

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33-8087; IC-25521; File No. S7-07-02]

RIN 3235-A139

Disclosure of Costs and Expenses by Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Annuity Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing revisions to the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable annuity contracts. The proposed amendments would revise the format of the fee table to require disclosure of the range of expenses for all of the mutual funds offered through the separate account, rather than disclosure of the expenses of each fund. These and other proposed technical amendments to the fee table will conform the treatment of fund expenses in the registration form for variable annuities to that in the registration form for variable life insurance policies that we are adopting in a companion release today, and the registration form used by mutual funds.

DATES: Comments must be received on or before June 14, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-07-02; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549-0102. Electronically submitted comment letters also will be posted on the Commission's Internet site (<http://www.sec.gov>).¹

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, Katy

Mobedshahi, Attorney, or Paul G. Cellupica, Assistant Director, (202) 942-0721, Office of Disclosure and Insurance Product Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing for comment amendments to Form N-4 [17 CFR 239.17b; 17 CFR 274.11c], the form used by separate accounts organized as unit investment trusts and offering variable annuity contracts to register under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] ("Investment Company Act") and to offer their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act").

I. Discussion

A. Disclosure of Range of Portfolio Company Expenses

Form N-4 is the registration form used by insurance company separate accounts organized as unit investment trusts that offer variable annuity contracts to register under the Investment Company Act and to register their securities under the Securities Act. Form N-4 requires that a prospectus for a variable annuity contract include a fee table, similar to the fee table required by Form N-1A for mutual funds.² The fee table of Form N-4 requires disclosure of the costs and expenses that a variable annuity contractowner will bear, directly or indirectly. This includes the annual operating expenses for each mutual fund in which a contractowner may invest ("Portfolio Company").³

Our proposed amendments would conform the treatment of Portfolio Company expenses in Form N-4 to that in newly adopted Form N-6. The Commission has today adopted Form N-6 for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies, to be used by these separate accounts to register under the Investment Company Act and to offer their securities under the Securities Act.⁴ Unlike the fee table in Form N-4, which requires disclosure of the expenses for each Portfolio Company, the fee table of Form N-6 requires disclosure of the range of

expenses for all of the Portfolio Companies.⁵ Because variable life fees and charges are complex, and because variable life policies frequently offer numerous Portfolio Companies as investment options, we concluded that investors could be overwhelmed by information if the fees and charges for each Portfolio Company were required to be separately stated in the Form N-6 fee table.⁶

In proposing Form N-6, we noted that we expected to reconsider the disclosure of Portfolio Company fees and charges in variable annuity prospectuses.⁷ We now believe that the approach adopted in Form N-6 to disclosing the fees and expenses of Portfolio Companies available through a variable life insurance policy may be appropriate in the variable annuity context as well. Therefore, we are proposing to amend the fee table of Form N-4 to require disclosure of the range of expenses for all of the Portfolio Companies offered through the separate account, rather than separate disclosure of the expenses of each Portfolio Company.⁸

We believe that use of a range of Portfolio Company expenses is warranted in order to simplify fee tables for variable annuity contracts, which have grown longer and more complex. As with variable life insurance policies, the number of investment options available through a typical variable annuity contract has expanded considerably in recent years.⁹ Variable annuity fee tables have also become more complicated in recent years because insurers have increasingly offered variable annuity contracts with a variety of so-called "unbundled" optional features, each of which has a separate charge.¹⁰

In addition, our proposed change will conform the treatment of Portfolio Company expenses in the fee table of the variable annuity prospectus to that in the fee table of the variable life

⁵ Form N-6 Adopting Release, *supra* note 4, at Section II.A.2., "Risk/Benefit Summary: Fee Table (Item 3); Portfolio Company Fees and Charges."

⁶ *Id.*

⁷ Investment Company Act Release No. 23066 (March 13, 1998) [63 FR 13988, 13993 n. 48 (March 23, 1998)] (Form N-6 Proposing Release).

⁸ Proposed Item 3(a).

⁹ Rick Carey, *9-Month Variable Annuity Sales Off 20% From Last Year*, National Underwriter Life & Health/Financial Services Edition, Dec. 3, 2001, at 14 (estimating that average number of funds available in a variable annuity contract increased from five in 1988 to 33 in 2001).

¹⁰ Timothy C. Pfeifer, *Growing Rider Use Furthers Flexibility But Also Complexity*, National Underwriter Life & Health/Financial Services Edition, Sept. 3, 2001, at 22 (describing growth in optional riders on both variable annuities and variable life insurance).

¹ We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

² Item 3(a) of Form N-4.

³ Variable annuity separate accounts registered as unit investment trusts are divided into sub-accounts, each of which invests in a different Portfolio Company. Each contractowner selects the sub-accounts, and thus the Portfolio Companies, in which his or her account value is invested.

⁴ Investment Company Act Release No. IC-25522 (April 12, 2002) ("Form N-6 Adopting Release").

insurance prospectus. We note that one of the commenters on Form N-6 urged that the Commission adopt a uniform approach to disclosure of Portfolio Company expenses in Form N-4 and Form N-6. We agree with this commenter's argument that requirements to report Portfolio Company expenses differently in variable annuity and variable life insurance registration statements would complicate the process of preparing registration statements without improving the quality of disclosure.¹¹

We emphasize that investors in variable annuity contracts will continue to have access to information about the fees and expenses of each Portfolio Company. Prior to adoption of Form N-6, a mutual fund that offers its shares exclusively to insurance company separate accounts as investment options for variable life insurance policies and variable annuity contracts was permitted to omit the fee table from its prospectus.¹² However, in connection with the adoption of Form N-6, we have also amended Form N-1A, the form used by mutual funds to register under the Investment Company Act and to offer their securities under the Securities Act, to eliminate this exclusion from the fee table requirement for mutual funds that offer their shares exclusively to separate accounts. Because this exclusion has been eliminated, investors in variable annuity contracts will now have access to information about the fees and expenses of each Portfolio Company in the prospectus for the Portfolio Company.¹³ Our proposed amendments to the fee table of Form N-4 would require a statement referring investors to the Portfolio Company prospectuses for

more detail concerning Portfolio Company fees and expenses.

