

The licensee has determined that the proposed action (DECON) is the most efficient use of the existing facility, because the SAFSTOR, ENTOMB, and no-action alternatives would entail continued surveillance, maintenance, and physical security measures to be in place and continued monitoring by licensee personnel. The alternatives would also entail the costs associated with these activities.

#### *Alternative Use of Resources*

This action does not involve the use of any resources different from those previously committed for construction and operation of the PBRF.

#### *Agencies and Persons Consulted*

In accordance with its stated policy, on January 21, 2000, the staff consulted with the State of Ohio official, Ruth Vandegrift, Supervisor Decommissioning for the Ohio Department of Health, Bureau of Radiation Protection regarding the environmental impact of the proposed action. The state official had no comments.

#### **Finding of No Significant Impact**

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. The environmental impacts are expected to be bounded by the analyses in NUREG-0586. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 20, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. It is also available at <http://www.nrc.gov/OPA/reports> under "What's New on This Page," "Decommissioning" or "Other Documents."

Dated at Rockville, Maryland, this 21st day of March 2000.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. IC-24346; File No. 812-11862]

### **Canada Life Insurance Company of America, et al.; Notice of Application**

March 22, 2000.

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

**ACTION:** Notice of application for an order of approval pursuant to Section 26(b) of the Investment Company Act of 1940 (the "Act") approving certain substitutions of securities.

*Summary of Application:* Applicants request an order under Section 26(b) of the Act to permit certain registered unit investment trusts to substitute (a) Shares of the Money Market Portfolio ("Fidelity Money Market Portfolio") of the Fidelity Variable Insurance products Fund ("Fidelity VIP") for shares of the Money Market Portfolio of the Canada Life of America Series Fund, Inc. (the "Series Fund"); (2) shares of the Investment Grade Bond Portfolio ("Fidelity Bond Portfolio") of the Fidelity Variable Insurance Products Fund II ("Fidelity VIP II") for shares of the Series Fund's Bond Portfolio; (3) shares of the Fidelity VIP's Overseas Portfolio ("Fidelity Overseas Portfolio") for shares of the Series Fund's International Equity Portfolio; (4) shares of the American MidCap Growth Portfolio ("Alger MidCap Portfolio") of The Alger American Fund ("Alger") for shares of the Series Fund's Capital Portfolio; (5) shares of the Fidelity VIP II's Asset Manager Portfolio ("Fidelity Asset Manager Portfolio") for shares of the Series Fund's Managed Portfolio; and (6) shares of the Fidelity VIP II's Contrafund Portfolio ("Fidelity Contrafund Portfolio") for shares of the Series Fund's Value Equity Portfolio currently held by those unit investment trusts.

*Applicants:* Canada Life Insurance Company of America ("Canada Life"), Canada Life Insurance Company of New York ("Canada Life of New York"), Canada Life of America Variable Annuity Account 1 ("the Canada Life Account") and Canada Life of New York Variable Annuity Account 1 ("the Canada Life of New York Account") (together, the "Applicants").

*Filing Date:* The application was filed on November 19, 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 April 17, 2000, 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, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, Charles MacPhaul, Esq., Senior Counsel, Canada Life Insurance Company of America, 6201 Powers Ferry Road, N.W., Atlanta, GA 30339. Copy to Stephen E. Roth, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004-2415.

**FOR FURTHER INFORMATION CONTACT:** Paul G. Cellupica, Senior Counsel, or Keith Carpenter, 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 may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW, Washington, DC 20549-0102 (tel. (202) 942-8090).

#### **Applicants' Representations**

1. Canada Life is a stock life insurance company incorporated under the laws of Michigan. Canada Life is engaged in the business of writing individual annuity contracts in the District of Columbia and all states except New York and Vermont. Canada Life is the depositor and sponsor of the Canada Life Account.

2. Canada Life of New York is a stock life insurance company incorporated under New York law. Canada Life of New York is engaged in the business of writing individual life insurance and annuity contracts in the State of New York. Canada Life of New York is the depositor and sponsor of the Canada Life of New York Account.

3. The Canada Life Account, a separate investment account established under Michigan law, is registered with the Commission as a unit investment trust. The assets of the Canada Life Account support individual flexible premium deferred variable annuity contracts ("Contracts"), and interests in the Canada Life Account offered through such Contracts have been registered under the Securities Act of 1933 (the "1933 Act") on Form N-4.

The Canada Life Account is currently divided into twenty-six subaccounts. Each subaccount invests exclusively in shares representing an interest in a corresponding investment portfolio ("Portfolio") of one of nine management investment companies of the series type ("Management Companies").

4. The Canada Life of New York Account, a separate investment account established under New York law, is registered with the Commission as a unit investment trust. The assets of the Canada Life of New York Account support the Contracts, and interests in the Canada Life of New York Account offered through such Contracts have been registered under the 1933 Act on Form N-4. The Canada Life of New York Account is currently divided into twenty-six subaccounts. Each subaccount invests exclusively in shares representing an interest in a Portfolio.

5. The Series Fund, a Maryland corporation, is registered under the Act as an open-end management investment company. The Series Fund is currently comprised of six portfolios, all of which would be involved in the proposed substitutions. The Series Fund issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N-1A. CL Capital Management, Inc. serves as the investment adviser to the Series Fund's Bond Portfolio, Money Market Portfolio and to the debt and money market portions of the Managed Portfolio, and, in general, supervises the management and investment program for all of the Series Fund portfolios. The investments of the Capital Portfolio, Value Equity Portfolio, and International Equity Portfolio and the equity portion of the Managed Portfolio are managed by subadvisers that are supervised by CL Capital Management, Inc.

