

November 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of October, 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-25766; File No. 812-12742]

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

October 8, 2002.

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

ACTION: Notice of application for an order pursuant to section 11(a) of the Investment Company Act of 1940 (the "Act") approving the terms of an offer of exchange.

APPLICANTS: Minnesota Life Insurance Company ("Minnesota Life"), Minnesota Life Variable Life Account (the "Variable Life Account"), and Securian Financial Services, Inc. ("Securian Financial," collectively with Minnesota Life and the Variable Life Account, the "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 11(a) of the Act approving the terms of a proposed offer of exchange of new variable adjustable life insurance policies issued by Minnesota Life and made available through the Variable Life Account (the "New Policies") for certain outstanding variable adjustable life insurance policies issued by Minnesota Life and made available through the Variable Life Account ("VAL "87" or "VAL "95," collectively, the "Old Policies;" collectively with the New Policies, the "Policies").

FILING DATE: The Application was filed on December 31, 2001.

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 Commission's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the Commission

by 5:30 p.m. on November 1, 2002, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Anna Marie Ettel, Esq., Minnesota Life, 400 Robert Street North, St. Paul, MN 55101-2098; copies to W. Randolph Thompson, Esq., Of Counsel, Jones & Blouch L.L.P., 1025 Thomas Jefferson Street, NW., Suite 410E, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Martha Atkins, Senior Counsel, 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 is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 ((202) 942-8090).

Applicants' Representations

1. Minnesota Life is a life insurance company organized under the laws of Minnesota. Minnesota Life was formerly known as The Minnesota Mutual Life Insurance Company, a mutual life insurance company organized in 1880 under the laws of Minnesota. Effective October 1, 1998, The Minnesota Mutual Life Insurance Company reorganized by forming a mutual insurance holding company named "Minnesota Mutual Companies, Inc." The Minnesota Mutual Life Insurance Company continued its corporate existence following conversion to a Minnesota stock life insurance company. All of the shares of the voting stock of Minnesota Life are owned by a second tier intermediate stock holding company named "Securian Financial Group, Inc.," which is a wholly-owned subsidiary of a first tier intermediate stock holding company named "Securian Holding Company," which in turn is a wholly-owned subsidiary of the ultimate parent, Minnesota Mutual Companies, Inc.

2. The Variable Life Account was established on October 21, 1985, by the Minnesota Life Board of Trustees in accordance with certain provisions of Minnesota insurance law. Minnesota Life is the legal owner of the assets in

the Variable Life Account. The obligations to Policy owners and beneficiaries arising under the Policies are general corporate obligations of Minnesota Life and thus Minnesota Life's general assets back the Policies. The Minnesota law under which the Variable Life Account was established provides that the assets of the Variable Life Account shall not be chargeable with liabilities arising out of any other business which Minnesota Life may conduct, but shall be held and applied exclusively to the benefit of the holders of those variable life insurance policies for which the separate account was established. The investment performance of the Variable Life Account is entirely independent of both the investment performance of Minnesota Life's General Account and of any other separate account which Minnesota Life may have established or may later establish. The Variable Life Account is organized and registered under the Act as a unit investment trust (File No. 811-4585) and is a "separate account" as defined in section 2(a)(37) of the Act.

3. Securian Financial is registered with the Commission as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. Securian Financial is the principal underwriter for the Policies. Securian Financial is a wholly-owned subsidiary of Advantus Capital Management, Inc., which in turn is a wholly-owned subsidiary of Minnesota Life.

The New Policies

4. The New Policies are offered pursuant to a registration statement under the Securities Act of 1933 (the "1933 Act") filed on February 8, 2000 (File No. 333-96383).