We are also proposing to permit registrants to continue to include disclosure of the fees and expenses for each Portfolio Company in the fee table of Form N-4, in addition to the range of expenses for the Portfolio Companies. This approach parallels the fee table of Form N-6 and would provide registrants with the flexibility to include this detailed information when they determine that it would be helpful, and not overwhelming, to investors.¹⁴

Like current Forms N-4 and N-1A, and newly adopted Form N-6, the proposed amendments would require line item disclosure of subcategories of Portfolio Company expenses, including management fees, distribution (12b-1) fees, and other expenses, as well as total annual Portfolio Company operating expenses. We request comment on whether this breakdown is appropriate or whether there should be more or fewer line items. We also request comment on other alternatives to the disclosure of Portfolio Company expenses in the fee table of Form N-4.

B. Other Fee Table Changes To Conform to Forms N-1A and N-6

We are proposing other amendments to conform the format and instructions for the fee table of Form N-4 more closely to its counterparts in Forms N-1A and N-6. These changes are discussed below.

Expense Reimbursement and Fee Waiver Arrangements. We are proposing to require that Portfolio Company operating expenses be disclosed before expense reimbursement and fee waiver arrangements. Expenses after reimbursement or waiver could be disclosed in a footnote.¹⁵

¹⁴ Proposed Instruction 23 to Item 3(a); Instruction 4(h) to Item 3 of Form N-6.

¹⁵ Proposed Instructions 21(a) & 22 to Item 3(a). See Instructions 3(d)(i) and 3(e) to Item 3 of Form N-1A; Instructions 4(f)(i) and 4(g) to Item 3 of Form N-6. Under Form N-1A, the staff has permitted mutual funds with fees that are subject to a contractual limitation that requires reimbursement or waiver of expenses to add two lines to the fee table: one line showing the amount of the reimbursement or waiver, and a second line showing the fund's net expenses after subtracting the reimbursement or waiver from the total fund operating expenses. See Letter from Barry D. Miller, Associate Director, Division of Investment Management, SEC, to Craig S. Tyle, General Counsel, Investment Company Institute (Oct. 2, 1998). We intend that the staff construe the proposed amendments to the fee table requirements of Form N-4, if adopted, consistent with the approach taken under Form N-1A, to permit the addition of one line to the fee table showing the range of net Portfolio Company operating expenses after taking account of contractual limitations that require reimbursement or waiver of expenses. This additional line would be placed immediately under the "Total Annual [Portfolio Company] Operating

Expense Example. Currently, Form N-4 requires the fee table to provide an example of the cumulative amount of separate account and Portfolio Company fees and expenses incurred over one, three, five, and ten year periods, based on a hypothetical investment of \$1,000 and an annual 5% return.¹⁶ Expense information in the example must be shown for each Portfolio Company offered through the contract.¹⁷ Because the proposed amendments to the Form N-4 fee table will require disclosure of the range of Portfolio Company expenses, rather than the expenses for each Portfolio Company offered through the contract, we are proposing to amend the expense example and the accompanying instructions, so that only an expense example based on the maximum expenses charged by any of the Portfolio Companies would be required.¹⁸ An additional example, based on the minimum expenses charged by any of the Portfolio Companies, could also be provided.¹⁹ In lieu of providing examples based on the maximum and minimum expenses charged by the Portfolio Companies offered through the contract, a registrant would be permitted to include expense examples for each of the Portfolio Companies, as Form N-4 currently requires.²⁰

The proposed amendments would also modify the format of the expense example to conform to the format of the

Expenses" line of the fee table and would have to use appropriate descriptive captions. A footnote to the fee table would be required to describe the contractual arrangement.

¹⁶ Item 3(a) and Instruction 21 to Item 3(a) of Form N-4.

¹⁷ Instruction 5 to Item 3(a) of Form N-4.

¹⁸ Proposed Instruction 24(b) to Item 3(a). Under Form N-1A, the staff has permitted mutual funds with fees that are subject to a contractual limitation that requires reimbursement or waiver of expenses to take account of the reimbursement or waiver in calculating the example required by the fee table of Item 3, but only for the duration of the contractual limitation. Funds may not assume that the reimbursement or waiver will continue for periods subsequent to the contractual limitation period in calculating expenses shown in the example. Cf. Letter from Barry D. Miller, Associate Director, Division of Investment Management, SEC, to Craig S. Tyle, General Counsel, Investment Company Institute (Oct. 2, 1998) (permitting funds with fees that are subject to a contractual limitation that requires reimbursement or waiver to add two lines to the fee table showing the amount of the reimbursement or waiver and total net expenses). We intend that the staff construe the proposed amendments to the expense example requirements of Form N-4, if adopted, consistent with the approach it has taken with the expense example of the fee table of Form N-1A, to permit expense examples to take into account contractual limitations on Portfolio Company operating expenses that require reimbursement or waiver of expenses, but only for the period of the contractual limitation.

