

## NUCLEAR REGULATORY COMMISSION

### Availability of Draft NUREGs on Risk Review of Use of Nuclear Byproduct Material

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of Availability and request for comments.

**SUMMARY:** NRC is announcing the availability of, and requesting comment on, three draft documents: NUREG/CR-6642, "Risk Analysis and Evaluation of Regulatory Options for Nuclear Byproduct Material Systems;" NUREG-1711, "Nuclear Byproduct Material Risk Review: Regulatory and Other Bases for Barriers to Dose;" and NUREG-1712, "Nuclear Byproduct Material Risk Review: Results of Survey of NRC and Agreement State Materials Licensing and Inspection Personnel," all dated July 1999.

NRC recognizes that, in order to accomplish its principal mission in an efficient and cost-effective manner, it has to focus on those regulated activities that pose the greatest risk to the public. The nuclear byproduct material risk review is one of several staff actions to address the issue. The intent is to develop a clearly understood technical basis for determining whether and what risk-informed adjustments can be made to the regulation of nuclear byproduct material. Nuclear byproduct material is defined in section 11.e(1) of the Atomic Energy Act of 1954 and Title 10 of the Code of Federal Regulations (10 CFR), § 30.4. Regulation of this material is addressed in 10 CFR parts 30 through 36 and 39. The three draft documents that are the subject of this notice have been developed as part of the risk review. NUREG/CR-6642 presents a detailed, comparative risk analysis of nuclear byproduct materials, organized into groups of activities or "systems" (e.g., medical diagnostic devices, nuclear pharmacy, pool irradiators); describes the methodology used in the risk analysis; and provides the results of the analyses through the date of publication. NUREG-1711 is a compilation of existing barriers (defined as those physical and/or procedural controls designed to limit worker and public radiation doses) and the currently instituted support for those barriers (e.g., regulations, license conditions, good practices). NUREG-1712 summarizes the responses to a survey of NRC and Agreement State materials licensing and inspection personnel regarding risks associated

with the use of nuclear byproduct material.

These documents are for public comment and do not communicate NRC positions on how any particular nuclear byproduct material system may be regulated in the future. The documents are being distributed for comment to encourage public participation in developing accurate information that will be used in assessing risks associated with use of nuclear byproduct material. The documents will be finalized using the public comments received.

**DATES:** The comment period ends October 25, 1999. Comments received after that time will be considered if practicable.

**ADDRESSES:** Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to [dml1@nrc.gov](mailto:dml1@nrc.gov).

Those considering public comment may request a free single copy of draft NUREG/CR-6642, draft NUREG-1711, and/or draft NUREG-1712 by writing to the U.S. Nuclear Regulatory Commission, ATTN: Dr. Dennis Serig, Mail Stop TWFN 8-F-5, Washington, DC 20555-0001. Alternatively, submit requests through the Internet by addressing electronic mail to [dis@nrc.gov](mailto:dis@nrc.gov). Single copies of draft NUREG/CR-6642, draft NUREG-1711, and draft NUREG-1712 are also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001.

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. NRC requests comments specifically with respect to the clarity and effectiveness of the language used in these documents. These comments should also be sent to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Dr. Dennis Serig, Mail Stop TWFN 8-F-5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7901; e-mail: [dis@nrc.gov](mailto:dis@nrc.gov).

## Electronic Access

Draft NUREG/CR-6642 and NUREG-1711 and 1712 are available electronically by visiting NRC's Home Page (<http://www.nrc.gov/nrc/nucmat.html>).

Dated at Rockville, MD, this 6th day of August, 1999.

For the Nuclear Regulatory Commission.

**Donald A. Cool,**

*Director, Division of Industrial and Medical Nuclear Safety, NMSS.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23953; File No. 812-11602]

### The Equitable Life Assurance Society of the United States, et al.

August 19, 1999.

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

**ACTION:** Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitutions of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

*Summary of Application:* Applicants request an order to permit certain registered unit investment trusts to substitute shares of EQ Advisors Trust, a registered open-end investment company, for shares of The Hudson River Trust, another registered open-end investment company, currently held by those unit investment trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the substitutions.