5. The New Policies are variable adjustable life insurance policies that permit the Policy owner to determine the amount of life insurance protection he or she requires and the amount of money the Policy owner can afford to pay. Based on the Policy owner's selection of the premium, face amount and death benefit option, Minnesota Life will calculate the guaranteed plan of insurance. Subject to certain minimums, maximums, and Minnesota Life's underwriting standards, a Policy owner may choose any level of premium or death benefit he or she wishes. This flexibility results in a broad range of plans of insurance.

6. The New Policies have a level premium for a specified number of years, for the life of the insured, or until the Policy becomes paid up.

7. Policy values of the Old and New Policies may be invested in the Variable

Life Account or in the general account option. The Variable Life Account currently has 25 sub-accounts to which a Policy owner may allocate premiums (the "Sub-Accounts"). Each Sub-Account invests in shares of a corresponding portfolio of the underlying mutual funds ("Underlying Funds"). Following is a list of the Underlying Funds: Advantus Series Fund, Inc.: Growth Portfolio, Bond Portfolio, Money Market Portfolio, Asset Allocation Portfolio, Mortgage Securities Portfolio, Index 500 Portfolio, Capital Appreciation Portfolio, International Stock Portfolio, Small Company Growth Portfolio, Value Stock Portfolio, Small Company Value Portfolio, Global Bond Portfolio, Index 400 Mid-Cap Portfolio, Macro-Cap Value Portfolio, Micro-Cap Growth Portfolio, Real Estate Securities Portfolio; Franklin Templeton Variable Insurance Products Trust: Templeton Developing Markets Securities Fund—Class 2 Shares, Templeton Asset Strategy Fund—Class 2 Shares, Franklin Small Cap Fund—Class 2 Shares; Fidelity Variable Insurance Products Funds: Mid Cap Portfolio—Service Class Shares, Contrafund® Portfolio—Service Class 2 Shares, Equity-Income Portfolio—Service Class 2 Shares; and Janus Aspen Series: Capital Appreciation Portfolio—Service Shares, International Growth Portfolio—Service Shares. Amounts invested in the Sub-Accounts are subject to the management fees paid and other expenses incurred by the Underlying Funds.

8. Policy values may also be accumulated on a guaranteed basis by allocation to Minnesota Life's general account (the "Guaranteed Principal Account"). Guaranteed Principal Account interest is guaranteed to be credited at a rate of at least 4% on an annual basis.

9. Actual cash value may be transferred between the Guaranteed Principal Account and the Variable Life Account or among the Sub-Accounts of the Variable Life Account. A Policy owner may request a transfer at any time while the Policy remains in force, or the Policy owner may arrange in advance for systematic transfers. A transfer is subject to a transaction charge, not to exceed \$10, for each transfer of actual cash value among the Sub-Accounts and the Guaranteed Principal Account. Currently, there is a charge only for non-systematic transfers in excess of four per year.

10. Policy values under the New Policies may be accessed by means of partial surrenders, policy loans or total surrender. Interest payable on policy loans will not be more than that

permitted in the state in which the Policy is delivered; interest credited on loan accounts established in connection with outstanding loans will be at a rate which is not less than the policy loan interest rate minus 1% per year. If the Policy has been in force for ten years or more, the loan is credited at a rate equal to the policy loan rate minus 0.5% per year.

11. The New Policies offer a choice of two death benefit options: a level death benefit equal to the New Policy's face amount (the "Cash Option") or a death benefit equal to the face amount plus policy value (the "Protection Option"). In either case, the death benefit may be greater if necessary for a New Policy to continue to comply with the tax law definition of life insurance.

12. The minimum face amount of a New Policy is \$25,000 if the insured is greater than age 15, and \$10,000 if the insured is age 0 to 15.

13. From base premiums, Minnesota Life deducts a Sales Charge, an Additional Face Amount Charge, and a Premium Charge. Premium Charges vary depending on whether the premium is a scheduled premium or a non-repeating premium.

