

Document Access and Management System (ADAMS) accumulated by the Office of the Secretary of the Commission, including electronic copies of records created using office automation tools and of records used to create ADAMS portable document format files. Records proposed for disposal include electronic recordkeeping copies of records related to committees and conferences for which the agency is not the sponsor, routine correspondence files, and rulemaking docket files. Paper copies of these records were previously approved for disposal. Series proposed for permanent retention include recordkeeping copies of such files as decisional dockets, records relating to committees and conferences sponsored by the agency, program correspondence at the Commission level, rulemaking records, and transcripts of Commission meetings.

15. Office of Personnel Management, Office of the Chief Information Officer (N1-478-02-1, 8 items, 8 temporary items). Year 2000 (Y2K) project records, including such records as plans, test documentation, correspondence, reports, and electronic copies of records created using electronic mail and word processing.

Dated: December 4, 2001.

Michael J. Kurtz,

*Assistant Archivist for Record Services—
Washington, DC.*

[FR Doc. 01-30436 Filed 12-7-01; 8:45 am]

BILLING CODE 7515-01-U

POSTAL RATE COMMISSION

Sunshine Act Meeting

Name of Agency: Postal Rate Commission.

Time and Date: December 12, 2001 at 10 a.m.

Place: Commission conference room, 1333, H Street NW., Suite 300, Washington, DC 20268-0001.

Status: Open.

Matters to be Considered: Election of vice-chairman.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, general counsel Postal Rate Commission, 202-789-6820.

Dated: December 5, 2001.

Steven W. Williams.

Acting Secretary.

[FR Doc. 01-30501 Filed 12-5-01; 4:07 pm]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration on the American Stock Exchange LLC (Quicksilver Resources Inc., Common Stock, \$.001 par value) File No. 1-14837

December 4, 2001.

Quicksilver Resources Inc., a Delaware Corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock, \$.001 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On September 28, 2001, the Board of Directors of the Issuer unanimously approved a resolution to withdraw the Issuer's Security from listing on the Amex and to list the Security on the New York Stock Exchange, Inc. ("NYSE"). In making the decision to withdraw the Security from listing on the Exchange, the Issuer considered the direct and indirect costs and the division of the market resulting from dual listing. The Issuer states that trading in the Security ceased on the Amex on October 22, 2001 and began on the NYSE the same day.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and shall have no effect upon its listing on the NYSE or its registration under section 12(b) of the Act.³

Any interested person may, on or before December 27, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d-2(d).

³ 15 U.S.C. 78l(b).

granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,

Secretary.

[FR Doc. 01-30415 Filed 12-7-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25308; File No. 812-12556]

First Variable Life Insurance Company, et al.

December 4, 2001.

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

Summary of Application: Applicants seek an order pursuant to Section 26(c) of the Investment Company Act of 1940 ("1940 Act"), approving the substitution of shares of certain Portfolios of Variable Investors Series Trust ("VIST") for shares of certain portfolios of other variable insurance products funds as follows: (1) Shares of the Pilgrim Baxter Insurance Series Fund, Inc.—PBHG Small Cap Growth Portfolio for shares of the VIST Small Cap Growth Portfolio; (2) shares of the American Century VP International Growth Fund for shares of the VIST World Equity Portfolio; (3) shares of the American Century VP Ultra Fund for shares of the VIST Growth Portfolio; (4) shares of the American Century VP Income and Growth Fund for shares of the VIST Matrix Equity Portfolio; (5) shares of the Fidelity Variable Insurance Products Fund—Growth & Income Portfolio for shares of the VIST Growth & Income Portfolio; (6) shares of the Fidelity Variable Insurance Products Fund—Growth & Income Portfolio for shares of the VIST Multiple Strategies Portfolio; (7) shares of the Federated High Income Bond Fund II for shares of the VIST High Income Bond Portfolio; and (8) shares of the Federated U.S. Government Securities Fund II for shares of the VIST U.S. Government Bond Portfolio. Applicants also seek an order, pursuant to Section 17(b) of the 1940 Act, granting exemptions from Section 17(a) to permit Applicants to carry out the above-referenced substitution by means of in-kind redemption and purchase.

Applicants: First Variable Life Insurance Company ("First Variable"),

⁴ 17 CFR 200.30-3(a)(1).

First Variable Annuity Fund E ("Account E"), First Variable Annuity Fund A ("Account A") and Separate Account VL ("Account VL") of First Variable Life Insurance Company. First Variable is referred to herein as the "Insurance Company Applicant." Account E, Account A and Account VL are referred to herein as the "Separate Account Applicants."

Filing Date: The application ("Application") was filed on June 21, 2001 and amendments thereto were filed on October 11, 2001 and December 3, 2001.

