company (a ''Parent'') of which the Co-Investor is a direct or indirect wholly owned subsidiary, or to a direct or indirect wholly owned subsidiary of its Parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (e) when the investment is comprised of securities (i) that meet the requirements of and are authorized as Nasdaq SmallCap Market securities by The Nasdaq Stock Market, Inc., (ii) that have an average daily trading volume value over the last 60 calendar days of at least $1 million, and (iii) are issued by an issuer whose common equity securities have a public float value of at least $150 million.

5. The Managers of each Fund will send to each person who was a Fund Investor in such Fund at any time during the fiscal year then ended audited financial statements with respect to those Series in which the Fund Investor held Interests. At the end of each fiscal year, the Managers will make a valuation or have a valuation made of all of the assets of the Fund as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the Managers of the Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. Each Fund and the Managers will maintain and preserve, for the life of each Series of that Fund and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements and annual reports of such Series to be provided to its Fund Investors, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

Compliance With Rule 701

7. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, the Company will make available at no charge to potential Fund Investors the services of a Financial Consultant qualified to provide advice concerning the appropriateness of investing in a Fund. Specifically, the Financial Consultant will hold one or more group meetings with potential Fund Investors at which the Financial Consultant will discuss the risks and other considerations relevant to determining whether to invest in a Fund. The Financial Consultant also will be available to the group of potential Fund Investors during the meeting to answer general questions regarding an investment in the Fund. In addition, potential Fund Investors will be given the opportunity to submit relevant questions and issues to the Financial Consultant in advance of the group meetings, so that the Financial Consultant can address those questions and issues at the meetings. The Company will not need to reveal the specific investments made by any Fund to the Financial Consultant, as long as the investment objectives, risk characteristics and other material information about the Fund of the type that would be disclosed in the offering documents for the Fund is made available to the Financial Consultant.

8. The Managers will at all times control each Fund, within the meaning of rule 405 under the Securities Act. In this regard, the Managers will be the sole managers of the Fund and make all investment and other operational decisions for the Fund.

9. The Company or a wholly-owned subsidiary will own not less than 5% of the economic Interests issued each year by the Fund, and at least 95% of the voting Interests of the Fund. In addition, the Company and its Partners (directly or through Qualified Investment Vehicles) together will own at least 80% of the economic Interests of each Series.

10. The Company prepares its financial statements on a modified cash basis, and does not consolidate the Fund's financial statements with its own. If, however, the Company prepared its financial statements in accordance with GAAP, it would consolidate the Fund's financial statements with its own.

11. The Company, when offering Interests pursuant to rule 701 under the Securities Act, will issue Interests in each Series in compliance with rule 701(d)(2),[3] and will comply with all applicable requirements of rule 701(e).[4]

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29041 Filed 11–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25800; File No. 812–12618]

Fortis Benefits Insurance Company, et al.; Notice of Application

November 8, 2002.

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

ACTION: Notice of amended and restated application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''Act'') approving certain substitutions of securities.

APPLICANTS: Fortis Benefits Insurance Company (''Fortis Benefits''), First Fortis Life Insurance Company (''First Fortis''), Variable Account D of Fortis Benefits Insurance Company (''Account D''), and Separate Account A of First Fortis Life Insurance Company (''Account A'') (together, the ''Applicants'').

SUMMARY OF APPLICATION: Applicants request an order to permit Fortis Benefits and First Fortis to substitute shares of the Mid Cap Growth Fund II of Strong Variable Insurance Funds, Inc. (''Strong'') for shares of the Discovery Fund II of Strong, and shares of the International Portfolio of Alliance Variable Products Series Funds, Inc. (''Alliance'') for shares of the International Stock Fund II of Strong held by Account D and Account A to support variable annuity contracts (''Contracts'').

[3] If the Company relies on rule 701(d)(2)(ii), it will not sell pursuant to rule 701, during any consecutive 12-month period, Interests in the Fund if the sales price of those Interests exceeds 15% of the total assets of the Fund.

[4] In order to comply with the requirements of rule 701, at the beginning of each Investment Period the Fund will accept capital contributions or irrevocable commitments from Regulation D Investors for the relevant Series, and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments, from Rule 701 Investors for that Series, which in the aggregate will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from Regulation D Investors.

