

Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a Fund of Funds as set forth in Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

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

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-28570; File No. 812-13402]

Sun Life Assurance Company of Canada (U.S.), et al., Notice of Application

December 23, 2008.

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

ACTION: Notice of application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the "Act"), and an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

Applicants: Sun Life Assurance Company of Canada (U.S.) ("Sun Life U.S."), Sun Life Insurance and Annuity Company of New York ("Sun Life N.Y.") (together with Sun Life U.S., the "Companies"), Sun Life of Canada (U.S.) Variable Account F ("Account F"), Sun Life of Canada (U.S.) Variable Account G ("Account G"), Sun Life of Canada (U.S.) Variable Account I ("Account I"), Sun Life (N.Y.) Variable Account C ("Account C"), Sun Life (N.Y.) Variable Account D ("Account D"), and Sun Life (N.Y.) Variable Account J ("Account J") (collectively, the "Applicants"). Applicants, together with Sun Capital Advisers Trust ("Sun Capital Trust") are "Section 17(b) Applicants."

Summary of Application: Applicants seek an order approving the proposed substitutions (the "Substitutions") under certain variable life insurance policies and variable annuity contracts ("Contracts") of Class VC shares of the

Lord Abnett Growth and Income Portfolio and the Lord Abnett Mid-Cap Value Portfolio of Lord Abnett Series Fund, Inc. ("LA Series"), and Administrative Class shares of the PIMCO High Yield Portfolio and the PIMCO Low Duration Portfolio of the PIMCO Variable Insurance Trust with Initial Class shares of the following portfolios of Sun Capital Trust, respectively: The SC Lord Abnett Growth & Income Fund, the SC Goldman Sachs Mid Cap Value Fund, the SC PIMCO High Yield Fund, and the SC Goldman Sachs Short Duration Fund. Section 17(b) Applicants also seek an order pursuant to Section 17(b) of the Act to permit certain in-kind transactions in connection with the Substitutions.

Filing Date: The application was originally filed on July 9, 2007, and an amended and restated application was filed on December 18, 2008.

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 must be received by the Commission by 5:30 p.m. on January 21, 2009, 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 requester'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 Commission.

ADDRESSES: The Commission: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; *Applicants:* c/o Maura A. Murphy, Esq., Sun Life Assurance Company of Canada (U.S.), One Sun Life Executive Park, Wellesley Hills, Massachusetts 02481.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551-6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549 (202-551-8090).

Applicants' and Section 17 Applicants' Representations and Conditions:

1. Sun Life U.S. is a stock life insurance company ultimately controlled by Sun Life Financial Inc. ("Sun Life Financial"), a Canadian reporting company under the Securities Exchange Act of 1934 (the "1934 Act"). Sun Life U.S. is the depositor and sponsor of Account F, Account G, and Account I.

2. Account F is registered as a unit investment trust (File No. 811-05846); its interests are offered through Contracts (the "Account F Contracts") registered under the Securities Act of 1933 ("1933 Act") on Form N-4 (File Nos. 033-41628, 333-37907, 333-05227, 333-30844, 333-31248, 333-41438, 333-74844, 333-82957, 333-83362, 333-83364, 333-83516, 333-115536, and 333-115525). Similarly, Account G, registered as a unit investment trust (File No. 811-07837) offers its interests through Contracts (the "Account G Contracts") registered under the 1933 Act on Form N-6 (File Nos. 333-65048, 333-13087, and 333-111688). Account I, registered as a unit investment trust (File No. 811-09137) also offers its interests through Contracts (the "Account I Contracts") registered under the 1933 Act on Form N-6 (File Nos. 333-68601, 333-100831, 333-59662, 333-100829, 333-94359, 333-143353, 333-143354, and 333-144628).

3. Sun Life N.Y., a wholly owned subsidiary of Sun Life U.S., is a stock life insurance company and is the depositor and sponsor of Account C, Account D, and Account J.

