

conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

j. Policy owners affected by the substitutions will be sent written confirmation of the substitutions that identify each substitution made on behalf of that Policy owner 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 in the application and the substitutions proposed in the Equitable Application, by a majority of that New Fund's outstanding voting securities in a manner consistent with the EQAT Shared Funding Order.

15. The 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 approving the Equitable Application.

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

d. Each Policy owner will have been mailed the First Notice, and, at least thirty days prior to the Substitution Date, the Second Notice and effective prospectuses for the New Funds.

e. The Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Policies allow the substitution of portfolios as described in the application, and that the transactions can be consummated as described herein under applicable insurance laws and under the Policies.

f. The Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Policies have been 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 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 Applicants submit that the Policies expressly reserve to the Applicants the right, subject to compliance with applicable law, to change or add investment companies and add or remove investment divisions, and that appropriate disclosure of this right of substitution is contained in the prospectuses describing the Policies. The Applicants assert that they have reserved this right of substitution both to protect themselves and the Policy owners in situations where either might be harmed by events affecting the issuer of the securities held by the American Franklin Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit itself and its Policy owners.

3. The Applicants maintain that the proposed substitutions protect the Policy owners who have allocated Policy value to the Current Funds by: (1) Providing an underlying investment option that is essentially identical in all material aspects to the current investment option; and (2) eliminating Current Funds that will not be viable due to the low level of assets following the proposed substitutions by Equitable.

4. The Applicants further 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 Policies provide each Policy owner with the right to exercise his own judgment and transfer Policy 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 Policy 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 costly forced redemption that Section 26(b) was designed to prevent.

5. The 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 Policy, Policy owners select much more than a

particular underlying fund in which to invest their Policy values. The Policy owners also select the specific type of insurance coverage offered by the Applicants under the applicable Policy, as well as numerous other rights and privileges set forth in the Policy. The Applicants state that, in choosing to buy a Policy from American Franklin, the Policy owner also may have considered American Franklin'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 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.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-22839 Filed 9-1-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23980; File No. 812-11676]

Integrity Life Insurance Company, et al.

August 27, 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.

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.

Applicants: Integrity Life Insurance Company, National Integrity Life Insurance Company, Separate Account VUL of Integrity Life Insurance Company, and Separate Account VUL of National Integrity Life Insurance Company (collectively, the "Applicants").

Filing Date: The application was filed on July 1, 1999, and amended and restated on August 17, 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 21, 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, NW, Washington, DC 20549-0609. Applicants: c/o Integrity Life Insurance Company, 515 West Market Street, 8th Floor, Louisville, Kentucky 40202, Attn: Kevin L. Howard, Esq.

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, NW, Washington, DC 20549-0102 (tel. (202) 942-8090).

Applicants' Representations

1. Integrity Life Insurance Company ("Integrity") is an Ohio stock life insurance company. Integrity sells flexible premium variable annuity contracts, fixed single premium annuity contracts, and flexible premium annuity contracts offering both traditional fixed guaranteed interest rates along with equity indexed options. Integrity serves as depositor for Separate Account VUL of Integrity Life Insurance Company ("Integrity Account").

2. Integrity is an indirect wholly owned subsidiary of ARM Financial Group, Inc., a publicly traded corporation specializing in providing retail and institutional customers with products and services designed for long-term savings and retirement planning.

3. National Integrity Life Insurance Company ("National Integrity," and together with Integrity, the "Insurance Companies") is a New York stock life

insurance company. National Integrity sells flexible premium variable annuity contracts, fixed single premium annuity contracts, and flexible premium annuity contracts offering traditional fixed guaranteed interest rates. National Integrity serves as depositor for Separate Account VUL of National Integrity Life Insurance Company ("National Integrity Account," and together with the Integrity Account, the "Insurance Company Accounts"). National Integrity is a wholly owned subsidiary of Integrity.