*Applicants:* For purposes of the order requested pursuant to Section 26(b), The Equitable Life Assurance Society of the United States ("Equitable"), Separate Account A of Equitable ("SA A"), Separate Account No. 301 of Equitable ("SA 301"), Separate Account No. 45 of Equitable ("SA 45"), Separate Account No. 49 of Equitable ("SA 49"), Separate Account I of Equitable ("SA I"), and Separate Account FP of Equitable ("SA FP", and together with SA A, SA 301, SA 45, SA 49, and SA I, the "Equitable Accounts") (collectively, the "Section 26 Applicants"). For purposes of the order pursuant to Section 17(b), Equitable, the Equitable Accounts, Separate Account No. 51 of Equitable ("SA 51"), and Separate Account No. 65

of Equitable ("SA 65" and together with Equitable, the Equitable Accounts, and SA 51, the "Section 17 Applicants").

**Filing Date:** The application was filed on April 30, 1999, and amended and restated on August 12, 1999.

**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 should be received by the Commission by 5:30 p.m. on September 13, 1999, 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 Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants: c/o The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, Attn: Mary Joan Hoene, Esq., Vice President and Counsel.

**FOR FURTHER INFORMATION CONTACT:** Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (tel. (202) 942-8090).

### Applicant's Representations

1. Equitable is a New York stock life insurance company authorized to sell life insurance and annuities in all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. Equitable is the depositor and sponsor of SA A, 301, SA 45, SA 49, SA I, SA FP, SA 51 and SA 65, each a segregated asset account of Equitable.

2. Equitable is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), as amended, and a wholly-owned subsidiary of The Equitable Companies Incorporated ("ECI"), a member of the global AXA Group, which is a holding company for an international group of insurance and related financial services

companies. Alliance Capital Management L.P. ("Alliance"), an investment adviser registered under the Advisers Act, is a majority-owned publicly traded subsidiary of ECI.

3. Each of SA A, SA 301, SA 45, SA 49, SA I, and SA FP (collectively, the "Equitable Accounts") is registered with the Commission under the 1940 Act as a unit investment trust. The assets of the Equitable Accounts support certain variable annuity contracts or variable life insurance policies (collectively, the "Contracts"). The variable annuity contracts issued by Equitable include flexible premium deferred variable annuity contracts and single premium immediate variable annuity contracts. Some of the variable annuity contracts are issued as group contracts, while the remaining annuity contracts are issued to or on behalf of individuals. The variable life insurance policies issued by Equitable include flexible premium, scheduled premium and single premium individual variable life, second to die and corporate variable life policies.

4. The Hudson River Trust ("HRT") is organized as a Massachusetts business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the Securities Act of 1933 (the "Securities Act") on Form N-1A. HRT is a series investment company, as defined by Rule 18f-2 under the 1940 Act, and currently offers shares of 14 separate portfolios ("Current Funds"), all of which would be involved in the proposed substitutions. HRT sells shares to the Equitable Accounts to serve as the investment medium for the Contracts. HRT currently offers two classes of shares, Class IA and Class IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b-1 under the 1940 Act. Each Current Fund is advised by Alliance.

5. EQ Advisors Trust ("EQAT") is organized as a Delaware business trust. It is registered as an open-end management investment company under the 1940 Act and its shares are registered under the 1933 Act on Form N-1A. EQAT is a series investment company, as defined by Rule 18f-2 under the 1940 Act, and currently offers 25 separate portfolios of shares. EQAT sells shares to the Equitable Accounts in connection with the Contracts.<sup>1</sup> EQAT

<sup>1</sup> An exemptive order was issued by the Commission granting exemptions from the 1940 Act to permit shares of EQAT to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or annuity contracts ("EQAT Shared

