Account I–NY. Applicants contend, however, that recapture of the Contract Enhancement does not violate section 22(c) and Rule 22c–1. Applicants argue that the recapture does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. See Adoption of Rule 22c–1 under the 1940 Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of a Contract Enhancement, Jackson National NY will redeem interests in an owner's Contract value at a price determined on the basis of current net asset value of Separate Account I–NY. The amount recaptured will equal (or may be less, depending upon the year of the recapture) the amount of the Contract Enhancement that Jackson National NY paid out if its general account assets. Although Owners will be entitled to retain any investment gain attributable to the Contract Enhancement, the amount of such gain will be determined on the basis of the current net asset value of Separate Account I–NY. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts and Future Contracts.

11. Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in their application described herein. Applicants submit that having them file additional applications would impair their ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the application, investors would not receive any benefit or additional protection thereby.

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are 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.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 01–8903 Filed 4–10–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24925; File No. 812–12368]

New England Life Insurance Company, et al.

April 5, 2001.

AGENCY: The Securities and Exchange Commission (''SEC'' or ''Commission''.

SUMMARY OF THE APPLICATION: The Section 26 Applicants request an order pursuant to section 26(b) of the 1940 Act to permit certain registered unit investment trusts to substitute Class A shares of the MetLife Stock Index Portfolio (the ''Replacement Portfolio'') of the Metropolitan Series for shares of the Westpeak Stock Index Series (the ''Substituted Portfolio,'' and together with the Replacement Portfolio, the ''Portfolios'') of the Zenith Fund currently held by those unit investment trusts. The Section 17(b) Applicants request an order pursuant to section 17(b) of the 1940 Act to permit certain in-kind transactions in connection with the substitution.

APPLICANTS: New England Life Insurance Company (''NELICO''), New England Variable Life Separate Account (''Separate Account 1''), Metropolitan Life Insurance Company (''MetLife''), The New England Variable Account (''Separate Account 2'') (together with Separate Account 1, the ''Separate Accounts''), the Metropolitan Series Fund, Inc. (''Metropolitan Series''), and the New England Zenith Fund (the ''Zenith Fund''). NELICO, MetLife, and the Separate Accounts are collectively referred to herein as the ''Section 26 Applicants.'' The Section 26 Applicants, the Metropolitan Series, and the Zenith Fund are collectively referred to herein as the ''Section 17(b) Applicants'' or ''Applicants.''

FILING DATE: The application (''Application'') was filed on December 19, 2000 and amended and restated on April 5, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 26, 2001, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Thomas Lenz, Esq. and Marie C. Swift, Esq., New England Life Insurance Company, 501 Boylston Street, Massachusetts 02116. Copy to Stephen E. Roth, Esq. and Kimberly J. Smith, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Ave., NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, or Keith Carpenter, Branch Chief, Division of Investment Management, Office of Insurance Products, 202–942–0670.

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

Applicants' Representations

1. NELICO is a life insurance company that is domiciled in Massachusetts. Its operations include both life insurance and annuity products as well as financial and retirement services. As of September 30, 2000, NELICO had assets of approximately $8.1 billion. NELICO is authorized to operate as a life insurance

company in all states, the District of Columbia and Puerto Rico. NELICO was originally organized as New England Variable Life Insurance Company, a stock life insurance company, in Delaware in 1980, and was a wholly owned subsidiary of New England Mutual Life Insurance Company. On August 30, 1996, New England Mutual Life Insurance Company merged with and into MetLife. MetLife became the parent of New England Variable Life Insurance Company, which changes its name to ''New England Life Insurance Company,'' and changed its domicile from the State of Delaware to the Commonwealth of Massachusetts. NELICO is the depositor and sponsor of Separate Account 1.