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 December 27, 2001, 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 requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: For the Commission: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. For Applicants: c/o Raymond A. O'Hara III, Esquire, Blazzard, Grodd & Hasenauer, PC, P.O. Box 5108, Westport, Connecticut 06881. Copies to: Steve M. Callaway, Esquire, Senior Associate Counsel, Protective Life Corporation, Birmingham, Alabama 35202.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna MacLeod, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549, (tel. (202) 942-8090).

Applicants' Representations

1. First Variable is a stock life insurance company that was organized under Arkansas law in 1968. It engages principally in the business of variable life insurance, variable annuities and fixed annuities. First Variable holds licenses to sell insurance in 49 states, the District of Columbia and the U.S. Virgin Islands. On October 1, 2001,

Protective Life Insurance Company, a subsidiary of Protective Life Corporation of Birmingham, Alabama, acquired the stock of First Variable from ILona Financial Group, Inc., formerly known as Irish Life of North America, Inc., which had owned all of the outstanding stock of First Variable until that date.

2. Account E is a segregated asset account of First Variable. Account E was established by First Variable on December 4, 1979, under Arkansas insurance laws. Account E is used to fund certain Contracts issued by First Variable. Account E is divided into several subaccounts, each of which invests in and reflects the investment performance of a specific underlying registered investment company or portfolio thereof. Account E is registered as a unit investment trust under the 1940 Act.

3. Account A is a segregated asset account of First Variable. Account A was established by First Variable on July 1, 1968 under Arkansas insurance laws. Account A is used to fund certain Contracts issued by First Variable. Account A is divided into several subaccounts, each of which invests in and reflects the investment performance of a specific underlying registered investment company or portfolio thereof. Account A is registered as a unit investment trust under the 1940 Act.

4. Account VL is a segregated asset account of First Variable. Account VL was established by First Variable on March 6, 1987, under Arkansas insurance laws. Account VL is used to fund certain Contracts issued by First Variable. Account VL is divided into several subaccounts, each of which invests in and reflects the investment performance of a specific underlying registered investment company or portfolio thereof. Account VL is registered as a unit investment trust under the 1940 Act.

5. The segregated asset accounts support certain variable annuity contracts and variable life insurance policies (collectively, the "Contracts") issued by the Insurance Company Applicant. Under the Contracts, First Variable reserves the right to substitute one or more of the variable investment options with another variable investment option. These contractual provisions have been disclosed in the prospectus or the statements of additional information relating to the contracts.

6. The Trust was organized as a Massachusetts business trust on December 23, 1986. The Trust is comprised of eight separate series ("Portfolios" or "Replaced Portfolios").

The Trust is registered as an open-end management investment company under the 1940 Act and its shares are registered as securities under the Securities Act of 1933 ("1933 Act"). The shares of the Trust are sold exclusively to the Separate Account Applicants to fund benefits under the Contracts. First Variable Advisory Services Corporation ("FVAS") is the investment adviser for the Trust. FVAS is a wholly-owned subsidiary of First Variable, the ultimate parent of which is Protective Life Corporation. FVAS has engaged sub-advisers for each of the Portfolios of the Trust to make investment decisions and place orders.

7. Applicants request the Commission's approval to effect the substitutions of the shares of portfolios of other variable insurance products funds ("Substituting Portfolios") for the shares of the Replaced Portfolios (the "Substitution"). The Substituting Portfolios are series of open-end management investment companies registered under the 1940 Act, the shares of which are registered as securities under the 1933 Act. Applicants represent that the Substituting Portfolios, in general, have similar investment objectives to, and more assets, better performance and lower expense ratios than, the Replaced Portfolios. The Replaced Portfolios and the corresponding Substituting Portfolios are as follows:

Replaced portfolios	Substituting portfolios
High Income Bond Portfolio. World Equity Portfolio	Federated High Income Bond Fund II. American Century VP International Growth Fund. PBHG Small Cap Growth Portfolio. American Century VP Income and Growth Fund.
Small Cap Growth Portfolio. Matrix Equity Portfolio	Federated U.S. Government Securities Fund II. American Century VP Ultra Fund. Fidelity VIP Growth & Income Portfolio. Fidelity VIP Growth & Income Portfolio.
U.S. Government Bond Portfolio.	
Growth Portfolio	
Multiple Strategies Portfolio. Growth & Income Portfolio.	

8. The investment objectives of the Replaced Portfolios and Substituted Portfolios are as follows:

(a) The stated objective for the High Income Bond Portfolio and the Federated Income Bond Fund II is to seek a high level of current income while secondarily seeking capital appreciation by investing primarily in fixed-income securities, including corporate bonds and notes, discount

bonds, zero-coupon bonds, convertible securities and preferred stocks and bonds issued with warrants, which are rated Baa or below by Moody's or BBB or below by Standard & Poor's or in unrated securities determined to be of comparable quality. The same individual, Mark E. Durbiano, manages both of these Portfolios.