(a) The Sales Charge consists of a deduction from each premium of up to 44% and applies only to base premiums scheduled to be paid in the 12-month period following the policy date, or any policy adjustment involving an increase in base premium or any policy adjustment occurring during a period when a Sales Charge is being assessed. It will also apply only to that portion of an annual base premium necessary for an original issue whole life plan of insurance under the Cash Option. In other words, the amount of any base premium in excess of this amount will not be subject to the Sales Charge. The Sales Charge is designed to compensate Minnesota Life for distribution expenses incurred with respect to the Policies. Only adjustments that involve an increase in base premium will result in an additional Sales Charge being assessed on that increase in premium.

(b) The Additional Face Amount Charge is an amount not to exceed \$5 per \$1,000 of face amount of insurance. This amount may vary by the age of the insured and the premium level for a given amount of insurance. This charge is made ratably from premiums scheduled to be paid during the first policy year and during the 12 months following certain policy adjustments. The Additional Face Amount Charge is designed to compensate Minnesota Life for the administrative costs associated with issuance or adjustment of the Policies, including the cost of

processing applications, conducting medical exams, classifying risks, determining insurability and risk class, and establishing policy records.

(c) The Premium Charge of 6% is deducted from each base premium, approximately 2.5% of which is attributable to state and local premium tax obligations of Minnesota Life in connection with receipt of premiums under the New Policies. This charge is designed to cover the expenses related to premiums, including but not limited to administration, sales load, and taxes.

14. Non-repeating premiums are currently subject to a Premium Charge of 3%. Minnesota Life does not assess a Sales Charge or an Additional Face Amount Charge against non-repeating premiums.

15. In addition to deductions from premiums and non-repeating premiums, Minnesota Life assesses from actual cash value of a Policy, a Monthly Policy Charge, a Cost of Insurance Charge, and certain transaction charges.

(a) The Monthly Policy Charge is \$8 plus \$0.02 per \$1,000 of face amount. The maximum Monthly Policy Charge will never exceed \$10 plus \$0.03 per \$1,000 of face amount. The Monthly Policy Charge is designed to cover certain administrative expenses, including those attributable to a Policy owner's records created and maintained by Minnesota Life.

(b) The Cost of Insurance Charge compensates Minnesota Life for providing the death benefit under a Policy and is calculated based on rates that cannot exceed the maximum charges for mortality derived from the 1980 Commissioners Standard Ordinary Mortality Tables.

(c) Transaction charges consist of up to a \$25 charge for each policy adjustment, which compensates Minnesota Life for expenses associated with processing transactions. If the only policy adjustment is a partial surrender, the transaction charge will be the lesser of \$25 or 2% of the amount surrendered. Minnesota Life also reserves the right to make a charge, not to exceed \$25, for each transfer of actual cash value among the Guaranteed Principal Account and the Sub-Accounts of the Variable Life Account. Currently, there is a \$10 charge only for non-systematic transfers in excess of four per year.

16. From the assets held in the Variable Life Account, Minnesota Life assesses a Mortality and Expense Risk charge, deducted on each valuation date at an annual rate of 0.50% of the average daily net assets of the Variable Life Account. Although Minnesota Life reserves the right to charge or make provision for any taxes payable by

Minnesota Life with respect to the Variable Life Account or the Policies by a charge or adjustment to such assets, no such charge or provision is made at the present time. The Mortality and Expense Risk Charge compensates Minnesota Life for assuming the risks that cost of insurance charges will be insufficient to cover actual mortality experience and that the other charges will not cover Minnesota Life's expenses in connection with the Policy.

17. Additional Benefits are offered by Minnesota Life as riders to the New Policies, subject to underwriting approval. These Additional Benefits may require the payment of additional premium. The Additional Benefits include a Waiver of Premium Agreement, an Inflation Agreement, a Business Continuation Agreement, a Family Term Rider, an Exchange of Insureds Agreement, and an Accelerated Benefits Agreement.

The Old Policies

18. The Old Policies are offered pursuant to registration statements under the Securities Act of 1933 (File Nos. 333-03233 and 333-64395).