4. Account C, a registered unit investment trust (File No. 811-04440), also offers its interests through certain Contracts (the "Account C Contracts") registered under the 1933 Act on Form N-4 (File Nos. 333-05037, 333-67864, 333-119151, 333-119154, 333-100474, 333-107983, 333-99907, and 333-100475). Similarly, Account D, registered as a unit investment trust (File No. 811-04633) offers its interests through Contracts (the "Account D Contracts") registered under the 1933 Act on Form N-6 (File Nos. 333-105437, 333-105438, and 333-105441). Account J, registered as a unit investment trust (File No. 811-21937) also offers its interests through Contracts (the "Account J Contracts") registered under the 1933 Act on Form N-6 (File Nos. 333-136433 and 333-136435).

5. All of the Contracts involved in the Substitutions (a) reserve the right to substitute shares of one portfolio for shares of another; (b) permit transfers of contract value among the subaccounts pursuant to the limitations of the particular Contract, (c) impose or

reserve the right to impose a transfer charge (except Accounts G and J); and (d) are subject to market timing policies and procedures that may operate to limit transfers.

6. Applicants represent that all of the portfolios involved in the Substitutions are currently available to new and existing Contract owners (and will continue to be available until the time the substitutions occur) for the allocation of purchase payments and transfer of contract value.

7. Lord Abnett Growth and Income Portfolio ("Old Growth & Income") and Lord Abnett Mid-Cap Value Portfolio ("Old Mid-Cap Value") (each, individually, an "Old Portfolio" and collectively, "Old LA Portfolios") are portfolios of LA Series, a registered, diversified, open-end management investment company (File No. 811-05876). Class VC shares of Old LA Portfolios are registered under the 1933 Act on Form N-1A (File No. 33-31072). The investment adviser to Old LA Portfolios is Lord Abnett & Co., LLC ("Lord Abnett").

8. PIMCO High Yield Portfolio ("Old High Yield") and PIMCO Low Duration Portfolio ("Old Low Duration") (each, individually, an "Old Portfolio" and collectively, "Old PIMCO Portfolios") are portfolios of PIMCO Variable Insurance Trust, a registered, diversified, open-end management investment company (File No. 811-08399). Administrative Class shares of Old PIMCO Portfolios are registered under the 1933 Act on Form N-1A (File No. 333-37115). The investment adviser to Old PIMCO Portfolios is Pacific Investment Management Company LLC ("PIMCO").

9. The following "New Portfolios" (each, individually, a "New Portfolio") are portfolios of Sun Capital Trust, a registered, diversified, open-end management investment company (File No. 811-08879): SC Lord Abnett Growth & Income Fund ("New Growth & Income"), SC Goldman Sachs Mid Cap Value Fund ("New Mid Cap Value"), SC PIMCO High Yield Fund ("New High Yield"), and SC Goldman Sachs Short Duration Fund ("New Short Duration"). Initial Class shares of New Portfolios are registered under the 1933 Act on Form N-1A (File No. 333-59093) and are not subject to a distribution fee.

10. Sun Capital Advisers LLC ("Sun Capital"), an indirect, wholly owned subsidiary of Sun Life Financial, is investment adviser to all the Sun Capital Trust portfolios. Through an order from the Commission pursuant to Section 6(c) of the Act, Sun Capital is exempt from Section 15(a) of the Act and Rule 18f-2 thereunder with respect

to subadvisory agreements (the "Manager of Managers Order").¹

11. Applicants represent that the relief granted in the Manager of Managers Order extends to New Portfolios permitting Sun Capital to enter into and materially amend investment subadvisory agreements without obtaining shareholder approval. Applicants also indicate that the prospectus for the New Portfolios will disclose and explain the existence, substance and effect of the Manager of Managers Order.

