker-dealers registered under the 1934 Act whose representatives are authorized by applicable law to sell the Variable Contracts.

10. AllianceBernstein Variable Products Series Fund, Inc. ("AllianceBernstein Fund") is registered as an open-end management investment company under the 1940 Act and currently offers 19 separate investment portfolios, one of which would be involved in the proposed substitutions. The AllianceBernstein Fund issues a separate series of shares of common stock in connection with each portfolio, and has registered such shares under the Securities Act of 1933 ("1933 Act") on Form N-1A. Each separate series offers only two classes of shares, Class A shares and Class B shares. The distinction between Class A shares and Class B shares is the imposition of a distribution fee of an annual rate of 0.25% (capped at a maximum annual rate of 0.50%) of each series' average daily net assets attributable to the Class B shares pursuant to Rule 12b-1 under the 1940 Act. Shareholders that would be affected by the proposed substitutions are currently invested in Class A shares of the Substituted Portfolio. Alliance Capital Management, L.P. ("Alliance") serves as the investment adviser to each portfolio of the AllianceBernstein Fund. Alliance Capital Management Corporation, the sole general partner of Alliance, is an indirect wholly owned subsidiary of The Equitable Life Assurance Society of the United States, which is in turn a wholly owned subsidiary of AXA Financial, Inc., a holding company which is controlled by AXA. Alliance receives an investment advisory fee from each portfolio it manages.

11. Delaware VIP Trust ("Delaware Trust") is registered as an open-end management investment company under the 1940 Act and currently offers

19 separate investment portfolios, one of which would be involved in the proposed substitutions. Delaware Trust issues a separate series of shares of common stock in connection with each portfolio, and has registered such shares under the 1933 Act on Form N-1A. Each separate series offers only two classes of shares, Standard Class shares and Service Class shares. The distinction between Standard Class shares and Service Class shares is the imposition of a distribution fee of an annual rate of 0.25% (capped at a maximum annual rate of 0.50%) of each series' average daily net assets attributable to the Service Class shares pursuant to Rule 12b-1 under the 1940 Act. Shareholders that would be affected by the proposed substitutions are currently invested in Standard Class shares of the Substituted Portfolio. Delaware Management Company ("DMC") serves as the investment adviser to each portfolio of Delaware Trust. DMC is a series of Delaware Management Business Trust, which is an indirect, wholly owned subsidiary of Delaware Management Holdings, Inc. DMC is paid fees by the Delaware VIP Trend Series.

12. MFS® Variable Insurance Trust<sup>SM</sup> ("MFS Trust") is registered as an open-end management investment company under the 1940 Act and currently offers 15 separate investment portfolios, two of which would be involved in the proposed substitutions. MFS Trust issues a separate series of shares of common stock in connection with each

portfolio, and has registered such shares under the 1933 Act on Form N-1A. Each separate series offers only two classes of shares, Initial Class shares and Service Class shares. The distinction between Initial Class shares and Service Class shares is the imposition of a distribution fee of an annual rate of 0.25% of each series' average daily net assets attributable to the Service Class shares pursuant to Rule 12b-1 under the 1940 Act. Shareholders that would be affected by the proposed substitutions are currently invested in Initial Class shares of the Substituted Portfolios. Massachusetts Financial Services Company ("MFS") serves as the investment adviser to each of the portfolios of the MFS Trust. MFS is a subsidiary of Sun Life of Canada (U.S.) Financial Services Holdings, Inc., which, in turn, is an indirect wholly owned subsidiary of Sun Life Assurance Company of Canada. MFS is paid fees by each of the MFS Trust portfolios for its services.

13. MLIG Variable Insurance Trust ("MLIG Trust") is registered as an open-end management investment company under the 1940 Act and currently offers 24 separate investment portfolios, two of which would be involved in the proposed substitutions. MLIG Trust issues a separate series of shares of common stock in connection with each portfolio, and has registered such shares under the 1933 Act on Form N-1A. Each separate series offers only one class of shares, and has not adopted a plan pursuant to Rule 12b-1 under the

1940 Act. Roszel Advisors, LLC ("Roszel Advisors") serves as the investment manager of the MLIG Trust and each of the portfolios therein. Roszel Advisors is a wholly owned subsidiary of MLIG, Inc. Roszel Advisors receives management fees from each of the portfolios. DMC is the subadviser to the Roszel/Delaware Trend Portfolio. PIMCO Advisors Retail Holdings LLC and Cadence Capital Management LLC ("PIMCO" and "Cadence," respectively) are the subadvisers to the Roszel/PIMCO CCM Capital Appreciation Portfolio.