2. Separate Account 1 is a separate investment account of NELICO and is registered under the 1940 Act as a unit investment trust. Separate Account 1 serves as a funding vehicle for certain variable life insurance contracts issued by NELICO (collectively, ''NELICO Life Contracts''). Separate Account 1 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

3, MetLife is a life insurance company that is domiciled in New York, and is a wholly owned subsidiary of MetLife, Inc., a publicly traded company that provides insurance and financial services to individual and group customers. With approximately $301 billion of assets under management as of September 30, 2000, MetLife provides individual insurance and investment products to approximately nine million households in the United States. MetLife also provides group insurance and investment products to corporations and other institutions employing over thirty three million employees and members. MetLife operates as a life insurance company in all fifty states, the District of Columbia, Puerto Rico, and all provinces of Canada. MetLife is the depositor and sponsor of Separate Account 2.

4. Separate Account 2 is a separate investment account MetLife and is registered under the 1940 Act as a unit investment trust. Separate Account 2 serves as a funding vehicle for certain variable annuity contracts originally issued by New England Mutual Life Insurance Company, and subsequent to its merger with and into MetLife, by MetLife (''MetLife Va Contracts'') (together with the NELICO Life Contracts, the ''Variable Contracts''). Separate Account 2 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

5. New England Securities Corporation ''NES'', serves as principal underwriter and distributor for the Variable Contracts. NES is an indirect wholly owned subsidiary of NELICO. NES is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. NES may enter into selling agreements with other broker-dealers registered under the Securities Exchange Act of 1934 whose representatives are authorized by applicable law to sell the Variable Contracts.

6. The Zenith Fund is registered as an open-end management investment company under the 1940 Act (File No. 811–3728) and currently offers sixteen separate investment portfolios, one of which would be involved in the proposed substitution. The Zenith Fund issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the Securities Act of 1933 (''1933 Act'') on form N–1A (File No. 2–83538). New England Investment Management, LLC (''NEIM'') serves as the investment manager to each portfolio except the Capital Growth Series, which is managed by Capital Growth Management Limited Partnership. NEIM (formerly named TNE Advisers, Inc.) is an indirect wholly owned subsidiary of NELICO. NEIM receives an investment advisory fee from each portfolio it manages. NEIM has contracted with subadvisers to make the day-to-day investment decision for all portfolios it manages. Subadvisers are compensated by NEIM, and not by the Zenith Fund. NEIM derives the amounts that it pays the subadvisers from its own investment advisory fees. Westpeak Investment Advisors, L.P. (''WIA'') is the subadviser to the Substituted Portfolio.

7. The Metropolitan Series is registered as an open-end management investment company under the 1940 Act (File No. 811–3618) and currently offers twenty separate investment portfolios, one of which would be involved in the proposed substitution. The Metropolitan Series issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A (File No. 2–80751). MetLife serves as the investment manager to each portfolio, for which it receives investment advisory fees. MetLife is also responsible for the day-to-day investment decisions for certain portfolios it manages, including the Replacement Portfolio. MetLife has contracted with subadvisers to make the day-to-day investment decisions for other portfolios it manages. Subadvisers are compensated by MetLife, and not by the Metropolitan Series. MetLife derives the amounts that it pays the subadvisers from its own investment advisory fees.[1]

8. The following chart sets out the investment objectives and certain policies of the Substituted Portfolio and the Replacement Portfolio, as stated in their respective prospectuses and statements of additional information.

Substituted portfolio	Replacement portfolio
Investment Objective:	
Investment results that correspond to the composite price and yield performance of the Standard & Poor's 500 Composite Stock Price Index (''S&P 500 Index'').	To equal the performance of the S&P 500 Index.
Investment Policies:	
WIA attempts to replicate the composite price and yield performance, before expenses, of the S&P 500 Index, which is dominated by large capitalization stocks. WIA will ordinarily invest the Portfolio's assets in all of the 500 stocks included in the S&P 500 Index. WIA collects data each day on the proportions of the 500 stocks included in the S&P 500 Index. Each month, WIA purchases and sells stocks as necessary to replicate the proportions of stocks included in the S&P 500 Index.	The Portfolio will normally invest most of its assets in common stocks included in the S&P 500 Index. The S&P 500 Index consists of 500 common stocks, most of which are listed on the New York Stock Exchange. The Portfolio will be managed by purchasing the common stock of all the companies in the S&P 500 Index. The stocks included in the S&P 500 Index are issued by companies among those whose outstanding stock have the largest aggregate market value, although stocks that are not among the 500 largest are included in the S&P 500 Index for diversification purposes.

