NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATE: Week of May 28, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of May 28, 2007—Tentative

Wednesday, May 30, 2007

9:25 a.m. Affirmation Session (Public Meeting) (Tentative):

a. USEC Inc. (American Centrifuge Plant), LBP–07–06 (Initial Decision Authorizing License), Geoffrey Sea Letter ''in preparation of late-filed contentions'' (Tentative).

b. Shieldalloy Metallurgical Corp. (Licensing Amendment Request for Decommissioning of the Newfield, New Jersey Facility), Docket No. 40–7102–MLA, Appeal of Loretta Williams from LBP–07–05 (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

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• The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. Braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: May 14, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–2467 Filed 5–15–07; 12:27 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27821; File No. 812–13287]

Lincoln Variable Insurance Products Trust, et al.; Notice of Application

May 11, 2007.

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

ACTION: Notice of application for an exemption pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'') from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: Lincoln Variable Insurance Products Trust (the ''Trust''), the Lincoln National Life Insurance Company (''Lincoln Life'') and Lincoln Investment Advisors Corporation (''LIAC'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 6(c) of the 1940 Act, granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Rule 6e–3(T)), to the extent necessary to permit shares of the Trust and shares of any other existing or future investment company (''Other Investment Companies'') that is designed to fund insurance products and for which Lincoln Life, or any of its affiliates, may serve as administrator, investment manager, principal underwriter or sponsor (the Trust and Other Investment Companies being hereinafter referred to, collectively, as ''Insurance Investment Companies''), or shares of any current or future series of any Insurance Investment Company (''Insurance Fund''), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) trustees of qualified group pension and group retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''); (3) LIAC and any affiliate of LIAC that serves as an investment adviser, manager, principal underwriter, sponsor or administrator for the purpose of providing seed capital (collectively, the ''Manager''); and (4) any insurance company general account that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (''General Account'') under the circumstances described in the application.

DATES: *Filing Date:* The application was filed on May 1, 2006, and amended on May 11, 2007.

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 June 1, 2007, 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, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Colleen E. Tonn, Lincoln National Life Insurance Company, 1300 South Clinton Street, Fort Wayne, IN 46802; copies to Keith T. Robinson, Dechert LLP, 1775 I Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Ellen J. Sazzman, Senior Counsel, at (202) 551–6762, or Harry Eisenstein, Branch Chief, at (202) 551–6795, 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 SEC's Public Reference Branch, 100 F Street, NE., Washington, DC 20549 ((202) 551–8090).

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company under the 1940 Act. The Trust currently consists of, and offers shares of beneficial interest in, thirty-one investment portfolios that are sold only to separate accounts of insurance companies in conjunction with variable

life and variable annuity contracts, or to other registered investment companies that sell their shares only to such separate accounts as part of a ''fund-of-funds'' arrangement. LIAC, a Tennessee corporation and a wholly-owned subsidiary of Lincoln National Corporation, is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended, and serves as investment adviser to the Trust. The Trust may offer one or more additional investment portfolios or classes of shares in the future.

2. The Trust sells its shares directly or indirectly to Lincoln Life and its affiliate, Lincoln Life & Annuity Company of New York, each of which holds the shares in its separate accounts to support variable annuity and variable life insurance contracts. Lincoln Life is an Indiana insurance company that serves as administrator and sponsor of the Trust. Lincoln Life is licensed to do business in all states (except New York) and the District of Columbia, Guam, and the Virgin Islands. Lincoln Life is a wholly owned subsidiary of Lincoln National Corporation, a publicly held insurance holding company incorporated under the laws of the State of Indiana.

3. Shares of the Trust are not offered directly to the public, but currently are sold directly or indirectly only to the separate accounts of Lincoln Life and Lincoln Life & Annuity Company of New York (collectively, the ''Life Companies'') to fund benefits under flexible premium variable life insurance policies or variable annuity contracts. Each Life Company is an affiliated person of the other Life Company. The separate accounts of the Life Companies include both separate accounts that are registered as investment companies under the 1940 Act and separate accounts that are not registered as investment companies under the 1940 Act in reliance on an exclusion from the definition of ''investment company'' provided by Section 3 of the 1940 Act.

4. The Insurance Investment Companies propose to also offer shares of the Insurance Funds to registered and unregistered separate accounts of unaffiliated insurance companies (collectively with separate accounts of affiliated insurance companies, ''Separate Accounts'') in order to fund various types of insurance products. These products may include, but are not limited to, variable annuity contracts, scheduled premium variable life insurance contracts, single premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively referred to herein as ''variable contracts'' or ''contracts''). Insurance companies whose Separate Account(s) may now or in the future own shares of the Insurance Funds are referred to herein as ''Participating Insurance Companies.''

