

*Week of October 26—Tentative—
Wednesday, October 28*

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

*Week of November 2—Tentative—
Monday, November 2*

2:00 p.m. Briefing on Improvements to the Plant Assessment Process (Public Meeting)

3:30 p.m. Affirmation Session (Public Meeting) (if needed)

* The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Bill (301) 415-1661.

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The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

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Dated: October 9, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98-27680 Filed 10-9-98; 2:47 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23479; File No. 812-11116]

American Fidelity Assurance Company, et al.; Notice of Application

October 6, 1998.

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

ACTION: Notice of application for an order pursuant to Section 17(b) of the Investment Company Act of 1940 (the "1940 Act").

SUMMARY OF APPLICATION: The Applicants seek an order pursuant to Section 17(b) of the 1940 Act exempting the Applicants from the provisions of Section 17(a) of the 1940 Act, to the extent necessary to permit the transfer

of securities and other instruments held by Account A to the Dual Strategy Fund in exchange for shares of the Dual Strategy Fund in connection with the reorganization of Account A (the "Reorganization") that will change Account A from a management investment company to a unit investment trust (Continuing Account A).

APPLICANTS: American Fidelity Assurance Company ("American Fidelity"), American Fidelity Variable Annuity Fund A ("Account A") and American Fidelity Dual Strategy Fund, Inc. (the "Dual Strategy Fund") (collectively, the "Applicants").

FILING DATE: The application was filed on April 30, 1996, and amended and restated on August 6, 1998.

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 on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 2, 1998, and accompanied by proof of service on the 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 SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Stephen P. Garrett, Senior Vice President, American Fidelity Assurance Company, 2000 Classen Center, Oklahoma City, Oklahoma 73106.

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Attorney, or Mark Amorosi, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202)942-8090).

Applicants' Representations

1. American Fidelity, a stock life insurance company incorporated in Oklahoma, is the sponsoring insurance company for Account A and will become the depositor of Continuing Account A pursuant to the Reorganization.

2. Account A is a separate account of American Fidelity that was established in 1968 to fund variable annuity contracts ("Contracts"). Account A is registered under the 1940 Act as an open-end diversified management investment company and consists of a diversified portfolio of primarily equity securities. The primary investment objective of Account A is long-term capital growth. The secondary investment objective is the production of current income. American Fidelity serves as the investment adviser to Account A and has retained Lawrence W. Kelly & Associates, Inc. ("Kelly") and Todd Investment Advisors, Inc. ("Todd Investment") to act as sub-advisers for Account A.

3. The Dual Strategy Fund is a registered open-end, diversified management investment company, established as a Maryland corporation on March 18, 1998. Immediately after the Reorganization, the Dual Strategy Fund will consist solely of the portfolio of securities and other instruments received by it from Account A pursuant to the Reorganization. The Dual Strategy Fund initially will offer its shares solely to Continuing Account A as a funding vehicle for the Contracts supported by Continuing Account A. In the future, the Dual Strategy Fund may offer its shares to another American Fidelity separate account supporting other variable annuity contracts.

4. The primary investment objective of the Dual Strategy Fund is long-term capital growth and its secondary investment objective is production of current income. Pursuant to an investment advisory agreement and subject to the authority of the Dual Strategy Fund's Board of Directors, American Fidelity will serve as the Dual Strategy Fund's investment adviser and will retain Kelly and Todd Investment to serve as its subadvisers.

5. As part of the Reorganization, Continuing Account A, will be renamed American Fidelity Separate Account A, will be registered under the 1940 Act as a unit investment trust. Continuing Account A will invest exclusively in shares of the Dual Strategy Fund.

6. Applicants state that only one type of Contract has been offered through Account A, a group variable annuity contract issued by American Fidelity for use by employers and self-employed persons in connection with certain tax-qualified group retirement plans. The Contract provides for, among other things: (a) four monthly payout options beginning at any time elected by a Contract participant; (b) certain minimum initial and subsequent purchase payments; and (c) a death

benefit payable if the participant dies before the commencement of annuity payments.

7. American Fidelity deducts transaction expenses from each purchase payment made under the Contract (3% for front-end sales load, .25% for administrative expense, and .75% for minimum death expense), a per payment charge of \$.50 and any applicable premium taxes. Under each Contract, there are daily deduction from the assets of Account A made for mortality risk equal to an annual rate of .85% and for expense risk equal to an annual rate of .11025%. An investment management charge of .50% also is deducted annually. There is a one time Contract fee of \$15.00 and there is no surrender or withdrawal charge imposed.