19. The Old Policies are variable adjustable life insurance policies that permit the Policy owner to select any two of the three components of a Policy—face amount, premium and plan of insurance—and Minnesota Life will then calculate the third. Subject to certain minimums, maximums and Minnesota Life's underwriting standards, a Policy owner may choose any level of premium or face amount that he or she wishes.

20. The Old Policies have a level premium for a specified number of years, for the life of the insured, or until the Policy becomes paid up. If, however, the Policy owner selects a premium amount which is less than the premium required for a whole life plan of insurance (or, in other words, if the Policy owner selects a "protection plan" of insurance, described below), premiums will be payable for the life of the insured or to age 100, but the guaranteed face amount of insurance provided by the Policy will not be level during the life of the insured.

21. Whole life insurance plans provide life insurance in an amount at least equal to the initial face amount at the death of the insured whenever that occurs. Premiums may be payable for a specified number of years or for the life of the insured. Whole life insurance plans assume an eventual tabular cash value accumulation, at or before the insured's age 100, equal to the net single premium required for that face amount of insurance.

22. "Protection plans" of insurance provide life insurance in an amount at least equal to the initial face amount for a specified period. After the initial protection period, there is insurance coverage in a reduced amount on the life of the insured. "Protection plans" of insurance assume the exhaustion of the tabular cash value at the end of the initial protection period, except for the cash value associated with the reduced amount of insurance coverage at the end of the initial protection period.

23. The highest premium amount permitted at the time of issue, or the maximum plan of insurance, for a specific face amount is one which will provide a fully paid-up Policy after the payment of ten annual premium payments. Whole life plans become paid up upon the payment of a designated number of annual premiums or at a designated age of the insured. If the Policy owner selects a premium amount which is less than the premium required for a whole life plan of insurance, premiums will be payable for the life of the insured or to age 100, but the guaranteed face amount of insurance provided by the Policy will not be level during the life of the insured. The initial face amount will be in effect until the Policy's tabular cash value, *i.e.*, the cash value which is assumed in designing the Policy and which would be guaranteed in a conventional fixed-benefit is exhausted. At that time a lower amount of insurance will become effective. This reduced face amount is calculated on the basis of the continued payment of the scheduled premiums and a whole life plan of insurance. The result is that the Policy, on issue, will have an initial guaranteed death benefit extending to a stated date; after that date, a lower death benefit is guaranteed for the life of the insured.

24. Policy values of the Old Policies may be invested in the Variable Life Account or in the general account option. The Variable Life Account currently has the same 25 Sub-Accounts as the New Policies have, to which a Policy owner may allocate premiums. Amounts invested in the Sub-Accounts are subject to the management fees paid and other expenses incurred by the Underlying Funds.

25. Policy values may also be accumulated on a guaranteed basis by allocation to the Guaranteed Principal Account. Guaranteed Principal Account interest is guaranteed to be credited at a rate of at least 4% on an annual basis.

26. Actual cash value may be transferred between the Guaranteed Principal Account and the Variable Life Account or among the Sub-Accounts of the Variable Life Account. A Policy

owner may request a transfer at any time while the Policy remains in force, or the Policy owner may arrange in advance for systematic transfers, subject to a maximum of 20 accounts. A transfer is subject to a transaction charge, not to exceed \$10, for each transfer of actual cash value among the Sub-Accounts and the Guaranteed Principal Account. Currently, there is a charge only for non-systematic transfers in excess of four per year.

27. Policy values under the Old Policies may be accessed by means of partial surrenders, policy loans or total surrender. Interest payable on policy loans will not be more than that permitted in the state in which the Policy is delivered; interest credited on loan accounts established in connection with outstanding loans will be at a rate which is not less than the policy loan interest rate minus 2% per year. If certain conditions are met, the loan is credited at a rate equal to the policy loan rate minus 0.75% per year.