5. The Participating Insurance Companies established or will establish their own Separate Accounts and designed or will design their own variable contracts. Each Participating Insurance Company has or will have the legal obligation to satisfy all applicable requirements under both state and federal law. Participating Insurance Companies may rely on Rule 6e–2 or Rule 6e–3(T) under the 1940 Act in connection with the establishment and maintenance of variable life insurance Separate Accounts, although some Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well.

6. Each Participating Insurance Company will enter into a participation agreement with the applicable Insurance Investment Company on behalf of the Insurance Funds in which the Participating Insurance Company invests. The role of the Insurance Funds under this arrangement, insofar as federal securities laws are applicable, will consist of offering their shares to the Separate Accounts and fulfilling any conditions that the Commission may impose upon granting the order requested herein.

7. The Insurance Investment Companies propose to offer shares of the Insurance Funds directly to Qualified Plans outside of the separate account context. Qualified Plans may choose any of the Insurance Funds that are offered as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. Shares of any of the Insurance Funds sold to such Qualified Plans would be held or deemed to be held by the trustee(s) of said Plans. Certain Qualified Plans, including Section 403(b)(7) Plans and Section 408(a) Plans, may vest voting rights in Plan participants instead of Plan trustees. Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by the Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

8. Shares of each Insurance Investment Company also may be offered to a Manager and to General Accounts. Treasury Regulation 1.817–5(f)(3)(ii) permits such sales as long as, *inter alia,* the return on shares held by the Manager is computed in the same manner as for shares held by the Separate Accounts, and the Manager does not intend to sell to the public shares of the Insurance Investment Company that it holds. Applicants represent that sales in reliance on these provisions of the Treasury Regulation will be made to a Manager consistent with these two conditions and for the purpose of providing seed capital. Any shares of an Insurance Fund purchased by the Manager will automatically be redeemed if and when the Manager's investment advisory agreement terminates.

9. Applicants propose that the Insurance Funds also be permitted to offer and/or sell shares to General Accounts. Treasury Regulation 1.817–5(f)(3) permits sales to general accounts of insurance companies and their corporate affiliates as long as the return on shares held by such persons is computed in the same manner as for shares held by a Separate Account, such persons do not intend to sell to the public shares of the Insurance Fund that they hold, and a segregated asset account of the life insurance company whose general account holds those shares also holds or will hold a beneficial interest in the Insurance Fund. Applicants represent that sales to General Accounts will be made consistent with these provisions.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust (''Trust Account''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as a depositor or principal underwriter of any Trust Account (among other things), if an affiliated person of that company is subject to disqualification enumerated in Section 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares.

2. The exemptions granted to an insurance company by Rule 6e–2(b)(15) are available only where each registered management investment company underlying the Trust Account (''underlying fund'') offers its shares ''exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *.'' Therefore, the relief granted by

Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company. The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.''

3. In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.''

4. Because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to a General Account, a Qualified Plan, or the Manager under the circumstances described in the Application. Applicants note that if shares of the Insurance Funds are sold only to variable annuity separate accounts, a Qualified Plan, the Manager, and a General Account, exemptive relief under Rule 6e–2 would not be necessary. The relief provided for under this section does not relate to such proposed purchasers or to a registered investment company's ability to sell its shares to such proposed purchasers. The use of a common management investment company as the underlying investment vehicle for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, a Qualified Plan, the Manager, and a General Account, is referred to herein as ''extended mixed and shared funding.''

5. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more underlying funds which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

6. The relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Investment Companies by Qualified Plans, the Manager or General Accounts. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to Qualified Plans, the Manager, or General Accounts.

7. Applicants maintain that none of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, the Manager or General Accounts, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Investment Companies may themselves be investment companies that rely upon the relief provided by Rules 6e–2 and 6e–3(T) and wish to continue to rely upon that relief provided in those Rules, that the Applicants are applying for the requested relief.

8. Applicants represent that if and when a material irreconcilable conflict arises between the Separate Accounts or between Separate Accounts on the one hand and Qualified Plans, the Manager or General Accounts on the other hand, the Participating Insurance Companies, Qualified Plans and the Manager must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as eligible investment options. Applicants submit that investment by the Manager or the inclusion of Qualified Plans or General Accounts as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. Applicants further maintain that even if a material irreconcilable conflict involving the Qualified Plans, Manager or General Accounts arose, the Qualified Plans, Manager or General Accounts, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants submit that allowing the Manager, Qualified Plans or General Accounts to invest directly in the Insurance Investment Companies should not increase the opportunity for conflicts of interest.