[1] Effective May 1, 2001 NEIM will become the investment adviser for the Replacement Portfolio and MetLife will become the subadviser for the Replacement Portfolio. Applicants state that this change will have no effect on the management fees imposed on the Replacement Portfolio.

Substituted portfolio	Replacement portfolio
	The Portfolio also expects to invest, as a principal investment strategy, in securities index futures contracts and/or related options to simulate full investments in the S&P 500 Index while retaining liquidity, to facilitate trading, to reduce transaction costs or to seek higher return when these derivatives are priced more attractively than the underlying security. Also, since the portfolio attempts to keep transaction costs low, the portfolio manager generally will rebalance the Portfolio only if it deviates from the S&P 500 Index by a certain percent. MetLife monitors the tracking performance of the Portfolio through examination of the ''correlation coefficient''. A perfect correlation would produce a coefficient of 1.00. The Portfolio will attempt to maintain a target correlation coefficient of at least .95.

9. The following chart compares the fees payable for advisory and subadvisory services for the year ending December 31, 2000, expressed as an annual percentage of average daily net assets, by the Substituted Portfolio and the Replacement Portfolio.

Substituted portfolio		Replacement portfolio (Class A) [2]	
Advisory fees	Subadvisory fees (paid by adviser)	Advisory fees	Subadvisory fees (paid by adviser)
0.25%	0.10%	0.25%	Prior to 5/1/01—none; after 5/1/01—at cost

[2] Beginning in January of 2001, Class B shares of the Replacement Portfolio, upon which fees are imposed under a plan adopted pursuant to Rule 12b–1 under the 1940 Act, became available for the allocation of purchase payments and contract value under certain MetLife VA Contracts.

10. The following chart compares the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 2000, expressed as an annual percentage of average daily net assets, of the Substituted Portfolio and the Replacement Portfolio. Neither the Substituted Portfolio nor Class A shares of the Replacement Portfolio have adopted any plan pursuant to Rule 12b–1 under the 1940 Act.

	Substituted portfolio	Replacement portfolio (Class A)
Management fees	.25%	.25%
Other expenses	.08	.03
Total operating expenses	.33	.28
Less expense waivers and reimbursements	—	—
Net operating expenses	.33%	.28%

11. Pursuant to their authority under the respective Variable Contracts and the prospectuses describing the same, and subject to the approval of the Commission under section 26(b) of the 1940 Act, NELICO and MetLife propose to substitute Class A shares of the Replacement Portfolio for shares of the Substituted Portfolio in the Separate Accounts (the ''Substitution''). Following this transaction, the Separate Accounts will each have two subaccounts holding shares of the Replacement Portfolio. The Separate Accounts will each combine the two subaccounts holding shares of the Replacement Portfolio by transferring shares on the same date from one of the subaccounts holding shares of the Replacement Portfolio to the other subaccount holding shares of the Replacement Portfolio. The net effect will be to eliminate one of the subaccounts in each Separate Account. The Replacement Portfolio would receive monies or in-kind securities from the Substituted Portfolio as a result of the Substitution.

12. The Section 26 Applicants state that the investment objectives and policies of the Replacement Portfolio are substantially similar to those of the Substituted Portfolio so that Variable Contract owners will have reasonable continuity in investment and risk expectations. In addition, the Section 26 Applicants state that the types of investment advisory and administrative services provided to the Replacement Portfolio are comparable to the types of investment advisory and administrative services provided to the Substituted Portfolio.

