

OPTION C PREMIUM PER MULTIPLE OF INSURANCE—Continued

Age band	Biweekly	Monthly
Ages 75–79	4.50	9.75
Ages 80 & Over	6.00	13.00

The premiums for compensationers who are paid every four weeks are two times the biweekly premium.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25876; 812–12648]

Nicholas-Applegate Capital Management et al.; Notice of Application

December 23, 2002.

AGENCY: Securities and Exchange Commission (“Commission” or “SEC”).

ACTION: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (“Act”) for exemptions from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants requests an order to permit certain registered open-end management investment companies or series thereof that are advised by Nicholas-Applegate Capital Management (each, a “Fund”) to invest in a company organized in the Republic of Mauritius (“Mauritius Company”) that will invest in Indian securities.

APPLICANTS: Nicholas-Applegate Capital Management (“NACM”) and Nicholas-Applegate Institutional Funds (“NAIF”).

FILING DATES: The application was filed on September 27, 2001 and amended on December 23, 2002.

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 Commission’s Secretary 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 January 17, 2003, 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 Commission’s Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: J.B. Kittredge, Esq., Ropes & Gray, One International Place, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission’s Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants’ Representations

1. NAIF, a Delaware business trust, is registered under the Act as an open-end management investment company and has 16 series, three of which currently intend to invest in the Mauritius Company: Nicholas-Applegate International Growth Opportunities Fund, Nicholas-Applegate International Core Growth Fund, and Nicholas-Applegate Emerging Countries Fund.¹ The investment objective of each of these series is to maximize long-term capital appreciation. NACM, a California limited partnership, is registered as an investment adviser under the Investment Advisers Act of 1940. NACM serves as investment adviser pursuant to an advisory agreement between NACM and the

¹ Each existing registered open-end management investment company that currently intends to rely on the requested relief has been named as an applicant. Applicants are also seeking relief for any registered open-end management investment company or series thereof for which an Adviser (defined below) currently, or in the future, acts as investment adviser or subadviser (included in the term “Funds”). The term “Adviser” includes NACM, or any registered investment adviser controlling, controlled by, or under common control with NACM that serves as investment adviser or subadviser to a Fund. Each existing or future registered open-end management investment company or Adviser that may rely on the requested relief in the future will do so only in accordance with the terms and conditions of the requested order.

relevant Fund (each, an “Advisory Agreement”). As investment adviser, NACM is responsible for making investment decisions for a Fund and managing the Fund’s other affairs and business, subject to the policies established by the board of directors of the relevant Fund (each a “Board”). Under the terms of each Advisory Agreement, NACM receives monthly management fees from the Fund or the Fund’s adviser, as the case may be, at specified annual rates.

2. The Funds desire to purchase and sell shares of beneficial interest representing ownership interests in a limited life company organized in the Republic of Mauritius (the “Mauritius Company”). The Mauritius Company will be formed and will operate solely for the purpose of allowing the Funds and certain pension plans and other separately managed accounts (collectively, the “Accounts”) for which NACM or another Adviser acts as discretionary manager, to invest in debt and equity securities of Indian issuers.² The Mauritius Company will enable the Funds’ and the Accounts’ investments in India to qualify for the favorable tax treatment afforded by the Mauritius-India double taxation avoidance treaty (the “Treaty”).

3. The Mauritius Company will be wholly-owned by the Funds and Accounts,³ and will not be permitted to make any types of investments, or engage in any types of activities, that would not be permitted to be made or engaged in by the Funds directly in accordance with their investment objectives, policies, and limitations. All material legal and tax considerations applicable to the Mauritius Company and the Funds’ investments therein will be fully set forth in each Fund’s registration statement. The shares of the Mauritius Company purchased by the

² The Funds will not invest in Indian issuers directly (other than investments in American Depositary Receipts or Global Depositary Receipts of Indian issuers (collectively, “Depositary Receipts”)) so long as they are able to invest in Indian securities through the Mauritius Company. For purposes of section 5 of the Act, a Fund would aggregate any Indian securities underlying Depositary Receipts owned by that Fund with that Fund’s pro rata share of Indian securities held indirectly through the Mauritius Company.

³ The Mauritius Company will be a private investment company excluded from the definition of “investment company” pursuant to section 3(c)(7) of the Act and the rules thereunder.