9. Applicants state that paragraph (3) of Section 9(a) provides, among other things, that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (a)(2). Rule 6e–2(b)(15)(i) and (ii) under the 1940 Act and Rule 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying fund.

10. Applicants submit that the relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) under the 1940 Act permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) under the 1940 Act permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that

none of the insurer's personnel who are ineligible, pursuant to Section 9(a), are participating in the management or administration of the underlying fund. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of Section 9 of the 1940 Act limits, in effect, the amount of monitoring of an insurer's personnel, which would otherwise be necessary to ensure compliance with Section 9, to that which is appropriate in light of the policy and purposes of Section 9. Those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply Section 9(a) of the 1940 Act to the many individuals employed by Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) who do not directly participate in the administration or management of the Insurance Investment Companies.

11. Applicants submit that there is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed funding or shared funding. Many of the Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Investment Companies. Those individuals who participate in the management or administration of the Insurance Investment Companies will remain the same regardless of which separate accounts, or insurance companies use the Insurance Investment Companies. Therefore, applying the monitoring requirements of Section 9(a) to the thousands of individuals employed by the Participating Insurance Companies would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. Applicants submit the relief requested should not be affected by the sale of shares of the Insurance Investment Companies to Qualified Plans, the Manager or General Accounts under the circumstances described in the application. The insulation of the Insurance Investment Companies from those individuals who are disqualified under the 1940 Act remains in place. Because Qualified Plans, the Manager and General Accounts are not investment companies and will not be deemed to be affiliated with the Insurance Investment Companies solely by virtue of their shareholdings, no additional relief is necessary.

12. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to underlying fund shares held by a separate account. Applicants maintain that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide partial exemptions from those sections to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(1) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such underlying funds to make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of such underlying funds or to approve or disapprove any contract between an underlying fund and its investment manager, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such underlying fund's investment policies, principal underwriter, or any investment manager (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of Rules 6e–2 and 6e–3(T)).

13. Applicants maintain Rule 6e–2 recognizes that a variable life insurance contract is an insurance contract; it has important elements unique to insurance contracts; and it is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Rule 6e–3(T)'s corresponding provisions presumably were adopted in recognition of the same factors.

14. Applicants submit that the Insurance Investment Companies' sale of shares to Qualified Plans, the Manager or General Accounts under the circumstances described in the Application will not have any impact on the relief requested in this regard. Shares of the Insurance Investment Companies sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Similarly, the Manager and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with Separate Accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, the Manager or General Accounts.

15. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

16. Applicants assert that shared funding by unaffiliated Participating Insurance Companies, is, in this respect, no different than the use of the same

investment company as the funding vehicle for affiliated Participating Insurance Companies, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated Participating Insurance Companies may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce.

17. Applicants assert that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners. Applicants assert that the right under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) of an insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations. However, a particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at an Insurance Investment Company's election, to withdraw its separate account's investment in that Insurance Investment Company and no charge or penalty would be imposed as a result of such withdrawal.

18. With respect to voting rights, Applicants submit that it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans, the Manager or General Accounts. The transfer agent(s) for the Insurance Investment Companies will inform each shareholder, including each separate account, each Qualified Plan, the Manager and each General Account, of its share ownership, in an Insurance Investment Company. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement. Investment by Qualified Plans or General Accounts in any Insurance Investment Company will similarly present no conflict. The likelihood that voting instructions of insurance company contract owners will ever be disregarded or the possible withdrawal referred to above is extremely remote and this possibility will be known, through prospectus disclosure, to any Qualified Plan or General Account choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans or General Accounts arises, the Qualified Plans or General Accounts may simply redeem their shares and make alternative investments.

19. Applicants assert that there is no reason that the investment policies of an Insurance Fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans and General Accounts (*i.e.*, long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts. Each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

20. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance needs, and investment goals. An Insurance Fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the growth of the Insurance Investment Company. In addition, permitting mixed and shared funding will broaden the base of contract owners, which will facilitate the establishment of additional Insurance Funds serving diverse goals. The broader base of contract owners and shareholders can also be expected to provide economic justification for the creation of additional series of each Insurance Investment Company with a greater variety of investment objectives and policies.

