8. The provider must design its Customized Postage indicia in a manner approved by the Postal Service, which reduces the likelihood that the public will be misled into believing that the product image originated with the Postal Service.

9. The Postal Service may suspend or cancel without prior notice and without liability for any costs incurred or losses sustained by a provider or customer, the approval of any customer as a test participant, or the Customized Postage test itself, in the event there is sufficient cause to believe that the test presents unacceptable risk to Postal Service revenues, degradation of the ability of the Postal Service to process or deliver mail produced by the test participants, an assessment that continuation of the test may expose the Postal Service or its customers to legal liability, or an assessment that continuation of the test will cause public or political embarrassment or harm to the Postal Service in any way.

10. The Postal Service will require approved providers of Customized Postage to pay a fee to defray the costs of the Postal Service in testing and evaluating Customized Postage.

11. Additional conditions and requirements may be set forth in individual product test approval letters.

Persons interested in submitting proposed Customized PC Postage concepts should contact: Manager, Postage Technology Management, U.S. Postal Service, 1735 North Lynn Street, Room 5011, Arlington, VA 22209–6030; (703) 292–3590 (Telephone); (703) 292–4073 (Fax); *ptm@USPS.gov*.

Neva Watson,

Attorney, Legislative.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26836; File No. 812–13054]

New England Life Insurance Co., et al., Notice of Application

April 21, 2005.

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

ACTION: Notice of application for an order pursuant to Sections 11(a) of the Investment Company Act of 1940 (the ''Act'').

Applicants: New England Life Insurance Company (''NELICO''), New England Variable Life Separate Account (the ''Variable Account''), and New England Securities Corporation (''NES'')

Summary of the Application: Applicants request an order pursuant to Section 11(a) of the Act approving the terms of the following proposed offer of exchange of variable life insurance contracts offered by NELICO and made available through the Variable Account: outstanding scheduled premium variable life insurance contracts (''Zenith Life Contract,'' ''Zenith Life Plus Contract,'' ''Zenith Life Plus II Contract,'' ''Zenith Life Executive 65 Contract,'' and ''Zenith Variable Whole Life Contract'' and, collectively, the ''Scheduled Premium Contracts'') for the Zenith Flexible Life 2001 contract (the ''Zenith 2001 Contract'').

Filing Date: The application was filed on December 22, 2003 and amended and restated on April 21, 2005.

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 the 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 May 12, 2005, 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 may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Marie C. Swift, Esq., New England Life Insurance Company, 501 Boylston Street, Boston, MA 02116. Copies to: Stephen E. Roth, Esq. and Mary E. Thornton, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The application is available for a fee from the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone (202) 551–8090).

Applicants' Representations

1. NELICO is a stock life insurance company organized under the laws of Delaware in 1980 as New England Variable Life Insurance Company. New England Variable Life Insurance Company was a wholly owned subsidiary of New England Mutual Life Insurance Company. On August 30, 1996, New England Mutual Life Insurance Company merged into Metropolitan Life Insurance Company (''MetLife''), a life insurance company with principal offices in New York. MetLife is a wholly owned subsidiary of MetLife, Inc., a publicly traded company. Thereafter, MetLife became the parent of New England Variable Life Insurance Company, and the latter changed its name to New England Life Insurance Company and changed its domicile from the State of Delaware to the Commonwealth of Massachusetts. NELICO is authorized to operate in all states and the District of Columbia.

2. NELICO established the Variable Account on January 31, 1983, under Delaware law. When NELICO changed its domicile to Massachusetts on August 30, 1996, the Variable Account became subject to Massachusetts law. The Variable Account is registered under the Act as a unit investment trust, and is a ''separate account'' as that term is defined in Section 2(a)(37) of the Act. NELICO is the legal owner of the assets in the Variable Account. The obligations to contract owners and beneficiaries arising under the contracts are general corporate obligations of NELICO, and the general assets of NELICO support the contracts. The assets of the Variable Account equal to its reserves and other contract liabilities are not available to meet the claims of NELICO's general creditors, but are held and applied exclusively to the benefit of holders of those variable life insurance contracts funded through the Variable Account. The investment performance of the Variable Account is independent of both the investment performance of the general account of NELICO and of any other separate account that NELICO has established or may establish in the future.

3. NES is registered with the Commission as a broker-dealer, and is a member of the National Association of Securities Dealers, Inc. NES serves as principal underwriter for the Scheduled Premium Contracts and the Zenith 2001 Contracts. NES is an indirect, wholly owned subsidiary of NELICO.

General Description of Zenith Life 2001 Contracts

4. The Zenith 2001 Contracts are flexible premium variable life insurance contracts offered pursuant to a registration statement under the Securities Act of 1933 (''1933 Act'') (File No. 333–103193). The Zenith 2001 Contracts are available for sale to

individuals, trusts, and business entities (''non-pension contracts'') as well as for sale to qualified pension plans (''pension contracts'').

5. With certain restrictions, a Zenith 2001 Contract owner may make premium payments in an amount and based on a plan or schedule that he or she determines. Such planned premiums may be paid on an annual, semi-annual, quarterly, or monthly schedule. A Zenith 2001 Contract owner may skip planned premium payments or make additional payments. Additional payments may be subject to underwriting. No payment may be less than $25 ($10 for premium payments made under certain monthly payment arrangements).

6. The Variable Account consists of several subaccounts, each of which invests exclusively in a designated portfolio of one of the following underlying funds: Metropolitan Series Fund, Inc.; Met Investors Series Trust; Fidelity Variable Insurance Products Fund; Fidelity Variable Insurance Products Fund II; and American Funds Insurance Series (collectively, the ''Underlying Funds'').