6. Fidelity VIP, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Fidelity VIP is currently comprised of five portfolios, two of which would be involved in the proposed substitutions. Fidelity VIP issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N-1A. Fidelity Management & Research Company serves as the investment adviser to Fidelity VIP's Portfolios.

7. Fidelity VIP II, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Fidelity VIP II is currently comprised of five portfolios, three of which would be involved in the proposed substitutions. Fidelity VIP II

issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N-1A. Fidelity Management & Research Company serves as the investment adviser to Fidelity VIP II's Portfolios.

8. Alger, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Alger is currently comprised of six portfolios, one of which would be involved in the proposed substitutions. Alger issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N-1A. Fred Alger Management Inc. serves as the investment adviser to Alger's Portfolios.

9. The Series Fund's Money Market Portfolio seeks as high a level of current income as is consistent with preservation of capital and liquidity. It invests primarily in high-quality U.S. dollar-denominated money market instruments of U.S. and foreign issuers that generally have remaining maturities of thirteen months or less. The Money Market Portfolio's investment adviser complies with industry-standard requirements for money market funds regarding the quality, maturity and diversification of the fund's investments. The investment adviser stresses maintaining a stable \$10.00 share price, liquidity and income. The Portfolio's investments are comprised of U.S. government securities, obligations issued or guaranteed as to principal and interest by the Government of Canada, the government of any Canadian province, or any Canadian or provincial Crown agency, obligations such as certificates of deposits and bankers' acceptances of banks, prime commercial paper; and repurchase agreements backed by U.S. government securities.

10. The Series Fund's Bond Portfolio seeks as high a level of current income and capital appreciation as is consistent with preservation of principal. Its primary investments are debt securities, and it normally invests at least 80% of its total assets in U.S. government securities; publicly traded debt instruments rated within the four highest categories by a rating agency; and Canadian government obligations. The Portfolio only invests in U.S. dollar-denominated debt instruments.

11. The Series Fund's International Equity Portfolio seeks long-term capital appreciation by investing in equity or equity type securities of companies located outside the United States. The International Equity Portfolio's subadviser seeks diversification by purchasing securities of at least four

different countries that offer varying investment opportunities and are affected by different economic trends. The Portfolio may invest in developed countries, in American Depositary Receipts, European Depositary Receipts and up to 30% of its total assets in emerging markets countries. In seeking to limit risks, the Portfolio's exposure is limited as follows: to a single industry group to 25% of its total assets; to a single country, excluding the United Kingdom and Japan, to 25% of its total assets; by normally holding investments in at least 4 countries and at least 40 different companies; and by investing in a minimum of at least 5 to 8 different industry groups.

12. The Series Fund's Capital Portfolio seeks capital appreciation, not current income, by investing in common stocks and securities convertible into or exchangeable for common stocks, in common stock purchase warrants, in debt securities, and in preferred stocks believed to provide capital appreciation opportunities. The Capital Portfolio's subadviser selects common stocks based on their near- or intermediate-term prospects, and its portfolio manager selects stock believed to be underpriced or stocks of growth companies, cyclical companies, or companies believed to be undergoing a basic change for the better. The Capital Portfolio may invest in stocks of companies showing earnings growth and predictability and newer, less-seasoned companies believed to have better-than-average prospects.

13. The Series Fund's Managed Portfolio seeks as high a level of return as possible, through capital appreciation and income, consistent with prudent investment risk and preservation of capital. The Managed Portfolio follows a fully managed investment policy by investing in three types of investments: equities, debt obligations, and money market instruments. There are no maximum or minimum percentages as to the amount of the Portfolio's assets that may be invested in any one type of investment. The Managed Portfolio's investment adviser determines the asset mix based on its overall analysis of the political and economic outlook over the next six to eighteen months, taking into account such factors as inflation, commodity prices, growth, relative values of stocks and bonds, and trends in currency values.

14. The Series Fund's Value Equity Portfolio seeks long-term growth of capital and income by investing in equity securities which are believed to have appreciation potential. The portfolio manager principal approach is to invest in common stocks having depressed values based on poor current

market and appearing undervalued relative to normal earnings power. The portfolio manager chooses investments emphasizing companies with good financial resources, satisfactory rate of return on capital, good industry position, and superior management skills.

15. The Fidelity Money Market Portfolio seeks as high a level of current income as is consistent with preservation of capital and liquidity. The principal investment strategies of the Portfolio's investment adviser include investing in U.S. dollar-denominated money market securities, including U.S. Government securities and repurchase agreements, and entering into reverse repurchase agreements; investing more than 25% of total assets in the financial services industry; and investing in compliance with industry-standard requirements for money market funds for the quality, maturity and diversification of investments. The investment adviser stresses maintaining a stable 41.00 share price, liquidity and income.

16. The Fidelity Overseas Portfolio seeks long-term growth of capital. The principal investment strategies of the Portfolio's investment adviser include investing at least 65% of total assets in foreign securities; investing primarily in common stocks; allocating investments across countries and regions considering the size of the market in each country and region relative to the size of the international market as a whole; and using fundamental analysis of each issuer's financial condition and industry position and market and economic conditions to select investments.

17. The Fidelity Bond Portfolio seeks as high a level of current income as is consistent with the preservation of capital. The principal investment strategies of the Portfolio's investment adviser include investing in U.S. dollar-denominated investment-grade bonds; managing the fund to have similar overall interest rate risk to the Lehman Brothers Aggregate Bond Index; allocating assets across different market sectors and maturities; and using analysis of a security's structural features, current pricing and trading opportunities, and the credit quality of its issuer to select investments.