21. Applicants note that Section 817(h) is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Applicants submit that Treasury Regulation 1.817–5, which establishes the diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, ''qualified pension or retirement plans,'' ''the general account of a life insurance company,'' ''the manager * * * of an investment company'' and separate accounts to share the same underlying management investment company. The Applicants, therefore, have concluded that neither the Code nor the Treasury Regulations nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts, the Manager and General Accounts all invest in the same underlying fund.

22. Applicants assert that the ability of the Insurance Investment Companies to sell their shares directly to Qualified Plans, the Manager or General Accounts does not create a ''senior security'' as such term is defined under Section 18(g) of the 1940 Act with respect to any variable contract, Qualified Plan, Manager or General Account. Regardless of the rights and benefits of contract owners or Qualified Plan participants, the Separate Accounts, Qualified Plans, the Manager, and the General Accounts

have rights only with respect to their respective shares of the Insurance Investment Companies. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Investment Companies has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

23. Applicants assert that permitting an Insurance Investment Company to sell its shares to the Manager in compliance with Treasury Regulation 1.817–5 will enhance Insurance Investment Company management without raising significant concerns regarding material irreconcilable conflicts.

24. Given the conditions of Treasury Regulation 1.817–5(f)(3) under the Code and the harmony of interest between an Insurance Investment Company, on the one hand, and its Manager(s) or a Participating Insurance Company, on the other, Applicants assert that little incentive for overreaching exists. Applicants assert that such investments should not implicate the concerns discussed regarding the creation of material irreconcilable conflicts. Applicants assert that permitting investment by the Manager or General Accounts will encourage the orderly and efficient creation and operation of the Insurance Investment Companies, and reduce the expense and uncertainty of using outside parties at the early stages of Insurance Investment Company operations.

25. Applicants assert that various factors have limited the number of insurance companies that offer variable contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain Participating Insurance Companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Investment Companies as a common investment medium for variable contracts, Qualified Plans and General Accounts would help alleviate these concerns, because Participating Insurance Companies, Qualified Plans and General Accounts will benefit not only from the administrative expertise of Lincoln Life and its affiliates, as well as the investment expertise of any investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Investment Companies available for mixed and shared funding and permitting the purchase of Insurance Investment Company shares by Qualified Plans and General Accounts may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Mixed and shared funding also may benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Insurance Investment Companies. This may benefit variable contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Insurance Investment Companies, or by making the addition of new Insurance Funds more feasible.

Applicants' Conditions

Applicants and the Manager agree that the order granting the requested relief shall be subject to the following conditions, which shall apply to the Trust as well as any future Insurance Investment Company that relies on the order:

1. A majority of the Board of Trustees or Board of Directors (''Board'') of each Insurance Investment Company shall consist of persons who are not ''interested persons'' of the Insurance Investment Company, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission (''Independent Board Members''), except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (i) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. The Board of each Insurance Investment Company will monitor the Insurance Investment Company for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, participants of Qualified Plans, the Manager or General Accounts investing in that Insurance Investment Company, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any Insurance Fund are being managed; (v) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of General Account assets in all Insurance Investment Companies), a Manager, and any trustee on behalf of any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Investment Company (''Participating Qualified Plan'') (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each trustee for a Qualified Plan that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Investment Company, and such responsibilities will be carried out with a view only to the interests of the

contract owners. The responsibility to report such information and conflicts and to assist the Board also will be contractual obligations of all Participating Qualified Plans under their agreements governing participation in the Insurance Investment Company, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board of an Insurance Investment Company, or a majority of its Independent Board Members, that a material irreconcilable conflict exists, the relevant Participant shall, at its expense and to the extent reasonably practicable (as determined by a majority of the Independent Board Members), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Insurance Investment Company or any series therein and reinvesting such assets in a different investment medium (including another Insurance Fund, if any); (ii) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (iii) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Insurance Investment Company or any Insurance Fund and reinvesting those assets in a different investment medium; and (iv) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Insurance Investment Company's election, to withdraw its Separate Account's investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Investment Company, to withdraw its investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participants under their agreements governing participation in the Insurance Investment Company, and these responsibilities will be carried out with a view only to the interests of the contract owners or Plan participants.