14. The MLIG Trust and Roszel Advisors obtained an order from the Commission pursuant to Section 6(c) of the 1940 Act exempting them from Section 15(a) of the 1940 Act and Rule 18f-2 under the 1940 Act, with respect to subadvisory agreements (the "Manager of Managers Order"). The Manager of Managers Order permits the MLIG Trust and Roszel Advisors to enter into and materially amend investment subadvisory agreements without obtaining shareholder approval. The relief granted in the Manager of Managers Order extends to all of the portfolios of the MLIG Trust that will be involved in the proposed substitutions.

15. The following chart sets out the investment objectives and certain policies of each Substituted Portfolio and each Replacement Portfolio, as stated in their respective prospectuses and statements of additional information.

| Substituted portfolios                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Replacement portfolios                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <p>AllianceBernstein Quasar Portfolio of the AllianceBernstein Fund .....<br/> Investment Objective—To seek growth of capital by pursuing aggressive investment policies. The portfolio treats current income as incidental to its objective.<br/> Investment Policies—Generally, the portfolio invests in a widely diversified mix of equity securities across many industries that offer the possibility of above-average earnings growth. Currently, the portfolio's investment adviser emphasizes investing in small cap companies, and it invests both in well-known and established companies and in new and unseasoned companies. The portfolio may invest in any securities with the potential for capital appreciation. In choosing securities, the portfolio's investment adviser considers the economic and political outlook, management capabilities and practices, and trends in the determinants of corporate profits, among others. The portfolio may also invest in non-convertible bonds, preferred stocks, and foreign securities.</p> <p>Delaware VIP Trend Series of the Delaware Trust.<br/> Investment Objective—To seek long-term capital appreciation.</p> | <p>Roszel/Delaware Trend Portfolio of the MLIG Trust.<br/> Investment Objective—To seek long-term capital appreciation.<br/> Investment Policies—The portfolio invests at least 65% of total assets in small cap equities of companies believed to have potential for high earnings growth. The portfolio's investment adviser seeks small companies that offer substantial opportunities for long-term price appreciation because they are poised to benefit from changing and dominant social and political trends. The portfolio's investment adviser evaluates company management, product development and sales and earnings, and it seeks market leaders, strong product cycles, innovative concepts, and industry trends. Also considered are a company's price-to-earning ratio, estimated growth rates, market cap, and cash flows to determine the company's attractiveness. To reduce the risk of investing in small cap companies, the portfolio invests in a well-diversified portfolio of different stocks representing a wide array of industries. The portfolio uses the Russell 2500 Growth Index as a performance benchmark. The portfolio may invest up to 25% of total assets in foreign securities.</p> |

| Substituted portfolios                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Replacement portfolios                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Investment Policies—The Series invests mainly in stocks of small, growth-oriented or emerging companies that the portfolio's investment adviser believes are responsive to changes in the marketplace and have prospects for continued growth. The portfolio's investment adviser looks for market leaders, strong product cycles, innovative concepts, and industry trends, and also examines price-to-earnings ratios, estimated growth rates, market caps, and cash flow when it selects stocks for investment.</p> <p>MFS Research Series of the MFS Trust .....</p> <p>Investment Objective—To seek long-term growth of capital and future income.</p> <p>Investment Policies—Normally, the Series invests at least 80% of its net assets in common stocks and related securities (preferred stocks, convertible securities and depository receipts for those securities), and focuses on companies, regardless of size, believed to have favorable prospects for long-term growth, attractive valuations based on current and expected earnings or cash flow, dominant or growing market share, and superior management. The Series may also invest in junk bonds and in foreign securities (including emerging markets securities). The Series' assets are allocated among various industries.</p> <p>MFS Investors Trust Series of the MFS Trust.</p> <p>Investment Objective—To provide long-term growth of capital, with reasonable current income as a secondary objective.</p> <p>Investment Policies—Normally, the Series invests at least 65% of net assets in common stocks and related securities (preferred stocks, convertible securities and depository receipts for those securities). The portfolio's investment adviser generally focuses on companies with larger market caps (although it may invest in companies of any size) believed to have sustainable growth prospects and attractive valuations based on current and expected earnings or cash flow. The portfolio's investment adviser will attempt to generate gross current income equal to about 90% of the dividend yield on the Standard &amp; Poor's 500 Composite Stock Index. The portfolio's investment adviser selects securities by analyzing earnings, cash flows, competitive position and management's abilities. The Series may invest in foreign equity securities.</p> | <p>Roszel/PIMCO CCM Capital Appreciation Portfolio of the MLIG Trust.</p> <p>Investment Objective—To seek long-term capital appreciation.</p> <p>Investment Policies—The portfolio invests at least 65% of total assets in large cap stocks of companies believed to have potential for high earnings growth. These companies are generally well-established issuers with strong business franchises and favorable long-term growth prospects. The portfolio's investment adviser seeks to achieve a consistent, favorable balance of growth and value with stocks of companies in the Russell 1000 and the S&amp;P 500 Indexes. In choosing companies to invest in, the portfolio's investment adviser first looks at dividend growth, earnings growth, relative growth of earnings over time, the company's history of meeting earnings targets, and price-to-earnings ratios and other ratios that reveal value. The most promising companies are then evaluated on the basis of management strength, competitiveness in their industries, business prospects, and profitability. The portfolio sells stocks when their price declines relative to other stocks invested in by the portfolio or to other companies in the same business industry or when the issuer's earnings decline. The portfolio may invest up to 10% of total assets in foreign securities. The portfolio uses the S&amp;P 500 Index as a benchmark index.</p> |