28. The Old Policies offer a choice of two death benefit options: the Cash Option or the Protection Option. Under the Cash Option, the death benefit will be the current face amount at the time of the insured's death. The death benefit will not vary unless the policy value exceeds the net single premium for the then-current face amount. At that time, the death benefit will be the greater of the face amount of the Policy or the amount of insurance which could be purchased at the date of the insured's death by using the policy value as a net single premium. Under the Protection Option for VAL '87, the death benefit is the current face amount or, if the policy value is greater than the tabular cash value at the date of the insured's death, the current face amount plus an additional amount of insurance which could be purchased by using that difference between values as a net single premium. Under the Protection Option for VAL '95 and Amended VAL '95, before the policy anniversary nearest the insured's age 70, the amount of the death benefit is the policy value plus the larger of: (a) the then current face amount; and (b) the amount of insurance which could be purchased using the policy value as a net single premium. At the policy anniversary nearest the insured's age 70, Minnesota Life will automatically adjust the face amount of the policy to equal the death benefit immediately preceding the adjustment. The Protection Option of VAL '95 is only available until the policy anniversary nearest the insured's age 70, at which time Minnesota Life converts the death benefit option to the cash option.

29. With the Amended VAL '95 Protection Option, after the policy anniversary nearest the insured's age 70, the amount of the death benefit is equal to the current face amount or, if the policy value is greater than the tabular cash value at the date of the insured's death, the current face amount plus an additional amount of insurance which could be purchased by using that difference between values as a net single premium.

30. The minimum face amount of an Old Policy is \$50,000.

31. From base premiums, Minnesota Life deducts a Sales Load, an Underwriting Charge, a Premium Tax Charge and a Face Amount Guarantee Charge. The base premium excludes any charge deducted from the premium to provide for any additional benefits provided by rider and, in the case of VAL '95, any charge deducted for sub-standard risks.

(a) The Sales Load consists of a deduction from each premium of 7% and it may also include a first year sales load deduction not to exceed 23%. The first year sales load applies only to base premiums, scheduled to be paid in the 12-month period following the policy date, or any policy adjustment involving an increase in base premium or any policy adjustment occurring during a period when a first year sales load is being assessed. The Sales Load will also apply only to that portion of an annual base premium necessary for an original issue whole life plan of insurance. The Sales Load is designed to compensate Minnesota Life for distribution expenses incurred with respect to the Policies.

(b) The Underwriting Charge currently is an amount not to exceed \$5 per \$1,000 of face amount of insurance. This amount may vary by the age of the insured and the premium level for a given amount of insurance. This charge is made ratably from premiums scheduled to be paid during the first policy year and during the twelve months following certain policy adjustments. The Underwriting Charge is designed to compensate Minnesota Life for the administrative costs associated with issuance or adjustment of the Policies, including the cost of processing applications, conducting medical exams, classifying risks, determining insurability and risk class and establishing policy records.

(c) The Premium Tax Charge of 2.5% is deducted from each base premium. This charge is designed to cover the aggregate premium taxes Minnesota Life pays to state and local governments for this class of policies.

(d) The Face Amount Guarantee Charge of 1.5% is deducted from each

base premium. This charge is designed to compensate Minnesota Life for its guarantee that the death benefit will always be at least equal to the current face amount in effect at the time of death regardless of the investment performance of the sub-accounts in which net premiums have been invested.

32. Non-repeating premiums are currently subject to the 2.5% Premium Tax Charge, but not to a Sales Load Charge. Minnesota Life does not assess a Face Amount Guarantee Charge or an Underwriting Charge against non-repeating premiums.

33. In addition to deductions from premiums and non-repeating premiums, Minnesota Life assesses from the actual cash value of a Policy, an Administration Charge, the Cost of Insurance Charge and certain transaction charges (and in the case of a VAL '87 Policy, any charge for sub-standard risks).