4. Each of the Insurance Company Accounts is a segregated asset account of its Insurance Company sponsor and is registered with the Commission under the 1940 Act as a unit investment trust. The Insurance Company Accounts fund the variable benefits available under certain variable life insurance policies issued by their respective Insurance Company sponsors (collectively, the "Policies"). The Policies are flexible premium individual variable life insurance policies. Integrity and National Integrity have not offered the Policies since 1990, but the Policies that they issued are still outstanding.¹

5. 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 "1933 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, six of which ("Current Funds") would be involved in the proposed substitutions. HRT sells shares to the Insurance Company Accounts to serve as an investment medium for the Policies.² Sales of HRT

¹ Applicants represent that, in reliance on the relief in *Great-West Life Insurance Company* (pub. avail. Oct. 23, 1990) ("Great-West"), they provide certain information to Policy owners about the policies, the relevant Insurance Company, and the underlying fund in lieu of filing post-effective amendments to the registration statements relating to those Policies or delivering updated prospectuses to those Policies owners.

² An exemptive order was issued by the Commission granting exemptions from the 1940 Act to permit shares of HRT to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or variable annuity contracts. See *Equitable Variable Life Insurance Company, Investment Company Act Rel. Nos. 14899* (Jan. 14, 1986) (order) and 14860 (Dec. 18, 1985) (notice). An exemptive order also was issued by the Commission granting exemptions from the 1940 Act to permit shares of EQ Advisors Trust to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or annuity contracts ("EQAT Shared Funding Order"). See *EQ Advisors Trust, Investment Company Act Rel. Nos. 22651* (April 30, 1997) (order) and 22602 (April 4, 1997) (notice).

shares to the Insurance Company Accounts currently account for less than 1% of HRT's total assets. 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. The Insurance Company Accounts hold only Class IA shares. Each Current Fund is advised by Alliance Capital Management L.P. ("Alliance"), an investment adviser registered under the Investment Advisers Act of 1940, as amended ("Advisers Act").

6. 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 currently sells shares to certain registered and unregistered separate accounts ("Equitable Separate Accounts") used as the underlying investment options for certain variable annuity contracts and/or variable life insurance policies issued by The Equitable Life Assurance Society of the United States ("Equitable"). EQAT currently offers two classes of shares, Class IA and 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. 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 with EQAT.³ 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

³ 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 to Equitable. That transfer of the Investment Management Agreement is expected to occur prior to October 1, 1999.

Board of Trustees. 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.⁴ In such circumstances, owners would receive notice of any such action, including information concerning any new Adviser, that normally is provided in proxy materials.

7. EQAT has filed a post-effective amendment to its registration statement on Form N-1A in order to register 14 new portfolios, including the six portfolios ("New Funds") that the Applicants propose to substitute for the Current Funds. Alliance will serve as the Adviser to each of the 14 new portfolios (the "Alliance Portfolios"), including the New Funds. EQAT intends to sell shares of the Alliance

Portfolios to the Equitable Separate Accounts, as well as to the Insurance Company Accounts.

8. The Policies 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 Insurance Company Accounts. The prospectuses describing the Policies contain appropriate disclosure of this right of substitution.

9. Applicants represent that they are not affiliates of HRT, EQAT or Equitable.

10. The Applicants propose to substitute Class IA shares issued by the six New Funds for the Class IA shares issued by six Current Funds. Equitable and each Equitable Separate Account that is registered under the 1940 Act and that currently invests in HRT (collectively, the "Equitable Accounts") have filed an application with the Commission ("Equitable Application") requesting, *inter alia*, an order pursuant to Section 26(b) of the 1940 Act, approving the substitution of securities issued by the Alliance Portfolios for the securities issued by the 14 portfolios of HRT and currently used as the investment options for the contracts issued by Equitable through the Equitable Accounts.⁵ If approved, Equitable will redeem more than 99% of HRT's assets in connection with those substitutions. Applicants state that it is their belief that it is reasonable to conclude that, following the proposed