16. The following chart describes the reimbursements) for the year ending assets, by each Substituted Portfolio and fees payable for advisory services December 31, 2002, expressed as an each Replacement Portfolio. (before any waivers and annual percentage of average daily net

| Substituted portfolios                                       | Percent | Replacement portfolios                                      | Percent |
|--------------------------------------------------------------|---------|-------------------------------------------------------------|---------|
| AllianceBernstein Quasar Portfolio, Annual Advisory Fees ... | 1.00    | Roszel/Delaware Trend Portfolio, Annual Advisory Fees ..... | 0.85    |
| Delaware VIP Trend Series, Annual Advisory Fees .....        | 0.75    | Roszel/PIMCO CCM Capital Appreciation Portfolio, Annual     | 0.80    |
| MFS Research Series, Annual Advisory Fees .....              | 0.75    | Advisory Fees.                                              |         |
| MFS Investors Trust Series, Annual Advisory Fees .....       |         | .....                                                       |         |

17. The following charts compare the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 2002, expressed as an annual percentage of average daily net assets, of each Substituted Portfolio and each Replacement Portfolio. None of the relevant classes of shares of the Replacement Portfolios have adopted a plan pursuant to Rule 12b-1 under the 1940 Act.

| Substituted portfolios (in percent)           |                                    |                            | Replacement portfolios (in percent)             |
|-----------------------------------------------|------------------------------------|----------------------------|-------------------------------------------------|
|                                               | AllianceBernstein Quasar Portfolio | Delaware VIP Trend series  | Roszel/Delaware Trend Portfolio                 |
| Management fees .....                         | 1.00                               | 0.75                       | 0.85                                            |
| 12b-1 fees .....                              | N/A                                | N/A                        | N/A                                             |
| Other expenses .....                          | 0.25                               | 0.09                       | 0.97                                            |
| Total operating expenses .....                | 1.25                               | 0.84                       | 1.82                                            |
| Less expense waivers and reimbursements ..... | N/A                                | N/A                        | (0.67)                                          |
| Net operating expenses .....                  | 1.25                               | 0.84                       | 1.15                                            |
|                                               | MFS Research series                | MFS Investors Trust series | Roszel/PIMCO CCM Capital Appreciation Portfolio |
| Management Fees .....                         | 0.75                               | 0.75                       | 0.80                                            |
| 12b-1 fees .....                              | N/A                                | N/A                        | N/A                                             |
| Other expenses .....                          | 0.12                               | 0.13                       | 0.97                                            |
| Total operating expenses .....                | 0.87                               | 0.88                       | 1.77                                            |
| Less expense waivers and reimbursements ..... | N/A                                | N/A                        | (0.67)                                          |
| Net operating expenses .....                  | 0.87                               | 0.88                       | 1.10                                            |