(a) The Administration Charge is designed to cover certain of Minnesota Life's administrative expenses, including those attributable to the records maintained for the Policies. The Administration Charge is \$60 for each policy year.

(b) The Cost of Insurance Charge compensates Minnesota Life for providing the death benefit under a Policy. The charge is calculated by multiplying the net amount at risk under the Policy by a rate that varies with the insured's age, sex, risk class, the level of scheduled premiums for a given amount of insurance, duration of the Policy, and the tobacco use of the insured. The rate is guaranteed not to exceed the maximum charges for mortality derived from the 1980 Commissioners Standard Ordinary Mortality Tables.

(c) Transaction charges are for expenses associated with processing transactions. There is a charge of up to \$25 for each policy adjustment. If the only policy adjustment is a partial surrender, the transaction charge will be the lesser of \$25 or 2% of the amount surrendered. Minnesota Life also reserves the right to make a charge, not to exceed \$25, for each transfer of actual cash value among the Guaranteed Principal Account and the sub-accounts of the Variable Life Account. Currently there is a \$10 charge only for non-systematic transfers in excess of four per year.

34. From the assets held in the Variable Life Account, Minnesota Life assesses a Mortality and Expense Risk charge, deducted on each valuation date at an annual rate of 0.50% of the average daily net assets of the Variable Life

Account. Although Minnesota Life reserves the right to charge or make provision for any taxes payable by Minnesota Life with respect to the Variable Life Account or the Policies by a charge or adjustment to such assets, no such charge or provision is made at the present time. The Mortality and Expense Risk Charge compensates Minnesota Life for assuming the risks that cost of insurance charges will be insufficient to cover actual mortality experience and that the other charges will not cover Minnesota Life's expenses in connection with the Policy.

35. Additional Benefits are offered by Minnesota Life as riders to the Old Policies, subject to underwriting approval. These Additional Benefits may require the payment of additional premium. The Additional Benefits include a Waiver of Premium Agreement, a Policy Enhancement Agreement and Cost of Living Agreement, a Face Amount Increase Agreement, a Survivorship Life Agreement, a Family Term Rider, an Exchange of Insurance Agreement, an Accelerated Benefits Agreement, and a Short Term Agreement.

The Exchange Offer

36. The exchange offer will be made only to Policy owners who have held their Old Policy for at least two years from the original issue date of the Old Policy and at least one year from their most recent policy adjustment on the Old Policy.

37. Eligible owners of Old Policies will be advised of the exchange offer in a notice accompanying the annual report. The notice will contain an overview of the offer and will instruct the Policy owner to contact his or her agent if the Policy owner is interested in the offer. Policy owners who express an interest will be provided two personalized illustrations and two prospectuses, accompanied by a letter explaining the offer and the administration fees associated with the offer, as well as a piece of sales literature that compares the two Policies.

38. The description of the proposed exchange offer in letters to Old Policy owners and in the New Policy's prospectus will provide full disclosure of the material differences in the two Policies. Each Old Policy owner will be provided, at no charge, personalized hypothetical illustrations that compare the Old and New Policies. The New Policies should be less expensive than the Old Policies for most Policy owners. The disclosure and illustrations provided give Old Policy owners

sufficient information to determine which Policy is best for them.

39. The exchange offer will provide that, upon acceptance of the offer, a New Policy will be issued with the same face amount as the Old Policy surrendered in the exchange, and with a policy value adjusted to reflect a \$200 processing charge (see below). The Policy owner and the insured must be the same person(s) under the New Policy acquired as under the exchanged Old Policy.

40. The risk class for a New Policy acquired by exchange will be the one most similar to the risk class for the exchanged Old Policy. New evidence of insurability will not be required as a condition of the exchange.

41. No premium charges will be deducted upon the acquisition of a New Policy in connection with an exchange, except that a one-time \$200 charge for the costs of processing the exchange will be imposed. Applicants represent that this charge will not exceed their costs of processing the exchange.