FILING DATE: The application was filed on August 29, 2001 and amended and restated on November 1, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 3, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Thomas S. Clark, Esq., Assistant Counsel, Hartford Life Insurance Company, 200 Hopmeadow Street, Simsbury, CT 06089. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Fang, Attorney, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Fortis Benefits is a stock life insurance company incorporated under the laws of Minnesota. Fortis Benefits is engaged in the underwriting and sale of life insurance and annuity products in the District of Columbia and all states but New York. Fortis Benefits is a wholly-owned indirect subsidiary of Fortis, Inc. As of December 31, 2001, Fortis Benefits had assets of approximately $10 billion. For purposes of the Act, Fortis Benefits is the depositor and sponsor of Account D as interpreted by the Commission with respect to variable annuity separate accounts.

2. First Fortis is a stock life insurance company incorporated under the laws of New York. First Fortis is engaged in the business of writing individual and group life insurance and annuity contracts in New York. First Fortis is a wholly-owned subsidiary of Fortis, Inc. As of December 31, 2001, First Fortis had assets of approximately $374 million. For purposes of the Act, First Fortis is the depositor and sponsor of Account A as interpreted by the Commission with respect to variable annuity separate accounts.

3. Fortis Benefits established Account D on October 14, 1987 as a segregated investment account under Minnesota law. Under Minnesota law, the assets of Account D attributable to the Contracts through which interests are issued are owned by Fortis Benefits but are held separately from all other assets of Fortis Benefits for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, such assets in Account D are not chargeable with liabilities arising out of any other business that Fortis Benefits may conduct. Income, gains, and losses, realized and unrealized, from the assets of Account D are credited to or charged against Account D without regard to the income, gains, or losses arising out of any other business that Fortis Benefits may conduct. Account D is a ''separate account'' as defined by Rule 0–1(e) under the Act and is registered with the Commission as a unit investment trust (File No. 811–05439), and interests in Account D offered through such Contracts have been registered under the Securities Act of 1933, as amended (the ''1933 Act'') on Form N–4 (File No. 33–63935).

4. First Fortis established Account A on October 1, 1993 as a segregated investment account under New York law. Under New York law, the assets of Account A attributable to the Contracts through which interests are issued are owned by First Fortis but are held separately from all other assets of First Fortis for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, such assets in Account A are not chargeable with liabilities arising out of any other business that First Fortis may conduct. Income, gains, and losses, realized and unrealized, from the assets of Account A are credited to or charged against Account A without regard to the income, gains, or losses arising out of any other business that First Fortis may conduct. Account A is a ''separate account'' as defined by Rule 0–1(e) under the Act and is registered with the Commission as a unit investment trust (File No. 811–08154), and interests in Account A offered through such Contracts have been registered under the 1933 Act on Form N–4 (File No. 333–20343).

5. On April 2, 2001, Fortis Benefits and First Fortis consummated agreements with Hartford Life and Annuity Insurance Company (''Hartford L&A'') and Hartford Life Insurance Company (''Hartford Life''), respectively, pursuant to which Hartford L&A and Hartford Life would reinsure all of the individual life insurance and annuity business of Fortis Benefits and First Fortis, respectively. Additionally, Fortis Benefits and First Fortis have contracted the administrative servicing obligations for the Contracts to Hartford L&A and Hartford Life, respectively. Although Fortis Benefits or First Fortis remains responsible for all Contract terms and conditions, Hartford L&A and Hartford Life are responsible for administering the Contracts, including processing premium payments, paying benefits, providing other Contract owner services, oversight of investment management of general account assets supporting the fixed account portion of the Contracts, and administration of the Accounts. With regard to administration of the Accounts, Hartford L&A and Hartford Life are responsible for making filings with the Commission, including the preparation and filing of applications for orders under section 26(c) of the Act if such becomes necessary for Fortis Benefits, First Fortis or the Accounts to respond to various contingencies involving underlying funds.

6. Strong was incorporated in Wisconsin on December 28, 1990. Strong is a series investment company as defined by Rule 18f–2 under the Act and is registered under the Act as an open-end management investment company (File No. 811–6553). Strong issues a separate series of shares of stock in connection with each fund and has registered these shares under the 1933 Act on Form N–1A (File No. 33–45321). Strong Capital Management, Inc. serves as investment adviser to the Strong Discovery Fund II (''Discovery''), the Strong International Stock Fund II (''Strong International''), and the Strong Mid Cap Growth Fund II (''Mid Cap Growth'').