¹⁹ Proposed Instruction 24(b) to Item 3(a).

²⁰ *Id.*

¹¹ Letter from Nationwide Life Insurance Company to Jonathan G. Katz, Secretary, Securities and Exchange Commission ("SEC") (June 29, 1998) (available in File No. S7-9-98). See also Letter from W. Thomas Conner, Vice President, Regulatory Affairs, National Association for Variable Annuities, to Paul F. Royce, Director, and Susan Nash, Senior Assistant Director, Division of Investment Management, SEC (Oct. 6, 1999) (available in File No. S7-07-02) (recommending that Commission adopt range of Portfolio Company expenses approach in Form N-4).

¹² See Item 3 of Form N-1A; Investment Company Act Release No. 16766 (Jan. 23, 1989) [54 FR 4772 (Jan. 31, 1989)] (adopting Form N-4 fee table and eliminating the fee table requirement in Form N-1A for Portfolio Companies offering shares exclusively to insurance company separate accounts); Investment Company Act Release No. 16482 (July 15, 1988) [53 FR 27872, 27874 (July 25, 1988)] (proposing Form N-4 fee table and elimination of Form N-1A fee table requirement for Portfolio Companies offering shares exclusively to insurance company separate accounts).

¹³ Investors in variable annuity contracts receive the prospectuses for both the separate account unit investment trust and the Portfolio Companies they have selected.

example in Form N-1A, by prescribing that a narrative explanation precede the example.²¹ The proposed amendments also would increase the initial hypothetical investment in the example from \$1,000 to \$10,000, the amount currently used in the expense example in Form N-1A.²² The increase reflects the fact that the typical amount invested in a variable annuity far exceeds \$1,000,²³ while still providing a round figure that will facilitate an investor's computation of his or her own estimated expenses based on the investor's actual investment.

We request comment on alternative formats for the expense example in Form N-4.

Fee Table Narrative. Currently, Form N-4 requires a brief narrative immediately following the fee table, explaining the purpose of the fee table and cross-referencing the Portfolio Company prospectuses.²⁴ We propose to require narrative explanations to precede each section of the fee table, in order to better help investors understand the information about fees and charges shown in that section. These would be similar to the narrative explanations required by the Form N-6 fee table.²⁵ A registrant would be able to modify a narrative explanation if the explanation contains comparable information to that shown.²⁶ We request comment on whether the proposed narrative explanations will be useful to investors in understanding the types of fees and charges disclosed in the fee table.

Fee Table Captions. The proposed amendments would add a caption to the Portfolio Company expenses section of the fee table for "Distribution [and/or Service] (12b-1) Fees," which includes any distribution and other expenses a fund pays under a rule 12b-1 plan. This addition would reflect the increasing use of such plans in recent years by funds that serve as investment options for variable annuity contracts.²⁷ In

addition, we propose to delete the current instruction that permits the use of subcategories under the caption for "Other Expenses" in the Portfolio Company expenses section of the fee table.²⁸ We believe that these subcategories would have extremely limited relevance in the context of a table showing the range of expenses for all Portfolio Companies because different Portfolio Companies would likely have different subcategories of "Other Expenses."

We also propose to amend the instructions to clarify that a registrant may modify or add captions in the fee table if the captions shown do not provide an accurate description of its fees and expenses, which parallels a similar instruction in the Form N-6 fee table.²⁹ This instruction recognizes that, following the enactment of the National Securities Markets Improvement Act of 1996, insurers have increased flexibility to structure variable annuity charges, subject to a requirement that those charges be reasonable in the aggregate.³⁰ We request comment on whether the captions of the fee table of Form N-4 are appropriate and whether additional captions or sub-captions should be required.

Requirement to Disclose All Fees and Charges. Currently, the fee table of Form N-4 requires that registrants disclose all transaction fees, whether or not a specific caption is provided for a charge in the fee table.³¹ We are proposing to add an instruction, similar to an instruction in Form N-6, requiring registrants also to disclose all recurring fees and charges.³² We believe that complete disclosure of all fees and charges that a contractowner may pay is appropriate. We are not aware of any mechanism to distinguish between charges for optional features that ought to be included in the fee table because they are expected to be selected by most or a majority of investors, or by "typical" investors, and charges for optional features that are expected to be less popular and hence arguably could be omitted from the fee table. We note that in recent years insurers have

increasingly offered variable annuities with a variety of so-called "unbundled" optional features, each of which has a specific charge.³³ This trend toward unbundling of features and charges would make the task of separating out those optional features that will be selected by a "typical" investor much more difficult. We request comment on whether there should be any limitations on the charges required to be disclosed in the fee table.

Requirement to Disclose Maximum Charges. The proposed amendments to the fee table would add an instruction requiring disclosure of the maximum guaranteed charge for each item unless a specific instruction directs otherwise.³⁴ In addition, registrants would be permitted, but not required, to disclose current charges in the fee table so long as the current charge disclosure is no more prominent than, and does not obscure or impede understanding of, the required maximum guaranteed charge disclosure. Registrants would also be able to include in a footnote to the table a tabular, narrative, or other presentation providing further detail regarding variations in a charge. This instruction parallels a similar instruction in Form N-6.³⁵ We request comment on this approach.

II. General Request for Comments

The Commission requests comment on the proposed changes to Form N-4, including suggested changes to related provisions of rules and forms that the Commission is not proposing to amend. Are there additional changes that we should make to conform the Form N-4 fee table to the fee tables in Forms N-1A and N-6?