currently offers two classes of shares, Class IA and Class IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b-1 under the 1940 Act. In connection with the proposed substitutions, EQAT has filed with the Commission post-effective amendment No. 11 to its registration statement in order to register 14 new portfolios ("New Funds"). EQ Financial Consultants, Inc. ("EQ Financial"), an indirect wholly-owned subsidiary of Equitable, serves as investment manager of each of the current 25 portfolios of EQAT under an investment management agreement between EQAT and EQ Financial.<sup>2</sup> EQ Financial is an investment adviser registered under the Advisers Act and a broker-dealer registered under the Securities Exchange Act of 1934, as amended. Pursuant to the investment management agreement, the investment manager ("Manager") is responsible for the general management and administration of EQAT, including selecting the investment advisers for each of EQAT's portfolios ("Advisers"), monitoring their investment programs and results, reviewing brokerage matters, overseeing compliance issues, and carrying out the directives of the Board of Trustees. Alliance will serve as the Adviser to each of the New Funds. EQAT has received an exemptive order from the Commission ("Multi-Manager Order") that permits EQ Financial, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the 1940 Act) with EQ Financial, subject to certain conditions, including approval of the Board of Trustees of EQAT, and without the approval of shareholders to: (a) employ a new Adviser or Advisers for any portfolio pursuant to the terms of a new Investment Advisory Agreement, in each case either as a replacement for an existing Adviser or as an additional Adviser; (b) change the terms of any Investment Advisory Agreement; and (c) continue the employment of an existing Adviser on the same contract terms where a contract has been assigned because of a change of control of the Adviser.<sup>3</sup> In

Funding Order"). See EQ Advisors Trust, Investment Company Act Rel. Nos. 22651 (April 30, 1997) (order) and 22602 (April 4, 1997) (notice).

<sup>2</sup> During 1999, EQ Financial plans to change its name to AXA Advisors, Inc. On July 12, 1999, the Board of Trustees of EQAT approved a transfer of the Investment Management Agreement between EQAT and EQ Financial to Equitable. That transfer of the Investment Management Agreement is expected to occur prior to October 1, 1999.

<sup>3</sup> See EQ Advisors Trust and EQ Financial Consultants, Inc., Investment Company Act Rel.

such circumstances, Contract owners would receive notice of any such action, including information concerning any new Adviser that normally is provided in proxy materials.

6. Each of the Contracts expressly reserve to the Section 26(b) Applicants the right, subject to compliance with applicable law, to substitute shares of another portfolio for shares of the Current Funds held by the Equitable Accounts. The prospectuses describing the Contracts contain appropriate disclosure of this right.

7. Equitable, on its own behalf and on behalf of the Equitable Accounts, proposes to substitute securities issued by the 14 New Funds for the securities issued by the 14 Current Funds. Specifically, Applicants propose to

substitute: (i) Class IA Shares of each New Fund for Class IA Shares of each Current Fund; and (ii) Class IB Shares of each New Fund for Class IB Shares of each Current Fund. The Applicants represent that the substitutions are part of an overall business plan by Equitable to make the Contracts more competitive and attractive to potential customers and Contract owners and to enable Equitable to more efficiently administer and oversee the Contracts. The Section 26 Applicants state that it is their belief that the substitutions will: (1) facilitate Contract owner understanding of the underlying investment options for the Contracts and reduce the potential for Contract owners to be confused by the two separate underlying investment vehicles (*i.e.*, portfolios of HRT and

portfolios of EQAT) that are used to fund the Contracts; (2) reduce the administrative burden of maintaining two separate underlying investment companies for the Contracts; and (3) consolidate the underlying investment vehicles in EQAT.

8. The Section 26(b) Applicants represent that EQAT's Manager will serve as Manager of each New Fund and that Alliance will serve as Adviser to each New Fund. The Applicants also state that each New Fund will have investment objectives, investment strategies and anticipated risks that are identical in all material respects to those of the corresponding Current Fund. The investment objectives of each Current Fund and the corresponding New Fund are shown below.