The Proposed Reorganization

1. The Board of Directors of American Fidelity, the Board of Managers of Account A, and the Board of Directors of the Dual Strategy Fund, including a majority of the disinterested members of each of the latter two boards, have approved an Agreement and Plan of Reorganization (the "Reorganization Agreement") and have each adopted resolutions authorizing the restructuring of Account A from a management investment company into a unit investment trust investing exclusively in the Dual Strategy Fund and the transfer of the portfolio assets and related liabilities of Account A to the Dual Strategy Fund at net asset value in exchange for shares of the Dual Strategy Fund of equal value. The Dual Strategy Fund will mirror the investment and policies of Account A. The membership of the Board of Managers of Account A is the same as that of the Board of Directors of the Dual Strategy Fund. The annuity features of the Contracts will not be affected by the Reorganization.

2. In connection with the approval of the Reorganization Agreement, a disinterested majority of the Board of Managers of Account A and the Board of Directors of the Dual Strategy Fund determined that the Reorganization would be in the best interests of Account A and the Dual Strategy Fund and that the interests of existing Contract owners would not be diluted as a result of the Reorganization. The Reorganization is subject to be the consideration and approval of the Contract owners and participants of Account A.

3. At the effective time of the Reorganization, American Fidelity will transfer the portfolio assets and related liabilities of Account A to the Dual Strategy Fund in exchange for shares of

the Dual Strategy Fund of equal value. American Fidelity will record shares issued by the Dual Strategy Fund as assets of Continuing Account A. The total net assets of Account A will be determined, in the customary manner, as of the business day immediately preceding the effective time of the Reorganization. The number of Dual Strategy Fund shares issued will be determined by dividing the value of the net portfolio assets to be transferred from Account A by the net asset value per share of the Dual Strategy Fund. Both determinations will be made in accordance with Section 22(c) of the Act and Rule 22c-1. Immediately following the Reorganization, a Contract owner's interest in Continuing Account A will be equal to its former interest in Account A. American Fidelity will take all action necessary to insure that such interest in Continuing Account A immediately following the effective time of the Reorganization is duly and validly recorded in the individual account records of Contract participants.

4. Applicants expect to use the Dual Strategy Fund as an underlying investment medium for Continuing Account A and other American Fidelity separate accounts funding variable annuity contracts. As a result of its increase in size, the Dual Strategy Fund should experience administrative efficiencies and economies of scale, and should be able to satisfy diversification requirements more easily.

5. The Dual Strategy Fund will have the same investment objectives, substantially the same investment policies and restrictions, the same Board of Directors and the same investment adviser and sub-advisers as Account A, provided such arrangements are approved by the Account A Contract owners and participants. The Applicants represent that all the assets to be acquired by the Dual Strategy Fund in the Reorganization will be suitable investments for the Dual Strategy Fund. Further, the parties do not anticipate that there will be any need to liquidate any portfolio securities held by Account A in order to complete the Reorganization. If such a need should arise, American Fidelity would bear any associated transaction costs of the liquidation.

6. American Fidelity will bear all of the costs of the Reorganization. The Reorganization will not affect the total amount of fees and charges assessed, directly or indirectly, under the Contracts. The Dual Strategy Fund will incur certain operating expenses in addition to the management and investment advisory fee. To ensure that annual expenses to be charged against

the Contracts by Continuing Account A plus the Dual Strategy Fund's expenses will not be greater in amount than the annual expenses that would have been charged by Account A had the Reorganization not occurred, American Fidelity will bear all of the Dual Strategy Fund's expenses of a type or in an amount which would not have been borne by Account A had the Reorganization not occurred.

7. Following the Reorganization, Contract owners will be charged the same fees and expenses that applied before the Reorganization, except that American Fidelity will receive the fee for its management and investment advisory services from the Dual Strategy Fund, and there will be no such charge by Continuing Account A. The management and investment advisory fee, brokerage fees and commissions, other investment transaction expenses and taxes, if any, will be expenses borne by the Dual Strategy Fund, and they will be reflected in the net asset value per share of the Dual Strategy Fund. All other expenses incurred by the Dual Strategy Fund, such as custodial fees, fees of disinterested directors, costs of meetings of shareholders, legal and accounting expenses, reporting costs and registration fees, will be borne by American Fidelity and will not be reflected in the Dual Strategy Fund's net asset value.

8. Following the Reorganization, American Fidelity will offer each Contract owner pursuant to instructions from participants, the opportunity to instruct American Fidelity in voting the Dual Strategy Fund shares attributable to that Contract owner. American Fidelity will vote shares of the Dual Strategy Fund held by Continuing Account A for which no voting instructions have been received in the same proportion as those for which instructions have been received.