Our proposed amendments are intended to conform the fee tables of Forms N-4 and N-6. If we adopt changes to our Form N-4 proposals in response to comments, we intend to adopt conforming changes to Form N-6. We therefore request that commenters on our proposed amendments to the fee table of Form N-4 address how their comments would apply to the fee table of Form N-6, and whether a different approach to any aspect of fee and expense disclosure is warranted in Form N-6 because of the differences between variable life insurance and variable annuities. We also request that commenters address the costs and benefits of any conforming change that

²¹ Proposed Item 3(a). See Item 3 of Form N-1A.

²² Proposed Item 3(a). See Item 3 of Form N-1A.

²³ See R. James Doyle, VARDS, and Timothy Pfeifer, Milliman USA, Inc., Variable Annuity Feature and Benefit Utilization Study 7-8 (Feb. 2002) (average initial premium for a variable annuity contract is \$61,411).

²⁴ General Instruction 1 to Item 3(a) of Form N-4.

²⁵ Proposed Item 3(a) and Proposed General Instruction 1 to Item 3(a). See Item 3 and Instruction 1(b) to Item 3 of Form N-6.

²⁶ Proposed General Instruction 1 to Item 3(a). See Instruction 1(b) to Item 3 of Form N-6.

²⁷ See Letter from Heidi Stam, Associate Director, Division of Investment Management, SEC, to Gary Hughes, Chief Counsel, Securities and Banking, American Council of Life Insurance, Paul Schott Stevens, General Counsel, Investment Company Institute, and Mark J. Mackey, President & Chief

Executive Officer, National Association for Variable Annuities (May 30, 1996) (describing issues raised by use of 12b-1 plans by funds underlying variable insurance products).

²⁸ Instruction 17(b) to Item 3(a) of Form N-4.

²⁹ Proposed General Instruction 3 to Item 3(a). See Instruction 1(c) to Item 3 of Form N-6.

³⁰ 15 U.S.C. 80a-26; 15 U.S.C. 80a-27; National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290 (1996), Section 205; S. Rep. No. 293, 104th Cong., 2d Sess. 22 (1996); H. Rep. No. 622, 104th Cong., 2d Sess. 45-46 (1996).

³¹ Instruction 12 to Item 3(a) of Form N-4.

³² Proposed Instruction 15 to Item 3(a). See Instruction 3(e) to Item 3 of Form N-6.

³³ Timothy C. Pfeifer, *Growing Rider Use Furthers Flexibility But Also Complexity*, *supra* note 10 (describing growth in optional riders).

³⁴ Proposed General Instruction 5 to Item 3(a).

³⁵ See Instruction 1(f) to Item 3 of Form N-6.

they recommend we make to the fee table of Form N-6.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 [5 U.S.C. 801 *et seq.*], the Commission also is requesting information regarding the potential effect of the proposed amendments to Form N-4 on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

III. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules on affected persons and entities.

Form N-4 is the registration form used by insurance company separate accounts organized as unit investment trusts that offer variable annuity contracts to register under the Investment Company Act and to register their securities under the Securities Act.³⁶ Form N-4 requires that a prospectus for a variable annuity contract include a fee table showing the costs and expenses that a variable annuity contractowner will bear, directly or indirectly, including the annual operating expenses for each mutual fund in which a contractowner may invest ("Portfolio Company"). The proposed amendments would amend the fee table in the prospectus of Form N-4 to require registrants to disclose the range of fees and expenses for all of the Portfolio Companies offered, rather than separately disclosing the fees and expenses of each Portfolio Company. Registrants would still be permitted to include additional disclosure of the fees and expenses of each Portfolio Company offered through a sub-account of the registrant. Use of a range of Portfolio Company expenses is warranted in order to streamline and improve fee tables for variable annuity contracts, which have grown increasingly longer and more complex in recent years as the number of investment options available through a typical variable annuity contract has expanded. Under the proposed amendments, in order to treat Portfolio Company expense disclosure consistent with Form N-1A and Form N-6, registrants would be also required to show total Portfolio Company annual expenses without the effect of any fee waiver or expense reimbursement arrangements, although expenses after

reimbursement or waiver could be disclosed in a footnote to the fee table.

The proposed amendments would also make other technical changes conforming the format and the instructions for the fee table of Form N-4 more closely to the fee tables in Forms N-6 and N-1A. These amendments include the following:

- Revising the expense example in the fee table, to require only an example based on the maximum expenses charged by any Portfolio Company, for purposes of consistency with disclosure of the range of Portfolio Company expenses in the fee table.
- Making other modifications to the format of the example, for purposes of consistency with the format of the expense example in Form N-1A.
- Prescribing narrative explanation to precede each section of the fee table, in order to help investors understand the information about fees and charges presented in that section and thereby improve transparency of fee disclosure.
- Requiring a caption in the fee table for 12b-1 distribution expenses, and adding an instruction permitting registrants to modify or add captions in the fee table, as appropriate. These changes would update the fee table of Form N-4 to reflect the increased use of 12b-1 plans by funds that serve as investment options for variable annuity contracts and the increased flexibility provided to insurers by the National Securities Markets Improvement Act of 1996 in structuring variable annuity charges, and would conform the fee table of Form N-4 more closely to the fee table of Form N-6.
- Adding an instruction requiring disclosure of all recurring fees and charges other than annual Portfolio Company operating expenses, in order to improve transparency of fee disclosure, and to make Form N-4 consistent with Form N-6.
- Adding an instruction requiring disclosure of maximum guaranteed charges for each item, but also permitting disclosure of current charges, in order to improve transparency of fee disclosure, and to make Form N-4 consistent with Form N-6.

