

section 26(c) of the 1940 Act, is in the best interest of Contract owners. With respect to management and fund objectives, the Replacement Funds, as has been demonstrated, are closely comparable to the corresponding Substituted Fund. Accordingly, the proposed substitution should not create incentives for Contract owner to surrender Contracts and seek out other investment opportunities (incurring additional sales charges) in order to maintain a desired investment strategy. On the contrary, the close comparability of the funds proposed as a substitute for the Substituted Funds ensures that investment strategies currently employed by Contract owners may be maintained after the substitution.

5. Each of the Replacement Funds currently has greater assets than the Substituted Fund being substituted into it. This will create the opportunity for better performance between the Substituted Funds and Replacement Funds, which have similar management and investment objectives. The economies inherent in the Replacement Funds' greater asset size will be passed to Contract owners.

6. The Applicants maintain that the substitutions will not result in the type of costly forced redemption that section 26(c) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the 1940 Act:

a. Each Replacement Fund has investment objectives that are similar to those of the corresponding Substituted Fund, and permits Contract owners continuity of their investment objectives and expectations;

b. Contract owners will not bear expenses incurred in connection with the substitutions, including legal, accounting and other fees and expenses, and brokerage expenses on portfolio transactions;

c. The substitutions will take place at relative net asset values of the respective sub-accounts, without the imposition of any transfer or similar charges and with no change in the amount of any Contract owner's unit values, death benefit or dollar value in the sub-accounts;

d. The substitutions will not cause the fees and charges under the Contracts currently being paid by Contract owners to be greater after the substitutions than before the substitutions, nor will Contract owner's rights, or the obligations of Nationwide, under the Contract be altered in any way;

e. The substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for

determining the number of remaining permissible transfers in a Contract year;

f. Within five (5) days after the substitutions, Nationwide will send to the affected Contract owners written confirmation that the substitutions have occurred;

g. The substitutions will not impose any tax liability on Contract owners and will not cause the Contract fees and charges currently being paid by existing Contract owners to increase.

7. Applicants assert that, for the reasons summarized above, the terms of the proposed substitution meet the standards set forth in section 26(c) of the 1940 Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**Federal Register Citation of Previous Announcement:** [66 FR 51076, October 5, 2001]

**Status:** Closed meeting.

**Place:** 450 Fifth Street, NW., Washington, DC.

**Date and Time of Previously Announced Meeting:** Tuesday, October 9, 2001 at 10 a.m.

**Change in the Meeting:** Additional items.

The following items were added to the closed meeting scheduled for Tuesday, October 9, 2001:

institution and settlement of injunctive actions;

settlement of administrative proceedings of an enforcement nature; and a formal order.

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 at (202) 942-7070.

Dated: October 10, 2001.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 15, 2001:

Closed meetings will be held on Tuesday, October 16, and Thursday, October 18, 2001, at 10 a.m.

Commissioner Unger, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Tuesday, October 16, 2001, will be: opinions.

The subject matters of the closed meeting scheduled for Thursday, October 18, 2001, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and formal orders.

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 at (202) 942-7070.

Dated: October 10, 2001.

**Jonathan G. Katz,**

*Secretary.*

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