7. Subject to certain restrictions, including restrictions on ''market timing'' transfers, a Zenith 2001 Contract owner may transfer cash value between subaccounts and between subaccounts and the fixed account, although special limits apply to transfers from the fixed account. NELICO reserves the right to limit transfers to 4 per contract year (12 per contract year in New York), and to impose a processing charge of $25 for each transfer in excess of 12 per contract year.

8. A contract owner may surrender the Zenith 2001 Contract at any time while the insured is living for the contract's net cash value, *i.e.*, cash value minus any contract loan and accrued interest thereon and any applicable surrender charge. A partial surrender reduces the death benefit and may necessitate a reduction of the face amount to the extent necessary to prevent the amount at risk under the contract from increasing. A partial surrender also may reduce rider benefits.

9. A contract owner may borrow from the cash value in the contract. The maximum amount a contract owner may borrow from cash value is an amount equal to: (i) 90% (more if required by state law) of the ''projected cash value'' of the contract minus (ii) the surrender charge on the next planned premium due date or, if greater, on the date the loan is made, minus (iii) loan interest to the next loan interest date. (The ''projected cash value'' is the cash value projected to the next contract anniversary or, if earlier, to the next planned premium due date, at a 4% rate and using current contract charges.) The loan value available is reduced by any outstanding loan plus interest charged on contract loans. A contract loan reduces the contract's cash value in the subaccounts by the amount of the loan. Unless a contract owner requests otherwise, NELICO attributes contract loans to the subaccounts of the Variable Account and to the fixed account in proportion to the cash value in each.

10. Two death benefit options are available under the Zenith 2001 Contract:

• Option 1 (Face Amount)—a level death benefit that equals the face amount of the contract; or

• Option 2 (Face Amount plus Cash Value)—a variable death benefit that equals the face amount of the contract plus the cash value of the contract.

11. NELICO deducts a sales charge, a premium tax charge, and a federal tax charge from premium payments before allocating the remaining amount to the investment options available under the Zenith 2001 Contract according to instructions from the contract owner. The maximum sales charge is four percent (three percent for certain pension-owned or business-owned Zenith 2001 Contracts) of premium. NELICO deducts a flat two and a half percent premium tax charge from each premium paid. NELICO also deducts one percent from each premium payment to cover its Federal income tax liability related to the premium payments it receives.

12. NELICO will deduct a surrender charge from cash value if, during the first eleven contract years or during the first eleven years following an increase in face amount, a contract owner surrenders his or her contract, reduces the face amount, makes a partial surrender that reduces the face amount, or the contract lapses. The surrender charge is comprised of a deferred sales charge and a deferred administrative charge. The deferred sales charge is a percentage of target premium that increases from 55% in the first contract year to 72% in contract years two through five, and then declines ratably on a monthly basis to 0% in the last month of the eleventh policy year (or the eleventh year following an increase in face amount). The deferred administrative charge is $2.50 per $1,000 of base contract face amount in the first contract year and then declines ratably on a monthly basis to $0 in the last month of the eleventh policy year (or the eleventh year following an increase in face amount). In the event of a face amount reduction or a partial surrender that results in a face amount reduction, NELICO will deduct the surrender charge applicable to the remaining cash value in an amount proportional to the amount of the face amount surrendered.

13. Each month, NELICO deducts: a policy charge ($15 per month during the first contract year and no more than $7 per month thereafter); an administrative charge of $.08 per $1,000 of base contract face amount in the first contract year and no more than $.04 per $1,000 of base contract face amount (not to exceed $60 per month) thereafter; monthly cost of insurance charges (the amount at risk under the contract—*i.e.*, the amount by which the death benefit, discounted monthly, exceeds the cash value—multiplied by the cost of insurance rate for the contract for that month); and charges for additional benefits and services (*e.g.*, for riders).

14. NELICO assesses a charge to cover the mortality and expense risks it assumes in issuing the Zenith 2001 Contracts. The charge is imposed daily, at an annual rate not to exceed 0.50% of the assets in the subaccounts of the Variable Account.

15. In addition, there are daily charges against the Underlying Fund assets for investment advisory services and operating expenses. These charges are reflected in the net asset values of the Underlying Fund shares purchased by the Variable Account subaccounts. For the fiscal year ended December 31, 2004, those Underlying Fund operating expenses ranged from 0.30% to 1.15% (before contractual fee waivers and expense reimbursements).

16. The death benefit or cash value proceeds of a Zenith 2001 Contract can be paid in a lump sum or under one of the payment options available under the contract. A contract owner may select a combination of payment options. The available payment options are fixed benefit options only, and are not affected by the investment experience of the Variable Account. NELICO must consent to, and may change the payment interval to increase each payment, if installments would be less than $20.

17. Several benefits may be added to the Zenith 2001 Contract by rider. These additional benefits usually require an additional charge as part of the monthly deduction from cash value. Not all riders are available to all Zenith 2001 Contract owners, and restrictions on rider coverage may apply in some states. NELICO may make other riders available in the future. These additional benefits include: Level Term Insurance

Rider (providing term insurance terminating at age 100); Temporary Term Insurance Rider (providing coverage from the date coverage is approved until the contract date); Children's Insurance Rider (providing term insurance on the lives of children of the insured); Waiver of Monthly Deduction Rider (waiving monthly deductions on the disability of the insured); Change to a New Insured Rider (allowing for the substitution of the insured); and Exchange to Term Insurance Endorsement (allows for the conversion of the policy to term insurance). NELICO does not intend to make the Exchange to Term Endorsement available under Zenith 2001 Contracts issued pursuant to the exchange offer, hereinafter ''Exchanged Zenith 2001 Contracts'').

General Descriptions of the Scheduled Premium Contracts

18. Each of the Scheduled Premium Contracts is a scheduled premium variable life insurance policy offered pursuant to a registration statement under the 1933 Act:

• Zenith Life Contract—File No. 2–82838.