18. "Other Expenses" for the Roszel/Delaware Trend Portfolio and the Roszel/PIMCO CCM Capital Appreciation Portfolio are based on estimates for the fiscal year ended December 31, 2003. In addition, MLIG Trust has entered into an expense limitation arrangement with Roszel Advisors whereby Roszel Advisors will reimburse the Roszel/Delaware Trend Portfolio and the Roszel/PIMCO CCM Capital Appreciation Portfolio to the extent total operating expenses (excluding interest, taxes, brokerage commissions, expenses in the form of fees paid to the Trust service providers by brokers in connection with directed brokerage arrangements, other expenditures that are capitalized in accordance with generally accepted accounting principles, and other extraordinary expenses not incurred in the ordinary course of each Portfolio's business) exceed certain limits. The expense limitation agreement is effective through April 30, 2004, and is expected to continue from year to year, conditioned upon approval for continuance by the board of trustees of the MLIG Trust. Net Operating Expenses for the AllianceBernstein Quasar Portfolio do not reflect fees waived or expenses assumed by Alliance during the year ended December 31, 2002. Such waivers and assumption of expenses were made on a voluntary basis, and Alliance has discontinued this waiver. During the fiscal year ended December 31, 2002, Alliance waived management fees totaling 0.12% and other expenses totaling 0.02% for the AllianceBernstein Quasar Portfolio. After considering such

reimbursements, actual Net Operating Expenses were 1.11%. DMC, the adviser to the Series, has contracted to waive fees and pay expenses through April 30, 2004 in order to prevent the Series' total operating expenses (excluding any 12b-1 fees, taxes, interest, brokerage fees, and extraordinary expenses) from exceeding 0.95% of average daily net assets.

19. Pursuant to their authority under the respective Variable Contracts and the prospectuses describing the same, and subject to the approval of the Commission under Section 26(c) of the 1940 Act, MLLIC and MLNY propose to substitute shares of the Replacement Portfolios for shares of the Substituted Portfolios in the Separate Accounts (the "Substitutions").

20. The Substitutions are part of an overall business plan involving the management of MLLIC and MLNY to make their respective products, including the Variable Contracts, more competitive (both in terms of new sales, as well as with regard to the retention of existing blocks of business) and more efficient to administer and oversee. The proposed Substitutions are consistent with this business plan and involve mutual funds with similar investment objectives.

21. Over the past several years, MLLIC and MLNY have engaged in a thorough review of the efficiencies and structures of all of the investment options they offer under the Variable Contracts. As part of this ongoing effort to make the Variable Contracts more competitive, the Applicants engaged in certain substitutions on May 1, 2002. Based on

their continuing evaluation of the available investment options, MLLIC and MLNY believe that more concentrated and streamlined operations for investment options could result in increased operational and administrative efficiencies and economies of scale for the Companies. More specifically, MLLIC and MLNY feel that streamlining the number of nonproprietary fund families available through the Variable Contracts and altering the available portfolios will simplify the administration of the Variable Contracts, particularly with regard to communications with the fund families and the preparation of various reports and disclosure documents. This streamlining will allow them to enhance their communication efforts to Variable Contract owners and sales representatives regarding the available portfolios, and may provide for more enhanced and timely reporting to MLLIC and MLNY from fund families and therefore from MLLIC and MLNY to Variable Contract owners. Furthermore, reducing the number of nonproprietary fund families also will provide MLLIC and MLNY with more control over fund changes that affect their Variable Contracts, allowing for appropriate long-term strategic planning.

22. During this continuing evaluation of the available investment options, MLLIC and MLNY also have engaged in a thorough review of the quality of all of the investment options offered under the Variable Contracts. This due diligence review involved an evaluation of the investment performance, the investment process, and the investment

teams responsible for the management of the Substituted Portfolios. Ultimately, MLLIC and MLNY concluded that the Substituted Portfolios offered under the Variable Contracts warrant replacement and that it would be preferable to make alternative investment options available to both current and future Variable Contract owners. Consequently, MLLIC and MLNY identified certain investment options (*i.e.*, the Replacement Portfolios) that MLLIC and MLNY feel would be more competitive and more attractive to Variable Contract owners. In fact, under certain of the Variable Contracts (where administratively feasible), MLLIC and MLNY closed the subaccounts investing in the Substituted Portfolios to the allocation of premium and contract value on May 1, 2003, and simultaneously added new investment options that invest in the Replacement Portfolios.

23. MLLIC and MLNY also feel that these options would better promote their goals of increasing administrative efficiency of, and control over, their Variable Contracts if they were a part of their affiliated fund families. For example, one of the proposed Substitutions involves the Roszel/Delaware Trend Portfolio, which is modeled on one of its corresponding Substituted Portfolios, the Delaware VIP Trend Series; this Replacement Portfolio also shares an identical investment objective and substantially similar policies, restrictions, and risks as this Substituted Portfolio. In addition, as the Replacement Portfolios operate pursuant to the Manager of Managers Order, the Substitutions would provide protection to Variable Contract owners by giving Roszel Advisors the agility and flexibility to change the subadvisers of the Replacement Portfolios should such a change become warranted or advisable.