12. Applicants propose to substitute Initial Class shares of (a) New Growth & Income for Class VC shares of Old Growth & Income; (b) New Mid Cap Value for Class VC shares of Old Mid Cap Value; (c) New High Yield for Administrative Class shares of Old High Yield; and (d) New Short Duration for Administrative Class shares of Old Low Duration. Applicants state that the proposed Substitutions are not intended to effect an overall reorganization or merger of any of the underlying investment options offered in the Contracts. Applicants assert their belief that:

(a) Reducing the number of nonproprietary funds will provide the Companies with more control over fund changes that affect the Contracts;

(b) The New Portfolios better promote their goals of increasing administrative efficiency of, and control over, their Contracts as the New Portfolios are part of their proprietary fund family;

(c) This streamlining will allow the Companies to enhance their communication efforts to Contract owners and sales representatives regarding the available portfolios, and may provide for more enhanced and timely reporting from the Companies to Contract owners with respect to changes in the underlying funds.

13. Applicants represent that because the New Portfolios operate pursuant to the Manager of Managers Order (and assuming that the Applicants first obtain shareholder approval of a change in a New Portfolio's subadviser or of a New Portfolio's continued ability to rely on the Manager of Manager's Order), the Substitutions would provide protection to Contract owners by giving Sun Capital the agility and flexibility to change the subadviser of the New Portfolios should such a change become warranted or advisable. In support of the Substitutions, Applicants assert that

the investment objectives and policies of the New Portfolios are sufficiently similar to those of the corresponding Old Portfolios that Contract owners will have reasonable continuity in investment expectations. The following summarizes the more complete comparison of New and Old Portfolios provided in the Application.

14. *Growth & Income Portfolio Substitution*

Applicants state that both Old Growth & Income and New Growth & Income share the identical investment objective to "seek long-term growth of capital and income without excessive fluctuations in market value." Applicants state that the principal investment strategies of the two portfolios are virtually identical noting that both invest at least 80% of net assets in equity securities of large companies defined as those having capitalization within the range of the companies in the Russell 1000 Index at the time of purchase. Both portfolios primarily purchase equity securities of large, seasoned, U.S. and multinational companies that are believed to be undervalued, and both attempt to invest in securities selling at reasonable prices in relation to their potential value. Applicants also represent that both portfolios share substantially similar risk profiles.

Charges for Class VC of Old Growth & Income include Management Fees of 0.47% and Other Expenses of 0.41%.² Total Operating Expenses for Initial Class shares of New Growth & Income are 0.88% which represents 0.01% in Other Expenses and a 0.87% unified management fee (subject to a 0.87% contractual limitation on Total Operating Expenses). Neither portfolio charges a 12b-1 Fee. Old Growth & Income's total gross and net operating expenses are both 0.88%. Respectively, New Growth & Income's total gross and net operating expenses are 0.88% and 0.87% (reflecting the contractual expense limitation agreement).

15. *Mid Cap Value Portfolio Substitution*

Applicants state that both Old Mid Cap Value and New Mid Cap Value share a similar investment objective because Old Mid Cap Value "seeks capital appreciation through investments, primarily in equity securities, which are believed to be undervalued in the marketplace" and New Mid Cap Value "seeks long-term return of capital." Applicants state that

¹ *Sun Capital Advisers Trust and Sun Capital Advisers, Inc.*, 1940 Act Rel. No. 24401 (April 24, 2000) (Order), File No. 812-11790; *see also Sun Capital Advisers Trust and Sun Capital Advisers, Inc.*, 1940 Act Rel. No. 23793 (Apr. 20, 1999) (Order), File No. 812-11464.

² For the descriptions of charges involved in the Substitution, all percentages for the Management Fees, 12b-1 Fees, Other Expenses, Fee Reductions, Total Gross and Net Annual Operating Expenses, and Separate Account Fees represent a percentage of average annual assets.

the principal investment strategies of the two portfolios are similar noting that both employ a value approach to investing and normally invest at least 80% of net assets, plus the amount of any borrowings for investment purposes, in securities of mid-sized companies. Applicants represent that both Old Mid Cap Value and New Mid Cap Value have substantially similar risk characteristics which are presented in greater detail in the Application.