• Zenith Life Plus Contract—File No. 33–19540.

• Zenith Life Plus II Contract—File No. 33–52050.

• Zenith Life Executive 65 Contract—File No. 33–64170.

• Zenith Variable Whole Life Contract—File No. 333–21767.

NELICO no longer sells new Scheduled Premium Contracts.

19. A Scheduled Premium Contract owner may make premium payments on due dates he or she selects during the lifetime of the insured for the period specified in the contract. The contract owner selects the frequency of premium payments—quarterly, semi-annually, annually, or according to another schedule agreed upon with NELICO. A contract owner may change the premium payment schedule. Failure to pay a required scheduled premium under any of these contracts may cause the contract to lapse.

• *Zenith Life Contract:* If the insured is under age 25 when the Zenith Life Contract is issued, premiums are payable for 40 years. If the insured is between the ages of 25 and 40 when the Zenith Life Contract is issued, premiums are payable until the insured reaches age 65. If the insured is above age 40 when the Zenith Life Contract is issued, premiums are payable for 25 years.

• *Zenith Life Plus Contract, Zenith Life Plus II Contract, Zenith Variable Whole Life Contract:* These contracts require that scheduled premium payments be made until the insured reaches age 100. The amount of the scheduled premium depends on: (i) The face amount of the contract; (ii) the age, gender (unless unisex rates apply), and underwriting class of the insured; (iii) the premium schedule the contract owner selects; and (iv) the charges for any rider benefits the contract owner elects.

• *Zenith Life Executive 65 Contract:* This contract requires scheduled premium payments from inception of the contract until the contract anniversary when the insured reaches age 65, or until 10 years after the contract is issued, whichever is later. The amount of the scheduled premium depends on: (i) The face amount of the contract; (ii) the age, gender (unless unisex rates apply), and underwriting class of the insured; (iii) the premium payment schedule selected by the contract owner; and (iv) any rider benefits.

20. The cash value of a Scheduled Premium Contract equals the sum of the cash value in the Variable Account, any cash value in the fixed account, and amounts held in NELICO's general account to support a contract loan. The cash value reflects: Scheduled premium payments and the payment schedule chosen by the contract owner; unscheduled premium payments; net investment experience of the Variable Account subaccounts; interest credited to cash value in the fixed account; interest credited to amounts held in NELICO's general account to support contract loans; the death benefit option chosen by the contract owner; contract fees and charges; partial surrenders and partial withdrawals; and transfers among the subaccounts and the fixed account.

21. Subject to certain restrictions, including restrictions on ''market timing'' transfers, Scheduled Premium Contract owners may transfer cash value between subaccounts and between the subaccounts and the fixed account. Limits may apply to transfers to and from the fixed account. NELICO reserves the right to limit transfers among subaccounts to 4 per contract year. NELICO limits transfers from the fixed account to the Variable Account to one per contract year.

22. While the insured is living, a contract owner may submit a written request to NELICO to surrender a Zenith Life Contract in whole or in part for its net cash value. A partial surrender involves splitting a contract into two contracts—one is surrendered for its net cash value, the other is continued in-force. The continued contract continues at the original contract's premium rates and generally must have a face amount of at least $25,000.

23. As to holders of Zenith Life Plus, Zenith Life Plus II, Zenith Life Executive 65, and Zenith Variable Whole Life Contracts, a contract owner may request to surrender his or her contract at any time, in whole or in part, for its net cash value. A partial surrender causes a proportionate reduction in the face amount, tabular cash value, death benefit, and basic scheduled premium. NELICO reserves the right to decline a partial surrender request that would reduce the face amount below the minimum face amount required under the contract. Any surrender charge applied reduces any remaining surrender charge under a contract.

24. Owners of each variety of Scheduled Premium Contract, except the Zenith Life Contract, may borrow all or part of their respective contract ''loan value'' (*i.e.*, (i) 90% (or more if required by state law) of ''projected cash value'' minus (ii) the surrender charge on the next loan interest due date or, if greater, on the date the loan is made, discounted at (iii) the loan interest rate). (The ''projected cash value'' is the cash value projected to the next contract anniversary or, if earlier, the next premium due date, at a set rate of interest.) Zenith Life Contract owners may borrow all or part of their respective contract ''loan value'' (*i.e.*, (i) ''projected cash value'' (ii) discounted at the loan interest rate and (iii) multiplied by 90%).

25. Subject to certain adjustments, the death benefit available under the Zenith Life Contract will equal the greater of the ''variable death benefit'' and the ''guaranteed minimum death benefit.'' The ''guaranteed minimum death benefit'' equals the initial face amount specified in the policy form for the contract, assuming that premiums have been paid when due and there is no outstanding contract loan. The ''variable death benefit'' initially equals the initial face amount of the contract, and may increase or decrease, after the first contract month, depending on the net investment experience of the Variable Account subaccounts. Whether a contract's ''variable death benefit'' exceeds the ''guaranteed minimum death benefit'' depends on the net investment experience of the Variable Account subaccounts.

26. Owners of the Zenith Life Plus Contract, the Zenith Life Plus II Contract, Zenith Life Executive 65 Contract, and the Zenith Variable Whole Life Contract must choose between two

death benefit options at the time they apply for a contract. Once selected, the death benefit option under a contract may not be changed.

• Option 1–The death benefit equals the face amount of the contract. The death benefit is fixed.