Funds and the Accounts will have identical terms, rights and conditions, will be redeemable at their net asset value next determined after receipt of the redemption request, and are expected to be liquid.⁴

4. NACM will serve as the investment adviser to the Mauritius Company and will make recommendations as to all investments of the Mauritius Company, subject to the supervision of the Mauritius Company's board of directors (the "Mauritius Company Board"). No advisory fees will be paid to NACM by the Mauritius Company, but the Mauritius Company will pay NACM a monthly administrative fee based upon a percentage of the Mauritius Company's average daily net assets. NACM's duties will include coordinating all of the Mauritius Company's services (including auditors and legal service providers), calculating the daily net asset value per share of the Mauritius Company, overseeing compliance by the Mauritius Company with applicable requirements of the Act, maintaining the books and records of the Mauritius Company, and acting as U.S. agent for the service of process for the directors and officers of the Mauritius Company who are not U.S. citizens or residents. The Funds and the Accounts will be assessed the expenses of the Mauritius Company on a pro rata basis.⁵

5. Applicants request an order pursuant to sections 6(c), 17(b) and 17(d) of the Act and rule 17d-1 under the Act solely to the extent necessary to permit: (a) The Funds to purchase shares of beneficial interest of the Mauritius Company; (b) the Mauritius Company to sell its shares of beneficial interest to the Funds, and to redeem such shares held by the Funds, upon the demand of the Funds; and (c) The Advisers to provide investment management services to the Funds and the Mauritius Company.

Applicants' Legal Analysis

1. Section 17(a) generally provides, in part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal,

knowingly to sell or purchase any security or other property to or from such investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with the power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds and the Mauritius Company are expected to be affiliated persons under section 2(a)(3) of the Act, since one or more of the Funds will own at least 5% (and, in all likelihood, more than 25%) of the outstanding voting securities of the Mauritius Company. In addition, as the investment adviser or subadviser to certain Funds and the Mauritius Company, NACM is an affiliated person of such Funds and the Mauritius Company. Further, certain of the Funds, Accounts, and the Mauritius Company arguably could be deemed to be under the common control of NACM or one of the other Advisers. Consequently, the sale of shares of beneficial interest of the Mauritius Company to the Funds, and the redemption of such shares of the Mauritius Company held by the Funds, would be prohibited under section 17(a) of the Act.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policies of each registered investment company involved and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provisions of the Act if such exemption is 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.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. For the reasons discussed below, Applicants submit that the terms of the arrangement are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed

transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Applicants further submit that the Funds' participation in the Mauritius Company will be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants note that NACM and its affiliates will receive no advisory fee in connection with the Funds' investment in the Mauritius Company, and shares of the Mauritius Company will not be subject to a sales load, redemption fee, distribution fee or service fee. Applicants argue that the fees payable to the Mauritius Company's service providers, including NACM, will be for distinct services, and the costs of such fees will be outweighed by the benefits to be obtained under the Treaty. Moreover, the administrative fees to be paid by the Mauritius Company to NACM will be paid only upon the determination by each Fund's Board, including a majority of its directors that are not "interested persons" of the Fund as defined in section 2(a)(19) of the Act ("Non-Interested Directors"), that the fees are (i) for services in addition to, rather than duplicative of, services rendered to the Funds directly and (ii) fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality. Each Fund and Account will be treated identically as a shareholder of the Mauritius Company, and each Fund and Account will purchase and sell shares of beneficial interest of the Mauritius Company on the same terms and on the same basis as each other Fund and Account that invests in the Mauritius Company.

6. Section 17(d) of the Act and rule 17d-1 under the Act generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. In considering whether to approve a joint transaction under rule 17d-1, the Commission considers whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. Applicant states that the Funds and the Accounts (by purchasing shares of beneficial interest of the Mauritius Company), NACM and the other Advisers (by managing the portfolio securities of the Funds at the same time that the Funds are invested

⁴ In making its own determination that its investments in illiquid securities do not exceed 15% of its net assets, each Fund will aggregate any illiquid securities owned by that Fund with that Fund's pro rata share of any illiquid securities held indirectly through the Mauritius Company.

⁵ The Mauritius Company's expenses will consist primarily of the administrative fee payable to NACM, the fees paid to the Mauritius Company's other service providers, local administrator fees, and the brokerage commissions paid by the Mauritius Company on its purchases and sales of portfolio securities of Indian issuers.

in shares of beneficial interest of the Mauritius Company), and the Mauritius Company (by selling its shares to, and redeeming its shares from, the Funds), could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) and rule 17d-1.