24. MLLIC and MLNY will effect the Substitutions as soon as practicable following the issuance of the requested order as follows. As of the effective date of the Substitutions ("Effective Date"), each Separate Account will redeem shares of the applicable Substituted Portfolios in-kind. The proceeds of such redemptions will then be used to purchase shares of the corresponding Replacement Portfolios, with each subaccount of the applicable Separate Account investing the proceeds of its redemption from the Substituted Portfolios in the applicable Replacement Portfolios. Following these transactions, certain Separate Accounts may have two subaccounts holding shares of the Replacement Portfolios. Each Separate Account will combine the two subaccounts holding shares of each

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 of the Substitutions will be to eliminate the subaccount in each Separate Account relating to the Substituted Portfolios.

25. Redemption requests and purchase orders will be placed simultaneously so that contract values will remain fully invested at all times. All redemptions of shares of the Substituted Portfolios and purchases of shares of the Replacement Portfolios will be effected in accordance with Rule 22c-1 of the 1940 Act.

26. The Substitutions 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. Variable Contract owners will not incur any additional fees or charges as a result of the Substitutions, nor will their rights or MLLIC's and MLNY's obligations under the Variable Contracts be altered in any way (although Variable Contract owners will lose their right to vote on whether the MLIG Trust and Roszel Advisors may enter into and materially amend investment subadvisory agreements relating to the Replacement Portfolios, pursuant to the Manager of Managers Order described above). All expenses incurred in connection with the Substitutions, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by MLLIC or MLNY. In addition, the Substitutions will not impose any tax liability on Variable Contract owners. The Substitutions will not cause the Variable Contract fees and charges currently paid by existing Variable Contract owners to be greater after the Substitutions than before the Substitutions. Neither MLLIC nor MLNY 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 Substitutions. To the extent that the total operating expenses of either of the Replacement Portfolios (taking into account any expense waiver or reimbursement), for each fiscal quarter during the twenty-four months following the Substitutions, exceed on an annualized basis the net expense level of the corresponding Substituted Portfolio for the fiscal year ended December 31, 2002, MLLIC and MLNY will, for each Variable Contract

outstanding on the date of the Substitutions, make a corresponding reduction in Separate Account expenses on the last day of such fiscal quarter, such that the amount of the Replacement Portfolio's net expenses, together with those of the corresponding Separate Account will, on an annualized basis, be no greater than the sum of the net expenses of the corresponding Substituted Portfolio and the expenses of the Separate Account for the 2002 fiscal year. In addition, for twenty-four months following the Substitutions, MLLIC and MLNY will not increase asset-based fees or charges for Variable Contracts outstanding on the day of the Substitutions. Thereafter, expenses of the Replacement Portfolios will vary from year to year and may exceed those of their corresponding Substituted Portfolios. The procedures to be implemented are sufficient to assure that each Variable Contract owner's cash values immediately after the Substitutions shall be equal to the cash value immediately before the Substitutions, and that the Substitutions will not affect the value of the interests of those owners of other MLLIC and MLNY variable contracts (other than the Variable Contracts) who currently have contract value allocated to any of the portfolios of the AllianceBernstein Fund, the Delaware Trust, the MFS Trust, or the MLIG Trust.

27. Variable Contract owners have been notified of the Application by means of a supplement to the prospectus for each of the Variable Contracts that discloses that the Applicants have filed the Application and seek approval for the Substitutions ("Pre-Substitution Notice"). The Pre-Substitution Notice set forth the anticipated Effective Date and advised Variable Contract owners that contract values attributable to investments in the Substituted Portfolios will be transferred to the Replacement Portfolios, without charge (including sales charges or surrender charges) and without counting toward the number of transfers permitted without charge, on the Effective Date. The Pre-Substitution Notice stated that, from the date the initial application was filed with the Commission through the date thirty (30) days after the Substitutions, Variable Contract owners may make one transfer of contract value from the subaccounts investing in the Substituted Portfolios (before the Substitutions) or the Replacement Portfolios (after the Substitutions) to any other subaccount without charge (including sales charges or surrender charges) and without that transfer counting toward the number

permitted without charge under the Variable Contract.