18. The Fidelity Asset Manager Portfolio seeks to obtain high return with reduced risk over the long term by allocating its assets among stocks, bonds, and short-term instruments. The principal investment strategies of the Portfolio's investment adviser include allocating the fund's assets among stocks, bonds, and short-term and money market instruments; maintaining

a neutral mix over time of 50% of assets in stocks, 40% of assets in bonds, and 10% of assets in short-term and money market instruments; adjusting allocation among asset classes gradually within the following ranges: stock class (30%–70%), bond class (20%–60%), and short-term/money market class (0%–50%); investing in domestic and foreign issuers; and using analysis of fundamental and/or quantitative factors and evaluation of each security's current price relative to estimated long-term value to select investments.

19. The Alger MidCap Portfolio seeks long-term capital appreciation. The Alger MidCap Portfolio focuses on midsize companies with promising growth potential. Under normal circumstances, the Portfolio invests primarily in the equity securities of companies having a market capitalization within the range of companies in the S&P Mid Cap 400 Index.

20. The Fidelity Contrafund Portfolio seeks long-term capital appreciation. The principal investment strategies of the Portfolio's investment adviser include investing primarily in common stocks; investing in securities of companies whose value it believes is not fully recognized by the public; investing in domestic and foreign issuers; investing in either "growth" stocks or "value" stocks or both; and using fundamental analysis of each issuer's financial condition and industry position and market and economic conditions to select investments.

21. The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a fixed basis. Under the Contracts, Canada Life and Canada Life of New York reserve the right to substitute shares of another portfolio of the Management Companies or shares of a different management company. A policyowner may make unlimited transfers (in minimum amounts of \$250 or the entire value of the subaccounts of the Accounts or the fixed account that is part of the general account of Canada Life or Canada Life of New York. The first twelve transfers during each policy year are free. Canada Life and Canada Life of New York assess a \$25 transfer fee for each transfer in excess of twelve made during a policy year.

22. Since its inception, the Series Fund has been relatively small for several reasons, including the fact that its Portfolios are only offered as funding vehicles for products of Canada Life and Canada Life of New York. As a result, the Series Fund has been able to

generate a sufficient level of assets to achieve any significant economies of scale, and has not been able to achieve above-average performance results or otherwise distinguish itself from other Management Companies that offer comparable portfolios. In light of the fact that a number of unaffiliated mutual fund organizations have large and successful insurance product portfolios in which the Accounts could invest, including several that the Accounts already invest in, Canada Life and Canada Life of New York propose substituting shares of the Fidelity VIP, Fidelity VIP II and Alger Portfolios for shares of the Series Fund Portfolios. The Fidelity VIP, Fidelity VIP II and Alger Portfolios are all part of a larger group of funds and have more distribution channels than the Series Fund Portfolios. Although the immediate increase in the size of the Fidelity VIP, Fidelity VIP II and Alger Portfolios as a direct result of the proposed substitutions would be modest, Applicants understand that these Portfolios offer their shares to insurance companies other than Canada Life and Canada Life of New York as investment options under various variable annuity and variable life insurance contracts issued by such companies. Applicants believe that the Fidelity VIP, Fidelity VIP II and Alger Portfolios would offer policyowners invested in them better growth prospects and greater appeal than is currently the case with the Series Fund Portfolios.

23. Canada Life and Canada Life of New York, on their behalf and on behalf of the Canada Life Account and the Canada Life of New York Account, propose to substitute: (1) Shares of the Fidelity Money Market Portfolio for shares of the Money Market Portfolio; (2) shares of the Fidelity Bond Portfolio for shares of the Bond Portfolio; (3) shares of the Fidelity Overseas Portfolio for shares of the International Equity Portfolio; (4) shares of the Alger MidCap Portfolio for shares of the Capital Portfolio; (5) shares of the Fidelity Asset Manager Portfolio for shares of the Managed Portfolio; and (6) shares of the Fidelity Contrafund Portfolio for shares of the Value Equity Portfolio.

24. Certain subaccounts of the Canada Life Account and the Canada Life of New York Account currently invest in shares representing an interest in the Fidelity Overseas Portfolio, Alger MidCap Portfolio, Fidelity Asset Manager Portfolio and Fidelity Contrafund Portfolio. Accordingly, immediately following the substitution transactions, the Canada Life Account and the Canada Life of New York Account would each have two

subaccounts holding shares of Fidelity Overseas Portfolio, two subaccounts holding shares of Alger MidCap Portfolio, two subaccounts holding shares of Fidelity Asset Manager Portfolio, and two subaccounts holding shares of Fidelity Contrafund Portfolio. The Canada Life Account and the Canada Life of New York Account would immediately combine the two subaccounts holding shares of the Fidelity Overseas Portfolio by transferring shares on the same date from one of the subaccounts holding shares of the Fidelity Overseas Portfolio to the other subaccount holding shares of the Overseas Portfolio. The Canada Life Account and the Canada Life of New York Account would similarly combine the two subaccounts holding shares of Alger MidCap Portfolio, Fidelity Asset Manager Portfolio, and Fidelity Contrafund Portfolio.