substitutions by Equitable: (i) The expense level of the Current Funds will increase dramatically as a percentage of net assets due to the smaller asset base, which is highly unlikely to increase; (ii) the Current Funds will be difficult to manage in conformity with the applicable diversification regulations under the Internal Revenue Code of 1986, as amended ("Code"); and (iii) the asset levels of the Current Funds will be small enough to raise concern as to whether the Current Funds will remain viable investment options. By contrast, none of these concerns will be associated with investments in EQAT. Applicants submit that, under these circumstances, the substitution of the New Funds for the Current Funds is in the best interest of Policy owners.

11. The Applicants represent that the Manager of the 25 current portfolios of EQAT will also serve as Manager of the New Funds, that Alliance will serve as the Adviser to each of the Alliance Portfolios, and that each of the New Funds will have the same portfolio manager(s) as those of the corresponding Current Fund. The Applicants also state that each of the New Funds 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 as follows:

Current fund	Investment objective	New fund	Investment objective
Alliance Aggressive Stock Portfolio	Seeks to achieve long-term growth of capital.	Alliance Aggressive Stock Portfolio.	Seeks to achieve long-term growth of capital.
Alliance Balanced Portfolio	Seeks to achieve a high return through both appreciation of capital and current income.	Alliance Balanced Portfolio	Seeks to achieve a high return through both appreciation of capital and current income.
Alliance Common Stock Portfolio ..	Seeks long-term growth of its capital and increase in income.	Alliance Common Stock Portfolio	Seeks long-term growth of its capital and increase in income.
Alliance Global Portfolio	Seeks long-term growth of capital	Alliance Global Portfolio	Seeks long-term growth of capital.
Alliance High Yield Portfolio	Seeks to achieve a high return by maximizing current income and, to the extent consistent with that objective, capital appreciation.	Alliance High Yield Portfolio	Seeks to achieve a high return by maximizing current income and, to the extent consistent with that objective, capital appreciation.
Alliance Money Market Portfolio	Seeks to obtain a high level of current income, preserve its assets and maintain liquidity.	Alliance Money Market Portfolio ...	Seeks to obtain a high level of current income, preserve its assets and maintain liquidity.

12. The Applicants state that it is expected that: (i) The management fees (*i.e.*, the total management fees paid to the Manager and from which the Manager will compensate 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 corresponding Current Fund. The Applicants also represent that the chart below shows: (i) The Management fees

⁴ See EQ Advisors Trust and EQ Financial Consultants, Inc., Investment Company Act Rel. 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.

⁵ File No. 812-11602 (filed Apr. 30, 1999).

and total expenses for Class IA 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 shares of each of

the New Funds following the proposed substitutions. Estimated management fees and total expenses of Class IA shares of each of the New Funds are based on pro forma expenses of the New

Funds following the proposed substitutions and are based upon the audited financial statements of HRT for the year ending December 31, 1998.

Year ending December 31, 1998			Pro forma		
Current fund class IA	Advisory fees (as percentage of average daily net assets)	Total ex- penses (as percentage of average daily net assets)	New fund class IA	Managemet and advisory fees (as percentage of average daily net assets)	Total ex- penses (as percentage of average daily net assets)
Alliance Aggressive Stock Portfolio	0.54	0.56	Alliance Aggressive Stock Portfolio	0.54	0.57
Alliance Balanced Portfolio	0.41	0.45	Alliance Balanced Portfolio	0.41	0.46
Alliance Common Stock Portfolio	0.36	0.39	Alliance Common Stock Portfolio	0.36	0.40
Alliance Global Stock Portfolio	0.64	0.71	Alliance Global Stock Portfolio	0.64	0.72
Alliance High Yield Portfolio	0.60	0.63	Alliance High Yield Portfolio	0.60	0.64
Alliance Money Market Portfolio	0.35	0.37	Alliance Money Market Portfolio	0.35	0.38