28. In addition, MLLIC will solicit approval of the proposed Substitutions from MLLIC Variable Contract owners and MLNY will solicit approval of the proposed Substitutions from MLNY Variable Contract owners. Such approval will be sought from the owners of First Generation MLLIC VLI Contracts, Second Generation MLLIC VLI Contracts, MLLIC Annuity Contracts, First Generation MLNY VLI Contracts, Second Generation MLNY VLI Contracts, and MLNY Annuity Contracts, each voting as a separate group. This solicitation will make clear that approval of the proposed Substitutions signifies approval of the Replacement Portfolios' reliance on the Manager of Managers Order described above. If MLLIC and MLNY do not receive approval for the Substitutions (and in effect, the Replacement Portfolios' reliance on the Manager of Managers Order) for all groups of Contracts, MLLIC and MLNY may decide to effect the Substitutions only for some or all of those groups whose owners approve them. Similarly, if MLLIC and MLNY do not receive approval for all of the Substitutions, MLLIC and MLNY may decide to effect only those Substitutions that were approved by Variable Contract owners. Neither MLLIC nor MLNY will effect any proposed Substitution for any group of Contracts that has not approved that Substitution. Approval will be obtained by the affirmative vote of the lesser of: (1) A majority of the outstanding interests in each applicable subaccount investing in the relevant Substituted Portfolio (measured by the dollar value of accumulation units), or (2) 67% of such outstanding interests voted, if votes received represent a majority of such interests. MLLIC and MLNY will solicit approval of Variable Contract owners by sending them written voting forms accompanied by a voting information statement and other disclosure documents in a manner generally consistent with applicable requirements of Regulation 14A under the 1934 Act (collectively, "voting materials"). In particular, the relevant information statement will disclose, in substance, the information required by applicable items of Form N-14. Any beneficial financial interest that MLLIC or MLNY may have in any of the Separate Accounts is immaterial in relation to the interests of Variable Contract owners and neither MLLIC nor MLNY will cast any votes. Pursuant to Rule 20a-1 under the 1940 Act, the voting materials have been filed with

the Commission as proxy materials. Applicants anticipate that voting materials will be sent to Variable Contract owners on October 10, 2003. Unless extended by either MLLIC or MLNY, votes must be received by November 7, 2003 to be counted.

29. All Variable Contract owners will have received a copy of the most recent Replacement Portfolio prospectuses prior to the Substitutions.

30. Finally, within five (5) days after the Substitutions, Variable Contract owners will be notified, by means of a supplement to the prospectus for each of the Variable Contracts, that the Substitutions were carried out ("Post-Substitution Notice"). The Post-Substitution Notice will restate the information set forth in the Pre-Substitution Notice (e.g., advising Variable Contract owners of the "free" transfer right).

#### **Applicants' Legal Analysis**

1. Section 26(c) 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(c) 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(c) 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 Applicants submit that the Substitutions meet the standards set forth in Section 26(c) and that, if implemented, the Substitutions would not raise any of the aforementioned concerns that Congress intended to address when the 1940 Act was amended to include this provision. In addition, the Applicants submit that the proposed Substitutions meet the standards that the Commission and its Staff have applied to substitutions that have been approved in the past.

3. The replacement of the Substituted Portfolios with the Replacement Portfolios 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(c) of the 1940 Act. The Substitutions will provide Variable Contract owners with comparable investment vehicles.

4. Although not always identical, the investment objectives, policies, and strategies of the Replacement Portfolios are comparable to those of their respective Substituted Portfolios.

5. In each proposed Substitution, the types of investment advisory and administrative services provided to the Replacement Portfolios by their various investment advisers are comparable to the types of investment advisory and administrative services provided to the Substituted Portfolios by their respective investment advisers. Variable Contract owners invested in the Delaware VIP Trend Series (one of the Substituted Portfolios) will enjoy continuity of their investment adviser due to the "manager of managers" approach employed by Roszel Advisors, the investment adviser to the corresponding Replacement Portfolio. The Replacement Portfolio will be managed overall by Roszel Advisors, but much of the day-to-day management activity will be handled by the subadviser, DMC, the investment adviser currently managing the Delaware VIP Trend Series. While Variable Contract owners invested in the AllianceBernstein Quasar Portfolio, whose investment adviser is currently Alliance, would be managed by a new investment adviser and a new subadviser, as stated above, the types of investment advisory and administrative services provided after the Substitution will be comparable to those received before the Substitution. Similarly, the same will be true of the Substitution of shares of the Roszel/PIMCO CCM Capital Appreciation Portfolio (the Replacement Portfolio), whose investment adviser will be Roszel Advisors and whose subadvisers will be PIMCO and Cadence, for shares of the MFS Research Series and MFS Investors Trust Series, whose investment adviser is MFS.