25. With respect to the proposed substitution of shares of the Fidelity

Money Market Portfolio for shares of the Money Market Portfolio, both Portfolios share substantially similar investment objectives using similar investment policies by seeking to provide policyowners with as high a level of current income as is consistent with preservation of capital and liquidity. Applicants believe that by making the proposed substitution, they can better serve the interests of policyowners by offering them a Portfolio which in recent years has had lower expenses and better performance than the Money Market Portfolio. The assets of the Fidelity Money Market Portfolio have been significantly greater than the assets of the Money Market Portfolio for each of the past three years. As a result of its size, the Fidelity Money Market Portfolio has been able to achieve economies of scale that the Money Market Portfolio could not attain. These economies of scale are reflected in the fidelity Money Market Portfolio's ratio

of total operating expenses to net asset value. Even after the Money Market Portfolio received an expense reimbursement, the Fidelity Money Market Portfolio's expense ratios have been less than one-half those of the Money Market Portfolio over the past three years. Applicants believe that the Fidelity Money Market Portfolio in the near future. Further, the Fidelity Money Market Portfolio has had better cumulative performance than has the Money Market Portfolio during the past three years. Accordingly, this proposed substitution would move policyowners currently invested in the Money Market Portfolio to a much larger fund with a significantly greater level of net assets, lower expense ratios, and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

| Money market portfolio <sup>1</sup> | Net assets at year-end | Expense ratio <sup>2</sup> (percent) | Total return (percent) |
|-------------------------------------|------------------------|--------------------------------------|------------------------|
| 1996 .....                          | \$7,599,213            | 0.75                                 | 4.58                   |
| 1997 .....                          | 9,149,393              | 0.75                                 | 4.95                   |
| 1998 .....                          | 12,309,897             | 0.75                                 | 4.77                   |

<sup>1</sup> The Money Market Portfolio began operations on Dec. 4, 1989.

<sup>2</sup> Before expense reimbursement, the Money Market Portfolio's expense ratios for 1996, 1997, and 1998 were 1.09%, 1.16% and 0.95%, respectively.

| Fidelity money market portfolio <sup>1</sup> | Net assets at year-end | Expense ratio (percent) | Total return (percent) |
|----------------------------------------------|------------------------|-------------------------|------------------------|
| 1996 .....                                   | \$1,126,155,000        | 0.30                    | 5.41                   |
| 1997 .....                                   | 1,020,794,000          | 0.31                    | 5.51                   |
| 1998 .....                                   | 1,507,489,000          | 0.30                    | 5.46                   |

<sup>1</sup> The Fidelity Money Market Portfolio began operations on April 1, 1982.

26. With respect to the proposed substitution of shares of the Fidelity Bond Portfolio for shares of the Bond Portfolio, both Portfolios have substantially the same investment objective and pursue this objective using similar investment policies. Both Portfolios seek to provide policyowners with as high a level of current income as is consistent with the preservation of capital by investing in U.S. dollar-denominated debt instruments. Applicants believe that the interests of policyowners will be better served by making the proposed substitutions and offering policyowners a Portfolio which has experienced lower expenses and a greater level of assets than the Bond Portfolio in recent years. The assets of the Fidelity Bond Portfolio have been significantly greater than the assets of

the Bond Portfolio for each of the past three years. Due to the fact that the Fidelity Bond Portfolio is a much larger Portfolio than the Bond Portfolio, it has been able to take advantage of much greater economies of scale. These economies of scale are reflected in the Fidelity Bond Portfolio's lower expense ratios, which have been approximately one-third less than those of the Bond Portfolio's expense ratios, after expense reimbursement, during the past three years. Applicants believe that the Fidelity Bond Portfolio will continue to have significantly greater assets than the Bond Portfolio, and have no reason to believe, given the limited distribution of the Bond Portfolio, that the Bond Portfolio will match the low expense ratios of the Fidelity Bond Portfolio in the near future. Further, although the

Fidelity Bond Portfolio and Bond Portfolio have both experienced approximately the same cumulative performance during the past three years. Applicants have no reason to believe that, in the near future, the performance of the Bond Portfolio will significantly exceed that of the Fidelity Bond Portfolio. Accordingly, this proposed substitution would offer policyowners currently invested in the Bond Portfolio the opportunity to invest in a much larger fund with a significantly greater level of net assets, lower expense ratios, and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

| Bond portfolio <sup>1</sup> | Net assets at year-end | Expense ratio <sup>2</sup> (percent) | Total return (percent) |
|-----------------------------|------------------------|--------------------------------------|------------------------|
| 1996 .....                  | \$6,712,914            | 0.90                                 | 4.66                   |
| 1997 .....                  | 7,065,818              | 0.90                                 | 8.09                   |
| 1998 .....                  | 16,705,618             | 0.90                                 | 9.00                   |

<sup>1</sup> The Bond Portfolio began operations on December 4, 1989.

<sup>2</sup> Before expense reimbursement, the Bond Portfolio's expense ratios for 1996, 1997, and 1998 were 1.08%, 1.02% and 0.92%, respectively.

| Fidelity bond portfolio <sup>1</sup> | Net assets at year-end | Expense ratio <sup>2</sup> (percent) | Total return (percent) |
|--------------------------------------|------------------------|--------------------------------------|------------------------|
| 1996 .....                           | \$228,594,000          | 0.58                                 | 3.19                   |
| 1997 .....                           | 324,525,000            | 0.58                                 | 9.06                   |
| 1998 .....                           | 674,813,000            | 0.57                                 | 8.85                   |

<sup>1</sup> The Fidelity Bond Portfolio began operations on December 5, 1988.

<sup>2</sup> The investment adviser has voluntarily agreed to reimburse the Fidelity Bond Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending fees, brokerage commissions and extraordinary expenses), as a percentage of its average net assets, exceed 0.80%.