7. Discovery seeks capital growth. This fund primarily invests in a diversified portfolio of common stocks from small-, medium-, and large-capitalization companies that offer attractive opportunities for growth. If market conditions favor fixed-income investments, Discovery may invest a significant portion of its assets in intermediate- and long-term investment grade bonds as well as in foreign investments to a limited extent.

8. Strong International seeks capital growth. This fund primarily invests in stocks of foreign issuers that appear to have strong growth potential relative to their risk.

9. Mid Cap Growth seeks capital growth. This fund invests at least 80% of its assets in stocks of medium-capitalization companies that have favorable prospects for growth of earnings and capital appreciation. Other Mid Cap Growth investments include futures and options transactions as well as writing put and call options and foreign securities. Except to the extent that Fortis Benefits or First Fortis may, from time to time, hold 5% or more of the shares of Mid Cap Growth, Mid Cap Growth is not an affiliated person of Fortis Benefits or First Fortis.

10. Alliance was incorporated in Maryland on November 17, 1987. Alliance is a series investment company as defined by Rule 18f–2 under the Act and is registered under the Act as an open-end management investment company (File No. 811–5398). Alliance issues a separate series of shares of common stock in connection with each portfolio and has registered these shares under the 1933 Act on Form N–1A (File No. 33–18647). Alliance Capital Management, L.P. serves as investment adviser to the International Portfolio (''Alliance International'').

11. Alliance International seeks a total return on its assets from long-term growth of capital. This fund normally invests 80% of its assets in a broad portfolio of marketable securities of established international companies, companies participating in foreign economies with prospects for growth, and foreign government securities, including U.S. companies that have their principal activities and interests outside the U.S. Except to the extent that Fortis Benefits or First Fortis may, from time to time, hold 5% or more of the shares of Alliance International, Alliance International is not an affiliated person of Fortis Benefits or First Fortis.

12. The Contracts are individual and group flexible premium deferred combination variable and fixed annuity contracts. The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable basis, fixed basis, or both. Under the Contracts, Fortis Benefits and First Fortis reserve the right to substitute shares of one fund for shares of another.

13. Under the Contracts, a Contract owner may make unlimited transfers of all or part of the Contract value from one subaccount to another during the accumulation period and four times per year during the annuity period. Fortis Benefits and First Fortis currently do not assess a charge on transfers; however, Fortis Benefits and First Fortis reserve the right to restrict the frequency of, or otherwise condition, terminate, or impose charges upon transfers from a subaccount in the future.

14. Fortis Benefits and First Fortis, on their behalf and on behalf of the Accounts, propose to substitute: (1) shares of Mid Cap Growth for shares of Discovery; and (2) shares of Alliance International for shares of Strong International. Applicants believe that by making the proposed substitutions, they can better serve the interests of the Contract owners.

15. On April 5, 2001, the board of directors of Discovery and Strong International (the ''Board'') voted to close these Funds (the ''Old Funds'') to new life insurance separate account investors effective April 6, 2001. Subsequently, on June 1, 2001, Strong Investments, Inc., Strong's distributor, notified Fortis Benefits and First Fortis of Strong's intention to terminate its participation agreements with them—to the extent that such agreements apply to the Old Funds—effective December 2001 and cease the Old Funds' operations soon thereafter. Strong Investments, Inc. indicated that the Board decided to close the Old Funds because of the Old Funds' small asset base, lack of expected asset growth, and lack of economies of scale. The Board also requested that all of the insurance companies currently having separate accounts invested in the Old Funds, including Fortis Benefits and First Fortis, seek an order from the Commission approving the substitutions of other securities for shares of Discovery and Strong International held currently by these separate accounts. Strong Investments, Inc. therefore suggested that closing the Old Funds would be best for the Applicants and the Contract owners.

16. Applicants represent that they had no control over the Board's decision to terminate the Old Funds. Further Applicants believe that some or all of these other insurance companies will seek an order from the Commission to substitute shares of certain securities for shares of the Old Funds. Accordingly, Applicants believe that the resulting decrease in assets of the Old Funds would likely result in higher expenses and less favorable performance, to the detriment of the Contract owners.