Current portfolio	Investment objective	New portfolio	Investment objective
Alliance Aggressive Stock.	Seeks to achieve long-term growth of capital	Alliance Aggressive Stock.	Seeks to achieve long-term growth of capital.
Alliance Balanced .....	Seeks to achieve a high return through both appreciation of capital and current income.	Alliance Balanced .....	Seeks to achieve a high return through both appreciation of capital and current income.
Alliance Common Stock.	Seeks long-term growth of its capital and increase in income.	Alliance Common Stock.	Seeks long-term growth of its capital and increase in income.
Alliance Conservative Investors.	Seeks to achieve a high total return without, in the opinion of the Adviser, undue risk to principal.	Alliance Conservative Investors.	Seeks to achieve a high total return without, in the opinion of the Adviser, undue risk to principal.
Alliance Equity Index ...	Seeks a total return before expenses that approximates the total return performance of the S&P 500 Index, including reinvestment of dividends, at a risk level consistent with that of the S&P 500 Index.	Alliance Equity Index ..	Seeks a total return before expenses that approximates the total return performance of the S&P 500 Index, including reinvestment of dividends, at a risk level consistent with that of the S&P 500 Index.
Alliance Global .....	Seeks long-term growth of capital .....	Alliance Global .....	Seeks long-term growth of capital.
Alliance Growth and Income.	Seeks to provide a high total return through a combination of current income and capital appreciation by investing primarily in income-producing common stocks and securities convertible into common stocks.	Alliance Growth and Income.	Seeks to provide a high total return through a combination of current income and capital appreciation by investing primarily in income-producing common stocks and securities convertible into common stocks.
Alliance Growth Investors.	Seeks to achieve the highest total return consistent with the Adviser's determination of reasonable risk.	Alliance Growth Investors.	Seeks to achieve the highest total return consistent with the Adviser's determination of reasonable risk.
Alliance High Yield .....	Seeks to achieve a high return by maximizing current income and, to the extent consistent with that objective, capital appreciation.	Alliance High Yield .....	Seeks to achieve a high return by maximizing current income and, to the extent consistent with that objective, capital appreciation.
Alliance Intermediate Government Securities.	Seeks to achieve high current income consistent with relative stability of principal through investment primarily in debt securities issued or guaranteed as a principal and interest by the U.S. Government or its agencies or instrumentalities.	Alliance Intermediate Government Securities.	Seeks to achieve high current income consistent with relative stability of principal through investment primarily in debt securities issued or guaranteed as to principal and interest by the U.S. Government or its agencies or instrumentalities.
Alliance International ...	Seeks to achieve long-term growth of capital by investing primarily in a diversified portfolio of equity securities selected principally to permit participation in non-U.S. companies with prospects for growth.	Alliance International ..	Seeks to achieve long-term growth of capital by investing primarily in a diversified portfolio of equity securities selected principally to permit participation in non-U.S. companies with prospects for growth.
Alliance Money Market	Seeks to obtain a high level of current income, preserve its assets and maintain liquidity.	Alliance Money Market	Seeks to obtain a high level of current income, preserve its assets and maintain liquidity.
Alliance Quality Bond ..	Seeks to achieve high current income consistent with preservation of capital by investing primarily in investment grade fixed income securities.	Alliance Quality Bond	Seeks to achieve high current income consistent with preservation of capital by investing primarily in investment grade fixed income securities.

Nos. 23128 (April 24, 1998) (order) and 23093 (March 30, 1998) (notice). Before a New Fund may rely on the Multi-Manager Order, the operation of that New Fund as a multi-manager fund, as

described in the application for the Multi-Manager Order, will be approved, following the substitutions proposed in the application, by a majority of that New Fund's outstanding voting securities in a

manner consistent with the EQAT Shared Funding Order.

Current portfolio	Investment objective	New portfolio	Investment objective
Alliance Small Cap Growth.	Seeks to achieve long-term growth of capital	Alliance Small Cap Growth.	Seeks to achieve long-term growth of capital.

9. The Section 26(b) Applicants state that it is expected that: (i) the management fees (i.e., the total management fees and investment advisory fees paid to the Manager and the Adviser) with respect to each New Fund will be the same as the management fees currently applicable to the corresponding Current Funds; and (ii) there may be a slight increase in the

total expense ratios of each of the New Funds as compared to those of the Current Funds. The Applicants also represent that the charts below show: (i) the management fees and total expenses for Class IA and Class IB shares of each of the Current Funds for the year ending December 31, 1998; and (ii) the estimated management fees and total expenses of Class IA and Class IB shares

of each of the New Funds following the proposed substitutions. Estimated management fees and total expenses of the Class IA and Class IB shares of each of the New Funds are presented on a pro forma basis and are based upon the audited financial statements of HRT for the year ending December 31, 1998.