A. Benefits

We believe that the proposed amendments to Form N-4 will benefit investors by making the variable annuity prospectus easier for investors to understand. As noted above, disclosure of a range of Portfolio Company expenses should make fee tables for variable annuity contracts, which have grown increasingly longer and more complex in recent years, easier to understand. Investors will

continue to have access to information about the fees and expenses of each Portfolio Company in the prospectus for the Portfolio Company. The proposed amendments would also modify the expense example of the Form N-4 fee table, consistent with the use of the range of Portfolio Company expenses in the fee table.

The proposed amendments would make other technical changes to the format and instructions of the fee table of Form N-4, in order to improve transparency of the fees and charges that contractowners will pay, to make the Form N-4 fee table more consistent with its counterpart in Form N-6, and to reflect changes in the types of fees and charges assessed by variable annuity contracts since the fee table of Form N-4 was adopted. We believe these changes may improve disclosure of variable annuity fees and expenses to investors. It is difficult to quantify the effects of this improved disclosure, though we note that the changes we are proposing are limited in nature.

The proposed amendments may also result in slightly reduced printing and mailing costs to registrants. Disclosure of the range of Portfolio Company expenses rather than the expenses of each Portfolio Company may shorten the typical variable annuity prospectus, because disclosure of these expenses sometimes comprises a full page, or more, of a variable annuity prospectus.³⁷ We do not expect that any of the other changes in the proposed amendments would lengthen the variable annuity prospectus, as these changes would largely affect the format in which fee and expense information is to be presented, rather than the quantity of information presented. Based on a print run of 20,000 copies for a typical variable annuity prospectus, and printing and mailing costs of \$0.05 per page, the reduction in printing and mailing costs attributable to the proposed amendments may equal \$1,000 for a typical variable annuity contract.³⁸ Based on an estimate of 520 variable annuity contracts currently being actively marketed, therefore, these

³⁷ The proposed amendments would require a registrant to include a statement referring investors to Portfolio Company prospectuses for more detail concerning Portfolio Company fees and expenses. This required statement would not impose any additional disclosure burden on registrants, because the instructions to Form N-4 currently require a similar cross-reference to the Portfolio Company prospectuses. See General Instruction 1 to Item 3(a) of Form N-4.

³⁸ These estimates are based on information provided to the staff by an insurance company that issues variable annuities of the typical print runs of its prospectuses, and its printing and mailing costs.

³⁶ Under a variable annuity contract, purchase payments are invested in an insurer's separate account created under state law and legally segregated from the assets of the insurer's general account. The separate account offers the contract owner a number of investment options, which generally consist of mutual funds.

printing and postage savings could total \$520,000 annually.³⁹

In addition, conforming the disclosure requirements for Portfolio Company expenses in variable annuity prospectuses to those in variable life prospectuses may simplify the process of preparing registration statements for some registrants, because frequently insurance companies that issue variable annuities also issue variable life insurance.⁴⁰ We believe that these cost savings will be relatively small, however.

B. Costs

Although the proposed amendments to the fee table of Form N-4 are limited and many of them are technical in nature, they differ from the current requirements of the fee table of Form N-4, which have been in place since 1989. Therefore, variable annuity issuers may incur a one-time cost for training in order for their personnel, particularly lawyers and others who are responsible for supervising the preparation of filings on Form N-4, to review and analyze the disclosure requirements of the amendments to Form N-4. Because the proposed amendments would make mostly minor changes to the current format of the Form N-4 fee table, and would not require the disclosure of information that the current fee table does not require, we estimate that this cost will be fairly small. We lack data necessary to make a more precise estimate of the cost resulting from the amendments, but we estimate that this cost will be approximately \$500 for each insurance company that sponsors separate accounts that are registered on Form N-4 and issue variable annuity contracts that are actively being sold. Further, we estimate that there are 94 such insurance companies.⁴¹ We therefore estimate the one-time cost attributable to the proposed amendments to Form N-4 to be \$47,000. We request comment on both the cost estimate of \$500 for each insurance company affected, and the total cost estimate of \$47,000.

We do not expect that the amendments to Form N-4 will result in any net effect on the aggregate hour

burden for completing and filing Form N-4. We expect that in preparing their fee tables for Form N-4, registrants will still need to calculate each line item of expenses for each Portfolio Company offered through the contract, in order to determine the minimum and maximum expenses of the Portfolio Companies. We also expect that the other proposed amendments modifying the format and instructions of the Form N-4 fee table to conform more closely to the fee tables of Form N-6 and Form N-1A will have no net effect on the burden hours for completing and filing Form N-4, because they will not require disclosure of any additional information by issuers.

The Commission requests comment on the costs and benefits of the proposed amendments to Form N-4, including any benefits to investors resulting from improved disclosure, and estimates of the one-time cost burden to apply the requirements of the proposed amendments to their existing variable annuity prospectuses. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with this proposal.