27. With respect to the proposed substitution of shares of the Fidelity Overseas Portfolio for shares of the International Equity Portfolio, both Portfolios seek to provide policyowners with long-term growth of capital by investing primarily in equity or equity type securities of companies located outside the United States. The two Portfolios have substantially similar investment objectives and similar investment policies. Applicants believe that policyowners will be better off if, as proposed, they are offered the Fidelity Overseas Portfolio which in recent years has had a greater level of assets and lower expenses than the International Equity Portfolio. The assets of the

Fidelity Overseas Portfolio have been significantly greater than the assets of the International Equity Portfolio for each of the past three years. The Fidelity Overseas Portfolio's ratio of total operating expenses to net asset value, which have been much lower than the International Equity Portfolio's during the past three years, reflect a level of economies of scale that the International Equity Portfolio has not been able to achieve. Applicants believe that the Fidelity Overseas Portfolio will continue to have significantly greater assets than the International Equity Portfolio, and have no reason to believe, given the limited distribution of the International Equity Portfolio, that the

International Equity Portfolio will match the low expense ratios of the Fidelity Overseas Portfolio in the near future. Further, although neither Portfolio has consistently outperformed the other during the past three years, this proposed substitution would move policyowners currently invested in the International Equity Portfolio to a much larger fund with a significantly greater level of net assets, lower expense ratios, and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

| International equity portfolio <sup>1</sup> | Net assets at year-end | Expense ratio <sup>2</sup> (percent) | Total return (percent) |
|---------------------------------------------|------------------------|--------------------------------------|------------------------|
| 1996 .....                                  | \$3,305,190            | 1.20                                 | 19.44                  |
| 1997 .....                                  | 4,771,122              | 1.20                                 | 4.32                   |
| 1998 .....                                  | 6,259,057              | 1.20                                 | 13.37                  |

<sup>1</sup> The International Equity Portfolio began operations on April 24, 1995.

<sup>2</sup> Before expense reimbursement, the International Equity Portfolio's expense ratios for 1996, 1997, and 1998 were 1.56%, 1.32% and 1.47%, respectively.

| Fidelity overseas portfolio <sup>1</sup> | Net assets at year-end | Expense ratio <sup>2</sup> (percent) | Total return (percent) |
|------------------------------------------|------------------------|--------------------------------------|------------------------|
| 1996 .....                               | \$1,667,601,000        | 0.92                                 | 13.15                  |
| 1997 .....                               | 1,926,322,000          | 0.90                                 | 11.56                  |
| 1998 .....                               | 2,074,843,000          | 0.89                                 | 12.81                  |

<sup>1</sup> The Fidelity Overseas Portfolio began operations on Jan. 28, 1987.

<sup>2</sup> The investment adviser or the Fidelity Overseas Portfolio has entered into varying arrangements with third parties who either paid or reduced a portion of the Portfolio's expenses. Before such reimbursements or reductions, the Portfolio's expense ratios for 1996, 1997, and 1998 were 0.93%, 0.92% and 0.91%, respectively. The investment adviser has voluntarily agreed to reimburse the Fidelity Overseas Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending fees, brokerage commissions and extraordinary expenses), as a percentage of its average net assets, exceed 1.50%.

28. With respect to the proposed substitution of shares of the Alger MidCap Portfolio for shares of the Capital Portfolio, although the Alger

MidCap Portfolio invests primarily in the equity securities of companies having a market capitalization within the range of companies in the S&P

MidCap 400 Index, it shares substantially the same investment objective as the Capital Portfolio in that both Portfolios seek to provide

policyowners with capital appreciation by focusing on companies with promising growth potential. Applicants believe that by making the proposed substitution, they can better serve the interests of policyowners by offering them a Portfolio which in recent years has had lower expenses and in the past year a higher total return than the Capital Portfolio. The assets of the Alger MidCap Portfolio have been significantly greater than the assets of the Capital Portfolio for each of the past three years. As a result of its size, the Alger MidCap Portfolio has been able to

achieve economies of scale that the Capital Portfolio could not attain, which are reflected in the Alger MidCap Portfolio's ratio of total operating expenses to net asset value. Applicants believe that the Alger MidCap Portfolio will continue to have significantly greater assets than the Capital Portfolio, and have no reason to believe, given the limited distribution of the Capital Portfolio, that the Capital Portfolio will match the lower expense ratios of the Alger MidCap Portfolio in the near future. Further, although the Capital Portfolio experienced higher total

returns than the Alger MidCap Portfolio in 1996 and 1997, the Alger MidCap Portfolio's total return in 1998 was substantially higher than the Capital Portfolio's return. Applicants believe that this proposed substitution would move policyowners currently invested in the Capital Portfolio to a much larger fund with a significantly greater level of net assets, lower expense ratios, and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

| Capital portfolio <sup>1</sup> | Net assets at year-end | Expense ratio <sup>2</sup> (percent) | Total return (percent) |
|--------------------------------|------------------------|--------------------------------------|------------------------|
| 1996 .....                     | \$6,676,516            | 0.90                                 | 12.65                  |
| 1997 .....                     | 6,494,058              | 0.90                                 | 21.14                  |
| 1998 .....                     | 8,407,733              | 0.90                                 | 20.23                  |

<sup>1</sup> The Capital Portfolio began operations on May 1, 1993.

<sup>2</sup> Before expense reimbursement, the Capital Portfolio's expense ratios for 1996, 1997, and 1998 were 0.99%, 0.99% and 0.99%, respectively.

| Alger MidCap portfolio <sup>1</sup> | Net assets at year-end | Expense ratio <sup>2</sup> (percent) | Total return (percent) |
|-------------------------------------|------------------------|--------------------------------------|------------------------|
| 1996 .....                          | \$394,847,000          | 0.84                                 | 11.90                  |
| 1997 .....                          | 444,967,000            | 0.84                                 | 15.01                  |
| 1998 .....                          | 689,571,000            | 0.84                                 | 30.30                  |

<sup>1</sup> The Alger MidCap Portfolio began operations on May 3, 1993.