#### CLASS IA SHARES

[Year ending December 31, 1998, pro forma]

Current fund	Advisory fees (as percentage of average daily net as- sets)	Total ex- penses (as percentage of average daily net assets)	New fund	Management & advisory fees (as per- centage of av- erage daily net assets)	Total ex- penses (as percentage of average daily net assets)
Alliance Aggressive Stock .....	0.54	0.56	Alliance Aggressive Stock .....	0.54	0.57
Alliance Balanced .....	0.41	0.45	Alliance Balanced .....	0.41	0.46
Alliance Common Stock .....	0.36	0.39	Alliance Common Stock .....	0.36	0.40
Alliance Conservative Investors .....	0.48	0.53	Alliance Conservative Investors .....	0.48	0.54
Alliance Equity Index .....	0.31	0.34	Alliance Equity Index .....	0.31	0.35
Alliance Global .....	0.64	0.71	Alliance Global .....	0.64	0.72
Alliance Growth and Income .....	0.55	0.58	Alliance Growth and Income .....	0.55	0.59
Alliance Growth Investors .....	0.51	0.55	Alliance Growth Investors .....	0.51	0.56
Alliance High Yield .....	0.60	0.63	Alliance High Yield .....	0.60	0.64
Alliance Intermediate Government Securities.	0.50	0.55	Alliance Intermediate Government Securities.	0.50	0.56
Alliance International .....	0.90	1.06	Alliance International .....	0.90	1.07
Alliance Money Market .....	0.35	0.37	Alliance Money Market .....	0.35	0.38
Alliance Quality Bond .....	0.53	0.57	Alliance Quality Bond .....	0.53	0.58
Alliance Small Cap Growth .....	0.90	0.96	Alliance Small Cap Growth .....	0.90	0.97

#### CLASS IB SHARES

[Year ending December 31, 1998, Pro Forma]

Current fund	Advisory fees (as percentage of average daily net as- sets)	12b-1 fees (percent)	Total ex- penses (as percentage of average daily net assets)	New fund	Management & advisory fees (as per- centage of av- erage daily net assets)	12b-1 fees	Total ex- penses (as percentage of average daily net assets)
Alliance Aggressive stock.	0.54	0.25	0.82	Alliance Aggres- sive Stock.	0.54	0.25	0.82
Alliance Balanced	0.41	0.25	0.70	Alliance Balanced	0.41	0.25	0.71
Alliance Common Stock.	0.36	0.25	0.64	Alliance Common Stock.	0.36	0.25	0.65
Alliance Conserv- ative Investors.	0.48	0.25	0.78	Alliance Conserv- ative Investors.	0.48	0.25	0.79
Alliance Equity Index.	0.31	0.25	0.59	Alliance Equity Index.	0.31	0.25	0.60
Alliance Global.	0.64	0.25	0.96	Alliance Global.	0.64	0.25	0.97
Alliance Growth and Income.	0.55	0.25	0.83	Alliance Growth and Income.	0.55	0.25	0.84
Alliance Growth In- vestors.	0.51	0.25	0.80	Alliance Growth In- vestors.	0.51	0.25	0.81
Alliance High Yield	0.60	0.25	0.88	Alliance High Yield	0.60	0.25	0.89
Alliance Inter- mediate Govern- ment Securities.	0.50	0.25	0.80	Alliance Inter- mediate Govern- ment Securities.	0.50	0.25	0.81
Alliance Inter- national.	0.90	0.25	1.31	Alliance Inter- national.	0.90	0.25	1.32

CLASS IB SHARES—Continued  
[Year ending December 31, 1998, Pro Forma]

Current fund	Advisory fees (as percentage of average daily net as- sets)	12b-1 fees (percent)	Total ex- penses (as percentage of average daily net assets)	New fund	Management & advisory fees (as per- centage of av- erage daily net assets)	12b-1 fees	Total ex- penses (as percentage of average daily net assets)
Alliance Money Market.	0.35	0.25	0.62	Alliance Money Market.	0.35	0.25	0.63
Alliance Quality Bond.	0.53	0.25	0.81	Alliance Quality Bond.	0.53	0.25	0.82
Alliance Small Cap Growth.	0.90	0.25	1.20	Alliance Small Cap Growth.	0.90	0.25	1.21

10. The Section 26 Applicants state that they have filed with the Commission prospectuses or prospectus supplements that describe the proposed substitutions. The Section 26 Applicants have sent the appropriate prospectus or supplement (or other notice, in the case of Contracts no longer actively marketed and for which there are a relatively small number of existing Contract owners ("Inactive Contracts"))<sup>4</sup> containing this disclosure to all existing and new Contract owners and participants. Such disclosure described each of the New Funds, identified each Current Fund that is being replaced, and disclosed the impact of the substitutions on fees and expenses at the underlying fund level. In addition, management and counsel for EQAT have filed with the Commission a post-effective amendment to the current registration statement of EQAT on Form N-1A in order to register the 14 New Funds under the 1940 Act and to register shares in each New Fund under the 1933 Act. Applicants state that on or about August 30, 1999, all existing Contract owners and participants will be sent an additional Contract prospectus or supplement thereto (or other notice in the case of Inactive Contracts) that notifies them of the fact that the application has been noticed. Together with this disclosure, Applicants state that all existing Contract owners and participants also will be sent a prospectus for each of the New Funds into which their Current Funds will be substituted. New purchasers of