13. The Section 26 Applicants state that the Substitution is part of efforts by NELICO and MetLife to make their Variable Contracts more efficient to administer and oversee and, thus, more cost-efficient and attractive to customers. According to the Section 26 Applicants, the Substitution reflects a determination by NELICO and MetLife that Variable Contract owners should have available under their Variable Contracts a more cost efficient mutual fund with good prospects for growth to help Variable Contract owners meet their investment goals under the Variable Contracts. In particular, the Section 26 Applicants point out that replacing the Substituted Portfolio with the Replacement Portfolio is appropriate

and in the best interests of Variable Contract owners, who will benefit from an underlying fund with more than $4 billion in assets, as compared to the less than $300 million in assets of the Substituted Fund; with lower expenses; and with good prospects for growth.

14. NELICO and MetLife will effect the Substitution on or about April 27, 2001 following the issuance of the requested order as follows: As of the effective date of the Substitution (''Effective Date''), shares of the Substituted Portfolio will be redeemed in cash or in-kind by NELICO and MetLife. The proceeds of such redemptions will then be used to purchase shares of the Replacement Portfolio either by cash purchases or in-kind purchases, with each subaccount of the Separate Accounts investing the proceeds of its redemption from the Substituted Portfolio in the Replacement Portfolio.

15. All redemptions of shares of the Substituted Portfolio and purchases of shares of the Replacement Portfolio will be effected in accordance with Rule 22c–1 of the 1940 Act. The Substitution will take place at relative net asset value with no change in the amount of any Variable Contract owner's contract value or death benefit or in the dollar value of his or her investments in any of the subaccounts. Variable Contract owners will not incur any additional fees or charges as a result of the Substitution, nor will their rights or NELICO's and MetLife's obligations under the Variable Contracts be altered in any way. All expenses incurred in connection with the Substitution, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by NELICO and MetLife. In addition, the Substitution will not impose any tax liability on Variable Contract owners. The Substitution will not cause the Variable Contract fees and charges currently paid by existing Variable Contract owners to be greater after the Substitution than before the Substitution. Neither NELICO nor MetLife will exercise any right it may have under the Variable Contracts to impose restrictions on transfers under the Variable Contracts for a period of at least thirty days following the Substitution.

16. For each period (not to exceed a fiscal quarter) during the 24 months following the date of the Substitution, NELICO and MetLife will reimburse (on the last business day of any such period) any subaccount available through a Variable Contract and investing in the Replacement Portfolio such that the sum of the Replacement Portfolio operating expenses (taking into account expense waivers and reimbursements) together with subaccount expenses [3] for such period on an annualized basis will not exceed the following limits (which equal, for each Variable Contract, the Substituted Portfolio operating expenses, 0.33%, together with any subaccount expenses for the fiscal year prior to the Substitution) for those Variable Contract owners who were Variable Contract owners on the date of the Substitution:

Variable contract	Expense cap (in percent)
NELICO Zenith Life One	0.78
NELICO Zenith Flexible Life	0.93
NELICO Zenith Variable Whole Life	0.93
NELICO Zenith Survivorship Life	1.08
NELICO Zenith Survivorship Life Plus	0.33
NELICO American Gateway Series	0.33
NELICO Zenith Life	0.68
NELICO Zenith Life Plus	0.93
NELICO Zenith Life Executive 65	0.93
NELICO Zenith Executive Advantage Plus	0.33
NELICO Zenith Executive Advantage 2000	0.33
NELICO Zenith Life Plus II	0.93
MetLife Zenith Accumulator	1.68

In addition, for those Variable Contract owners who owned a Variable Contract for which mortality and expense risk charges are not subaccount expenses (*i.e.,* NELICO Zenith Survivorship Life Plus, NELICO American Gateway Series, NELICO Zenith Executive Advantage Plus, or NELICO Zenith Executive Advantage 2000) on the date of the Substitution, NELICO will not increase current mortality and expense risk charges for a period of 24 months following the date of the Substitution.