29. With respect to the proposed substitution of shares of the Fidelity Asset Manager Portfolio for shares of the Managed Portfolio, both Portfolios have substantially the same investment objective and both pursue this objective using similar investment policies. Both Portfolios seek to provide policyowners with high total return, consistent with prudent investment risk, by allocating the Portfolio assets among equities, debt obligations, and short-term and money market instruments. Applicants believe that by making the proposed substitution, they can better serve the interests of policyowners by offering them a Portfolio which in recent years has had lower expenses and better

performance than the Managed Portfolio. The assets of the Fidelity Asset Manager Portfolio have been significantly greater than the assets of the Managed Portfolio for each of the past three years. As a result of its size, the Fidelity Asset Manager Portfolio has been able to achieve economies of scale that the Managed Portfolio could not attain. These economies of scale are reflected in the Fidelity Asset Manager Portfolio's lower expense ratios. Applicants believe that the Fidelity Asset Manager Portfolio will continue to have significantly greater assets than the Managed Portfolio, and have no reason to believe, given the limited distribution of the Managed Portfolio, that the

Managed Portfolio will match the low expense ratios of the Fidelity Asset Manager Portfolio in the near future. Further, the Fidelity Asset Manager Portfolio has had better cumulative performance than has the Managed Portfolio during the past three years. Accordingly, this proposed substitution would move policyowners currently invested in the Managed Portfolio to a much larger fund with a significantly greater level of net assets, lower expense ratios, higher total returns and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

| Managed portfolio <sup>1</sup> | Net assets at year-end | Expense ratio <sup>2</sup> (percent) | Total return (percent) |
|--------------------------------|------------------------|--------------------------------------|------------------------|
| 1996 .....                     | \$15,972,639           | 0.90                                 | 5.75                   |
| 1997 .....                     | 15,277,567             | 0.90                                 | 17.61                  |
| 1998 .....                     | 13,308,554             | 0.90                                 | 5.15                   |

<sup>1</sup> The Managed Portfolio began operations on Dec. 4, 1989.

<sup>2</sup> Before expense reimbursement, the Managed Portfolio's expense ratios for 1996, 1997, and 1998 were 0.95%, 0.95% and 0.96%, respectively.

| Fidelity asset manager portfolio <sup>1</sup> | Net assets at year-end | Expense ratio <sup>2</sup> (percent) | Total return (percent) |
|-----------------------------------------------|------------------------|--------------------------------------|------------------------|
| 1996 .....                                    | \$3,641,194,000        | 0.73                                 | 14.60                  |

| Fidelity asset manager portfolio <sup>1</sup> | Net assets at year-end | Expense ratio <sup>2</sup> (percent) | Total return (percent) |
|-----------------------------------------------|------------------------|--------------------------------------|------------------------|
| 1997 .....                                    | 4,399,937,000          | 0.64                                 | 20.65                  |
| 1998 .....                                    | 4,905,468,000          | 0.63                                 | 15.05                  |

<sup>1</sup> The Fidelity Asset Manager Portfolio began operations on Sept. 6, 1989.

<sup>2</sup> The investment adviser of the Fidelity Asset Manager Portfolio has entered into varying arrangements with third parties who either paid or reduced a portion of the Portfolio's expenses. Before such reimbursements or reductions, the Portfolio's expense ratios for 1996, 1997 and 1998 were 0.74%, 0.65% and 0.64%, respectively. The investment adviser has voluntarily agreed to reimburse the Fidelity Asset Manager Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending fees, brokerage commissions and extraordinary expenses) as a percentage of its average net assets, exceed 1.25%.

30. With respect to the proposed substitution of shares of the Fidelity Contrafund Portfolio for shares of the Value Equity Portfolio, the investment objectives of both Portfolios are substantially similar in that both Portfolios seek long-term capital appreciation, although the Value Equity Portfolio also pursues long-term growth of income. Further, although the Fidelity Contrafund Portfolio's investment policies are broader than those of the Value Equity Portfolio, one of its principal investment strategies parallels the primary approach of the Value Equity Portfolio: to invest in securities which appear to be undervalued. In addition, Applicants believe that by making the proposed substitution, they can better serve the interests of policyowners by offering

them a Portfolio which in recent years has had lower expenses and better overall total returns than the Value Equity Portfolio. The assets of the Fidelity Contrafund Portfolio have been significantly greater than the assets of the Value Equity Portfolio for each of the past three years. As with all of the Portfolios proposed as adequate substitutions for the Series Fund Portfolios, the Fidelity Contrafund Portfolio's size has resulted in greater economies of scale than that of the Value Equity Portfolio. The Fidelity Contrafund Portfolio's expense ratios have been consistently lower than the Value Equity Portfolio's expense ratios over the past three years. Applicants believe that the Fidelity Contrafund Portfolio will continue to have significantly greater assets than the

Value Equity Portfolio, and have no reason to believe, given the limited distribution of the Value Equity Portfolio, that the Value Equity Portfolio will match the lower expense ratios of the Fidelity Contrafund Portfolio in the near future. Further, the Fidelity Contrafund Portfolio has experienced higher total returns in 1996 and 1998 than the Value Equity Portfolio. Applicants believe that this proposed substitution would move policyowners currently invested in the Value Equity Portfolio to a much larger fund with a significantly greater level of net assets and lower expense ratios. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

| Value equity portfolio <sup>1</sup> | Net assets at year-end | Expense ratio <sup>2</sup> (percent) | Total return (percent) |
|-------------------------------------|------------------------|--------------------------------------|------------------------|
| 1996 .....                          | \$8,519,192            | 0.90                                 | 16.94                  |
| 1997 .....                          | 10,146,856             | 0.90                                 | 26.93                  |
| 1998 .....                          | 16,829,336             | 0.90                                 | 2.81                   |

<sup>1</sup> The Value Equity Portfolio began operations on Dec. 4, 1989.