• Option 2–The death benefit equals the face amount of the contract plus the amount by which the cash value exceeds the ''tabular cash value'' of the contract. The ''tabular cash value'' is the value the contract would have if: (i) A contract owner paid all scheduled premiums when due; (ii) a contract owner made no unscheduled payments, partial surrenders, partial withdrawals, loans or reductions in face amount; (iii) the Variable Account subaccounts earned a specified constant annual net rate of return of 5% for the Zenith Life Plus Contract and 4.5% for the Zenith Life Plus II Contract, the Zenith Life Executive 65 Contract, and the Zenith Variable Whole Life Contract; and (iv) NELICO deducted cost of insurance charges using the maximum guaranteed cost of insurance rates or, for the Zenith Life Plus II Contract, the Zenith Life Executive 65 Contract, and the Zenith Variable Whole Life Contract, the maximum contract charges.

Under these Scheduled Premium Contracts, the minimum death benefit will equal the face amount of the contract as long as the contract owner pays the required scheduled premium and there is no ''excess policy loan'' (*i.e.*, the difference between (i) the amount of the policy loans plus accrued interest and (ii) the amount of the contract value less any applicable surrender charge, on the next date that interest is due under the policy loan).

27. NELICO deducts the following charges from scheduled premiums paid to arrive at a basic premium payment for a Scheduled Premium Contract.

• *Zenith Life Contract*—NELICO deducts charges for any optional insurance benefits the contract owner selects by rider, any additional amounts paid for a Zenith Life Contract for an insured in a substandard risk classification, and an annual administrative charge. NELICO assesses an additional one-time administrative charge during the first contract year. NELICO also assesses a sales charge that varies depending upon the contract year and grades down over time (the maximum sales charge is 20% of the basic premium payments in the first contract year, 12% of the basic premium payments made for the second through fourth contract years, and 7.75% of the basic premium payments in the subsequent contract years); a state premium tax charge (2% of the basic premium) to cover the average cost of state premium taxes; and a minimum death benefit risk charge (1.2% of the basic premium) to protect against the prospect that the variable death benefit under the Zenith Life Contract will be less than the guaranteed minimum death benefit under the contract.

• *Zenith Life Plus Contract, Zenith Life Plus II Contract, Zenith Life Executive 65 Contract, Zenith Variable Whole Life Contract*—NELICO deducts charges for: any rider benefits the contract owner selects; additional amounts payable for substandard risk or automatic issue risk classes; the portion of the annual administrative charge that is due with the scheduled premium payment (ranging from $57.75 to $58.41 of every $1,000 of face amount on an annual basis); a sales charge (discussed below); a state premium tax charge (ranging from two to two and a half percent of premiums paid); and (for the Zenith Life Plus II Contract, the Zenith Life Executive 65 Contract, and the Zenith Variable Whole Life Contract only) a Federal premium tax charge (one percent of premiums paid).

The sales charge for the Zenith Life Plus Contract is 6% of each scheduled premium for the first 15 contract years and 6% of each unscheduled premium. For the Zenith Life Plus II Contract, the Zenith Life Executive 65 Contract, and the Zenith Variable Whole Life Contract, the sales charge is 5.5% of each scheduled premium for at least the first 15 contract years—thereafter, NELICO may waive this charge under certain conditions—and 5.5% of each unscheduled premium for all contract years.

28. NELICO deducts the following surrender charges from the Scheduled Premium Contracts.

• *Zenith Life Contract:* No surrender charge applies under the Zenith Life Contract.

• *Zenith Variable Whole Life Contract:* NELICO will deduct a surrender charge from cash value if a contract owner totally or partially surrenders his or her Zenith Variable Whole Life Contract, allows his or her contract to lapse, or reduces the face amount of his or her contract, during the first 11 contract years. The surrender charge is a percentage of basic scheduled premiums. The maximum surrender charge rate is 55% in the first contract year, and reduces to 0% in the eleventh contract year. NELICO limits the dollar amount of the surrender charge to an amount per $1,000 of face amount; the maximum surrender charge per $1,000 of face amount is $47 in the first contract year, and grades down to $25 per $1,000 of face amount in the eleventh contract year. In the event of a partial surrender or reduction in face amount, NELICO will deduct from cash value any surrender charge that applies in an amount that is proportional to the amount of the face amount surrendered.

• *Zenith Life Plus Contract, Zenith Life Plus II Contract, Zenith Life Executive 65 Contract:* NELICO will deduct a surrender charge from cash value if, during the first 15 contract years, a contract owner totally or partially surrenders his or her contract, allows his or her contract to lapse, or, for the Zenith Life Plus II and Zenith Life Executive 65 Contracts, reduces the face amount of his or her contract. The surrender charge includes a deferred administrative charge and a deferred sales charge. The deferred administrative charge is $5 per $1,000 of face amount in the first 10 contract years for the Zenith Life Plus Contract, reducing monthly thereafter until it reaches $0 at the end of the 15th contract year; $2.50 per $1,000 of face amount in the first contract year for the Zenith Life Plus II Contract, reducing monthly thereafter until it reaches $0 in the 11th contract year; $2.70 per $1,000 of face amount in the first contract year for the Zenith Life Executive 65 Contract, reducing monthly thereafter until it reaches $0 at the end of the 10th contract year.

For the Zenith Life Plus Contracts, the maximum deferred sales charge for an insured with an issue age of 53 or younger applies if the contract owner surrenders the contract or allows the contract to lapse in the 10th contract year. The maximum charge in that year is an amount equal to 24% of the basic scheduled premium for the first contract year plus 4% of the basic scheduled premiums for the second through the tenth contract years. The charge may be less if the issue age of the insured is above 53. For the Zenith Life Plus II Contracts, the maximum charge for an insured with an issue age of 53 or younger applies if the contract owner surrenders the contract or allows the contract to lapse or reduces the contract face amount in contract years 4 through 8. The maximum charge in that year is an amount equal to 43.5% of the basic scheduled premium for the first contract year plus 23.5% of the basic scheduled premiums in the second and third contract years, and 14.5% of the basic scheduled premium in the fourth contract year. Different maximum charges apply if the contract owner surrenders the contract, allows the contract to lapse, or reduces the face amount of the contract in the first 2 contract years. The charge may be less if the issue age of the insured is above 53. For the Zenith Life Executive 65 Contract, the maximum charge for an insured with an issue age of 50 or younger applies if the contract owner surrenders the contract or allows the contract to lapse or reduces the contract face amount in contract years 3 through 10. The maximum charge in those years is 43.5% of the first year basic scheduled premium, plus 16.5% of the basic scheduled premium for the second contract year. The charge may be less if the issue age of the insured is above 50.