17. Mid Cap Growth and Discovery have an identical investment objective of capital growth. The investment strategies of both funds are somewhat similar; however, they differ in that Discovery invests in stocks having a wide range of capitalizations whereas Mid Cap Growth invests at least 80% of its assets in medium-capitalization stocks. If the market dictates, both funds will place their assets in other types of investments: Discovery may invest in intermediate- and long-term investment grade bonds, and Mid Cap Growth may invest in futures and options transactions and in foreign securities, as well as write put and call options. Overall, Applicants believe that both funds have substantially similar investment risk profiles; although Mid Cap Growth is permitted to invest in more types of investments, some of which could entail greater risks than most of the securities in Discovery's investment portfolio, Mid Cap Growth's actual portfolio, taken as a whole, is quite comparable to that of Discovery. After the proposed substitution, Contract owners will still have the ability to invest in a fund seeking capital growth through medium-capitalization stocks. Applicants believe that Contract owners will be better off with the proposed substitution because Mid Cap Growth has more assets and has had better performance than Discovery in recent periods.

18. Discovery has proven unpopular with investors. Over the last four years, Discovery has lost 43% of its assets, declining from $214 million at the end of 1997 to only $121 million as of December 31, 2001. Although Mid Cap Growth's assets experienced a decline in 2001, overall the fund's assets have grown by approximately $321 million over the last four years. The large growth in Mid Cap Growth's assets has created greater economies of scale than it had when its asset base was smaller. Mid Cap Growth currently maintains an expense ratio comparable to that of Discovery.

19. Mid Cap Growth has cumulative four-year returns that surpass or are comparable to its benchmark indices, the S&P Mid Cap 400, the Russell Midcap Index, and the Lipper Multi-Cap Index, even though Mid Cap Growth averaged returns below its benchmark indices last year.

20. The investment objectives and strategies of Alliance International and Strong International are substantially the same as they both seek capital growth through foreign investments. Alliance International, however, also invests in U.S. companies that have their principal activities and interests outside of the U.S. Overall, Applicants believe that both Funds have substantially similar investment risk

profiles. In fact, Applicants believe that an investment in Alliance International would generally entail less risk than would an investment in Strong International in that Alliance International may invest in a broader spectrum of investments leading to greater diversification and correspondingly less risk. After the proposed substitution, Contract owners will still have the ability to invest in a fund that invests in the stocks of issuers located or doing business in foreign countries. Applicants believe that Contract owners will be better off with the proposed substitution because Alliance International has more assets, lower expenses, and better performance than Strong International.

21. Alliance International's expense ratio has consistently been lower than Strong International's expense ratio over the last four years. Alliance International has an expense ratio of 1.44% as of December 31, 2001. However, because of expense caps, Contract owners only paid 0.95%.

22. Alliance International has performed on par with its benchmark index, the MSCI EAFE Index. Whereas Alliance International has a five-year cumulative return of 0.38%, its benchmark index returned 0.90% over the same period. Last year, Alliance International and its benchmark posted somewhat comparable losses of −22.35% and −21.21% respectively.

23. The following charts show the approximate year-end size (in net assets), expense ratio (ratio of operating expenses as a percentage of average net assets), and annual total returns for each of the past five years for each of the funds.

	Net assets at year-end (millions)	In percent			
		Expense ratio (before imposition of expense caps)	Actual expense ratio	Management fee	Total return
Strong Discovery Fund II:					
1997	$214	1.2	1.2	1.00	11.4
1998	196	1.2	1.2	1.00	7.3
1999	152	1.2	1.1	1.00	5.1
2000	136	1.3	1.2	1.00	4.4
2001	121	1.2	1.2	1.00	4.1
Strong Mid Cap Growth Fund II:					
1997	2	2.0	1.2	1.00	29.8
1998	18	1.6	1.2	1.00	28.7
1999	324	1.2	1.1	1.00	89.9
2000	531	1.2	1.2	1.00	−14.8
2001	323	1.4	1.2	0.75	−30.8
Strong International Stock Fund II:					
1997	60	1.5	1.5	1.00	−13.50
1998	47	1.6	1.6	1.00	−4.80
1999	125	1.3	1.2	1.00	87.20
2000	55	1.6	1.2	1.00	−39.50
2001	33	1.5	1.0	1.00	−22.10
Alliance International Portfolio:					
1997	61	1.42	0.95	0.53	3.33
1998	65	1.37	0.95	0.67	13.02
1999	81	1.36	0.95	0.69	40.23
2000	79	1.34	0.95	0.69	−19.86
2001	64	1.44	0.95	0.61	−22.35

24. Prior to the date the substitution is effected, Fortis Benefits and First Fortis will send Contract owners a current prospectus for Alliance International and Mid Cap Growth (the ''New Funds''). In addition, by supplements to the various prospectuses for the Contracts and the Accounts, Fortis Benefits and First Fortis will notify all owners of the Contracts of their intention to take the necessary actions, including seeking the orders requested by the Application, to substitute shares of the Funds as described herein. The supplements will inform Contract owners that until the date of the proposed substitutions, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the affected subaccounts on the date of the supplement to another subaccount under a Contract (other than the other affected subaccount) without that transfer being treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. The supplements also will inform Contract owners that Fortis Benefits and First Fortis will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions.