IV. Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Securities Exchange Act of 1934 require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.⁴²

The proposed amendments to Form N-4 are expected to have minimal effects on efficiency and competition among issuers of variable annuity insurance policies. If adopted, the proposed amendments would revise the fee table in the prospectus of Form N-4 to require registrants to disclose the range of expenses for all the Portfolio Companies offered through the separate account, rather than disclosing separately the fees and expenses of each Portfolio Company. In addition, the proposed amendments would make certain other technical changes to conform the format and instructions to the fee table of Form N-4 more closely to its counterparts in Form N-6 and Form N-1A. The proposed amendments would allow fee table disclosure of Portfolio Company expenses to be shorter, and would generally make fee

table disclosure clearer and more understandable to investors. However, we would not expect the proposed amendments to have any significant effect on competition and efficiency because they would not change the quantity of information about fees and expenses that investors in variable annuity contracts receive. Similarly, it is unclear whether the proposed amendments to Form N-4 will affect capital formation. We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation.

V. Paperwork Reduction Act

Form N-4 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], and the Commission has submitted the proposed collections of information to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Form N-4 under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Separate Accounts Organized as Unit Investment Trusts." The information collection requirements imposed by Form N-4 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Form N-4 (OMB Control No. 3235-0318) was adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a-8] and section 5 of the Securities Act [15 U.S.C. 77e]. The purpose of Form N-4 is to meet the registration and disclosure requirements of the Securities Act and Investment Company Act and to enable separate accounts organized as unit investment trusts that offer variable annuity contracts to provide investors with information necessary to evaluate an investment in a variable annuity contract.

The Commission is proposing to amend Form N-4 to conform the disclosure of Portfolio Company expenses in the fee table to the format used in Form N-6, the registration form for insurance company separate accounts registered as unit investment trusts that offer variable life insurance policies. Under the proposed amendments, registrants on Form N-4 would be required to disclose only the range of the expenses for all of the Portfolio Companies in which the separate account invests. Variable

³⁹ The estimate of 520 variable annuity contracts is based on the number of contracts tracked by Morningstar, Inc. Morningstar, Principia Pro Plus, Variable Annuities/Life (Jan. 2002).

⁴⁰ We estimate, based on an analysis of data from the EDGAR filing system for 2000 and 2001, that approximately two-thirds of insurers issuing variable annuities also issue variable life insurance policies.

⁴¹ The estimate of the number of insurance companies issuing variable annuities is based on the staff's analysis of data from the EDGAR filing system for 2000 and 2001.

⁴² 15 U.S.C. 77b(b), 78c(f), and 80a-2(c).

annuity investors would continue to have access to complete information about the Portfolio Company fees and expenses because disclosure of the fees and expenses for each Portfolio Company would be located in its prospectus under the requirements of Form N-1A. In addition, registrants on Form N-4 would be required to disclose Portfolio Company expenses in the fee table prior to expense reimbursements and fee waiver arrangements, consistent with the approach adopted by the Commission in Form N-1A and Form N-6. Registrants would be permitted to disclose expenses after reimbursement or waiver in a footnote to the fee table. The proposed amendments would also make other technical changes in order to conform the format and instructions for the fee table of Form N-4 to its counterparts in Form N-1A and Form N-6.

The Commission estimates that there are 615 separate accounts offering variable annuity contracts that are registered with the Commission on Form N-4.⁴³ We estimate that Form N-4 requires approximately 219.8 hours for each post-effective amendment and 298 hours for each initial registration statement, with total aggregate burden hours of 284,379.20.⁴⁴

We do not expect that the amendments to Form N-4 will result in any net effect on the aggregate hour burden for completing and filing Form N-4. We expect that in preparing their fee tables for Form N-4, registrants will still need to calculate each line item of expenses for each Portfolio Company offered through the contract, in order to determine the minimum and maximum expenses of the Portfolio Companies. We also expect that the other proposed amendments modifying the format of the Form N-4 fee table to conform more closely to the fee tables of Form N-6 and Form N-1A will have no net effect on the burden hours for completing and filing Form N-4, because they will not require any additional information to be disclosed.

We request your comments on the accuracy of our estimate. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609, with reference to File No. S7-07-02. Request for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7-07-02, and be submitted to the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, Attention: Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release.

VI. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the proposed amendments to Form N-4 would not, if adopted, have a significant economic impact on a substantial number of small entities. Few, if any, small entities are affected by Form N-4. The Chairman's certification, including the reasons therefor, is attached to this release as Appendix A. The Commission encourages written comment on the certification. Commenters are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Statutory Authority

The amendments to Form N-4 are being proposed pursuant to sections 5, 7, 8, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)] and sections 8, 24, 30, and 38 of the Investment Company Act [15 U.S.C. 80a-8, 80a-24, 80a-29, and 80a-37].

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

For the reasons set out in the preamble, the Commission proposes to amend Chapter II, Title 17 of the Code of Federal Regulations as follows.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

2. The authority citation for Part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

Note: The text of Form N-4 does not and these amendments will not appear in the *Code of Federal Regulations*.

3. Form N-4 (referenced in §§ 239.17b and 274.11c), Item 3(a), is amended by:

- a. Revising Item 3(a);
- b. Revising Instructions: General Instructions 1, 3, and 5;
- c. Removing the heading "Portfolio Company Annual Expenses" preceding Instruction 15;
- d. Removing Instructions 16 through 21;
- e. Redesignating Instruction 15 as Instruction 16;
- f. Adding new Instruction 15;
- g. Adding the heading "Annual [Portfolio Company] Operating Expenses" to precede newly redesignated Instruction 16; and
- h. Adding new Instructions 17 through 25, to read as follows:

Form N-4

* * * * *

⁴³ See Proposed Collection; Comment Request (Extension of Form N-4) (Jan. 4, 2000) [65 FR 1934 (Jan. 12, 2000)]. The estimate of the number of separate accounts was based on the staff's analysis of filings it received on Form N-4 over a representative period.