6. Although the Delaware VIP Trend Series' advisory fee and total operating expenses are lower than those of the Roszel/Delaware Trend Portfolio (before any waivers and reimbursements), the AllianceBernstein Quasar Portfolio's advisory fee and total operating expenses are higher than those of the Roszel/Delaware Trend Portfolio (before

any waivers and reimbursements). Moreover, the proposed Substitutions will be effected only with the approval of Variable Contract owners. Finally, MLLIC and MLNY will agree that, for two years from the date of the Substitutions, they will reduce Separate Account expenses to the extent the annualized expenses for either Replacement Portfolio for any fiscal quarter exceed the 2002 net expense level of its corresponding Substituted Portfolio. Similarly, although the advisory fee and total operating expenses of the MFS Research Series and the MFS Investors Trust Series are lower than those of the Roszel/PIMCO CCM Capital Appreciation Portfolio (before any waivers and reimbursements), MLLIC and MLNY will effect the proposed Substitutions only if Variable Contract owner approval is received. And, MLLIC and MLNY will agree that, for two years from the date of the Substitutions, they will reduce Separate Account expenses to the extent the annualized expenses for either Replacement Portfolio for any fiscal quarter exceed the 2002 net expense level of its corresponding Substituted Portfolio.

7. Although not always identical, the investment risks of the Replacement Portfolios are comparable to those of their respective Substituted Portfolios.

8. The Section 17(b) Applicants also request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit MLLIC and MLNY to carry out the Substitutions by redeeming shares issued by AllianceBernstein Fund, Delaware Trust, and MFS Trust in-kind and using the distributed securities to purchase shares issued by MLIG Trust.

9. 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. MLLIC and MLNY anticipate that the Substitutions will be done (in whole or in part) by redeeming shares of the Substituted Portfolios in-kind rather than in cash and then using those assets to purchase shares of the Replacement Portfolios. 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 by MLLIC, MLNY, and the

MLIG Trust, each arguably an affiliated person of those investment companies.

10. Pursuant to Section 17(a)(1) of the 1940 Act, the Section 17(b) Applicants may be considered affiliates of one or more of the funds involved in the Substitutions, based upon the definition of "affiliated person" under Section 2(a)(3) of the 1940 Act. Because the Substitutions may be effected, in whole or in part, by means of in-kind redemptions and subsequent purchases of shares, and also by means of in-kind transactions, the Substitutions may be deemed to involve one or more purchases or sales of securities or property between affiliates.

11. Any in-kind redemptions and purchases for purposes of the Substitutions will be effected in a manner consistent with the investment objectives and policies of the Substituted Portfolios and the Replacement Portfolios. Subject to the oversight of Roszel Advisors, DMC will review the securities holdings of the AllianceBernstein Quasar Portfolio and the Delaware VIP Trend Series, and PIMCO and Cadence will review the securities holdings of the MFS Research Series and the MFS Investors Trust Series, and determine which of these Substituted Portfolio holdings would be suitable investments for the Roszel/Delaware Trend Portfolio and the Roszel/PIMCO CCM Capital Appreciation Portfolio, respectively, in the overall context of the Replacement Portfolios' investment objectives and policies and consistent with their management of the Replacement Portfolios. The Section 17(b) Applicants state that securities to be paid out as redemption proceeds and subsequently contributed to the Replacement Portfolios to effect the contemplated in-kind purchases of shares will be valued based on the normal valuation procedures of the redeeming and purchasing portfolios. The redeeming and purchasing values will be the same. Consistent with Rule 17a-7(d) under the 1940 Act, no brokerage commissions, fees, or other remuneration will be paid in connection with the in-kind transactions. If Roszel Advisors declines to accept particular portfolio securities of any of the Substituted Portfolios for purchase in-kind of shares of any of the Replacement Portfolios, those positions will be liquidated by the applicable Substituted Portfolio and shares of the corresponding Replacement Portfolio will be purchased with cash.