13. The Applicants state that they provided their respective Policy owners with detailed notice disclosing the proposed substitutions shortly after the application was initially filed. The Applicants state that, upon effectiveness of the post-effective amendment to the registration statement of EQAT with respect to the New Funds and publication of notice by the Commission with respect to the application, they will send the Policy owners further detailed notice concerning the proposed substitutions, together with a prospectus for the New Funds. The notices will describe each of the New Funds, identify each Current Fund that is being replaced, and disclose the impact of other substitutions on fees and expenses at the underlying fund level. The Applicants state that copies of the prospectuses for the New Funds will be sent to Policy owners with the notice. The notice period will be at least thirty days after the notice is sent to affected Policy owners. Confirmation of the substitutions will be sent to affected Policy owners within five days after the substitutions are effected.

14. The Applicants state that the substitutions will be effected by redeeming shares of the Current Funds on the effective date of the substitutions proposed in the application and proposed in the Equitable Application ("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 changes will be imposed by the Applicants and, on the Substitution Date, all policy 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 will reduce the brokerage costs that otherwise would be incurred in connection with the proposed substitutions and will ensure that Policy 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.

15. The significant terms of the substitutions described 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 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 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 substitutions.

c. Policy owners may transfer assets from the Current or New Funds to another fund available under their Policy 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 Applicants, and with no change in the amount of any Policy owner's Policy value or in the dollar value of his or her investment in such Policy.

e. Policy owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or the obligations of the relevant Insurance Company under the Policies 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 Policy fees and charges currently being paid by existing Policy 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 the 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 Policy owners can select during the life of a Policy.

h. The substitutions will not alter in any way the life benefits, tax benefits, or any Policy obligations of the Applicants, under the Policies.

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

j. Policy owners affected by the substitutions will be sent written confirmation of the substitutions that identify each substitution made on behalf of that Policy owner 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 in the application and the substitutions proposed in the Equitable Application, by a majority of that New Fund's outstanding voting securities in a manner consistent with the EQAT Shared Funding Order.

16. The 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 approving the Equitable Application.

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

d. Each Policy owner will have been mailed effective prospectuses for the New Funds and relevant information about the proposed substitutions for the applicable Policies at least 30 days prior to the Substitution Date. In conjunction with this mailing, each Policy owner will have been sent a notice that describes the terms of the proposed substitutions and the Policy owners' rights in connection with them.

e. The Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Policies allow the substitution of portfolios as described in the

application, and that the transactions can be consummated as described herein under applicable insurance laws and under the various Policies.

f. The Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Policies have been 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 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 Applicants submit that the Policies 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 Insurance Company Accounts, and that appropriate disclosure of this right of substitution is contained in the prospectuses describing the Policies. The Applicants assert that they have reserved this right of substitution both to protect themselves and their Policy owners in situations where either might be harmed by events affecting the issuer of the securities held by the Insurance Company Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit itself and its Policy owners.

3. The Applicants maintain that the proposed substitutions protect the Policy owners who have allocated Policy 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) eliminating Current Funds that will not be viable due to the low level of assets following the proposed substitutions by Equitable.

4. The Applicants further 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 Policies provide each Policy owner with the right to exercise his own judgment

and transfer Policy 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 Policy owners will be offered the opportunity to transfer amounts out of the affected subaccounts without any cost or other 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 costly forced redemption that Section 26(b) was designed to prevent.

5. The 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 Policy, Policy owners select much more than a particular underlying fund in which to invest their Policy values. The Policy owners also select the specific type of insurance coverage offered by the Applicants under the applicable Policy, as well as numerous other rights and privileges set forth in the Policy. The Applicants state that, in choosing to buy a Policy from one of the Insurance Companies, it is likely that the Policy owner also may have considered that Insurance Company'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 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.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-22942 Filed 9-1-99; 8:45 am]

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