Charges for Class VC of Old Mid Cap Value include Management Fees of 0.74% and Other Expenses of 0.38%. Total Operating Expenses for Initial Class shares of New Mid Cap Value are 1.06% which represents 0.01% in Other Expenses and a 1.05% unified management fee (subject to a 1.07% contractual limitation on Total Operating Expenses). Neither portfolio charges a 12b-1 Fee. Old Mid Cap Value's total gross and net operating expenses are both 1.12% while New Mid Cap Value's total gross and net operating expenses are both 1.06%.

16. High Yield Portfolio Substitutions

Applicants represent that Old High Yield and New High Yield share a virtually identical investment objective because New High Yield seeks "maximum total return, consistent with capital preservation" and Old High Yield seeks the same "and prudent investment management." Applicants represent that under normal circumstances both invest at least 80% of assets in a diversified portfolio of high yield junk bonds rated at least Caa by Moody's or equivalently rated by S&P or Fitch, or, if unrated, determined by the adviser or subadviser to be of comparable quality. Applicants state that neither portfolio may invest more than 5% of total assets in securities of equal or lower rating. Applicants represent that both portfolios employ an average portfolio duration within a two-to-six year time frame and may invest up to the same percentages of total assets in issuers located in countries with developing economies. Applicants assert that the limits for investment in foreign currency denominated securities and U.S. dollar-denominated securities of foreign issuers are the same for both portfolios. Applicants also identify other similar strategies including that both portfolios may invest all of their assets in derivative instruments. In addition, Applicants represent that both Old High Yield and New High Yield have substantially similar risk characteristics discussed at length in the Application.

Charges for Administrative Class shares of Old High Yield include Management Fees of 0.25%, Service

Fees of 0.15%, and Other Expenses of 0.35%. Charges for Initial Class shares of New High Yield include a 0.74% unified management fee and 0.01% in Other Expenses. New High Yield does not charge a service fee, and neither portfolio charges a 12b-1 Fee. The total gross and net operating expenses for both Old High Yield and New High Yield are 0.75%. In addition, New High Yield's fees are also subject to a 0.75% contractual expense limitation on total operating expenses for at least 24 months following the date of the Substitutions.

17. Low/Short Duration Portfolio Substitutions

Applicants represent that Old Low Duration and New Short Duration share a similar investment objective in that Old Low Duration "seeks maximum total return, consistent with preservation of capital and prudent investment management," while New Short Duration "primarily seeks a high level of current income, with capital appreciation as a secondary goal." Applicants also represent that the principal investment strategies of the two portfolios are similar. Both invest primarily in fixed income securities at levels of total assets equal to at least 65% for Old Low Duration and 80% for New Short Duration. In addition, Applicants represent that both Old Low Duration and New Short Duration have similar risk characteristics discussed at length in the Application.

Charges for Administrative Class shares of Old Low Duration include Management Fees of 0.25%, Service Fees of 0.15%, and Other Expenses of 0.25%. Charges for Initial Class shares of New Short Duration include a 0.64% unified management fee and 0.01% in Other Expenses. New Short Duration does not charge a service fee, and neither portfolio charges a 12b-1 Fee. The total gross and net operating expenses for both Old Low Duration and New Short Duration are 0.65%. In addition, New Short Duration's fees are also subject to a 0.65% contractual expense limitation on total operating expenses for at least 24 months following the date of the Substitutions.

18. Applicants assert that as of the effective date of the Substitutions ("Effective Date" or "Substitution Date"), each Separate Account will redeem shares of the applicable Old Portfolio in-kind. Applicants state that if Sun Capital declines to accept particular portfolio securities of any of the Old Portfolios for purchase in-kind of shares of the New Portfolios, the applicable Old Portfolio will liquidate portfolio securities as necessary, and shares of the New Portfolio will be purchased with

cash. Applicants represent that in either event, the proceeds of such redemptions will then be used to purchase shares of the New Portfolios, with each subaccount of the applicable Separate Account investing the proceeds of its redemption from the Old Portfolios in the applicable New Portfolio.