The deferred sales charge applies to the lesser of (i) the total payments (both scheduled premiums and unscheduled payments) made and (ii) the contract's total basic scheduled premiums up to the date of surrender, lapse, or, for the Zenith Life Plus II Contract and the Zenith Life Executive 65 Contract, face amount reduction (even if the contract owner has not paid each of those premiums). In the event of a partial surrender or, for the Zenith Life Plus II Contract and the Zenith Life Executive 65 Contract, reduction in face amount, NELICO will deduct any deferred sales charge from cash value in an amount that is proportional to the amount of the cash value surrendered or the face amount reduction.

29. NELICO makes the following deductions from cash value. NELICO deducts these charges from the Variable Account subaccounts in proportion to the contract owner's cash value in each subaccount (these do not include deductions for certain transactions, such as reissuing or redating a contract).

NELICO deducts a cost of insurance charge each contract month.

- For the Zenith Life Plus, Zenith Life Plus II, Zenith Life Executive 65, and Zenith Variable Whole Life Contracts, beginning on the contract date and on the first day of each contract month thereafter, NELICO will assess a monthly deduction consisting of an administrative charge, a minimum death benefit guarantee charge ($0.01 per $1,000 of face amount), and (in the first contract year for the Zenith Life Plus Contract only) an additional administrative fee of $0.035 per $1,000 of face amount. If there is an outstanding contract loan and the net cash value is not large enough to pay the monthly deduction, the difference is treated as an excess contract loan and the contract may terminate. For the Zenith Life Executive 65 Contract, the monthly deduction will only apply until the contract anniversary when the insured reaches age 65, or 10 years after the contract is issued, whichever is later.
- NELICO assesses a charge to cover the mortality and expense risks it assumes in issuing the Scheduled Premium Contracts (0.35% annually for the Zenith Life Contracts, and from 0.60% to a maximum of 0.90% annually for the Zenith Life Plus Contracts, the Zenith Life Plus II Contracts, Zenith Life Executive 65 Contracts, and the Zenith Variable Whole Life Contracts).

30. The death benefit or cash value proceeds of a Scheduled Premium Contract can be paid in a lump sum or under one of the payment options available under the contract. A contract owner may select a combination of payment options. The available payment options are fixed benefit options only, and are not affected by the investment experience of the Variable Account. NELICO must consent to, and may change the payment interval to increase each payment, if installments would be less than $20.

31. Each of the Scheduled Premium Contracts and the Zenith 2001 Contract offer the same line-up of Underlying Funds. The charges against the Underlying Fund assets for investment advisory services and operating expenses are reflected in the net asset value of the Underlying Fund shares purchased by the Variable Account subaccounts. During the fiscal year ended December 31, 2004, these charges ranged from 0.31% to 1.32% (before contractual fee waivers and expense reimbursements).

32. Several benefits may be added to the Scheduled Premium Contracts by rider. These additional benefits usually require an additional charge against premium payments. Not all riders are available to all Scheduled Premium Contract owners, and restrictions on rider coverage may apply in some states. NELICO may make other riders available in the future. These additional benefits include: Level Term Insurance; Accidental Death Benefit; Option to Purchase Additional Life Insurance; Waiver of Premiums—Disability of Insured; Waiver of Premiums—Disability of Applicant; Waiver of Premiums—Death of Applicant; Waiver of Premiums—Death or Disability of Applicant; Temporary Term Insurance; Children's Insurance—provides insurance on the lives of the insured's children; and Guaranteed Income Benefit (not available under the Zenith Life Contract or the Zenith Life Plus Contract).

Exchange Offer

33. Applicants propose to offer owners of the Scheduled Premium Contracts the opportunity to exchange their contracts for Zenith 2001 Contracts (''Exchanged Zenith 2001 Contracts''). For reasons set forth below, Applicants believe that the proposed exchanges will benefit current Scheduled Premium Contract owners.

- The Exchanged Zenith 2001 Contracts offer greater investment flexibility than is available under the Scheduled Premium Contracts because the Exchanged Zenith 2001 Contract gives the contract owner the flexibility to make premium payments as he or she determines. The Scheduled Premium Contracts, by contrast, require that premium payments be made on a schedule prescribed by NELICO; failure to pay a scheduled premium may result in lapse of the Scheduled Premium Contract.
- The ability to change the death benefit option under the Exchanged Zenith 2001 Contract after the first contract year enables contract owners to alter their coverage by, for example, building cash values more quickly or increasing total death benefit amounts available under their contracts.
- The ability to increase contract face amount by acquiring an ''increase contract,'' which has no policy charge and is available at a lower face amount than would otherwise be available under a Zenith 2001 Contract, enables contract owners to adjust their contract benefits to account for changes (*i.e.*, increases) in their need for coverage. This ''increase contract,'' used to effect the increase in face amount increase, would be a new Zenith 2001 Contract that is separate from the Exchanged Zenith 2001 Contract.
- The maximum surrender charge period under the Exchanged Zenith 2001 Contract is 10 years, one year shorter than the maximum surrender charge period that would be applicable if the Zenith 2001 Contract were purchased independently of the proposed exchange. Surrender charges will be waived entirely for Zenith 2001 Contracts exchanged for Zenith Life Contracts. Each of the other Scheduled Premium Contracts has a longer surrender charge period than the Exchanged Zenith 2001 Contract—11 years for the Zenith Variable Whole Life Contract, and 15 years for the Zenith Life Plus Contract, the Zenith Life Plus II Contract, and the Zenith Life Executive 65 Contract.
- Contract owners will receive credit for the amount of time they held the Scheduled Premium Contract in determining any surrender charge applicable to the Exchanged Zenith 2001 Contract. Although NELICO will make adjustments to the otherwise applicable surrender charges under the Exchanged Zenith 2001 Contracts, as

