

relief, prevent these entities from participating in foreign telecommunications infrastructure projects on desirable terms.

3. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act or any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant requests an order under section 6(c) to permit applicant and the other Covered Entities to engage, directly or through subsidiaries, in foreign telecommunications infrastructure projects without being subject to the provisions of the Act.

4. Applicant believes that the requested relief is necessary and appropriate in the public interest. Applicant's business does not entail the types of risk to public investors that the Act was designed to eliminate or mitigate. Applicant's assets cannot be characterized as liquid, mobile, and readily negotiable, or as large liquid pools of funds. Applicant represents that its assets, as well as the assets of the other Covered Entities, are not held as passive or portfolio investments and are not traded for short-term profit. In addition, applicant asserts that the requirement that applicant or another Covered Entity provide active developmental assistance to the foreign telecommunications infrastructure projects is inconsistent with the notion that its assets are liquid, mobile, and readily negotiable. Applicant also states that investment companies of the type intended to be regulated under the Act could not engage in the activities that would be covered by the exemptive order because, unlike the Covered Entities, they lack the expertise and resources to provide active developmental assistance to foreign telecommunications infrastructure projects.

5. Applicant believes that the requested relief is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that the Act was not intended to regulate the kind of industrial activity in which the Covered Entities engage. Applicant historically has developed as an operating industrial company rather than an investment pool, engaging principally in the telecommunications business. In addition, its proposed participation in foreign telecommunications infrastructure projects through the provision of active

developmental assistance is consistent with the type of activities typically associated with an operating industrial company. Finally, applicant does not hold itself out as engaged in the business of investing, reinvesting, or trading in securities or otherwise as an investment pool of the type intended to be regulated by the Act, and the exemptive order would not be available to any Covered Entity that holds itself out as engaged in the business of investing, reinvesting, or trading in securities.

Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. No Covered Entity that proposes to rely on the requested relief will hold itself out as being engaged in the business of investing, reinvesting, or trading in securities.

2. A Covered Entity may rely on the order granting the requested relief only to the extent that the manner in which it is involved in foreign telecommunications infrastructure projects does not differ materially from that described in the application.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23620; File No. 812-11358]

Western Reserve Life Assurance Co. of Ohio, et al.

December 22, 1998.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of application for an order under Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving the proposed substitution of securities.

SUMMARY OF APPLICATION: Applicants request an order approving the substitution of securities issued by certain management investment companies and held by the Account to support individual flexible premium deferred variable annuity contracts (the "Contracts") issued by Western Reserve.

APPLICANTS: Western Reserve Life Assurance Co. of Ohio ("Western Reserve") and WRL Series Annuity Account (the "Account").

FILING DATE: The application was filed on October 15, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 18, 1999, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Thomas E. Pierpan, Esquire, Western Reserve Life Assurance Co. of Ohio, 570 Carillon Parkway, St. Petersburg, FL 33716-1202.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior Counsel, or Mark C. Amorosi, 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 is available for a fee from the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel (202) 942-8090).

Applicants' Representations

1. Western Reserve, a stock life insurance company, is principally engaged in the business of writing life insurance policies and annuity contracts and is authorized to do business in the District of Columbia and all states except New York. Western Reserve is a wholly-owned subsidiary of First AUSA Life Insurance Company which is a wholly-owned subsidiary of AEGON USA, Inc. AEGON USA, Inc. is a wholly-owned indirect subsidiary of AEGON nv, a Netherlands corporation, which is a publicly traded international insurance group. Western Reserve is the sponsor and depositor of the Account.

2. Western Reserve issues individual flexible premium deferred variable annuity contracts (the "Contracts") through the Account. The Account is a separate account and is registered under the 1940 Act as a unit investment trust. Interests in the Account offered through the Contracts have been registered

under the Securities Act of 1933 ("1933 Act"). The Account is comprised of sub-accounts established to receive and invest net purchase payments of the Contracts. Each sub-account invests exclusively in the shares of a specified portfolio of the WRL Series Fund, Inc. (The "Fund") and supports the Contracts.

3. Each Contract permits at least 12 transfers of cash value per Contract year among and between the sub-accounts available as investment options without the imposition of a transfer charge. All of the Contracts reserve to Western Reserve the right to further restrict transfer privileges.