⁴⁴ See *id.* The burden hours to complete an initial registration statement and a post-effective amendment on Form N-4 were based on a survey by the staff of nine issuers of variable annuity contracts.

Item 3. Synopsis

(a) Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 430.421(d)]:

The following tables describe the fees and expenses that you will pay when buying, owning, and surrendering the contract. The first table describes the fees and expenses that you will pay at the time that you buy the contract, surrender the contract, or transfer cash value between investment options. State premium taxes may also be deducted.

Contractowner Transaction**Expenses:**

Sales Load Imposed on Purchases (as a percentage of purchase payments) _____ %

Deferred Sales Load (as a percentage of purchase payments or amount surrendered, as applicable) _____ %

Surrender Fees (as a percentage of amount surrendered, if applicable) _____ %

Exchange Fee %

The next table describes the fees and expenses that you will pay periodically during the time that you own the contract, not including [portfolio company] fees and expenses.

[Annual] Contract Fee %

Separate Account Annual Expenses (as a percentage of average account value)

Mortality and Expense Risk Fees %

Account Fees and Expenses %

Total Separate Account Annual Expenses %

The next table describes the [portfolio company] fees and expenses that you will pay periodically during the time that you own the contract. The table shows the minimum and maximum fees and expenses charged by any of the [portfolio companies]. More detail concerning each [portfolio company's] fees and expenses is contained in the prospectus for each [portfolio company].

Annual [Portfolio Company] Operating Expenses (expenses that are deducted from [portfolio company] assets)

Management Fees	_____ %	_____ %
Distribution [and/or Service] (12b-1) Fees	_____ %	_____ %
Other Expenses	_____ %	_____ %
Total Annual [Portfolio Company] Operating Expenses	_____ %	_____ %

Example

This Example is intended to help you compare the cost of investing in the contract with the cost of investing in other variable annuity contracts.

The Example assumes that you invest \$10,000 in the contract for the time periods indicated. The Example also assumes that your investment has a 5% return each year and assumes the maximum fees and expenses of any of the [portfolio companies]. Although your actual costs may be higher or lower, based on these assumptions, your costs would be:

(1) If you surrender your contract at the end of the applicable time period:

1 year	3 years	5 years	10 years
\$ _____	\$ _____	\$ _____	\$ _____

(2) If you annuitize at the end of the applicable time period:

1 year	3 years	5 years	10 years
\$ _____	\$ _____	\$ _____	\$ _____

(3) If you do not surrender your contract:

1 year	3 years	5 years	10 years
\$ _____	\$ _____	\$ _____	\$ _____

Instructions:**General Instructions**

1. Include the narrative explanations in the order indicated. A Registrant may modify a narrative explanation if the explanation contains comparable information to that shown.

* * * * *

3. A Registrant may omit captions if the Registrant does not charge the fees or expenses covered by the captions. A Registrant may modify or add captions if the captions shown do not provide an accurate description of the Registrant's fees and expenses.

* * * * *

5. In the Contractowner Transaction Expenses, [Annual] Contract Fee, and Separate Account Annual Expenses tables,

the Registrant must disclose the maximum guaranteed charge, unless a specific instruction directs otherwise. The Registrant may disclose the current charge, in addition to the maximum charge, if the disclosure of the current charge is no more prominent than, and does not obscure or impede understanding of, the disclosure of the maximum charge. In addition, the Registrant may include in a footnote to the table a tabular, narrative, or other presentation providing further detail regarding variations in the charge. For example, if deferred sales charges decline over time, the Registrant may include in a footnote a presentation regarding the scheduled reductions in the deferred sales charges.

* * * * *

15. If the Registrant (or any other party pursuant to an agreement with the Registrant) imposes any other recurring charge other than annual portfolio company operating expenses, add another caption describing it and list the (maximum) amount or basis on which the charge is deducted.

Annual [Portfolio Company] Operating Expenses

* * * * *

17. If a Registrant has multiple sub-accounts, it should disclose the minimum and maximum expenses of any portfolio companies for each line item. For example, if a Registrant has five sub-accounts with management fees of 0.50%, 0.70%, 1.00%, 1.10%, and 1.25%, respectively, it should disclose that management fees range from 0.50% to 1.25%. The minimum and maximum amounts disclosed for "Total Annual [Portfolio Company] Operating Expenses" should be the minimum and maximum "Total Annual [Portfolio Company] Operating Expenses" for any portfolio company, and not the sum of the minimum and maximum amounts disclosed for the individual line items. For example, assume a Registrant has three sub-accounts. Sub-account 1 has management fees of 0.50%, 12b-1 fees of 0.25%, other expenses

of 0.30%, and total expenses of 1.05%; sub-account 2 has management fees of 0.90%, 12b-1 fees of 0.00%, other expenses of 0.25%, and total expenses of 1.15%; and sub-account 3 has management fees of 1.00%, 12b-1 fees of 0.00%, other expenses of 0.25%, and total expenses of 1.25%. The minimum and maximum amounts to be disclosed in the table are: management fees—0.50%-1.00%; 12b-1 fees—0.00%-0.25%; other expenses: 0.25%-0.30%; total annual [portfolio company] operating expenses—1.05%-1.25%. The total annual [portfolio company] operating expenses are the expenses of sub-accounts 1 and 3, respectively, not the sum of the minimum and maximum amounts disclosed for the individual line items, which would be 0.75%-1.55%.

18. "Management Fees" include investment advisory fees (including any fees based on a portfolio company's performance), any other management fees payable to a portfolio company's investment adviser or its affiliates, and administrative fees payable to a portfolio company's investment adviser or its affiliates that are not included as "Other Expenses."