42. No additional sales load will be imposed at the time of the exchange. The first-year Sales Charge of the New Policies will apply only if the Policy owner chooses to make a policy adjustment that will increase the base premium of the policy. The additional Sales Charge would not exceed 44% of the increase in the base premium.

43. Optional Additional Benefits attached to an Old Policy surrendered in an exchange will carry over to the New Policy acquired in the exchange only if that additional benefit (or a substantially equivalent additional benefit) is available under the New Policies. Optional insurance additional benefits available under the New Policies but not the Old Policies may be acquired at the time of the exchange, but, as noted above, may occasion the need for new evidence of insurability. Optional additional benefits available under the Old Policies but not the New Policies and their related charges, if any, will not be carried over to the New Policies.

44. Loans under an Old Policy must be repaid in cash or by means of a partial surrender (in the amount of the unpaid loan and interest thereon) prior to the exchange. In the event a loan is repaid by taking a partial surrender, the face amount of the Old Policy will be reduced, as with any partial surrender, and the face amount of the New Policy received will be the face amount of the Old Policy after that partial surrender. Any letters to Old Policy owners describing the exchange offer will include the fact that loans must be repaid prior to the exchange and

disclosure that repayment of a loan by means of a partial surrender could have adverse tax consequences to the Old Policy owner. Minnesota Life will waive the transaction charge that would otherwise be applicable to a partial surrender made in connection with accepting the exchange offer and that is used solely to pay off an outstanding loan.

45. To accept the exchange offer, an Old Policy owner must return his or her Old Policy (or else submit a lost policy statement) and must submit a supplemental application that indicates how Policy values are to be allocated among the investment options of the New Policy. Payments submitted with the supplemental application requesting the exchange will be assumed to be payments under the New Policy as of the date of issue of the New Policy.

46. The suicide clause time period(s), incontestability time period(s), and free look time period(s) of the Old Policy will apply to the New Policy acquired in an exchange.

Applicants' Legal Analysis

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

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

49. The Account is registered under the Act as a unit investment trust. Accordingly, the proposed exchange offer constitutes an offer of exchange of two securities, each of which is offered by a registered unit investment trust. Thus, unless the terms of the exchange offer are consistent with those permitted by Commission rule, Applicants may make the proposed exchange offer only after the Commission has approved the terms of the offer by an order pursuant to section 11(a) of the Act.

50. As noted by the Commission when proposing Rule 11a-3 under the

Act, the purpose of section 11 of the Act is to prevent "switching," the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company "solely for the purpose of exacting additional selling charges." That type of practice was found by Congress to be widespread in the 1930's prior to adoption of the Act.

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

52. Applicants assert that the legislative history of section 11 makes it clear that the potential for harm to investors perceived in switching was its use to extract additional sales charges from those investors. Applications under section 11(a) and orders granting those applications appropriately have focused on sales loads or sales load differentials and administrative fees to be imposed for effecting a proposed exchange and have ignored other fees and charges, such as relative advisory fee charges of the exchanged and acquired securities.

53. Rule 11a-2, adopted in 1983 under section 11 of the Act, by its express terms, provides blanket Commission approval of certain types of offers of exchange of one variable annuity contract for another or of one variable life insurance contract for another. However, there is Commission language in the release adopting Rule 11a-2 that suggests that the rule may have been intended to permit exchanges of funding options within a single variable life insurance policy but not the exchange of one such policy for another. Variable annuity exchanges are permitted by Rule 11a-2 provided that the only variance from a relative net asset value exchange is an administrative fee disclosed in the offering account's registration statement and a sales load or sales load differential calculated according to methods prescribed in the rule. Variable life insurance exchanges may vary from relative net asset exchanges only by reason of disclosed administrative fees; no sales loads or sales load differentials are permitted under the rule for such exchanges. Applicants believe that the exchange of the Old Policies for the New Policies would satisfy Rule 11a-2, if Rule 11a-2 applied.