<sup>2</sup> Before expense reimbursement, the Value Equity Portfolio's expense ratios for 1996, 1997, and 1998 were 0.99%, 1.01% and 0.97%, respectively.

| Fidelity contrafund portfolio <sup>1</sup> | Net assets at year-end | Expense ratio <sup>2</sup> (percent) | Total return (percent) |
|--------------------------------------------|------------------------|--------------------------------------|------------------------|
| 1996 .....                                 | \$2,394,103,000        | .71                                  | 21.22                  |
| 1997 .....                                 | 4,107,868,000          | .68                                  | 24.14                  |
| 1998 .....                                 | 6,388,592,000          | .66                                  | 29.98                  |

<sup>1</sup> The Fidelity Contrafund Portfolio began operations on January 3, 1995.

<sup>2</sup> The investment adviser of the Fidelity Contrafund Portfolio has entered into varying arrangements with third parties who either paid or reduced a portion of the Portfolio's expenses. Before such reimbursements or reductions, the Portfolio's expense ratios for 1996, 1997 and 1998 were 0.74%, 0.71% and 0.70%, respectively. The investment adviser has voluntarily agreed to reimburse the Fidelity Contrafund Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending fees, brokerage commissions and extraordinary expenses) as a percentage of its average net assets, exceed 1.00%.

31. Canada Life and Canada Life of New York will redeem the shares of the Series Fund Portfolios for cash and use the redemption proceeds to purchase shares of the Fidelity VIP, Fidelity VIP II and Alger Portfolios. The proposed substitutions will take place at relative net asset value with no change in the amount of any policyowner's policy value, cash value or death benefit or in

the dollar value of his or her investment in either of the Accounts. As a result, policyowners will remain fully invested. Policyowners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or Canada Life's and Canada Life of New York's obligations under the Contracts be altered in any way. All expenses incurred in connection with

the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by Canada Life and Canada Life of New York. In addition, the proposed substitutions will not impose any tax liability on policyowners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing policyowners to be greater after

the proposed substitutions than before the proposed substitutions. The proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a policy year. Canada Life and Canada Life of New York will not exercise any right they may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the substitutions.

32. By supplements to the various prospectuses for the Contracts and the Accounts, Canada Life and Canada Life of New York will notify all owners of the Contracts of their intention to effect the substitutions. The supplements advise policyowners that from the date of the supplement until the date of the proposed substitution, they are permitted to make one transfer of all amounts which are invested, as of the date of the supplement, in any one of the affected subaccounts to another subaccount (other than one of the other affected subaccounts) without that transfer counting as a "free" transfer under the Contract. The supplements also inform policyowners that Canada Life and Canada Life of New York will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions.

33. In addition to the prospectus supplements distributed to owners of Contracts, within five days after the proposed substitutions are effected, any policyowners who were affected by the substitutions will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all policy value or cash value under a Contract invested in any one of the affected subaccounts on the date of the notice to another subaccount available under their Contract or to the fixed account without that transfer counting as one of any limited number of transfers permitted in a policy year or as one of a limited number of transfers permitted in a policy year free of charge. The notice will also reiterate the fact that Canada Life and Canada Life of New York will not exercise any rights reserved by them under the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, policyowners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or

annuity contracts, as applicable, issued by Canada Life and Canada Life of New York (or one of their affiliates) during the 60 days following the proposed substitutions. The notices will be preceded or accompanied by current prospectuses for Fidelity VIP, Fidelity VIP II and Alger.

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

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(b) states 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. 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 policy and provisions of this title.

2. Applicants state that the substitutions appear to involve substitutions of securities within the meaning of Section 26(b) of the Act and request that the Commission issue an order pursuant to Section 26(b) of the Act approving the substitutions.

3. The Contracts expressly reserve for Canada Life and Canada Life of New York the right, subject to compliance with applicable law, to substitute shares of another Management Company for shares of a Management Company held by a subaccount of the Canada Life Account or the Canada Life of New York Account. The prospectuses for the Contracts and the Canada Life Account and the Canada Life of New York Account contain appropriate disclosure of this right.

4. Applicants request an order of the Commission pursuant to Section 26(b) of the Act approving the proposed substitutions by Canada Life and Canada Life of New York. Applicants assert that the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants assert that the Fidelity VIP, Fidelity VIP II and Alger Portfolios would offer policyowners better growth prospects than the Series Fund Portfolios do. The Fidelity VIP, Fidelity VIP II and Alger Portfolios are all part of a larger group of funds and have more distribution channels than the Series Fund Portfolios. Applicants therefore believe that the Fidelity VIP, Fidelity VIP II and Alger Portfolios will offer

greater appeal and the capacity for faster future growth to potential future investors than would the Series Fund Portfolios. Further, the investment objectives of the Series Fund Portfolios are substantially similar if not identical to those of their corresponding Fidelity VIP, Fidelity VIP II, and Alger Portfolios, with such objectives being pursued using the same or similar investment policies. Accordingly, although the Fidelity VIP, Fidelity VIP II and Alger Portfolios and the Series Fund Portfolios do not share the same investment adviser, Applicants assert that the proposed substitutions will result in an array of subaccounts that not only continue to meet policyholders' investment expectations and maintain investment flexibility, but that are essentially the same as the array offered prior to the substitution, except that the underlying portfolios will be larger with lower expense ratios. For these reasons, Applicants assert that policyowners would benefit from the proposed substitutions.