12. Section 17(b) of the 1940 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 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

13. The Section 17(b) Applicants submit that the terms of the Substitutions, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17(b) Applicants also submit that the Substitutions are consistent with the policies of AllianceBernstein Fund, Delaware Trust, MFS Trust, and MLIG Trust, and their portfolios, as recited in the current registration statements and reports filed by each under the 1940 Act. Finally, the Section 17(b) Applicants submit that the proposed Substitutions are consistent with the general purposes of the 1940 Act.

#### **Applicants' Conditions**

For purposes of the approval sought pursuant to Section 26(c) of the 1940 Act, the Substitutions described in the 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 as necessary to carry out the transactions described in the Application; 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 the Application.

2. Each Variable Contract owner will have been sent (i) prior to the Effective Date, a copy of the effective prospectus relating to the relevant Replacement Portfolio, (ii) prior to the Effective Date, a Pre-Substitution Notice describing the terms of the Substitutions and the rights of the Variable Contract owners in connection with the Substitutions, and (iii) a Post-Substitution Notice within five days after the Substitutions informing them that the Substitutions were carried out and restating the information set forth in the Pre-Substitution Notice.

3. MLLIC and MLNY shall have satisfied themselves that (i) the Variable Contracts allow the substitution of portfolios in the manner contemplated by the Substitutions and related

transactions described herein, (ii) the transactions can be consummated as described in the 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.

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. 34-48668; File No. SR-BSE-2003-07]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. To Amend Its Listed Securities Requirements Relating to the Mandatory Establishment of Independent Audit Committees for All Listed Issuers

October 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 16, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add new requirements concerning audit committees to its Listed Securities Requirements in Chapter XXVII of the Rules of the Board of Governors of the BSE ("BSE Rules"). The Exchange states that the proposed rule change will address the requirements of Rule 10A-3 under the Act relating to the mandatory establishment of independent audit committees for all listed issuers.<sup>3</sup> The text of the proposed

rule change is below. Text in italics indicates material to be added.

\* \* \* \* \*

## Chapter XXVII

### Listed Securities—Requirements

Sec. 1-9. No change.

#### Sec. 10. Corporate Governance

*A. Audit Committees: All issuers with securities listed on the Boston Stock Exchange will be required to establish an independent audit committee that shall be defined as: "An independent committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the Company and audits of the financial statements of the Company; and if no such body exists with respect to the Company, the entire board of directors." All issuers with securities listed on the Boston Stock Exchange shall comply with the following rules:*

*1. Required Standards for Audit Committee Pursuant to SEC Rule 10A-3:*

*(a) Pursuant to section 10A(m) of the Act (15 U.S.C. 78j-1(m)) and section 3 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7202):*

*(1) National securities exchanges. The rules of each national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) must, in accordance with the provisions of this section, prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.*

*(2) National securities associations. The rules of each national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o-3) must, in accordance with the provisions of this section, prohibit the initial or continued listing in an automated inter-dealer quotation system of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.*

*(3) Opportunity to cure defects. The rules required by paragraphs (a)(1) and (a)(2) of this section must provide for appropriate procedures for a listed issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (a) of this section, before the imposition of such prohibition. Such rules also may provide that if a member of an audit committee ceases to be independent in accordance with the requirements of this section for reasons outside the*

*member's reasonable control, that person, with notice by the issuer to the applicable national securities exchange or national securities association, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.*

*(4) Notification of noncompliance. The rules required by paragraphs (a)(1) and (a)(2) of this section must include a requirement that a listed issuer must notify the applicable national securities exchange or national securities association promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of this section.*

*(5) Implementation.*

*(i) The rules of each national securities exchange or national securities association meeting the requirements of this section must be operative, and listed issuers must be in compliance with those rules, by the following dates:*

*(A) July 31, 2005 for foreign private issuers and small business issuers (as defined in § 240.12b-2); and*

*(B) For all other listed issuers, the earlier of the listed issuer's first annual shareholders meeting after January 15, 2004, or October 31, 2004.*

*(ii) Each national securities exchange and national securities association must provide to the Commission, no later than July 15, 2003, proposed rules or rule amendments that comply with this section.*

*(iii) Each national securities exchange and national securities association must have final rules or rule amendments that comply with this section approved by the Commission no later than December 1, 2003.*

*(b) Required standards.*

*(1) Independence.*

*(i) Each member of the audit committee must be a member of the board of directors of the listed issuer, and must otherwise be independent; provided that, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies.*

*(ii) Independence requirements for non-investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is not an investment company may not, other*

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

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

<sup>3</sup> 17 CFR 240.10A-3.