Applicants' Legal Analysis

1. Section 17(a) of the 1940 Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, from selling or purchasing any security or other property to or from such registered investment company. Section 17(b) of the 1940 Act authorizes the Commission to grant an order exempting a transaction otherwise prohibited by Section 17(a) of the 1940 Act if evidence establishes that: (1) 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; (2) the proposed transaction is consistent with

the policy of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

2. Each Applicant may be deemed to be an affiliated person of the other Applicants or an affiliated person of an affiliated person by virtue of being under the common control of American Fidelity, and the Reorganization may be deemed to entail the purchase or sale of securities or other property by or between Applicants. Accordingly, Account A's sale of its portfolio assets to the Dual Strategy Fund and the Dual Strategy Fund's purchase of those assets from Account A may be prohibited by Section 17(a) of the 1940 Act absent an exemptive order permitting the purchase and sale transaction.

3. Rule 17a-8 under the 1940 Act provides exemptive relief for sales of substantially all of the assets of one registered investment company to another if such companies are affiliated solely because of common directors, officers, or investment advisers. Because of the various relationships among them, Applicants state that they may not be able to rely on Rule 17a-8 in connection with the Reorganization. Applicants state that they intend to conform to the conditions set forth in Rule 17a-8, including the requirement that a majority of the independent directors of the Board of Managers of Account A and a majority of the independent directors of the Board of Directors of the Dual Strategy Fund make the determinations prescribed by Rule 17a-8.

4. Applicants maintain that the proposed Reorganization is in the best interests of Account A, to the extent the Dual Strategy Fund is used to fund other separate accounts. Applicants state that Contract owners and participants will benefit from administrative efficiencies and economies of scale, particularly with respect to the level of fixed administrative expenses. Applicants state that these benefits are created without any diminution or dilution of Contract owners and participants' interests and at no cost to Contract owners or participants.

5. Applicants state that the restructuring of Account A into a unit investment trust also will benefit future owners of other variable contracts issued by American Fidelity because they will benefit from administrative efficiencies and economies of scale created by this structure without bearing the organizational costs.

6. The conversion of Account A from a management investment company to a unit investment trust will result in Contract owner and participant interests

which, in practical economic terms, do not differ in any measurable way from such interests immediately prior to the Reorganization. The exchange of the portfolio assets of Account A for shares of the Dual Strategy Fund will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c-1 thereunder. American Fidelity will assume all expenses incurred in preparing for and carrying out the transactions constituting the Reorganization. As a result, Contract owners' and participants' interests in Continuing Account A immediately after the Reorganization will be equal to their former interests in Account A immediately prior to the Reorganization and their interests will not be diluted as a result of the Reorganization.

7. Applicants state the Reorganization will not require the liquidation of any assets of Account A because the Reorganization will take the form of an exchange of the portfolio investments of Account A for shares of the Dual Strategy Fund. Because the investment policies and restrictions of the Dual Strategy Fund will be identical in substance to those of Account A the only sales of Account A assets following the Reorganization will be those arising in the ordinary course of business. Therefore, neither Account A nor the Dual Strategy Fund will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets.

8. American Fidelity believes that the transfer of portfolio assets from Account A to the Dual Strategy Fund in exchange for the issuance of shares of the Dual Strategy Fund will be a tax-free event. As a condition to the closing of the Reorganization, American Fidelity will receive an opinion of counsel confirming the tax-free nature of the Reorganization. However, to the extent any tax liability arises out of this transfer, Applicants state that such liability will be borne by American Fidelity.

9. Applicants maintain that because the investment objectives of the Dual Strategy Fund will be substantially identical to the investment objectives of Account A immediately prior to the Reorganization, the transactions are consistent with the objectives and policies of Account A and the Dual Strategy Fund. Applicants state that they will obtain Contract owner and participant approval of the transactions by at least the vote required under the 1940 Act to effect any change in fundamental investment policy. This eliminates any questions that might otherwise exist as to whether investment in the Dual Strategy Fund is

in compliance with the investment objectives and policies of Account A. The Account A Contract owners and participants will be fully informed of the terms of the Reorganization through proxy materials and will have an opportunity to approve or disapprove the Reorganization Agreement at a meeting of Account A Contract owners.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemption from Section 17(a) of the 1940 Act to permit the Reorganization and the related transactions meets the standards set forth in Section 17(b) of the 1940 Act. In this regard, Applicants assert the Reorganization is fair and reasonable, does not involve any overreaching on the part of any person concerned, is consistent with the policy of each registered investment company concerned, and is consistent with the provisions, policies, and purposes of the 1940 Act.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-27415 Filed 10-13-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23478; 812-11148]

MACC Private Equities Inc., et al.; Notice of Application

October 6, 1998.

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

ACTION: Notice of an application for an order under sections 6(c) and 57(i) of the Investment Company Act of 1940 (the "Act"), and under rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies to co-invest with certain affiliates in portfolio companies.

APPLICANTS: MACC Private Equities, Inc. ("Private equities"), MorAmerica Capital Corporation ("MorAmerica Capital"), and InvestAmerica Investment Advisors, Inc. ("InvestAmerica").

FILING DATES: The application was filed on May 21, 1998, and amended on