Contracts will be provided with the Contract prospectuses or supplements containing disclosure that the application has been noticed, as well as a prospectus for each of such New Funds. These Contract prospectuses/supplements and New Fund prospectuses will be delivered to purchasers of new Contracts in accordance with all applicable legal requirements. Confirmation of the substitutions will be sent to affected Contract owners and participants within five days after the substitutions are effected.

11. Applicants state that the substitutions will be effected by redeeming shares of the Current Funds on the date the substitutions will take place ("Substitution Date") at net asset value and using the proceeds to purchase shares of the New Funds at net asset value on the same date. No transfer or similar charges will be imposed and, on the Substitution Date, all Contract values will remain unchanged and fully invested. The Applicants expect that the substitutions will be effected by redeeming the shares of each Current Fund in-kind. Those assets will then be contributed in-kind to the corresponding New Fund to purchase shares of that New Fund. Redemptions and contributions in-kind ("In-Kind Transactions") will reduce the brokerage costs that otherwise would be incurred and will ensure that Contract values remain fully invested. In-kind redemptions and contributions will be done in a manner consistent with the investment objectives, policies and diversification requirements of each corresponding New Fund. The Manager of each New Fund will review the in-kind transactions to assure that the assets are suitable for the New Fund. All assets subject to in-kind redemption and purchase will be valued based on the normal valuation procedures of the redeeming and purchasing Funds, as set forth in the HRT and EQAT registration statements.

12. The significant terms of the substitutions describe above include:

a. The New Funds have investment objectives, investment strategies, and anticipated risks that are identical in all material respects to those of the Current Funds. In this regard, the Section 26 Applicants note that the New Funds will continue to employ the same portfolio managers currently employed by the Current Funds and are intended to mirror the investment options provided by the Current Funds.

b. The fees and expenses of the New Funds will in all cases be substantially similar to those of the Current Funds, assuming that the asset levels of the New Funds do not decrease significantly from the Current Funds' present asset levels. Again, the Section 26 Applicants note in this regard that given the substantial similarity of the Current Funds and the New Funds, Applicants do not expect there to be a reduction in the asset levels of the New Funds as a result of the proposed substitutions.

c. Contract owners and participants may transfer assets from the Current or New Funds to another investment option available under their Contract without the imposition of any fee, charge, or other penalty that might otherwise be imposed from the date of the initial notice through a date at least thirty days following the Substitution Date.

d. The substitutions, in all cases, will be effected at the net asset value of the respective shares of the Current Fund and the corresponding New Fund in conformity with Section 22(c) of the 1940 Act and Rule 22c-1 thereunder, without the imposition of any transfer or similar charge by the Section 26 Applicants, and with no change in the amount of any Contract owner's or participant's Contract value or in the dollar value of his or her investment in such Contract.

e. Contract owners and participants will not incur any fees or charges as a

<sup>4</sup> Applicants state that in reliance on the relief provided in Great-West Life Insurance Company (pub. avail. Oct. 23, 1990) ("Great-West") and in The Equitable Life Assurance Society of the United States (pub. avail. Oct. 4, 1990) ("The Equitable"), certain information about Inactive Contracts, the relevant Equitable Account, and the underlying fund are provided to Inactive Contract owners in lieu of filing post-effective amendments to the registration statements relating to those Inactive Contracts or delivering updated prospectuses to those Contract owners.

result of the proposed substitutions, nor will their rights or Equitable's obligations under the Contracts be altered in any way. Equitable will bear all expenses incurred in connection with the proposed substitutions and related filings and notices, including legal, accounting and other fees and expenses. The proposed substitutions will not cause the contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

f. Redemptions in-kind and contributions in-kind will be done in a manner consistent with the investment objectives, policies and diversification requirements of the applicable Current and New Funds, and the Manager will review in-kind transactions to assure that the assets are suitable for the New Fund. Consistent with Rule 17a-7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid in connection with the in-kind transactions.