17. Each of NELICO and MetLife reserves the right to substitute shares of one portfolio for shares of another, under the NELICO Life Contracts and the MetLife VA Contracts, respectively, and this right has been disclosed in the prospectuses. Variable Contract owners were notified of the Application by means of a supplement to the prospectus for each of the Variable Contracts that disclose that the Section 26 Applicants intended to file the Application and seek approval for the Substitution.

18. Further, before the Effective Date, a notice (''Pre-Substitution Notice''), in the form of an additional supplement to the prospectuses for the Variable Contracts, will be mailed to Variable Contract owners setting forth the scheduled Effective Date and advising Variable Contract owners that contract values attributable to investments in the Substituted Portfolio will be transferred to the Replacement Portfolio, without charge and, when relevant, without counting toward the number of transfers permitted without charge, on the Effective Date. The Pre-Substitution Notice will state that, from the date the Application was filed with the Commission through the date 30 days after the substitution, Variable Contract owners may make a transfer of contract value from the subaccount corresponding to the Substituted Portfolio (before the Substitution) and make a transfer of contract value from the subaccount corresponding to the Replacement Portfolio (after the Substitution) to any other subaccount without charge and without those transfers counting toward the number permitted without charge under the Variable Contract (regardless of whether during the accumulation period or the annuity period). In addition, within five days after the Substitution, any Variable Contract owners who were affected by the Substitution will be sent a written notice informing them that the Substitution was carried out and advising them of their transfer rights (''Post-Substitituon Notice'').

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(b) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the 1940 Act.

2. Section 26(b) was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substitute security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the

[3] Subaccount expenses refer to those asset-based expenses that are deducted on a daily basis from subaccount assets, and either reflected in the calculation of subaccount unit values (for ''unitized'' Variable Contracts) or deducted as a percentage of a Variable Contract's share of subaccount assets (for ''non-unitized'' Variable Contracts). Examples of subaccount expenses may include the mortality and expense risk charge or administrative charge.

proceeds of redemption, or both. The section was designed to forestall the ability of a depositor to present holders of interest in a unit investment trust with situations in which a holder's only choice would be to continue an investment in an unsuitable underlying security, or to elect a costly and, in effect, forced redemption. The Section 26 Applicants submit that the Substitution meets the standards set forth in section 26(b) and that, if implemented, the Substitution would not raise any of the aforementioned concerns that Congress intended to address when the 1940 Act was amended to include this provision.

3. The Section 26 Applicants assert that the replacement of the Substituted Portfolio with the Replacement Portfolio is consistent with the protection of Variable Contract owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to section 26(b) of the 1940 Act. The Section 26 Applicants contend that the investment objectives, policies, and strategies of the Replacement Portfolio are substantially comparable to those of the Substituted Portfolio.

4. NEIM currently serves as investment adviser for the Substituted Portfolio. Investment management decisions for the Substituted Portfolio are made by WIA in its capacity as subadviser. Prior to August 1, 1993, Back Bay Advisors served as subadviser to the Substituted Portfolio. The investment adviser for the Replacement Portfolio is MetLife, who also oversees the daily investment management decisions. Effective May 1, 2000, NEIM, which will have been renamed MetLife Advisers, LLC, will become the investment adviser for the Replacement Portfolio, and MetLife will become the subadviser.

5. The Section 26 Applicants state that the Replacement Portfolio had significantly more assets as of December 31, 2000 as compared to the Substituted Portfolio, which has not gathered as many assets as expected by NELICO and MetLife. The Section 26 Applicants state that the Replacement Portfolio, accordingly, benefits from greater economies of scale. Further, the expense ratio for the Replacement Portfolio as of December 31, 2000 was lower than the expense ratio for the Substituted Portfolio. The Section 26 Applicants state that, since both portfolios hold all 500 securities in the S&P Index in the same proportion as the index, the respective expense ratios of the portfolios are the primary cause of tracking error (*i.e.,* the difference between the performance of the Replacement Portfolio and the performance of the S&P 500 Index). The Section 26 Applicants anticipate, accordingly, that the Replacement Portfolio's tracking error will be lower, over time, than the Substituted Portfolio's tracking error.

6. The following table compares the respective asset levels and expense ratios of the two portfolios as of December 31, 2000. The table also compares performance data as of December 31, 2000 for the two portfolios as well as for the S&P 500 Index.

Portfolio	Fund adviser or subadviser	Asset levels (as of 12/31/00)	Expense ratios (for the year ended 12/31/00) (in percent)	Performance (as of December 31, 2000)	
					In percent
Substituted Portfolio	Westpeak Investment Advisors, L.P. (subadviser).	$268,989,000	.33	1 year	9.0
				5 year	17.8
				10 year	17.0
				Since inception (May 1, 1987).	14.2
Replacement Portfolio	MedLife (adviser)	$3,999,903,000	.28	1 year	9.3
				5 year	17.9
				10 year	17.0
				Since inception (May 1, 1987).	16.1
S&P 500 Stock Index				1 year	9.1
				5 year	18.3
				10 year	17.4
				Since inception May 1, 1987.	14.7
				Since inception May 1, 1990.	16.5

7. Apart from the replacement of the underlying investment vehicle, the rights of the Variable Contract owners and the obligations of NELICO and MetLife under the Variable Contracts would not be altered by the Substitution except, of course, that Variable Contract owners will not have the right to allocate contract value to subaccounts that invest in the Substituted Portfolio. Variable Contract owners will not incur any additional tax liability as a result of the Substitution. NELICO and MetLife will bear the costs of any legal or accounting fees of the Substitution and transactional expenses, including brokerage commissions, in liquidating or transferring the assets of the Substituted Portfolio and purchasing shares of the Replacement Portfolios to be able to make payment to the Separate Accounts in connection with the Substitution.

8. From the date the Application is filed with the Commission to the date 30 days after the Effective Date, Variable Contract owners will have the right to make a transfer of contract value from the subaccounts invested in the Substituted Portfolio (before the Substitution) and to make a transfer of contract value from the subaccount corresponding to the Replacement Portfolio (after the Substitution) to any other subaccount without charge and without those transfers counting toward the number permitted under the Variable Contracts (regardless of whether during the accumulation period or the annuity period). Each Variable Contract owner has received a prospectus supplement regarding the Substitution and will, prior to the Effective Date, receive a prospectus for the Replacement Portfolio. A Pre-

Substitution Notice (in the form of an additional prospectus supplement) regarding the Substitution will also be mailed to Variable Contract owners prior to the Effective Date. The Pre-Substitution Notice will set forth the scheduled Effective Date and advise Variable Contract owners of their transfer rights. The Effective Date will be no earlier than twenty days after the mailing of the Pre-Substitution Notice.

9. The Section 26 Applicants note that, in accordance with the terms of each of the Variable Contracts, no sales charges or surrender charges will apply to transfers in connection with the Substitution, and NELICO and MetLife represent that no such charge shall be imposed. In addition, within five days after the Substitution, any Variable Contract owners who were affected by the Substitution will be sent a Post-Substitution Notice informing them that the Substitution was carried out and advising them of their transfer rights. The Section 26 Applicants assert that the procedures to be implemented are sufficient to assure that each Variable Contract owner's cash values immediately after the Substitution shall be equal to the cash value immediately before the Substitution, and that the Substitution will not affect the value of the interests of those owners of other NELICO and MetLife variable contracts (other than the Variable Contracts) who currently have contract value allocated to any of the portfolios of the Zenith Fund or Metropolitan Series.

10. Any in-kind redemptions and purchases for purposes of the Substitution will be effected in a manner consistent with the investment objectives and policies of the Substituted Portfolio and the Replacement Portfolio. MetLife will review the securities holdings of the Substituted Portfolio and determine which portfolio holdings of the Substituted Portfolio would be suitable investments for the Replacement Portfolio in the overall context of such portfolio's investment objectives and policies and consistent with its management of the Replacement Portfolio. The Section 17(b) Applicants state that securities to be paid out as redemption proceeds and subsequently contributed to the Replacement Portfolio to effect the contemplated in-kind purchases of shares will be valued based on the normal valuation procedures of the redeeming and purchasing Portfolios. The redeeming and purchasing values will be the same. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees or other remuneration will be paid in connection with the in-kind transactions.

11. Section 17(a)(1) and (a)(2) of the 1940 Act generally prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, from selling any security or other property to such registered investment company and from purchasing any security or other property from such registered investment company. NELICO and MetLife anticipate that the Substitution will be done by redeeming shares of the Substituted Portfolio in-kind rather than in cash and then using those assets to purchase shares of the Replacement Portfolio. Redemptions and purchases in-kind involve the purchase of property from a registered investment company and the sale of property to a registered investment company by NELICO and MetLife, each an affiliated person of those investment companies.

12. Pursuant to section 17(a)(1) of the 1940 Act, the section 17(b) Applicants may be considered affiliates of one another based upon the definition of ''affected person'' under section 2(a)(3) of the 1940 Act. Because the Substitution may be effected, in part, by means of in-kind redemptions and subsequent purchases of shares, and also by means of in-kind transactions, the Substitution may be deemed to involve one or more purchases or sales of securities or property between affiliates.

13. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (i) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the 1940 Act; and (iii) the proposed transaction is consistent with the general purposes of the 1940 Act.

14. The Section 17(b) Applicants assert that the terms under which the in-kind redemptions and purchases will be effected are reasonable and fair and do not involve overreaching on the part of any person. According to the Section 17(b) Applicants, the use of in-kind redemptions of such subaccounts is intended to reduce costs and thereby benefit Variable Contract owners. The Section 17(b) Applicants further contend that the transactions will not cause Variable Contract owner interests to be diluted, and represent that the proposed transactions will take place at relative net asset value in conformity with the requirements of section 22(c) of the 1940 Act and Rule 22c–1 thereunder with no change in the amount of any Variable Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Separate Accounts. Variable Contract owners will not suffer any adverse tax consequences as a result of the Substitution. Fees and charges under the Variable Contracts will not increase because of the Substitution.

15. The Section 17(b) Applicants state that the in-kind redemptions and purchases will be transacted in a manner consistent with the policies of both the Substituted Portfolio and the Replacement Portfolio, as recited in their registration statements. According to the section 17(b) Applicants, MetLife will review the securities holdings of the Substituted Portfolio and determine which portfolio holdings of the Substituted Portfolio would be suitable investments for the Replacement Portfolio in the overall context of such Portfolio's investment objectives and policies and consistent with the management of the Replacement Portfolio.

16. The Section 17(b) Applicants assert that the Substitution, as described herein, is consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in Section 1 of the 1940 Act and that the proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. The Section 17(b) Applicants represent that the securities to be paid out as redemption proceeds and subsequently contributed to the Replacement Portfolio to effect the contemplated in-kind purchases of shares will be valued based on the normal valuation procedures of the redeeming Substituted Portfolio and purchasing Replacement Portfolio. The Section 17(b) Applicants state that there will accordingly be no change in value to any Variable Contract owner as a result of the Substitution.

17. The Section 17(b) Applicants request that the Commission issue an order pursuant to section 17(b) of the 1940 Act exempting the Substitution from the provisions of section 17(a) to the extent necessary to permit the Substitution effected, in part, by means of in-kind redemptions and purchases of shares, and also by means of in-kind transactions. The Section 17(b) Applicants submit that, for all of the reasons stated above, the terms of the proposed in-kind redemptions and purchases of shares described above,

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 it 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 Act [3] 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 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

[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).