

including the consideration to be paid or received, are reasonable and fair to Variable Contract owners invested in each and do not involve overreaching on the part of any person; and furthermore, granting the relief requested herein for the Substitution that may be effected in part by means of in-kind redemptions and purchases of shares is appropriate, in the public interest, and consistent with the policies of each of the Portfolios and the general purposes of the 1940 Act.

Applicants' Conditions

For purposes of the approval sought pursuant to section 26(b) of the 1940 Act, the Substitution described in the Application will not be completed, unless all of the following conditions are met.

1. The Commission shall have issued an order (i) approving the Substitution under section 26(b) of the 1940 Act, and (ii) exempting any in-kind redemptions and purchases from the provisions of section 17(a) of the 1940 Act as necessary to carry out the transactions described in the Application.

2. Each Variable Contract owner will have been sent (i) copy of the effective prospectus relating to the Replacement Portfolio and any necessary amendments to the prospectuses relating to the Variable Contracts, (ii) prior to the Effective Date, a Pre-Substitution Notice describing the terms of the Substitution and the rights of the Variable Contract owners in connection with the Substitution, and (iii) if affected by the Substitution, a Post-Substitution Notice within five days after the Substitution informing them that the Substitution was carried out and advising them of their transfer rights.

3. NELICO and MetLife shall have satisfied themselves that (i) the Variable Contracts allow the substitution of portfolios in the manner contemplated by the Substitution and related transactions described herein, (ii) the transactions can be consummated as described in this Application under applicable insurance laws, and (iii) that any applicable regulatory requirements in each jurisdiction where the Variable Contracts are qualified for sale, have been complied with to the extent necessary to complete the transaction.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44148; File No. SR-NASD-01-02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Reflecting the Transfer of Responsibilities to the Nasdaq Office of Appeals and Review

April 4, 2001.

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 March 22, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one concerned solely with the administration of the self-regulatory organization under section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(3),⁴ which renders the rule effective upon filing with the Commission. 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

Nasdaq is herewith filing with the Commission a proposed rule change amending the NASD Rules to reflect certain internal changes in the Nasdaq office that will receive, acknowledge, and maintain records regarding reviews by the Nasdaq Listing and Hearing Review Council and the NASD Board of Governors. Below is the text of the proposed rule change. New language is italicized, and deletions are bracketed.

* * * * *

4840. Review by the Nasdaq Listing and Hearing Review Council

(a) No change.

(b) The issuer may initiate the Listing Council's review of any Panel Decision by making a written request within 15 calendar days of the date of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 79s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

decision. Requests for review should be addressed to the Listing Council in care of the Nasdaq Office of [General Counsel] *Appeals and Review*. The request will not operate as a stay of the Panel Decision. Also within 15 calendar days of the date of the Panel Decision, the issuer must submit a fee of \$1,400 to the The Nasdaq Stock Market, Inc. to cover the cost of the review. Upon receipt of the request for review and the applicable fee, the Nasdaq Office of [General Counsel] *Appeals and Review* will make an acknowledgement of the issuer's request stating the deadline for the issuer to provide any written submissions.

(c) No change.

(d) The Listing Council will consider the written record and, at its discretion, hold additional hearings. Any hearing will be scheduled, to the extent practicable, within 45 days of the date that a request for review initiated by either the issuer or one or more members of the Listing Council, is made. The Listing Council may also recommend that the NASD Board of Governors ("NASD Board") consider the matter. The record of proceedings before the Listing Council will be kept by the Nasdaq Office of [General Counsel] *Appeals and Review*.

(e) No change.

4850. Discretionary Review by NASD Board

(a) No change.

(b) If the NASD Board conducts a discretionary review, the review generally will be based on the written record considered by the Listing Council. However, the NASD Board may, at its discretion, request and consider additional information from the issuer and/or from Nasdaq staff. Should the Board consider additional information, the record of proceedings before the NASD Board will be kept by the Nasdaq Office of [General Counsel] *Appeals and Review*.

(c) No change.

(d) No change.

* * * * *

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 NASD included statements concerning the purpose of and basis for the proposed rule change 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 NASD has prepared summaries, set forth in

Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The NASD Rule 4800 Series provides procedures for the independent review of determinations that prohibit or limit the listing of an issuer's securities on the Nasdaq. Securities of issuers that do not meet the quantitative or qualitative listing standards set forth in the Rule 4000 Series are subject to delisting from, or denial of initial inclusion on, the Nasdaq. Currently, pursuant to Rule 4840, the Nasdaq Office of General Counsel receives and acknowledges requests for review of Listing Qualifications Panel Decisions. Additionally, pursuant to Rules 4840 and 4850, the Nasdaq Office of General Counsel maintains the record on review for the Nasdaq Listing and Hearing Review Council and the NASD Board. This proposed rule change gives effect to a decision by the NASD to transfer these responsibilities to a new unit with Nasdaq's Listing Qualifications Department, the Office of Appeals and Review. Accordingly, the proposed rule change modifies NASD Rules 4840(b), 4840(d), and 4850(b) to indicate that requests for review should be addressed to, and will be acknowledged by, the Nasdaq Office of Appeals and Review, and that the record on review will be maintained by the Nasdaq Office of Appeals and Review.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁵ which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. This proposal enhances Nasdaq's ability to provide for an independent review of determinations of the Association that prohibit or limit the listing of an issuer's securities on the Nasdaq, thus protecting issuers, investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act⁶ and subparagraph (f)(3) of Rule 19b-4 thereunder⁷ because it is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-01-02 and should be submitted by May 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,

Secretary.

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⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(3).

⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44153; File No. SR-NASD-01-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Revise the Fees Associated With Appeals of Nasdaq Listing Determinations

April 5, 2001.

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 March 13, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq filed a proposed rule change to revise the fees associated with appeals of Nasdaq listing determinations. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 4820. Request for Hearing

(a) No change

(b) No change

(c) Within 15 calendar days of the date of the Staff Determination, but in no event after the time of the hearing, the issuer must submit a hearing fee to The Nasdaq Stock Market, Inc., to cover the cost of holding the hearing, as follows:

(1) where consideration is on the basis of an written submission from the issuer, \$[1,400] 4,000; or

(2) where consideration is on the basis of an oral hearing, whether in person or by telephone, \$[2,300] 5,000.

Rule 4840. Review by the Nasdaq Listing and Hearing Review Council

(a) No change

(b) The issuer may initiate the Listing Council's review of any Panel Decision by making a written request within 15 calendar days of the date of the decision. Requests for review should be addressed to the Listing Council in care of the Nasdaq Office of General Counsel. The request will not operate as a stay of the Panel Decision. Also

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78o-3(b)(6).