7. Applicants request an order pursuant to section 17(d) and rule 17d-1 to permit the proposed transactions with the Mauritius Company. Applicants submit that the investment by the Funds in the Mauritius Company on the basis proposed is consistent with the provisions, policies and purposes of the Act, and that each Fund will invest in shares of beneficial interest of the Mauritius Company on the same basis as any other shareholder (*i.e.*, the other Funds and Accounts). Applicants further submit that all investors in shares of beneficial interest of the Mauritius Company will be subject to the same eligibility requirements imposed by the Mauritius Company, and all shares will be priced in the same manner and will be redeemable under the same terms. Moreover, investing in the Mauritius Company will offer tax advantages to the Funds that would not otherwise be available.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The Funds' investment in shares of the Mauritius Company will be undertaken only in accordance with the Funds' stated investment restrictions and will be consistent with their stated investment policies. For these purposes, the Funds will be treated as owning their pro rata portion of the portfolio securities of the Mauritius Company.

2. NACM and its affiliated persons will receive no advisory fee in connection with the Funds' investment in the Mauritius Company. NACM and its affiliated persons will receive no commissions, fees, or other compensation from a Fund or the Mauritius Company in connection with the purchase or redemption by the Funds of shares in the Mauritius Company. Shares of the Mauritius Company will not be subject to a sales load, redemption fee, distribution fee or service fee.

3. Administrative fees will be paid by the Mauritius Company to NACM only upon a determination by each Fund's Board, including a majority of its Non-Interested Directors, that the fees are (i) for services in addition to, rather than duplicative of, services rendered to the Funds directly, and (ii) fair and reasonable in light of the usual and

customary charges imposed by others for services of the same nature and quality. If such determination is not made by a Fund's Board, NACM will reimburse to that Fund the amount of any administrative fee borne by that Fund as an investor in the Mauritius Company.

4. The Mauritius Company will, at all times, limit its investment in illiquid securities to no more than 15% of its assets.

5. Each Fund's Board, including a majority of the Non-Interested Directors, will determine initially and no less frequently than annually that the Fund's investments in the Mauritius Company are, and continue to be, in the best interests of the Fund and the Fund's shareholders.

6. NACM will undertake to make the accounts, books and other records of the Mauritius Company available for inspection by the SEC staff and, if requested, to furnish copies of those records to the SEC staff.

7. The Mauritius Company will comply with the requirements of sections 9, 12, 13, 17(a), 17(d), 17(e), 17(f), 17(h), 18, 21 and 36-53 of the Act and rule 22c-1 under the Act as if the Mauritius Company were an open-end management investment company registered under the Act. In addition, the Mauritius Company will comply with the requirements of the rules under section 17(f) and 17(g) of the Act. With respect to all redemption requests made by a Fund, the Mauritius Company will comply with section 22(e) of the Act. NACM will adopt procedures designed to ensure that the Mauritius Company complies with the aforementioned sections of the Act and rules under the Act. NACM will periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a-1(b)(1), 31a-1(b)(2)(ii) and 31a-1(b)(9) under the Act. In addition, in connection with the review required by condition 5 above, NACM will provide annually to each Fund's Board a written report about NACM's and the Mauritius Company's compliance with this condition. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and its staff.

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

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-25875; File No. 812-12914]

ReliaStar Life Insurance Company of New York, et al.

December 23, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemption from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

APPLICANTS: ReliaStar Life Insurance Company of New York ("RLNY"), Separate Account NY-B of ReliaStar Life Insurance Company of New York (the "Account") and Directed Services, Inc. ("DSI") (together, the "Applicants").

SUMMARY OF THE APPLICATION:

Applicants seek an order of the Commission, pursuant to Section 6(c) of the Act, exempting them from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the recapture of certain credits applied to premium payments made in consideration of certain deferred variable annuity contracts, described herein, that RLNY plans to issue (the "Contracts"). Applicants also hereby apply for an order of the Commission, pursuant to Section 6(c) of the Act, exempting (1) variable annuity separate accounts that RLNY or its successors in interest may establish in the Future ("Future Accounts"), and (2) principal underwriters for such Future Accounts under common control with RLNY or its successors in interest now or in the future ("Future Underwriters"), from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the recapture of certain credits applied to premium payments made in consideration of variable annuity contracts issued in the Future by RLNY or its successors in interest through a Future Account that are substantially similar in all material respects to the Contracts ("Future Contracts").