4. The Fund is registered under the 1940 Act as an open-end management investment company. The Fund is a series investment company as defined by rule 18f-2 under the 1940 Act and is currently comprised of 18 investment portfolios (the "Portfolios"). The Fund issues a separate series of shares of stock in connection with each Portfolio and has registered these shares under the 1933 Act. WRL Investment Management, Inc. ("WRL Management"), a direct wholly-owned subsidiary of Western Reserve, is the investment adviser to the Fund.

5. Applicants state that one of the Portfolios of the Fund has not generated substantial Contract owner interest since its inception. The Global Sector Portfolio (the "Replaced Portfolio") is relatively small in terms of assets when compared to many other similar investment portfolios of open-end management investment companies available as investment vehicles for variable annuity products. Applicants state that, as a result, the annual expense ratios of the Replaced Portfolio have been higher than the ratios of most similar, but larger, portfolios. Applicants also state that the performance of the Replaced Portfolio since its inception has been unremarkable given overall market performance during the relevant time period.

6. For these reasons, Applicants propose that Western Reserve substitute shares of the Global Portfolio for shares of the Global Sector Portfolio.

7. The Global Portfolio seeks long-term growth of capital in a manner consistent with preservation of capital by primarily investing in common stocks of foreign and domestic issuers. The Global Sector Portfolio seeks growth of capital by following an asset allocation strategy that shifts among a wide range of asset categories and within them, market sectors. The Global Sector Portfolio invests primarily in equity securities of domestic and foreign

issuers, including common stocks, preferred stocks, convertible securities and warrants; debt securities of domestic and foreign issuers; real estate investment trusts; equity securities of companies involved in the exploration, mining processing, or dealing or investing in gold; gold bullion; and domestic money market instruments.

8. Applicants represent that the Portfolio proposed as a substitute (the "Substitute Portfolio") is substantially larger than the Replaced Portfolio. Applicants also represent that the Substitute Portfolio has lower expense ratio and has outperformed the Replaced Portfolio.

9. Applicants state that, by supplements to the prospectuses for the Contracts of the Account, all owners and prospective owners of the Contracts were notified of Western Reserve's intention to take the necessary actions to substitute shares of the Global Portfolio for shares of the Global Sector Portfolio. The supplements advised owners and prospective owners that they will be unable to allocate net purchase payments to, or transfer cash values to, the sub-account of the Account corresponding to the Replaced Portfolio, after May 1, 1999. The supplements also advised owners and prospective owners that, on the date of the proposed substitution, the Substitute Portfolio will replace the Replaced Portfolio as the underlying investment for such sub-account. The supplements further apprised owners and prospective owners that from the date of the supplements until 30 days after the date of the proposed substitution, owners will be permitted to make one transfer of all the cash value under a Contract invested in such affected sub-account to other available sub-account(s), without that transfer counting as one of the limited number of transfers permitted in a Contract year free of charge. In addition, the supplements informed owners and prospective owners that Western Reserve will not exercise any rights reserved by Western Reserve under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitution.

10. Applicants state that at least 60 days before the date of the proposed substitution, affected owners were provided with a prospectus for the Fund, which includes complete current information concerning the Substitute Portfolio.

11. Applicants propose to have Western Reserve redeem shares of the Replaced Portfolio in cash and purchase shares of the Substitute Portfolio. Applicants represent that redemption

requests and purchase orders will be placed simultaneously so that Contract values will remain fully invested at all times.

12. Applicants state that the proposed substitution will take place at relative net asset value with no change in the amount of any Contract owner's cash value or death benefit or in the dollar value of his or her investment in the Account. Applicants represent that Contract owners will not incur any fees or charges as a result of the proposed substitution and that their rights and Western Reserve's obligations under the Contracts will not be altered in any way. All expenses incurred in connection with the proposed substitution, including legal, accounting and other fees and expenses, will be paid by Western Reserve. In addition, Applicants represent that the proposed substitution will not impose any tax liability on Contract owners. The proposed substitution will not cause the Contract fees and charges currently paid by existing Contract owners to be greater after the proposed substitution than before the proposed substitution.