25. Fortis Benefits and First Fortis will redeem the shares: (1) Of Discovery for cash and use the redemption proceeds to purchase shares of Mid Cap Growth; and (2) of Strong International for cash and use the redemption proceeds to purchase shares of Alliance International. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or in the dollar value of his or her investment in either of the Accounts. As a result, Contract owners will remain fully invested. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or Fortis Benefits' and First Fortis' obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting, brokerage, and other fees and expenses, will be the responsibility of Fortis Benefits and/or First Fortis. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by

existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. The proposed substitution will not, of course, be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. Fortis Benefits and First Fortis will not exercise any right they may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the substitutions. Contract owners having Contract value transferred to a New Fund by the proposed substitutions, may transfer out of the subaccount investing in that Fund during the 30 days following the date of the proposed substitutions without that transfer being treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year.

26. In addition to the supplements described above, Fortis Benefits and First Fortis will, if necessary, by supplements to the various prospectuses for the Contracts and the Accounts, notify all owners of the Contracts of the substitutions immediately after they occur.

27. In addition to the prospectus supplements distributed to Contract owners, within five days after the proposed substitution, any Contract owners who were affected by the substitutions will be sent a written notice informing them that the substitution was carried out and that they may transfer to another subaccount. Contract value invested in one of the affected subaccounts may be transferred free of charge for 30 days following the date of the substitutions without that transfer counting as one of a limited number of transfers permitted in a Contract year or as one of a limited number of transfers permitted in a Contract year. The notice will also reiterate the fact that Fortis Benefits and First Fortis will not exercise any rights reserved by them under the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice will be preceded or accompanied by current prospectuses for the Alliance International and Mid Cap Growth.

Applicants' Legal Analysis

1. Section 26(c) was added to the Act by the Investment Company Amendments of 1970. Prior to the enactment of the 1970 amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval.

2. Congress responded to the Commission's concerns by enacting section 26(c) to require that the Commission approve all substitutions by the depositor of investments held by unit investment trusts.

3. The proposed substitutions appear to involve the substitution of securities within the meaning of section 26(c) of the Act. Applicants therefore request an order from the Commission pursuant to section 26(c) approving the proposed substitutions.

4. Applicants state that the Contracts expressly reserve for Fortis Benefits and First Fortis the right, subject to compliance with applicable law, to substitute shares of another management company for shares of a management company held by a subaccount of the Accounts. Applicants state that Fortis Benefits and First Fortis reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit themselves and Contract owners.

5. In addition to the foregoing, Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

6. Applicants further assert that the proposed substitutions are not the type of substitutions that section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract or cash values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. Applicants believe the proposed substitutions, therefore, will not result in the types of costly forced redemption that section 26(c) was designed to prevent.

7. Applicants also believe that the proposed substitutions are unlike the type of substitutions that section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by Fortis Benefits and First Fortis under their Contract as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered Fortis Benefits' and First Fortis' size, financial condition, type, and reputation for service in selecting their Contract. Applicants state that these factors will not change as a result of the proposed substitutions.

8. Fortis Benefits and First Fortis will not receive, for three years from the date of the substitutions, any direct or indirect benefits from the New Funds, their advisers or underwriters, or from affiliates of the New Funds, their advisers or underwriters, in connection with assets attributable to the Contracts affected by the substitutions, at a higher rate than each received from the Old Funds, their advisers or underwriters, or from affiliates of the Old Funds, their advisers or underwriters, including without limitation Rule 12b-1 fees, shareholder service or administrative or other service fees, revenue sharing or other arrangements. Fortis Benefits and First Fortis each represent that the substitutions it carries out and its selection of New Funds was not motivated by any financial consideration paid or to be paid to it or to any of its affiliates by any of the New Funds, their advisers or underwriters, or by affiliates of the New Funds, their advisers or underwriters.