19. Applicants further state that redemption requests and purchase orders will be placed simultaneously so that contract values will remain fully invested at all times. Applicants represent that all redemptions of shares of the Old Portfolios and purchases of shares of the New Portfolios will be effected in accordance with Section 22(c) of the Act and Rule 22c-1 thereunder. Applicants state that the Substitutions will take place at relative net asset value as of the Effective Date with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investments in any of the subaccounts. Applicants represent that Contract values attributable to investments in the Old Portfolios will be transferred to the New Portfolios without charge and without counting toward the number of transfers that may be permitted without charge.

20. Applicants further represent that all expenses incurred in connection with the Substitutions, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by Sun Life U.S. or Sun Life N.Y. Applicants also state that, as a result of the Substitutions, Contract owners will not incur any additional fees or charges, nor will their rights or insurance benefits or the Companies' obligations under the Contracts be altered. Applicants assert that the Substitutions: (a) Will not impose any tax liability on Contract owners; and (b) will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitutions than before the Substitutions. Applicants represent that neither Sun Life U.S. nor Sun Life N.Y. will exercise any right either may have under the Contracts to impose restrictions on transfers under the Contracts for the period from the date the Application was filed with the Commission through at least thirty days following the Effective Date.

21. The Companies represent that during the twenty-four months following the Effective Date, the total net operating expenses of each New Portfolio (taking into account any expense waiver or reimbursement) will not exceed the net expense level of the corresponding Old Portfolio for the fiscal year ended December 31, 2007.

Applicants also state that for at least twenty-four months following the date of the Substitutions, Sun Capital has contractually agreed to waive its management fee and, if necessary, to limit other ordinary operating expenses so that total operating expenses, as a percentage of average net assets, do not exceed 0.87%, 1.07%, 0.75%, or 0.65%, as applicable. In addition, Applicants represent that for twenty-four months following the date of the Substitutions, the Companies will not increase asset-based fees or charges for Contracts outstanding on the Effective Date.

22. Applicants represent that a prospectus for the New Portfolio containing disclosure describing the existence, substance and effect of the Manager of Managers Order will be provided to each Contract owner prior to or at the time of the Substitutions. Notwithstanding the Manager of Managers Order, the Applicants agree not to change any New Portfolio's subadviser, add a new subadviser, or otherwise rely on the Manager of Managers Order without first obtaining shareholder approval, following the Effective Date of the Substitutions, of either: (1) The subadviser change; or (2) the New Portfolio's continued ability to rely on the Manager of Managers Order.

23. Applicants state that Contract owners were or will be notified of the proposed Substitutions by means of a prospectus or prospectus supplement for each of the Contracts stating that the Applicants filed the Application and seek approval for the Substitutions ("Pre-Substitution Notice"). The Pre-Substitution Notice sets forth the anticipated Effective Date and explains that contract values attributable to investments in the Old Portfolios will be transferred to the New Portfolios on the Effective Date without charge (including sales charges or surrender charges) and without counting toward the number of transfers that may be permitted without charge. Applicants indicate that the Pre-Substitution Notice states that, from the date the initial application was filed with the Commission through the date thirty days after the Substitutions, Contract owners may make one transfer of contract value from each subaccount investing in the Old Portfolios (before the Substitutions) or a New Portfolio (after the Substitutions) to one or more other subaccount(s) without a transfer charge and without that transfer counting against their contractual transfer limitations.

24. Applicants represent that all Contract owners will have received a copy of the most recent prospectus for the New Portfolios prior to the Substitutions. Applicants also agree

that, within five days following the Substitutions, Contract owners affected by the Substitutions will be notified in writing that the Substitutions were carried out and that this notice will restate the information set forth in the Pre-Substitution Notice.