g. The substitutions will not be counted as new investment selections in determining the limit, if any, on the total number of funds that Contract owners and participants can select during the life of a Contract.

h. The substitutions will not alter in any way the annuity or life benefits, tax benefits or any contractual obligations of the Section 26 Applicants under the Contracts.

i. Contract owners and participants may withdraw amounts under the Contracts or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

j. Contract owners and participants affected by the substitutions will be sent written confirmation of the substitutions that identify each substitution made on behalf of that Contract owner or participant within five days following the Substitution Date.

k. Before a New Fund may rely on the Multi-Manager Order, the operation of that New Fund as a multi-manager fund, as described in the application for the Multi-Manager Order, will be approved, following the substitutions proposed herein, by a majority of that New Fund's outstanding voting securities in a manner consistent with the EQAT Shared Funding Order.

13. The Section 26(b) Applicants state that they will not complete the substitutions as described in the application unless all of the following conditions are met:

a. The Commission will have issued an order approving the substitutions under Section 26(b) of the 1940 Act.

b. The Commission will have issued an order exempting the in-kind transactions from the provisions of Section 17(a) of the 1940 Act, to the extent necessary to carry out the substitutions as described herein.

c. The amendments to the registration statements for the Contracts describing the substitutions shall have become effective.

d. The amendments to the registration statement for EQAT adding the 14 New Funds shall have become effective.

e. Each Contract owner or participant will have been mailed effective prospectuses with respect to the New Funds and the effective amended/supplemented prospectus for the applicable Contracts (or other notice in the case of Inactive Contracts)<sup>5</sup> at least thirty days prior to the Substitution Date (Applicants state that Contract owners and participants were sent initial disclosure of the proposed substitutions following the initial filing of this application). In addition, in conjunction with this mailing, at least thirty days prior to the Substitution Date, each Contract owner or participant will have been sent a notice that describes the terms of the proposed substitutions and Contract owners' and participants' rights in connection with them.

f. The Section 26 Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Contracts allow the substitution of portfolios as described in the application, and that the transactions can be consummated as described therein under applicable insurance laws and under the various Contracts.

g. The Section 26 Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

#### **Applicants' Legal Analysis**

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered

<sup>5</sup> The Section 26 Applicants state that they have sent and will continue to send Inactive Contract owners all relevant information about the proposed substitutions in accordance with the terms of Great-West and The Equitable. Applicants state that the substance of the disclosures about the substitutions that they will make to owners of Inactive Contracts will be essentially identical to the disclosures about the substitutions that they make to owners of all other outstanding Contracts. Applicants state that certain of these disclosures already have been delivered and that all such further disclosures will be sent at approximately the same time to owners of Inactive Contracts as to all other owners of outstanding Contracts.

unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. Section 26(b) further provides that the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. The Section 26 Applicants submit that the Contracts expressly reserve to the Applicants the right, subject to compliance with applicable law, to substitute shares of another portfolio for shares of the Current Funds held by the Equitable Accounts, and that appropriate disclosure of this right is contained in the prospectuses describing the Contracts. The Applicants assert that they have reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed by events affecting the issuer of the securities held by a Separate Account and to preserve the opportunity to replace such shares where a substitution could benefit the Contract owners.

3. The Section 26 Applicants maintain that the proposed substitutions protect the Contract owners who have allocated Contract value to the Current Funds by: (1) providing an underlying investment option that is substantially similar in all material aspects to the current investment option; and (2) providing such Contract owners with simpler and more focused disclosure documents.

4. The Section 26 Applicants submit that the proposed substitutions meet the standards that the Commission and its staff generally have applied to other substitutions that have been approved. In addition, the Applicants contend that none of the proposed substitutions is the type of substitution that Section 26(b) was designed to prevent. Unlike traditional unit investment trusts, the Contracts provide each Contract owner with the right to exercise his own judgment and transfer Contract values into any other available variable and/or fixed investment options. Additionally, Applicants state that the proposed substitutions will not, in any manner, reduce the number, nature or quality of the available investment options. The Applicants assert that the Contract owners will be offered the opportunity to transfer amounts out of the affected subaccounts without any cost or penalty that may otherwise have been imposed until thirty days after the Substitution Date. For these reasons, the Applicants

maintain that the proposed substitutions will not result in the type of forced redemptions that Section 26(b) was designed to prevent.