19. "Distribution [and/or Service] (12b-1) Fees" include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b-1 [17 CFR 270.12b-1].

20. (a) "Other Expenses" include all expenses not otherwise disclosed in the table that are deducted from a portfolio company's assets. The amount of expenses deducted from a portfolio company's assets are the amounts shown as expenses in the portfolio company's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6-07 of Regulation S-X [17 CFR 210.6-07]).

(b) "Other Expenses" do not include extraordinary expenses as determined under generally accepted accounting principles (see Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred by any portfolio company that would, if

included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum "Other Expenses" would have been had the extraordinary expenses been included.

21. (a) Base the percentages of "Annual [Portfolio Company] Operating Expenses" on amounts incurred during the most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If a portfolio company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the portfolio company. If the Registrant or a portfolio company has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining "Annual [Portfolio Company] Operating Expenses."

(b) If there have been any changes in "Annual [Portfolio Company] Operating Expenses" that would materially affect the information disclosed in the table:

(i) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(ii) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(c) A change in "Annual [Portfolio Company] Operating Expenses" means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in "Annual [Portfolio Company] Operating Expenses" does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in a portfolio company's assets.

22. A Registrant may reflect minimum and maximum actual [portfolio company] operating expenses that include expense reimbursement or fee waiver arrangements in a footnote to the table. If the Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a portfolio company.

23. A Registrant may include additional tables showing annual operating expenses separately for each portfolio company immediately following the required table of "Annual [Portfolio Company] Operating Expenses." The additional tables should be prepared in the format, and in accordance with the Instructions, prescribed in Item 3 of Form N-1A [17 CFR 239.15A; 17 CFR 274.11A] for disclosing "Annual Fund Operating Expenses."

Example

24. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under "Separate Account Annual

Expenses" remain the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect reduced annual expenses resulting from completion of the amortization of initial organization expenses;

(b) Assume deduction of the maximum percentage amount of expenses shown under "Total Annual [Portfolio Company] Operating Expenses," and that this amount remains the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect reduced annual expenses resulting from completion of the amortization of initial organization expenses. An additional example that assumes deduction of the minimum percentage amount of expenses shown under "Total Annual [Portfolio Company] Operating Expenses" may also be provided, immediately following the required expense example based on maximum portfolio company expenses. In lieu of providing the required example based on maximum portfolio company expenses, a Registrant may include separate expense examples based on the expenses of each portfolio company;

(c) Assume the maximum sales load that may be deducted from purchase payments is deducted;

(d) For any breakpoint in any fee, assume that the amount of the Registrant's (and the portfolio company's) assets remains constant as of the level at the end of the most recently completed fiscal year;

(e) Assume no exchanges or other transactions;

(f) Reflect any [annual] contract fee by dividing the total amount of [annual] contract fees collected during the year that are attributable to the contract offered by the prospectus by the total average net assets of all the sub-accounts in the separate account that are attributable to the contract offered by the prospectus. Add the resulting percentage to "Separate Account Annual Expenses," and assume that it remains the same in each year of the 1-, 3-, 5-, and 10-year periods;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the third section of the Example only if a sales load or other fee is charged upon a complete surrender; and

(i) Include in the Example the information provided by the caption "If you annuitize at the end of the applicable time period" only if the Registrant charges fees upon annuitization that are different from those charged upon surrender.

25. *New Registrants.* For purposes of this Item, a "New Registrant" is a Registrant (or sub-account of the Registrant) that does not include in Form N-4 financial statements reporting operating results or that includes financial statements for the Registrant's (or sub-account's) initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Registrants:

(a) Base the percentages in "Annual [Portfolio Company] Operating Expenses" on payments that will be made, but include in expenses amounts that will be incurred

without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of "Other Expenses." Disclose in a footnote to the table that "Other Expenses" are based on estimated amounts for the current fiscal year.

(b) A New Registrant may reflect in a footnote to the table expense reimbursement or fee waiver arrangements that are expected to reduce any minimum or maximum [portfolio company] operating expense or the estimate of minimum or maximum "Other Expenses" (regardless of whether the arrangement has been guaranteed). If the New Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a portfolio company.

(c) Complete only the 1- and 3-year period portions of the Example, and estimate any [annual] contract fees collected.

* * * * *

Dated: April 12, 2002.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

Appendix A

[Note: Appendix A to the preamble will not appear in the *Code of Federal Regulations*.]

Regulatory Flexibility Act Certification

I, Harvey L. Pitt, Chairman of the Securities and Exchange Commission, on information and belief, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Form N-4, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed amendments to Form N-4, a registration form for insurance company separate accounts that offer variable annuity contracts, would amend the fee table presentation in the prospectus of Form N-4 to require disclosure of the range of annual expenses for all portfolio companies in which the separate account invests, rather than separate disclosure of the expenses of each portfolio company.

Few, if any, registered insurance company separate accounts have net assets of less than \$50,000,000, when separate account assets are aggregated with the assets of the sponsoring insurance company. As a result, few, if any, small entities within the definitions provided in Rule 0-10 under the Investment Company Act of 1940 and rule 157 under the Securities Act of 1933 would be affected by the proposed amendments to Form N-4, if adopted. Accordingly, the proposed amendments would not have a significant economic impact on a substantial number of small entities.

Dated: April 11, 2002.

Harvey L. Pitt,
Chairman.

[FR Doc. 02-9456 Filed 4-22-02; 8:45 am]

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