offset by distribution expenses not reimbursed by the Contingent Deferred Sales Charge. In such circumstances, a portion of the Mortality and Expense Risk Charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. NEVLICO represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Contract Owners. The basis for such a conclusion with be maintained in a memorandum at NEVLICO's principal office and available to the Commission upon request.

7. NEVLICO represents that the Variable Account will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by the company's board of directors, a majority of whom are not "interested persons" of the company within the meaning of section 2(a)(19) of the 1940 Act.

## Conclusion

Applicants assert that, for the reasons and the facts set forth above, the requested exemptions from Section 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Variable account under the Contracts meet the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions 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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[Release No. 34–35388; File No. SR-CBOE-95-06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Related to Retail Automatic Execution System

February 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 18, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules to allow the Exchange's Control Room to turn off the Retail Automatic Execution System ("RAES"). The amendments would add an Interpretation to Exchange Rules 24.15 and 6.8. The text of the proposed rule change is available at the office of the Secretary, CBOE, and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries set forth in Sections (A), (B) and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to grant the Exchange's Control Room the authority to turn off RAES if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes. Specifically, the proposal would add a rule interpretation to Exchange Rules 24.15 and 6.8 to grant the senior person then in charge of the Exchange's Control Room the authority to turn off RAES if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes.

When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry into the system. A buy order will pay the prevailing market quote for an offer and a sell order will sell at the prevailing market quote for a bid. A market maker who has signed on as a participant in RAES will be designated as a contra-broker on the trade. Trades are assigned to these

participating market makers on a rotating basis. Therefore, by agreeing to participate in RAES, a market maker is automatically assigned trades based on the prevailing market quote that is then being disseminated. Consequently, it is important that the prevailing market quote be accurate, because otherwise market makers participating in RAES may be assigned trades at prices other than the actual prevailing market quote.

In addition, if there is a quote dissemination problem such that incorrect quotes are being displayed, it could result in a customer's order being filled at a price other than the quote the customer sees on display.

The proposed interpretations are necessary to prevent market makers from being assigned trades based on inaccurate or "stale" market quotes and to prevent customer orders from being filled based on such inaccurate or "stale" market quotes. The proposed Interpretations are also necessary to prevent a situation where customers' orders are filled at prices other than the prices the customers see displayed. Pursuant to the proposed interpretations, the senior person then in charge of the Exchange's Control Room will have the ability to act quickly to turn off RAES if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes. Since RAES trades are based on the current disseminated quote, RAES trades would be based on inaccurate or "stale" quotes during a system malfunction that interferes with dissemination of current quote information. The Exchange believes it is important for the Control Room to have this power to turn off RAES since the Control Room will most likely learn of the system malfunction before Floor Officials or other Exchange Staff and consequently the Control Room can act in a timely manner to prevent trades based on "stale" market quotes.

If RAES is turned off, the orders that would have been routed to RAES will be re-routed to the Floor Broker routing printer in the trading crowd or to the member firm booths. Where the order is rerouted depends upon the parameters member firms have set for their customers' orders prior to entering the orders onto RAES.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> CBOE understands that when determining order parameters for routing purposes, the member firms look to (1) the size of the order, (2) whether the series is on RAES, and (3) whether it is a market order or an immediately executable limit order. Telephone conservation between Edward Joyce, CBOE, Michael Meyer, Attorney, Schiff, Hardin, and Waite, Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, and John