For the purposes of this Condition (4), a majority of the Independent Board Members shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Investment Company or its Manager be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially and adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (i) a majority of Qualified Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (ii) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan makes such decision without Qualified Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered Separate Account as required by the 1940 Act as interpreted by the Commission. However, as to variable contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of each Insurance Fund held in their Separate Accounts in a manner consistent with voting instructions timely received from such contract owners. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts investing in an Insurance Investment Company calculates voting privileges in a manner consistent with all other Participating Insurance Companies.

The obligation to calculate voting privileges as provided in the application shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Investment Company. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares held in its General Account or otherwise attributed to it, in the same proportion as it votes those shares for which it has received voting instructions. Each Plan will vote as required by applicable law and governing Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, a Manager and any General Account will vote their respective shares in the same proportion as all variable contract owners having voting rights with respect to that Insurance Investment Company or Insurance Fund, as the case may be; provided, however, that a Manager or any General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. An Insurance Fund will make its shares available to a Separate Account and/or Qualified Plans at or about the same time it accepts any seed capital from any Manager or any General Account of a Participating Insurance Company.

9. An Insurance Investment Company will notify all Participants that disclosure regarding potential risks of mixed and shared funding may be appropriate in prospectuses for any of the Separate Accounts and in Plan disclosure documents. Each Insurance Investment Company will disclose in its prospectus that: (i) Shares of the Insurance Investment Company may be offered to insurance company Separate Accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (ii) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Insurance Investment Company and the interests of Qualified Plans or General Accounts investing in the Insurance Investment Company might at

some time be in conflict; and (iii) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then each Insurance Investment Company and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

12. Each Insurance Investment Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Insurance Investment Company or Insurance Fund, as the case may be), and in particular each Insurance Investment Company will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although each Insurance Investment Company is not, or will not be, one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Investment Company will act in accordance with the Commission's interpretation of the requirements of Section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

13. Each Participant shall at least annually submit to the Board of an Insurance Investment Company such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of the Participants to provide these reports, materials and data to the Board of the Insurance Investment Company when it so reasonably requests, shall be a contractual obligation of the Participants under their agreements governing participation in each Insurance Investment Company.

14. Each Insurance Investment Company will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan an owner of 10% or more of the assets of the Insurance Investment Company unless the trustee for such Plan executes a participation agreement with such Insurance Investment Company which includes the conditions set forth herein to the extent applicable. A trustee for a Qualified Plan will execute an application containing an acknowledgment of this condition at the time of such Plan's initial purchase of the shares of any Insurance Investment Company or Insurance Fund.

Conclusion

Applicants submit, for the reasons stated above, that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55744; File No. 4–429]

Joint Industry Plan; Order Approving Joint Amendment No. 22 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to Response Time for Certain Orders Sent Through the Linkage

May 11, 2007.

I. Introduction

On February 2, 2007, February 15, 2007, February 5, 2007, February 7, 2007, January 30, 2007, and February 13, 2007, the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Incorporated (''CBOE''), the International Securities Exchange, LLC (''ISE''), the NYSE Arca, Inc. (''NYSE Arca''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, ''Participants''), respectively, filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder [2] an amendment (''Joint Amendment No. 22'') to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[3] In Joint Amendment No. 22, the Participants propose to reduce (i) the amount of time a member must wait after sending a Linkage Order [4] to a market before the member [5] can trade through that market and (ii) the timeframe within which a Participant must respond to a Linkage Order after receipt of that Order. On March 8, 2007, the Commission summarily put into effect Joint Amendment No. 22 on a temporary basis not to exceed 120 days and solicited comment on Joint Amendment No. 22 from interested persons.[6] The Commission received no comments on Joint Amendment No. 22. This order approves Joint Amendment No. 22.

II. Description of the Proposed Amendment

In Joint Amendment No. 22, the Participants proposed to reduce the amount of time a member must wait after sending a Linkage Order to a market before the member can trade through that market. The Participants proposed to decrease this time period

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca), and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] *See* Section 2(16) of the Linkage Plan. For the purposes of this Joint Amendment No. 22 only, references to ''Linkage Orders'' herein pertain to P/A Orders and Principal Orders. For definitions of ''P/A Order'' and ''Principal Order,'' *see* Section 2(16)(a) and (b) of the Linkage Plan, respectively.

[5] The term ''member,'' as used herein, includes NYSE Arca OTP Holders and OTP Firms and Boston Options Exchange (''BOX'') Options Participants. *See* NYSE Arca Rules 1.1(q) and 1.1(r) and Chapter I, Sec. 1(a)(40) of BOX Rules, respectively.

[6] *See* Securities Exchange Act Release No. 55436, 72 FR 12639 (March 16, 2007).