described in more detail below, the applicable surrender charges under the Exchanged Zenith 2001 Contract will be the same as or lower than those that would apply under the Scheduled Premium Contracts that are exchanged for Zenith 2001 Contracts.

34. The exchange offer will only be made to owners of Scheduled Premium Contracts that satisfy the new business criteria of the Zenith 2001 Contract. To be eligible for the exchange, the face amount of the Scheduled Premium Contract must be at least $25,000 ($50,000 in New Jersey), the insured generally must be age 85 or younger, and an insured in a substandard risk class must meet certain other eligibility criteria. NELICO will notify eligible Scheduled Premium Contract owners of the exchange offer.

35. By supplements to the Scheduled Premium Contracts dated May 1, 2004, NELICO notified contract owners that it had applied to the Commission for approval of the proposed exchange offer and instructed the Scheduled Premium Contract owner to contact his or her registered representative to learn more about the availability of the proposed exchange program.

36. Contract owners who express an interest in the exchange offer will be provided, at no charge, with: (i) A prospectus for the Zenith 2001 Contract; (ii) personalized illustrations for the Exchanged Zenith 2001 Contract, showing one or more gross rates of return (including 0%) and reflecting (with equal prominence) both current and guaranteed charges under the Contract; (iii) personalized in-force illustrations of the relevant Scheduled Premium Contract (where available) [1] or a comparison of values and/or a comparison of relative costs and benefits of the relevant Scheduled Premium Contract, showing one or more gross rates of return (including 0%) and reflecting (with equal prominence) both current and guaranteed charges under the Contract; and (iv) non-personalized materials explaining, concisely and in ''Plain English,'' the terms of the exchange offer, the material differences between the contracts, and the material respects in which aspects of the Exchanged Zenith 2001 Contract are less favorable than aspects of the Scheduled Premium Contract that is being exchanged, including a general discussion of charges that are higher under the Exchanged Zenith 2001 Contract. Applicants believe the disclosure and illustration(s) given to Scheduled Premium Contract owners will provide sufficient information for them to determine which contract is better for them.

37. Under the exchange, a Zenith 2001 Contract will be issued by NELICO at the insured's attained age at the time of the exchange with the date of exchange as the issue date. The exchange offer will provide that, upon acceptance of the offer, a Zenith 2001 Contract will generally be issued with the same face amount as the Scheduled Premium Contract surrendered in the exchange.

38. If a contract owner interested in exchanging a Scheduled Premium Contract for a Zenith 2001 Contract wishes to increase the face amount of the Exchanged Zenith 2001 Contract, NELICO may, with underwriting, issue an increase contract that, together with the Exchanged Zenith 2001 Contract, will provide the increased face amount requested.

39. Owners of multiple Scheduled Premium Contracts who accept the proposed exchange offer may exchange each such Scheduled Premium Contract for a separate Exchanged Zenith 2001 Contract. Such contract owners also may exchange two or more of their Scheduled Premium Contracts for a single Exchanged Zenith 2001 Contract, provided that the issue dates for the Scheduled Premium Contracts to be exchanged are no more than two years apart. The surrender charge, if any, applicable to the single Exchanged Zenith 2001 Contract immediately upon the exchange will be determined based on the years remaining in the Scheduled Premium Contract with the shortest remaining surrender charge period.

40. An Exchanged Zenith 2001 Contract will generally be issued with the same death benefit as the respective Scheduled Premium Contract surrendered. For Scheduled Premium Contracts other than the Zenith Life Contract, the Option 1 or Option 2 death benefit selected for the Scheduled Premium Contract will carry over to the Exchanged Zenith 2001 Contract. (Applicants note that the difference in computation of the Option 2 death benefit under the Zenith 2001 Contract and the Scheduled Premium Contracts may result in a slightly higher death benefit under Option 2 of an Exchanged Zenith 2001 Contract than under Option 2 of the Scheduled Premium Contracts.) A Zenith 2001 Contract issued in exchange for a Zenith Life Contract will be issued with an Option 2 death benefit, as that death benefit option most closely corresponds to the only death benefit option available under the Zenith Life Contract. (A contract owner who elects to exchange his/her Scheduled Premium Contract for an Exchanged Zenith 2001 Contract would, in doing so, gain the right to change the death benefit option after the first contract year.)

41. NELICO will apply the cash value of the Scheduled Premium Contract being exchanged to a Zenith 2001 Contract at the time of exchange. The risk class for an Exchanged Zenith 2001 Contract will be the one most similar to the risk class for the Scheduled Premium Contract being exchanged. NELICO will not require new evidence of insurability as a condition of the exchange.

42. If the surrender charge period for an existing Scheduled Premium Contract has not expired at the time of the exchange, any surrender charges on that existing Scheduled Premium Contract will not be assessed when converting over to the Zenith 2001 Contract. NELICO will not apply the front-end sales load applicable to Zenith 2001 Contracts to the cash value of the Scheduled Premium Contract exchanged, but will deduct that front-end sales load from any new premiums paid into the Exchanged Zenith 2001 Contracts at the time of, or subsequent to, the exchange.