9. Applicants request an order of the Commission pursuant to section 26(c) of the Act approving the proposed substitutions by Fortis Benefits and First Fortis. Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the reasons summarized above, Applicants assert that the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and therefore request that the substitutions be granted.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29040 Filed 11–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46779; File No. SR–Amex–2001–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Review of a Floor Official's Market Decision

November 6, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, and amended such proposed rule change on August 27, 2001[3] and October 8, 2002,[4] 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, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 24, 2001, replacing Form 19b–4 in its entirety (''Amendment No. 1''). In Amendment No. 1, the Amex, in part, amended the Exchange Constitution to clarify that there is no right to appeal a Floor Official's market decision or ruling to the Board of Governors (''Board''); clarified the definition of ''market decision'' and what types of market decisions may be subject to arbitration; provided more detail regarding the appeal process; and clarified the individuals who can hold various offices and hear appeals.

[4] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 7, 2002, replacing Form 19b-4 in its entirety (''Amendment No. 2''). In Amendment No. 2, the Amex deleted the proposed amendment to the Exchange Constitution originally proposed in Amendment No. 1; provided a separate procedure in Amex Rule 22 for appealing a decision of a Floor Official that is made with the concurrence of a Senior Floor Official; and amended the rule text to state that not all decisions or rulings on the Trading Floor may be subject to arbitration.

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

The Amex proposes to amend Exchange Rule 22 to change the procedure for reviewing a Floor Official's market decision and to eliminate the right of appealing a Floor Official's market decision or ruling to the Board. Below is the text of the proposed rule change, as amended.[5] New text is italicized. Deleted text is bracketed.

* * * * *

Authority of Floor Officials

Rule 22. (a) through (d). No change.

(d) Review of Rulings.—[On request of a] *Any* member wishing a prompt (*i.e., prior to scheduled settlement*) on-Floor review of a Floor Official's market decision, [or a decision required to be made by a Floor Official with the concurrence of a Senior Floor Official, the Market Operations Division] shall, forthwith *and in the presence of the ruling Floor Official, present the matter to an Exchange Official* [arrange a meeting of the Senior Supervisory Officer on the Floor and the available Senior Floor Officials,] who shall confirm, amend, or overrule the decision. *An Exchange Official's decision in a matter may be promptly presented on appeal to a Governor who shall confirm, amend, or overrule the decision. A Governor's decision in a matter may be promptly presented on appeal to a panel of three Governors who have not already ruled on the matter which panel shall confirm, amend, or overrule the decision. The Senior Supervisory Officer on the Floor may serve on a panel as a Governor. In the event that three Governors are not available, Senior Floor Officials who have not already ruled on the matter may serve on a panel. Any remaining vacancies on a panel may be filled by Exchange Officials (who have not already ruled on the matter) in order of their seniority as Exchange Officials. Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a market decision of a Floor Official made with the concurrence of a Senior Floor Official shall, forthwith and in the presence of the ruling Floor Official and Senior Floor Official, present the matter to a panel of three Governors who have not already ruled on the matter.*

[5] The proposed rule text in Amendment No. 2 replaces the proposed rule text in the original rule filing and Amendment No. 1 in its entirety. Telephone conversation between William Floyd-Jones, Jr., Assistant General Counsel, Amex, and Cyndi Nguyen, Attorney, Division, Commission, on November 4, 2002.

Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a market decision of a Floor Official made with the concurrence of a Senior Floor Official shall, forthwith and in the presence of the ruling Floor Official and Senior Floor Official, present the matter to a panel of three Governors who have not already ruled on the matter which panel shall confirm, amend, or overrule the decision. The Senior Supervisory Officer on the Floor may serve on a panel as a Governor. In the event that three Governors are not available, Senior Floor Officials who have not already ruled on the matter may serve on a panel. Any remaining vacancies on a panel may be filled by Exchange Officials (who have not already ruled on the matter) in order of their seniority as Exchange Officials.

The decision or ruling of a Floor Official or Officials, [or, if reviewed, the determination of the] *Exchange Official, Governor, or three-Governor panel* [Senior Supervisory Officer on the Floor and Senior Floor Officials,] shall be binding on members[, subject to any right of appeal under the Constitution or Rules of the Exchange]. *Notwithstanding the foregoing, at any point after establishing a loss (or profit) through clearance and complying with the highest decision (if any) made in a matter, either party to the matter may elect to submit it to arbitration pursuant to Article VIII of the Constitution. The final decision or ruling on the Trading Floor shall not be binding on the arbitrators, but they may give it such weight as they feel is appropriate. Not all decisions or rulings on the Trading Floor may be subject to arbitration.*

Commentary * * * No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.