5. The Section 26 Applicants further submit that the proposed substitutions also are unlike the type of substitution that Section 26(b) was designed to prevent in that by purchasing a Contract, Contract owners and participants select much more than a particular underlying fund in which to invest. The Contract owners also select the specific type of insurance coverage offered under the Contract, as well as other rights and privileges set forth in the Contract. The Applicants state that, in choosing to buy a Contract, the Contract owner also may have considered Equitable's size, financial condition, and reputation for service, and that none of those considerations and factors will change as a result of the proposed substitutions.

6. The Section 26 Applicants submit that, for all reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

7. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits such affiliated persons from knowingly purchasing any security or other property from such registered investment company.

8. Section 17(b) of the 1940 Act Authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

9. The Section 17 Applicants submit that each of the Current Funds may be deemed to be an affiliated person of an affiliated person (Equitable or the Equitable Separate Accounts) of the New Funds, and vice versa. In addition, each of the Current Funds and each of the New Funds may be deemed to be under the common control of Equitable or the Equitable Separate Accounts and, therefore, to be affiliated persons of each other. If viewed as such, the proposed In-Kind Transactions may be deemed to

contravene Section 17(a) due to the affiliated status of the participants.

10. The Section 17 Applicants maintain that the terms of the proposed substitutions, including the consideration to be paid and received, are reasonable, fair, and do not involve overreaching because: (1) the transactions will not adversely affect or dilute the interests of Contract owners and participants; (2) with respect to those securities for which market quotations are readily available, the transactions will comply with the conditions set forth in Rule 17a-7, other than the requirement relating to cash consideration; and (3) with respect to those securities for which market quotations are not readily available, the transactions will be effected in accordance with each Fund's normal valuation procedures, as set forth in the HRT and EQAT registration statements. The Applicants assert that the In-Kind Transactions will be effected at the respective net asset values of the Current Funds and the New Funds and that, after the proposed In-Kind Transactions, the value of an Equitable Separate Account's investment in the New Funds will equal the value of its investment in the Current Funds before the In-Kind Transactions. The Applicants further maintain that none of the parties will be in a position to "dump" undesirable securities on either the Current or New Funds or to transfer desirable securities to other advisory clients because virtually all of the portfolio securities of each of the Current Funds will be transferred to the corresponding New Fund, and the portfolio securities were selected and retained, or will be selected between the date of the amended and restated application and the Substitution Date, without regard to the proposed In-Kind Transactions.

11. The Section 17 Applicants submit that the proposed redemption of shares of the Current Funds will be consistent with the investment policies of HRT and the Current Funds provided that the shares are redeemed at their net asset value in conformity with Rule 22c-1 under the 1940 Act. The Applicants also submit that the proposed sale of shares of the New Funds for investment securities is consistent with the investment policy of EQAT and will be consistent with the investment policy of each of the New Funds provided that: (1) the shares are sold at their net asset value; and (2) the investment securities are of the type and quality that each of the New Funds could have acquired, respectively, with the proceeds from the sale of its shares had the shares been sold for cash. The Applicants assert that

the second of these conditions is met because for the proposed In-Kind Transactions: (1) the New Funds are substantially similar to the Current Funds; (2) the Adviser for the New Funds will be the same as the current investment adviser for the corresponding Current Funds; and (3) the Adviser will have retained or selected each portfolio security for the corresponding Current Fund without regard to the proposed In-Kind Transaction.

12. The Section 17 Applicants assert that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in Section 1 of the 1940 Act and do not present any conditions or abuses that the 1940 Act was designed to prevent.

### Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions and related transactions involving the In-Kind Transactions should be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-22022 Filed 8-24-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23954; 812-11588]

### Van Wagoner Funds, Inc., et al.; Notice of Application

August 19, 1999.

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

**ACTION:** Notice of application under sections 6(c) and 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act permitting certain joint transactions.

**SUMMARY OF APPLICATION:** The order would permit applicants to co-invest in the same issuers of securities with each other and certain affiliates.

**APPLICANTS:** Van Wagoner Funds, Inc. (the "Company") and Van Wagoner Capital Management, Inc. (the "Adviser").

**FILING DATES:** The application was filed on April 20, 1999, and amended on July 7, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the