Applicants' Legal Analysis

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission shall approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants submit that the Substitutions meet the standards set forth in Section 26(c) and assert that replacement of the Old Portfolios with the New Portfolio is consistent with the protection of Contract owners and the purposes fairly intended by the policy and provisions of the Act. Applicants have reserved the right to make such a substitution under the Contracts and represent that this reserved right is disclosed in the prospectus for the Contracts.

3. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principal, from knowingly purchasing any security or other property from the registered company. Pursuant to Section 17(a)(1) of the Act, the Section 17(b) Applicants may be considered affiliates of one or more of the portfolios involved in the Substitutions. Because the Substitutions may be effected, in whole or in part, by means of in-kind redemptions and subsequent purchases of shares and by means of in-kind transactions, the Substitutions may be deemed to involve one or more purchases or sales of securities or property between affiliates.

4. Section 17(b) of the 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: 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; 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 Act; and the proposed transaction is consistent with the general purposes of the Act.

5. The Section 17(b) Applicants state 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 principally because the Substitutions will conform with all but one of the conditions enumerated in Rule 17a-7. Applicants assert that the use of in-kind transactions will not cause Contract owner interests to be diluted. In support, Applicants represent that: (a) The proposed transactions will take place at relative net asset value as of the Effective Date 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 Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Separate Accounts; (b) Contract owners will not suffer any adverse tax consequences as a result of the Substitutions; and (c) fees and charges under the Contracts will not increase because of the Substitutions.

6. Further, though the Section 17(b) Applicants may not rely on Rule 17a-7 because they cannot meet all of its conditions, the Section 17(b) Applicants agree to carry out the proposed in-kind purchases in conformity with all of the conditions of Rule 17a-7 and the procedures adopted thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. However, Applicants assert that the circumstances surrounding the Substitutions will offer the same degree of protection to the New Portfolios from overreaching that Rule 17a-7 provides to it generally in connection with its purchase and sale of securities under that Rule in the ordinary course of its business.

7. Applicants assert that the Board of Sun Capital Trust has adopted procedures, as required by paragraph (e)(1) of Rule 17a-7, pursuant to which its portfolios may purchase and sell securities to and from their affiliates. Applicants also note that the Companies (or any of their affiliates) cannot effect the proposed Substitutions at a price disadvantageous to the New Portfolio. Although the Substitutions may not be entirely for cash, Applicants represent that each will be effected based upon (1) the independent market price of the portfolio securities valued as specified

in paragraph (b) of Rule 17a-7, and (2) the net asset value per share of each portfolio involved valued according to the procedures disclosed in its registration statement and as required by Rule 22c-1 under the Act. The Section 17(b) Applicants state that if Sun Capital declines to accept particular portfolio securities of either of the Old Portfolios for purchase in-kind of shares of a New Portfolio, the applicable Old Portfolio will liquidate portfolio securities as necessary and shares of the New Portfolios will be purchased with cash. Consistent with Rule 17a-7(d), Applicants also agree that no brokerage commissions, fees, or other remuneration will be paid in connection with the in-kind transactions.

Conclusions

1. Applicants submit that for the reasons and upon the facts set forth in their application, the requested order pursuant to Section 26(c) of the Act is consistent with the protection of investors and the purposes fairly intended by the policy of the Contracts and provisions of the Act and should, therefore, be granted.

2. Section 17 Applicants represent that the proposed in-kind transactions are consistent with the general purposes of the Act, do not present any of the conditions or abuses the Act was designed to prevent, and that an exemption should be granted, to the extent necessary, from the provisions of Section 17(a).

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

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-31088 Filed 12-30-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59154; File No. SR-BSE-2008-48]

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Establish New Rules for Membership, Member Conduct, and the Listing and Trading of Cash Equity Securities; Order Granting an Exemption for the Boston Stock Exchange, Incorporated From Section 11A(b) of the Securities Exchange Act of 1934

December 23, 2008.