6. Applicants assert that each of the substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each policyowner with the right to exercise his or her own judgment and transfer policy or cash values into other subaccounts. Moreover, the Contracts will offer policyowners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. Applicants assert that the substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

7. Applicants further assert that the proposed substitutions also are unlike the type of substitution which Section 26(b) was designed to prevent in that by purchasing a Contract, policyowners select much more than a particular investment company in which to invest their account values. Applicants believe that they also select the specific type of insurance coverage offered by Canada Life and Canada Life of New York under their contract as well as numerous other rights and privileges set forth in the Contract. Applicants assert that policyowners may also have considered Canada Life's and Canada Life of New York's size, financial condition, type and their reputation for service in selecting their Contract. Applicants maintain that these factors will not

change as a result of the proposed substitutions.

### Conclusion

Applicants assert that, for the reasons summarized above, the substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-7584 Filed 3-27-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24344; 812-11430]

### Equity Investor Fund, et al.; Notice of Application

March 21, 2000.

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

**ACTION:** Notice of an application for an order under section 12(d)(1)(f) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1)(f)(ii) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** The requested order would permit certain unit investment trusts ("UITs") relying on section 12(d)(1)(f) of the Act to offer units with a sales load in excess of the limit in section 12(d)(1)(f)(ii) of the Act. In addition, the requested order would permit a terminating series of a UIT to sell certain investment company shares to a new series of the UIT.

**APPLICANTS:** Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Salomon Smith Barney Inc., Dean Witter Reynolds Inc. and Paine Webber Incorporated (collectively, the "Sponsors"); and the Equity Investor Fund ("EIF").

**FILING DATES:** The application was filed on December 10, 1998 and amended on April 20, 1999 and March 7, 2000. 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 application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary 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 April 17, 2000, 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 Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609; Applicants, P.O. Box 9051, Princeton, NJ 08543-9051.

### FOR FURTHER INFORMATION CONTACT:

Deepak T. Pai, Senior Counsel, at (202) 942-0574 or George J. Zornada, Branch Chief, at (202) 942-0564, (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

### Applicants' Representations

1. EIF is registered under the Act as a UIT and is sponsored by one or more of the Sponsors. EIF consists of multiple series ("Series"), each created by a trust indenture between the Sponsors and a financial institution that satisfies the criteria of section 26(a) of the Act (the "Trustee"). Each Sponsor is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. ("NASD"). Applicants request relief for each subsequently-issued Series and for any future registered UIT that is sponsored by one or more of the Sponsors and which becomes party to the trust indenture.

2. Each Series will contain a portfolio of equity securities ("Fund Shares") issued by registered investment companies that are not affiliated with any of the applicants (the "Funds"). The Funds may be closed-end investment companies ("Closed-end Funds"), open-end investment companies ("Open-end Funds"), UITs or investment companies that are registered under the Act as open-end investment companies or UITs but have received exemptive relief under the Act to permit their shares to trade at negotiated prices on a national securities exchange ("Exchange-Traded Funds"). The Sponsors will deposit Fund Shares in a Series at the Fund Shares' net asset value (in the case of

Open-end Funds and UITs) or at their market value (in the case of Closed-end Funds and Exchange-Traded Funds). Market value will be a Fund's closing sale price on a national securities exchange or the Nasdaq National Market System ("Nasdaq-NMS") or, if unavailable, at the closing ask prices as determined by the Trustee.

3. Simultaneously with the deposit of Fund Shares, the Trustee will deliver to the Sponsors units ("Units") which represent the entire ownership of the Series. These Units will in turn be offered for sale to the public by the Sponsors. The Units will be offered at prices based on the aggregate value of the Fund Shares deposited (plus any cash, receivables (including dividends receivable) and any other assets of the Series less accrued liabilities), plus a sales charge and organization costs. The sales charges on the Units will not, when aggregated with any sales charge, distribution fees and service fees paid by the Series with respect to Fund Shares, exceed the limits set forth in rule 2830 of the NASD's Conduct Rules. Although a Series may invest in a Fund with an asset-based sales charge exceeding .25% of the Fund's average net assets, any fees paid by a Fund to the Sponsors or the Trustee will be rebated to the Series and used to reduce the Series' expenses.

4. The portfolios of certain Series may be selected based on an asset allocation model or other selection criteria, which the investment strategy requires to be reapplied periodically. These Series ("Rollover Series") may terminate approximately one or two years after they are offered for sale. At that time, the Sponsors intend to create and offer a new Series ("New Series"), the portfolio of which will reflect the current asset allocation model or reapplication of the selection process and may contain the same Fund Shares as the Rollover Series. Investors in the Rollover Series may elect to invest in the New Series.

5. Applicants request relief to permit a Rollover Series to sell Fund Shares to the New Series. In order to minimize the potential for overreaching, Merrill Lynch as agent for the Sponsors will certify in writing to the Trustee, within five days of each sale of Fund Shares from a Rollover Series to a New Series: (a) That the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statement and reports filed under the Act, (b) the date of the transaction, and (c) the net asset value of the Fund in the case of an Open-end Fund or UIT, or the closing sale price on a national securities