43. Surrender charges will be waived entirely on Zenith 2001 Contracts issued in exchange for Zenith Life Contracts. For Zenith 2001 Contracts issued in exchange for any other Scheduled Premium Contract, a surrender charge consisting of a deferred sales charge and a deferred administrative charge will apply. Contract owners will receive credit for the amount of time they held the Scheduled Premium Contract in determining any surrender charge applicable to the Exchanged Zenith 2001 Contract. Furthermore, Exchanged Zenith 2001 Contracts will impose a maximum surrender charge period of 10 years, as opposed to the 11-year maximum surrender charge period applicable to Zenith 2001 Contracts. The remaining surrender charge period under the Exchanged Zenith 2001 Contract immediately upon exchange is the difference between the Exchanged Zenith 2001 Contract's surrender charge period (10 years) and the number of years the contract owner held the Scheduled Premium Contract, rounded up to the next contract anniversary.

44. Each of the Scheduled Premium Contracts (other than the Zenith Life Contract) has a longer surrender charge period than the Exchanged Zenith 2001

[1] NELICO plans to have system capabilities to generate personalized in-force illustrations for most Scheduled Premium Contracts. However, NELICO may only be able to provide owners of the Zenith Life Contract and owners of certain classes of the other Scheduled Premium Contracts with a comparison of premiums, cash values and death benefits.

Contract; the Zenith Variable Whole Life Contract has a maximum 11-year surrender charge period and the other Scheduled Premium Contracts (other than the Zenith Life Contract) have a 15-year surrender charge period. Accordingly, NELICO has modified the surrender charge schedule applicable to the Exchanged Zenith 2001 Contract to discourage Scheduled Premium Contract owners from exchanging their contracts solely to avoid or significantly reduce the applicable surrender charges. These adjustments are as follows:

- The deferred sales charge applicable to an Exchanged Zenith 2001 Contract will be based on the ratio of (A) to (B), multiplied by (C), where:
  - (A) is the deferred sales charge percentage under the Zenith 2001 Contract corresponding to the number of years the contract owner held the Scheduled Premium Contract (rounded up as described above);
  - (B) is the maximum deferred sales charge percentage assessed under the Zenith 2001 Contract for the applicable age (up to 72%); and
  - (C) is the applicable deferred sales charge percentage for the contract year of the Exchanged Zenith 2001 Contract that would apply to a Zenith 2001 Contract purchased at the time of the exchange.
- Similarly, the deferred administration charge assessed under the Exchanged Zenith 2001 Contract will be based on the ratio of (A) to (B), multiplied by (C), where:
  - (A) is the deferred administrative charge amount under the Zenith 2001 Contract corresponding to the number of years the contract owner held the Scheduled Premium Contract (adjusted as described above);
  - (B) is the maximum deferred administrative charge amount assessed under the Zenith 2001 Contract for the applicable age (up to $2.50 per $1,000 of face amount); and
  - (C) is the applicable deferred administrative charge amount for the contract year of the Exchanged Zenith 2001 Contract that would apply to a Zenith 2001 contract purchased at the time of the exchange.

45. Applicants propose to make further adjustments to the surrender charges applicable to the Exchanged Zenith 2001 Contracts to minimize the possibility that the surrender charge under the Exchanged Zenith 2001 Contract will exceed the corresponding surrender charge on the existing Scheduled Premium Contract. In addition, the Company will monitor each individual Exchanged Zenith 2001 Contract on an ongoing basis and will make any further adjustments as may be needed to ensure that the surrender charge under that Exchanged Zenith 2001 Contract will be the same or lower than under the exchanged Scheduled Premium Contract. With these adjustments and the ongoing monitoring of the imposition of any surrender charges on Exchanged Zenith 2001 Contracts), the Applicants represent that the surrender charge under the Exchanged Zenith 2001 Contract will be the same or lower for all Scheduled Premium Contract owners who exchange their contracts for Zenith 2001 Contracts.

46. Additional benefits attached to a Scheduled Premium Contract surrendered in an exchange will carry over to the Zenith 2001 Contract acquired in the exchange only if that additional benefit (or a substantially equivalent additional benefit) is available under the Zenith 2001 Contract. Additional benefits available under the Zenith 2001 Contract—but not the Scheduled Premium Contracts—may be acquired at the time of the exchange, but may occasion the need for new evidence of insurability. Additional benefits available under the Scheduled Premium Contracts—but not the Zenith 2001 Contract—and their related charges, if any, will not be carried over to the Exchanged Zenith 2001 Contracts.

47. Loans under a Scheduled Premium Contract must be repaid prior to, or at the time of, the exchange. Loans may be repaid prior to the exchange in cash or by means of a partial surrender or a partial withdrawal (in the amount of the unpaid loan and interest thereon). Loans not repaid prior to the exchange will be repaid at the time of the exchange by applying a portion of the surrender proceeds to the amount of the loan and loan interest. In the event a loan is repaid by taking a partial surrender or a partial withdrawal before the exchange or by applying a portion of the surrender proceeds at the time of the exchange, the death benefit of the Scheduled Premium Contract will be reduced (and the face amount of the Scheduled Premium Contract may be reduced). Any communications with Scheduled Premium Contract owners describing the exchange offer will include the fact that loans must be repaid before or at the time of the exchange, as well as disclosure regarding the effects of repaying loans by means other than in cash, including potential adverse tax consequences.

48. To accept an exchange offer, a Scheduled Premium Contract owner must return his or her contract (or submit a lost policy statement) and submit a supplemental application for an Exchanged Zenith 2001 Contract. NELICO will treat any premiums submitted with the supplemental application requesting the exchange as payments under the Exchanged Zenith 2001 Contract as of the date of issue of the Exchanged Zenith 2001 Contract. All costs associated with the administration of the exchange offer will be borne by NELICO.