I. Introduction

On November 3, 2008, the Boston Stock Exchange ("BSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to: (i) Adopt new rules governing membership, the regulatory obligations of members, listing, and equity trading ("Equity Rules"); (ii) amend its certificate of incorporation ("Certificate") and by-laws ("By-laws") to reflect the proposed change in the name of the Exchange to NASDAQ OMX BX, Inc; (iii) amend and restate the Operating Agreement of BSX Group LLC ("Operating Agreement"), which will operate the Exchange's cash equities trading business, and which will be renamed NASDAQ OMX BX Equities LLC ("BX Equities LLC"); and (iv) to adopt a Delegation Agreement ("Delegation Agreement") between the Exchange and BX Equities LLC (formerly, BSX Group LLC). The proposed rule change was published for comment in the **Federal Register** on November 19, 2008.³ On November 12, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ On December 23, 2008, the Exchange filed Amendment No. 2 to the proposed rule change.⁵ Because Amendment Nos. 1

and 2 make technical modifications to the original rule proposal, the Commission is not publishing them for comment. The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

On December 23, 2008, the Exchange requested that the Commission grant BX Equities LLC a permanent exemption from the requirement under Section 11A(b) of the Act, and Rule 609 thereunder, that a securities information processor ("SIP") acting as an exclusive processor register with the Commission.⁶ This order grants the requested exemption.

II. Background

On August 7, 2008, the Commission approved, along with related proposals, a BSE proposed rule change relating to governing documents and certain rules of the Exchange to accommodate the acquisition of the Exchange by The NASDAQ OMX Group, Inc. ("NASDAQ OMX"), the parent corporation of Nasdaq.⁷ Among other things, the BSE Approval Order: (i) Amended and restated BSE's Certificate to reflect the Exchange's status as a wholly owned subsidiary of NASDAQ OMX; (ii) established new By-laws that are similar to the by-laws of Nasdaq; (iii) amended the Operating Agreement of BSX Group LLC, the entity that operated the Exchange's cash equities trading business prior to the Exchange's acquisition by NASDAQ OMX;⁸ (iv) prohibited an Exchange member or its associated persons from beneficially owning more than 20% of the outstanding voting securities of NASDAQ OMX; and (v) limited the circumstances under which the Exchange may be affiliated with a member, and approved the affiliation

regulatory purposes; and (2) the proposal to accept orders routed by Nasdaq Execution Services, LLC ("NES") to the Exchange on a one-year pilot basis is made by the Exchange, rather than by The NASDAQ Stock Market, LLC ("Nasdaq").

⁶ See letter from John Zecca, Chief Regulatory Officer, Exchange, to Dr. Erik Sirri, Director, Division of Trading and Markets, Commission, dated December 23, 2008 ("SIP Exemption Request Letter"). See also 15 U.S.C. 78k-1(b), Rule 609 under the Act, 17 CFR 242.609, requires that the registration of a securities information processor be on Form SIP, 17 CFR 249.1001.

⁷ See Securities Exchange Act Release No. 58324, 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) ("BSE Approval Order").

⁸ BSX Group LLC was formed in 2004 as a joint venture between BSE and several investors to operate an electronic trading facility, the Boston Equities Exchange ("BeX"), for the trading of cash equity securities. BeX ceased its operations in September 2007. See Securities Exchange Act Release No. 57757 (May 1, 2008), 73 FR 26159.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58927 (November 10, 2008), 73 FR 69685 ("Notice").

⁴ Amendment No. 1 states that the Board of Directors of the Exchange and the Board of Directors of BSX Group LLC have completed all action required to be taken in connection with the proposed rule change.

⁵ Amendment No. 2 clarifies that: (1) Confidential information pertaining to the self-regulatory function of the Exchange or any market responsibility delegated by the Exchange to BX Equities LLC that comes into the possession of BX Equities LLC shall not be used for any non-