13. Within 5 days after the proposed substitution, Applicants represent that any owners who were affected by the substitution will be sent a written notice informing them that the substitution was carried out and that they may make one transfer of all cash value under a Contract invested in the affected sub-account to other sub-account(s) until 30 days after the substitution without that transfer counting as one of the limited number of transfers permitted in a Contract year free of charge. The notice also will reiterate that Western Reserve will not exercise any rights reserved by Western Reserve under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitution.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 26(b) of the 1940 Act approving the substitution by Western Reserve of shares of the Global Portfolio for shares of the Global Sector Portfolio. Applicants submit that the proposed substitution meets the standards that the Commission has applied to substitutions that have been approved in the past.

2. Section 26(b) of the 1940 Act provides, in pertinent part, that it "shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution."

Section 26(b) of the 1940 Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

3. Applicants assert that the Contracts give Western Reserve the right, subject to Commission approval, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a subaccount of the relevant Account. Applicants also assert that the prospectuses for the Contracts and the Account contain appropriate disclosure of this right.

4. Applicants contend that the Substitute Portfolio will have lower or equal future expense ratios than the past expense ratios of the Replaced Portfolio. The Substitute Portfolio is substantially larger than the Replaced Portfolio, and the Substitute Portfolio has had more favorable expense ratios over the last two years than the Replaced Portfolio.

5. As of May 1, 1999, the Replaced Portfolio will no longer be available for new investment, and most likely will experience the net redemption of its shares from that date forward. Therefore, Applicants assert it is highly likely that in the near future the Replaced Portfolio's asset base will decrease and, accordingly, the Replaced Portfolio's expense ratio will increase.

6. Applicants state that the Substitute Portfolio has performed favorably over the past two years and since its inception compared to the Replaced Portfolio. Applicants therefore anticipate that after the proposed substitution, the Substitute Portfolio will provide Contract owners with more favorable or comparable overall investment results than would be the case if the proposed substitution does not take place.

7. Applicants represent that the Substitute Portfolio is a suitable and appropriate investment vehicle for Contract owners and that the Substitute Portfolio has substantially identical or similar investment objectives and policies to the Replaced Portfolio.

Conclusion

Applicants submit that, for all the reasons summarized above, the proposed substitution is 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.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40815; File No. SR-OCC-98-16]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Index Options Escrow Deposits

December 21, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 23, 1998, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change would eliminate the reference to List of Marginable OTC Securities ("OTC List") in OCC Rule 1801 and in OCC's agreement with each of its approved escrow deposit banks.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by OCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would eliminate the reference to the OTC List in OCC Rule 1801.³ Rule 1801 permits escrow deposits to be made with respect to short positions in put and call stock index options. For short put stock index options, an escrow deposit may only include cash and short-term U.S. Government securities. For short stock index call options, an escrow deposit may consist of any combination of cash, short-term U.S. Government securities, and common stocks listed on a national securities exchange or included in the current OTC List published by the Board of Governors of the Federal Reserve System ("Federal Reserve Board").⁴ This criterion is also incorporated in OCC's agreement with each of its approved escrow deposit banks.

Effective January 1, 1999, the Federal Reserve Board will cease publication of the OTC List and will remove the definition of OTC stock from Regulation T. Broker-dealers instead will be permitted to extend margin credit against all equity securities listed on the Nasdaq Stock Market. In light of the foregoing, OCC is proposing to eliminate the reference to the OTC List contained in Rule 1801 and to allow any common stock listed on the Nasdaq Stock Market to be included in escrow deposits with respect to short positions in index call options.

Upon the approval of the proposed rule change, OCC intends to send a notice to each of its custodian banks to advise them that, notwithstanding the reference to the OTC List in the Amended and Restated On-Line Escrow Deposit Agreement, all common stocks listed on the Nasdaq Stock Market will be permitted to be included in escrow deposits in respect to short index calls.

OCC believes that the proposed rule change is consistent with the purposes and requirement of Section 17A of the Act⁵ because it would conform OCC's escrow deposit rules to a change being made by the Federal Reserve Board.

³ The text of the proposed amendment to OCC Rule 1801 is set forth in OCC's filing, which is available for inspection and copying at the Commission's Public Reference Room and through OCC.

⁴ The OTC List is composed of stocks traded over-the-counter ("OTC") in the United States that qualify as margin securities under Regulation T. Accordingly, broker-dealers are permitted to extend margin credit against such OTC stocks.

⁵ 15 U.S.C. 78q-1.