54. Adoption of Rule 11a-3, which takes a similar approach to that of Rule 11a-2, represents the most recent Commission action under Section 11 of

the Act. As with Rule 11a-2, the focus of Rule 11a-3 is primarily on sales or administrative charges that would be incurred by investors for effecting exchanges. Applicants assert that the terms of the proposed offer are consistent with the Commission's recent substantive approach in Rule 11a-3, because no additional sales charges will be incurred as a result of the exchange and no administrative fees will be charged to effect the exchange. However, because the investment company involved in the proposed exchange offer is a separate account and because it is organized as a unit investment trust rather than as a management investment company, Applicants may not rely upon Rule 11a-3 despite the fact that their proposal would satisfy its substantive provisions.

55. Applicants assert that the terms of the proposed exchange offer do not present the abuses against which Section 11 was intended to protect. No additional sales load will be imposed at the time of exchange. No charge will be imposed at that time, other than a \$200 exchange fee to reimburse Minnesota Life for all or a portion of its administrative costs associated with the exchange. No new evidence of insurability will be required for the exchange.

56. The policy value and death benefit of a New Policy acquired in the proposed exchange will be precisely the same immediately after the exchange as that of the Old Policy exchanged immediately prior to the exchange. Accordingly, the exchanges, in effect, will be relative net asset value exchanges that would be permitted under Section 11(a) if the Account were registered as a management investment company rather than as a unit investment trust.

57. Policy owners will receive sufficient information to determine which Policy is best for them.

Conclusion

For the reasons summarized above, Applicants represent that the Exchange Offer is consistent with the protections provided by Section 11 of the Act and does not involve any of the switching abuses that led to the adoption of Section 11. Permitting Policy owners to evaluate the relative merits of the Old and New Policies and to select the one that best suits their circumstances and preferences fosters competition and is consistent with the public interest and the protection of investors. Approval of the terms of the Exchange Offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes

fairly intended by the policies and provisions of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 14, 2002: an Open Meeting will be held on Wednesday, October 16, 2002 at 10 a.m., and a Closed Meeting will be held on Thursday, October 17, 2002, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Open Meeting scheduled for Wednesday, October 16, 2002 will be:

1. The Commission will consider publication of acknowledgements of receipt of Forms 1-N from the Chicago Mercantile Exchange Inc., OneChicago, LLC and Nasdaq LIFFE Markets, LLC to trade security futures.

The Commission will also consider whether to delegate authority to the Director of the Division of Market Regulation to publish in the **Federal Register** acknowledgements of receipt of Forms 1-N filed pursuant to Section 6(g) of the Securities Exchange Act of 1934.

2. The Commission will consider whether to propose rules relating to Sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002. The proposed rules would require companies to include in their Exchange Act filings: (1) an annual internal control report, (2) disclosure regarding whether a company has adopted a code of ethics that applies to certain senior officers, and (3) disclosure regarding

whether a company has a financial expert on its audit committee.

3. The Commission will consider whether to propose amendments to implement Section 303 of the Sarbanes-Oxley Act of 2002. Section 303(a) prohibits an issuer's officers, directors, and persons acting under the direction of an officer or director, from taking any action to fraudulently influence, coerce, manipulate or mislead the auditor of the issuer's financial statements for the purpose of rendering those financial statements materially misleading.

The subject matter of the Closed Meeting scheduled for Thursday, October 17, 2002 will be:

Formal orders of investigation; Institution and settlement of injunctive actions; and Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: October 9, 2002.

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 62997, October 9, 2002.]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, October 10, 2002 at 2:30 p.m.

CHANGE IN THE MEETING: Additional Item.

The following item has been added to the Closed Meeting scheduled for Thursday, October 10, 2002 at 2:30 p.m.: regulatory matter.

Commissioner Goldschmid, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted