party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

3. Applicant filed a Certificate of Cancellation with the Delaware Secretary of State on February 15, 1996.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22577 Filed 9–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22189; File No. 812–10180]

The Lincoln National Life Insurance Company, et al.

August 29, 1996.

AGENCY: U.S. Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: The Lincoln National Life Insurance Company (''Lincoln Life''), Lincoln Life & Annuity Company of New York (''Lincoln Life of NY''), Lincoln National Variable Annuity Account L (''Account L''), Lincoln Life & Annuity Company of New York Variable Annuity Account L (''Account L–NY), and LNC Equity Sales Corporation (''LNC'').

RELEVANT ACT SECTIONS: Order requested pursuant to Section 17(b) of the 1940 Act from Section 17(a) thereof, and pursuant to Section 11 of the 1940 Act.

SUMMARY OF APPLICATION: Applicants request an order approving: (i) the transfer of assets from the VA–1 Separate Account of UNUM Life Insurance Company of America (''UNUM VA–1 Separate Account'') to Account L and Account L–NY, and from the VA–1 Separate Account of First UNUM Life Insurance Company of America (''First UNUM VA–1 Separate Account'') to Account L–NY; and (ii) the offer of exchange of interests in the UNUM VA–1 Separate Account for interests in Account L and Account L–NY, and the offer of exchange of interests in the First UNUM VA–1 Separate Account for interests in Account L–NY, through the assumption reinsurance by Lincoln Life and Lincoln Life of NY of group variable annuity contracts issued by UNUM Life Insurance Company of America (''UNUM'') and First UNUM Life Insurance Company of America (''First UNUM'').

FILING DATE: The application was filed on June 3, 1996, and amended and restated on August 28, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 23, 1996, 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 who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: SEC, Secretary, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, John L. Steinkamp, Esq., The Lincoln National Life Insurance Company, 1300 South Clinton Street, P.O. Box 1110, Fort Wayne, Indiana 46801.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Lincoln Life, a stock life insurance company organized in Indiana in 1905, is principally engaged in the sale of life insurance and annuity policies. Lincoln Life is wholly-owned by Lincoln National Corporation, a publicly-held insurance and financial services company.

2. Lincoln Life of NY is a stock life insurance company incorporated under the laws of New York in 1996. Lincoln Life of NY is principally engaged in the sale of life insurance and annuity policies in the State of New York, and is a wholly-owned subsidiary of Lincoln Life.

3. LNC will serve as the principal underwriter and distributor of group variable annuity contracts issued through Account L (the ''Lincoln Life Contracts'') and group variable annuity contracts issued through Account L–NY (the ''Lincoln Life of NY Contracts''). LNC is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. LNC is a wholly-owned subsidiary of Lincoln National Corporation.

4. Account L, a separate account established in Indiana on April 29, 1996, pursuant to a resolution of the board of directors of Lincoln Life, will be the funding medium for Lincoln Life Contracts.

5. Account L–NY, a separate account established in New York on July 24, 1996, pursuant to a resolution of the board of directors of Lincoln Life of NY, will be the funding medium for Lincoln Life of New Contracts

6. Lincoln Life and UNUM have entered into an amended and restated asset transfer and acquisition agree, dated as of January 24, 1996 (the ''UNUM Acquisition Agreement''), which provides for the sale of UNUM's tax-sheltered annuity business to Lincoln Life and the assumption of UNUM's obligations under its group variable annuity contracts by Lincoln Life. The UNUM Acquisition Agreement provides that UNUM's group variable annuity contracts issued in states other than New York (the ''UNUM Non-NY Contracts'') will be assumed directly by Lincoln Life, and that UNUM's group variable annuity contracts issued in New York (the ''UNUM NY Contracts'') will be assumed by Lincoln Life of NY.[1] The UNUM Acquisition Agreement also provides that, for a limited period of time after the acquisition is effected and at Lincoln Life's request, UNUM will issue in certain states group variable annuity contracts of the type being assumed by Lincoln Life. The acquisition is to be effected on September 30, 1996, subject to certain state insurance regulatory approvals (the ''Closing Date'').

7. Lincoln Life, on behalf of Lincoln Life of NY, has entered into a virtually identical acquisition agreement with First UNUM dated March 20, 1996 (the ''First UNUM Acquisition Agreement''), which provides for the sale of First UNUM's tax-sheltered annuity business to Lincoln Life of NY and the assumption of First UNUM's obligations under its group variable annuity contracts (the ''First UNUM Contracts'') by Lincoln Life of NY. The First UNUM Acquisition Agreement also provides that for a limited period of time after the acquisition is effected (also on the Closing Date), and at the request of Lincoln Life of NY, First UNUM will issue in New York group variable annuity contracts of the type being assumed by Lincoln Life of NY.

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[1] UNUM formerly issued contracts in New York but no longer does business in that state.

8. Assumption of the UNUM NY Contracts, the UNUM Non-NY Contracts, and the First UNUM Contracts by Lincoln Life and Lincoln Life of NY will occur sometime after the Closing Date, depending on when applicable state insurance department approval and other regulatory approvals are obtained, and subject to giving contractholders and participants the opportunity to opt-out of the transfer to Lincoln Life Contracts or Lincoln Life of NY Contracts. Any participants who opt-out will have either UNUM or First UNUM as the insurer; those participants who do not opt-out will have either Lincoln Life or Lincoln Life of NY as the insurer.

9. The UNUM Non-NY Contracts and the UNUM NY Contracts (together, the ''UNUM Contracts'') represent three types of group variable annuity contracts sold to retirement programs meeting the requirements of Section 403(b) of the Internal Revenue Code of 1986, as amended (the ''Code''). The three types of First UNUM Contracts correspond with the three types of UNUM Contracts, except where differences are required by New York law.

10. Each type of UNUM Contract and each type of First UNUM Contract is registered separately under the Securities Act of 1933 (the ''1933 Act''). The three types of UNUM Contracts are funded by the UNUM VA–1 Separate Account; the three types of First UNUM Contracts are funded by the First UNUM VA–1 Separate Account. Both the UNUM VA–1 Separate Account and the First UNUM VA–1 Separate Account are registered with the Commission under the 1940 Act as unit investment trusts. Each of these separate accounts consists of nine subaccounts; each subaccount invests exclusively in a matching underlying fund.

11. Lincoln Life will enter into administrative services agreements with both UNUM and First UNUM under which, as of the Closing Date, Lincoln Life will be solely responsible for administering the UNUM Contracts, the First UNUM Contracts, the UNUM VA–1 Separate Account, and the First UNUM VA–1 Separate Account.

12. Additionally, Lincoln Life will enter into an indemnity reinsurance agreement (the ''Lincoln Life Indemnity Agreement'') with UNUM which provides for the indemnity reinsurance by Lincoln Life of the general account liabilities of UNUM with respect to the UNUM Non-NY Contracts as of the Closing Date, pending assumption of those contracts by Lincoln Life. Lincoln Life of NY will enter into similar indemnity reinsurance agreements with both UNUM and First UNUM with respect to the UNUM NY Contracts and the First UNUM Contracts (the ''Lincoln Life of NY Indemnity Agreements,'' together with the Lincoln Life Indemnity Agreement, the ''Indemnity Reinsurance Agreements'').

13. Furthermore, Lincoln Life will enter into an assumption reinsurance agreement with UNUM pursuant to which Lincoln Life will assumptively reinsure all of UNUM's obligations under the UNUM Non-NY Contracts. Lincoln Life of NY will enter into virtually identical assumption reinsurance agreements with UNUM and First UNUM pursuant to which Lincoln Life of NY will assumptively reinsure all of UNUM's and First UNUM's obligations under the UNUM NY Contracts and the First UNUM Contracts, respectively. Upon novation, the assets supporting the variable benefits of the reinsured UNUM Non-NY Contracts will be transferred from the UNUM VA–1 Separate Account to Account L, which thereafter will support the relevant UNUM Non-NY Contracts; Lincoln Life will assume all obligations and liabilities of UNUM under those contracts. Similarly, all assets supporting the variable benefits of the reinsured UNUM NY Contracts and First UNUM Contracts will be transferred from the UNUM VA–1 Separate Account and the First UNUM VA–1 Separate Account, respectively, to Account L–NY, which thereafter will support the reinsured UNUM NY Contracts and First UNUM Contracts; Lincoln Life of NY will assume all obligations and liabilities of UNUM and First UNUM under those contracts. (The transactions implementing the various assumption reinsurance agreements described above are referred to herein collectively as the ''Reinsurance Transactions.'')

14. The Reinsurance Transactions are subject to certain state insurance regulatory approvals and, in certain states, may require the affirmative consent of contractholders and individual participants. Each UNUM and First UNUM contractholder (collectively, ''Contractholders'') will be given the right to opt-in or opt-out of the Reinsurance Transaction; these options will be described in a notice that will be sent to Contractholders. The notice will be accompanied by a rejection or acceptance form, a certificate of assumption, and a definitive prospectus for the applicable Lincoln Life Contract or Lincoln Life of NY Contract. The notice will: (i) state that the underlying assumption reinsurance transaction has been approved by the insurance departments of the domiciliary states of the insurance companies that are parties to the assumption reinsurance agreement; (ii) describe the options available to the Contractholder to either accept the transfer of the Contract from UNUM or First UNUM to Lincoln Life or Lincoln Life of NY as appropriate, or reject the proposed transfer by completing and returning the rejection form; and (iii) state that Lincoln Life will administer the Contract whether or not the Contractholder accepts the assumption reinsurance. If the Contractholder accepts the assumption reinsurance, a certificate notice, a rejection or acceptance form, a certificate of assumption, and a definitive prospectus for the applicable Lincoln Life Contract or Lincoln Life of NY Contract will be sent to each participant under the respective contract, giving those participants a similar opportunity to accept or reject the assumption reinsurance (*i.e.*, an ''opt-out right'').

15. Upon the assumption reinsurance of each UNUM Contract and First UNUM Contract (each now a ''Novated Contract''), Lincoln Life or Lincoln Life on NY will assume all of UNUM's or First UNUM's liabilities under the Novated Contract. Any premiums from participants who do not opt-out of the Reinsurance Transactions will be sent directly to either Lincoln Life or Lincoln Life of NY for allocation to Account L or Account L–NY, as appropriate. If Contractholders or participants reject the assumption reinsurance, premiums will be sent to the UNUM VA–1 Separate Account or First UNUM VA–1 Separate Account, as appropriate. Accordingly, whether Contractholders or participants opt-in or opt-out of the Reinsurance Transactions, Contractholders will deal directly with Lincoln Life as the administrator for the UNUM Contracts and the First UNUM Contracts, as well as for the Lincoln Life Contracts and the Lincoln Life of NY Contracts.

16. The Novated Contracts will be identical to the relevant UNUM Contracts and First UNUM Contracts, but for the separate account supporting variable contract benefits and the identity of the depositor for such separate account. The same underlying funds will be available under the Novated Contracts as are available under the UNUM Contracts and the First UNUM Contracts. Lincoln Life will establish accumulation units in its separate account for the Novated Contracts with the same values as those in the UNUM VA–1 Separate Account for the UNUM Non-NY Contracts. Likewise, Lincoln Life of NY will establish accumulation units in its

separate account for the Novated Contracts with the same values as those in the UNUM VA–1 Separate Account for the UNUM NY Contracts.[2] Since the accumulation unit values will be based on the net asset values of the same underlying funds, and will reflect identical deductions for asset-based charges, the accumulation unit values of the UNUM VA–1 Separate Account for the UNUM Non-NY Contracts and the First UNUM VA–1 Separate Account for the First UNUM Contracts that are not assumed by Lincoln Life or Lincoln Life of NY will be identical to the corresponding values in Account L and Account L–NY for the Novated Contracts for each valuation period after the Reinsurance Transactions have been effected.

17. The Reinsurance Transactions will be carried out by transferring supporting underlying fund shares from the UNUM VA–1 Separate Account or First UNUM VA–1 Separate Account L or Account L–NY, as appropriate, as of the close of business on the day the reinsurance is effected. Therefore, there will be no interruption of investment of contract value in the underlying funds. No charge or expense will be incurred by the UNUM VA–1 Separate Account, the First UNUM VA–1 Separate Account, Account L, Account L–NY, or the underlying funds in connection with the transfer of shares of the underlying funds. Accordingly, the contract values under the Novated Contracts will be the same as they would have been under the corresponding UNUM Contracts and First UNUM Contracts had the Reinsurance Transactions not been effected. Finally, Lincoln Life and Lincoln Life of NY will not assess any charge as a result of the Reinsurance Transactions.

18. If either the Contractholder or participant exercises opt-out rights, the participant's interest in the UNUM Contract or the First UNUM Contract will not be reinsured with Lincoln Life or Lincoln Life of NY, and the assets supporting the variable benefits of such participant's interest in such contract will remain in either the UNUM VA–1 Separate Account or First UNUM VA–1 Separate Account, as appropriate. In that event, UNUM and First UNUM will continue to accept purchase payments under the terms of their respective contracts.

19. There will be no adverse tax consequences to Contractholders and participants as a result of the assumption reinsurance of the UNUM Contracts and the First UNUM Contracts or the exercise of any opt-out rights in connection with the Reinsurance Transactions.

20. UNUM has agreed to continue to issue its contracts in each state except New York for up to 18 months after the Closing Date in the event Lincoln Life has not received policy form approval or other necessary regulatory approvals to issue the Lincoln Life Contracts to the residents of a particular state. LNC will be the principal underwriter for such sales.

21. Lincoln Life and UNUM will enter into a coinsurance and assumption agreement (the ''UNUM Coinsurance Agreement'') which will provide for the indemnity reinsurance, on a coinsurance basis, by Lincoln Life of the general account obligations of UNUM under the UNUM Contracts issued in states where Lincoln Life has not yet received the necessary regulatory approvals to issue its Contracts (the ''UNUM Coinsured Contracts''). Lincoln Life will assume by novation the UNUM Coinsured Contracts on a state-by-state basis as Lincoln Life receives the necessary regulatory approvals. Lincoln Life of NY will enter into a similar arrangement and coinsurance and assumption agreement with First UNUM (the ''First UNUM Coinsurance Agreement''). (First UNUM Contracts issued under such an arrangement are referred to herein as the ''First UNUM Coinsured Contracts.'') LNC will be the principal underwriter of the First UNUM Coinsured Contracts. The First UNUM Coinsured Contracts will be assumed by Lincoln Life of NY as the necessary state approvals are obtained. When the UNUM Coinsured Contracts and First UNUM Coinsured Contracts and certificates thereunder are issued, the Contractholder and participants will consent to the assumption of the contract and certificate by Lincoln Life or Lincoln Life of NY.

Applicants' Legal Analysis and Conditions

Section 17(b) of the 1940 Act

1. Section 2(a)(3) of the 1940 Act defines ''affiliated person'' of another person to include any person directly or indirectly controlling, controlled by, or under common control with such other person. Section 2(a)(9) of the 1940 Act defines control as the power to exercise controlling influence over management or policies of a company. Section 17(a)(1) of the 1940 Act, in pertinent part, prohibits any affiliated person of or principal underwriter for a registered investment company, or any affiliated person of such a person, acting as principal, to knowingly sell to or purchase from such registered company any security or other property. Section 17(b) of the 1940 Act provides that a person may apply for an order of exemption from the provisions of Section 17(a) and that the Commission shall grant such an application if the evidence establishes that:

(i) the terms of the proposed transaction, including the conditions 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; and (iii) the proposed transaction is consistent with the general purposes of the 1940 Act.

2. After the Closing Date, LNC will serve as principal underwriter for the UNUM VA–1 Separate Account and the First UNUM VA–1 Separate Account. Applicants submit that LNC and Lincoln Life, as wholly-owned subsidiaries of Lincoln National Corporation, may be deemed to be under common control for purposes of Section 2(a)(3) of the 1940 Act and, therefore, affiliates of one another. Similarly, Lincoln Life of NY, as an indirect wholly-owned subsidiary of Lincoln National Corporation, may be deemed to be under common control with LNC and, therefore, an affiliate of LNC. As such, Lincoln Life and Lincoln Life of NY, as affiliates of LNC, would be deemed for purposes of Section 17(a) to be affiliated persons of the principal underwriter of the UNUM VA–1 Separate Account and the First UNUM VA–1 Separate Account.

3. Because of these relationships, Applicants submit, the Reinsurance Transactions may be deemed to involve purchase and/or sale transactions between a registered investment company and an affiliated person of its principal underwriter in that the Reinsurance Transactions will be effected by a transfer of separate account assets (*i.e.*, shares of the underlying funds) from: (i) the UNUM VA–1 Separate Account to Account L with regard to the UNUM Non-NY Contracts and the UNUM Coinsured Contracts; (ii) the UNUM VA–1 Separate Account to Account L–NY with regard to the UNUM NY Contracts; and (iii) the First UNUM VA–1 Separate Account to Account L–NY with regard to the First UNUM Contracts and the First UNUM

[2] Applicants state that because of differences in accumulation unit values between the UNUM NY Contracts and the First UNUM Contracts, the accumulation unit values in Account L–NY will not correspond to the accumulation unit values in the First UNUM VA–1 Separate Account for the First UNUM Contracts. The number of accumulation units will be adjusted so that for the First UNUM Contracts that are reinsured, participant interests under such contracts will not be diluted as a result of the reinsurance.

Coinsured Contracts. Accordingly, Applicants suggest that these transfers may be prohibited by Section 17(a) of the 1940 Act in the absence of an exemption pursuant to Section 17(b) thereof, and note that none of the rules granting self-executing exemptions under Section 17(a) appear to be relevant to the Reinsurance Transactions.

4. Applicants state that the 1940 Act does not provide any specific standards or guidelines for the Commission to apply in determining whether a transaction being considered under Section 17(b) is reasonable and fair and does not involve overreaching. Applicants submit that the Reinsurance Transactions are reasonable and fair because: (i) the contractual rights of Contractholders and participants vis-a-vis the separate account supporting the variable benefits of their contracts will not change as a result of the Reinsurance Transactions; (ii) the same underlying funds will be available after the Reinsurance Transactions; (iii) no charges will be imposed in connection with effecting the Reinsurance Transactions; (iv) the charges under the contracts will not change after the Reinsurance Transactions; and (v) the respective operations and objectives of the Lincoln Life and Lincoln Life of NY separate accounts will be identical to the operations and objectives of the UNUM and First UNUM separate accounts.

5. Applicants assert that the Reinsurance Transactions do not involve overreaching on the part of any person concerned. Applicants represent that neither Lincoln Life nor Lincoln Life of NY will impose any charge in connection with the Reinsurance Transactions, and that participants' interests will not be diluted as a result of the Reinsurance Transactions. Applicants also note that the Reinsurance Transactions will have been subjected to regulatory approval in most states before being implemented.

6. Section 17(b) requires that the proposed transaction be consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act. Applicants represent that the UNUM VA–1 Separate Account, the First UNUM VA–1 Separate Account, Account L and Account L–NY have the same policies insofar as the Novated Contracts are concerned. In particular, Applicants represent that because the assets underlying the Novated Contracts will continue to be invested in shares of the same underlying funds—in the same manner and subject to the same rules—before and after the Reinsurance Transactions have been effected, the assets underlying the Novated Contracts will continue to be invested according to the investment policies recited in the registration statements for the UNUM Contracts and the First UNUM Contracts.

7. Applicants assert that the Reinsurance Transactions are consistent with the general purposes of the 1940 Act, and do not present any of the issues or abuses that Section 17(a), in particular, and the 1940 Act, in general, were designed to prevent. The interests of participants will not be adversely effected by the reinsurance of their contracts: the terms and provisions of the Novated Contracts will remain unchanged and participants' interests will be unaffected by the Reinsurance Transactions. Further, Contractholders and participants will be provided with the definitive prospectus for the Novated Contracts, and will thereby be informed about Lincoln Life, Lincoln Life of NY, and their respective separate accounts.

Section 11 of the 1940 Act

8. Section 11(a) of the 1940 Act provides, in relevant part, that it shall be unlawful for any registered open-end management investment company (a ''fund'') or its principal underwriter to make an offer to a shareholder of that fund or of another fund to exchange his or her security for a security in the same or another fund on a basis other than the relative net asset values of the securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or the offer compiles with the Commission's rules. Section 11(c) makes this prohibition applicable, regardless of the basis of the exchange, to any type of offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company. In other words, prior Commission approval is required for exchange offers subject to Section 11(c) even if made on the basis of relative net asset values.

9. Rule 11a–2 under the 1940 Act permits registered insurance company separate accounts and their principal underwriters to make certain exchange offers to holders of variable contracts supported by separate accounts having the same or an affiliated insurance company depositor or sponsor without prior Commission approval, provided that certain conditions are met. With respect to variable annuity contracts, these conditions require that: (i) the exchange be made on the basis of the relative net asset values of the securities to be exchanged (less any administrative fee disclosed in the offering account's registration statement and certain front-end sales loads); and (ii) any deferred sales loads which may be imposed be calculated and deducted to give full credit for the sales load paid under the exchanged security.

10. Applicants note that Section 11 does not set forth specific standards for Commission approval of exchange offers. Applicants maintain that the public policy underlying Section 11 may be inferred from Section 1(b)(1) of the 1940 Act, which declares that the national public interest and the interests of investors are adversely affected when, among other things, investors exchange securities issued by investment companies without ''adequate, accurate, and explicit information, fairly presented, concerning the character of such securities and the circumstances, policies, and financial responsibility of such [investment] companies and their management.'' Applicants also maintain that the legislative history of the 1940 Act indicates that Section 11(a) is designed to provide assurance that exchange offers are not being proposed ''solely for the purpose of exacting additional selling charges and profits'' from investors by inducing them to ''switch'' one security for another.

11. Applicants represent that, as soon as practicable following the receipt of necessary state insurance department approvals and other regulatory approvals: UNUM will transfer its liabilities under the UNUM Non-NY Contracts and the UNUM Coinsured Contracts to Lincoln Life pursuant to assumption reinsurance agreements and the UNUM Coinsurance Agreement; UNUM will transfer its liabilities under the UNUM NY Contracts to Lincoln Life of NY pursuant to an assumption reinsurance agreement; and First UNUM will transfer its liabilities under the First UNUM Contracts and the First UNUM Coinsured Contracts to Lincoln Life of NY pursuant to an assumption reinsurance agreement and the First UNUM Coinsurance Agreement.

12. Applicants state that for participants who opt-in or are deemed to have opted-in to the Reinsurance Transactions, assets held in the UNUM VA–1 Separate Account will be transferred to Account L or Account L–NY, as appropriate, and assets held in the First UNUM VA–1 Separate Account will be transferred to Account L–NY. Thus, Applicants submit, a participant under a UNUM Non-NY Contract or a UNUM Coinsured Contract who opts-in or is deemed to have opted-in to the Reinsurance Transactions, in effect, will be exchanging his or her interest in such

contracts for a Lincoln Life Contract, and a participant under a UNUM NY Contract who opts-in or is deemed to have opted-in to the Reinsurance Transactions, in effect, will be exchanging his or her interest in a UNUM NY Contract for a Lincoln Life of NY Contract. Likewise, Applicants submit, the participant under a First UNUM Contract or a First UNUM Coinsured Contract who opt-in or is deemed to have opted-in to the Reinsurance Transactions, in effect, will be exchanging his or her interest in a First UNUM Contract or a First UNUM Coinsured Contract for an interest in a Lincoln Life of NY Contract. Applicants state that the granting of a right to make an election to opt-in or opt-out of the Reinsurance Transactions may be considered an offer to exchange securities of one unit investment trust for another unit investment trust, for purposes of Section 11 of the 1940 Act.

13. Applicants represent that the terms of the exchange offers proposed herein do not involve any of the practices Section 11 of the 1940 Act was designed to prevent, and are fair to Contractholders and participants, because: (i) participants will be fully apprised of their rights in connection with the exchange offers and will receive definitive prospectuses for the relevant Lincoln Life Contract or Lincoln Life of NY Contract; (ii) no charges will be imposed in connection with effecting the exchanges and, therefore, the exchanges will be made on the basis of the relative net asset value; (iii) participants who opt-in to the Reinsurance Transactions will have their interests assumptively reinsured under a materially similar Lincoln Life Contract or Lincoln Life of NY Contract with an identical sales charge structure; (iv) when appropriate, participants under a UNUM Contract or First UNUM Contract will receive credit for the time invested in such contract for purposes of determining any applicable sales charge under the corresponding Lincoln Life Contract or Lincoln Life of NY Contract; (v) the same underlying funds will be available upon reinsurance and, thus, there will be no interruption in the underlying funds serving as an investment media for the contracts; and (vi) participants who do not wish to accept the assumption reinsurance by Lincoln Life or Lincoln Life of NY may elect to opt-out of the Reinsurance Transactions, and their existing contractual rights under the UNUM Contract or First UNUM Contract will remain unchanged. Applicants also assert that there will be no adverse tax consequences to Contractholders and participants as a result of the assumption reinsurance of their contracts or the exercise of any opt-out rights in connection with the proposed exchange offers.

14. Applicants submit that if, through common ownership, UNUM were affiliated with Lincoln Life and UNUM and First UNUM were affiliated with Lincoln Life of NY, Rule 11a–2 would permit the proposed exchange offers to be made without the prior approval of the Commission. Applicants submit that the proposed exchange offers between non-affiliates—which would be permitted under Rule 11a–2 if the companies were affiliated—should not be held to a more stringent standard than Rule 11a–2.

Conclusion

For the reasons set forth above, Applicants represent that the requested exemptions satisfy the standards of Section 17(b) of the 1940 Act, and that the terms of the proposed exchange offers satisfy the standards of Section 11 of the 1940 Act. Applicants, therefore, request that the Commission issue an order granting the requested exemptions and approving the proposed exchange offers.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22626 Filed 9–4–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be Published].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: To be Published.

CHANGE IN THE MEETING: Cancellation.

The closed meeting scheduled for Thursday, September 5, 1996, at 10:00 a.m., has been cancelled.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: August 30, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22722 Filed 8–30–96; 4:25 pm]

BILLING CODE 8010–01–M

[Release No. 34–37621; File No. SR–CBOE–96–49]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Permitting Additional Submissions Following Respondent's Petition for Review

August 29, 1996.

On July 23, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] The proposed rule change amends Exchange Fule 17.10 which governs the review of Business Conduct Committee ("BCC") decisions by the Exchange's Board of Directors ("Board"). Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission release (Securities Exchange Act Release No. 37473, July 23, 1996) and by publication in the Federal Register (61 FR 39685, July 30, 1996).[3] No comment letters were received. The Commission is approving the proposed rule change.

I. Background

The purpose of the proposed change to Exchange Rule 17.10 is to formalize the current practice whereby the Board has permitted one additional submission by both Exchange staff and Respondent following Respondent's petition for review. Presently, the Rule does not provide for any subsequent submissions following a Respondent's appeal of a BCC decision to the Board.

II. The Terms of Substance of the Proposed Rule Change

The proposed rule change provides that, after a Respondent appeals a BCC decision to the Board, Exchange staff may submit a written response to which the Respondent may submit a reply. The proposed rule change requires the

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change was originally filed with the Commission on July 11, 1996. The CBOE subsequently submitted Amendment No. 1 to the filing. Letter from Michael L. Meyer, Schiff, Hardin & Waite, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated July 19, 1996.