Applicants' Legal Analysis

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

2. Section 11(c) of the Act provides, as relevant here, that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company must be approved by the Commission or satisfy applicable rules adopted under section 11, regardless of the basis of the exchange.

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

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

5. Applicants contend that the purpose of section 11 of the Act is to prevent "switching"—the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges. Congress found evidence of

widespread ''switching'' operations in the 1930s prior to adoption of the Act. Applicants assert that the legislative history of Section 11 makes it clear that the potential for harm to investors perceived in switching was its use to extract additional sales charges from those investors. Accordingly, according to Applicants, applications under section 11(a) and orders granting those applications appropriately have focused on sales loads or sales load differentials and administrative fees to be imposed for effecting a proposed exchange and have ignored other fees and charges, such as relative advisory fee charges of the exchanged and acquired securities.

6. Rule 11a–2, adopted in 1983 under Section 11 of the Act, by its express terms, provides blanket Commission approval of certain offers of exchange of one variable annuity contract for another or of one variable life insurance contract for another. Rule 11a–2 permits variable annuity exchanges as long as the only variance from a relative net asset value exchange is an administrative fee disclosed in the registration statement of the offering separate account, and a sales load or sales load differential calculated according to methods prescribed in the rule. Variable life insurance exchanges may vary from relative net asset exchanges only by reason of disclosed administrative fees; no sales loads or sales load differentials are permitted under the rule for such exchanges. Applicants note, however, that there is language in the adopting release for Rule 11a–2 that suggests that the rule may have been intended to permit exchanges for funding options within a single variable life insurance contract, but not the exchange of one such contract for another.

7. Given the terms of the exchange offer, Applicants do not meet the specific requirements of Rule 11a–2. Applicants note, however, that the surrender charge schedule under the existing Scheduled Premium Contracts was designed to cover the costs associated with the original sales of those contracts. If the sales charge structure under the Exchanged Zenith 2001 Contract is applied to the cash value transferred under the exchange, then some contract owners may exchange their Scheduled Premium Contracts with the intent to then surrender the Exchanged Zenith 2001 Contract and incur no or a lower surrender charge. Accordingly, NELICO has modified the surrender charge schedule applicable to the Exchanged Zenith 2001 Contracts to discourage owners of Scheduled Premium Contracts being exchanged from exchanging their contracts solely to avoid or significantly reduce the applicable surrender charges.

8. Adoption of Rule 11a–3 under the Act, permitting certain exchange offers by open-end investment companies other than separate accounts, represents the most recent Commission action under section 11 of the Act. Rule 11a–3 permits an offering company (that is an open-end management company) to charge exchanging security holders a sales load on the acquired security, a redemption fee, an administration fee, or any combination of the foregoing, provided that certain conditions are met. As with Rule 11a–2, Rule 11a–3 focuses primarily on sales or administrative charges that would be incurred by investors for effecting exchanges. Because the investment company involved in the proposed exchange is a separate account, and because the investment company is organized as a unit investment trust rather than as a management investment company, Applicants may not rely on Rule 11a–3.

9. Applicants submit that the terms of the exchange offer are, nevertheless, consistent with the legislative intent of section 11, and that the exchange has not been proposed solely for the purpose of exacting additional selling charges and profits from investors by switching them from one security to another. In support of this contention, Applicants note the following:

- No additional sales load or administrative charge will be imposed at the time of exchange. The contract value and face amount of a contract acquired in the proposed exchange (*i.e.*, the Exchanged Zenith 2001 Contract) will be no lower immediately after the exchange than that of the contract exchanged (*i.e.*, a Scheduled Premium Contract) immediately prior to the exchange (unless a loan is repaid by applying a portion of the surrender proceeds at the time of the exchange).
- Although the surrender charges applicable under the Exchanged Zenith 2001 Contract will differ from the surrender charges imposed under Zenith 2001 Contracts, NELICO will ''tack'' the time the contract owner owned the Scheduled Premium Contract for purposes of calculating the surrender charge period under the Exchanged Zenith 2001 Contract, in accordance with the requirements of Rule 11a–2 and Rule 11a–3 under the Act. Surrender charges will be waived entirely on Exchanged Zenith 2001 Contracts issued in exchange for Zenith Life Contracts. In addition, the shorter (11-year) surrender charge period applicable under the Exchanged Zenith 2001 Contract will relieve many Scheduled Premium Contract owners of several remaining years of surrender charges as a result of the exchange. Moreover, the surrender charges under the Exchanged Zenith 2001 Contracts will be the same as or lower than those that would apply under the Scheduled Premium Contracts that are exchanged for Zenith 2001 Contracts.
- Contract owners will receive sufficient information to determine which contract best suits their needs.

10. Applicants assert that permitting contract owners to evaluate the relative merits of the exchange offers and to select the contract that best suits their circumstances and preferences fosters competition and is consistent with the public interest and the protection of investors. Accordingly, according to applicants, not only is the exchange offer consistent with the protections afforded by section 11 of the Act and the rules promulgated thereunder, but approval of the terms of the exchange offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Conclusion

For the reasons summarized above, Applicants represent that: (i) The proposed exchange offer is consistent with the intent and purpose of Section 11 of the Act and the protection of investors and the purposes fairly intended by the policy and provisions of the Act; and (ii) the terms of the proposed exchange are ones that may properly be approved by an order issued by the Division of Investment Management pursuant to delegated authority.

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. IC–26838; 812–13182]

The PNC Financial Services Group, Inc., et al.; Notice of Application

April 21, 2005.

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

ACTION: Notice of application for a permanent order under section 9(c) of