(b) The World Equity Portfolio's stated objective is to seek maximum long-term total return by investing primarily in common stocks, and securities convertible into common stocks, traded in securities markets located around the world, including the United States. This objective is to be obtained via international blue chips and domestic U.S. small cap stocks. The American Century VP International Growth Portfolio's stated objective is to seek capital growth by investing primarily in large cap equities in developed countries around the world. The Portfolio also invests in preferred stock and convertible debt and it can invest in the United States.

Morningstar Inc. ("Morningstar"), a provider of mutual fund, stock and variable insurance investment information, assigns both of these Portfolios to a Large-Growth investment style box focusing on international equities.

(c) The objective of the Small Cap Growth Portfolio and the PBHG Small Cap Growth Portfolio is to seek capital appreciation by investing primarily in common stocks of emerging companies with the potential for significant capital appreciation and strong earnings growth with attendant risk. The Portfolios normally invest at least 65% of assets in common stocks and convertible securities issued by companies with market capitalization or annual revenues not exceeding \$1 billion at the time of purchase. Both Portfolios are managed by the same entity—Pilgrim Baxter & Associates, Ltd.

(d) The Matrix Equity Portfolio's investment objective is to seek capital appreciation and current income by investing in a diversified portfolio of equity securities. The American Century VP Income and Growth Portfolio's investment objective is to seek capital growth by investing in common stocks, with income as a secondary objective.

Over the last ten years, both Portfolios have had substantially similar investment styles and Morningstar has categorized each fund as either being Large/Value or Large/Blend during that time period.

(e) The U.S. Government Bond Portfolio's investment objective is to seek current income and preservation of capital. Under normal circumstances, at

least 80% of the Portfolios assets will be invested in U.S. Government Securities; the remainder may be invested in investment grade corporate securities and in cash and money market instruments. The Federated U.S. Government Securities Fund II's investment objective is to provide current income by investing at least 65% of its assets in U.S. government securities, including mortgage backed securities issued by U.S. government agencies. In addition, the Fund may invest up to 35% of its assets in investment grade non-government mortgage-backed securities.

Morningstar classifies both portfolios as Intermediate Government Bond Funds.

(f) The Growth Portfolio's investment objective is to seek capital growth; it also seeks current income when consistent with its primary objective. It pursues its objective by investing primarily in common stocks and securities convertible into common stock. Securities are selected on the basis of their issuers long-term potential for expanding their earnings, profitability, and size and on the basis of potential increases in market recognition of their securities. The American Century VP Ultra Fund's investment objective is to seek long-term capital growth. The Portfolio pursues this objective by investing in large company stocks that the manager believes will increase in value over time, using a growth investment strategy. The strategy looks for companies with earnings and revenues that are not only growing, but also growing at a successfully faster or accelerating pace.

Both portfolios are classified by Morningstar as large cap growth funds.

(g) The Multiple Strategies Portfolio's investment objective is to seek as high a level of total return as the manager considers consistent with prudent investment risk. The Portfolio invests in equity securities, fixed income securities and money market instruments. Equity securities are selected on the basis of their issuers long-term potential for expanding their earnings, profitability, and size and on the basis of potential increases in market recognition of their securities. The Fidelity VIP Growth & Income Portfolio's investment objective is to seek high total return through a combination of current income and capital appreciation. The Portfolio invests a majority of its assets in common stocks with a focus on those that pay current dividends and show potential for capital appreciation. The Portfolio also invests in bonds,

including lower-quality debt securities, as well as stocks that are not currently paying dividends, but offer prospects for future income or capital appreciation.

(h) The Growth & Income Portfolio's investment objective is to seek growth of capital and income. The Portfolio pursues this objective by investing primarily in dividend-paying common stocks, as well as fixed income securities. The Fidelity VIP Growth & Income Portfolio's investment objective is to seek high total return through a combination of current income and capital appreciation. The Portfolio invests a majority of its assets in common stocks with a focus on those that pay current dividends and show potential for capital appreciation. The Portfolio also invests in bonds, including lower-quality debt securities, as well as stocks that are not currently paying dividends, but offer prospects for future income or capital appreciation.

Both of the Portfolios have been characterized by Morningstar as Large/Value and Large/Blend over the last 10 years.

9. For the shares of each Replaced Portfolio held on behalf of their respective Separate Accounts at the close of business on the date selected for the Substitution, First Variable will redeem those shares for cash or in-kind. Simultaneously, First Variable, on behalf of each of its Separate Account Applicants, will place a purchase order for shares of each Substituting Portfolio so that each purchase will be for the exact amount of the redemption proceeds, which may be partly or wholly in-kind. Accordingly, at all times monies attributable to Owners then invested in the Replaced Portfolio will remain fully invested and will result in no change in the amount of any Owner's contract value, death benefit or investment in the applicable Separate Account Applicant.

10. In connection with the redemption of all shares of each Replaced Portfolio, it is anticipated that the Replaced Portfolio will incur brokerage fees and expenses in connection with such redemption. To alleviate the potential impact, the redemptions for certain Replaced Portfolios will be effected partly for cash and partly for portfolio securities redeemed in-kind. In addition, Applicants will use the in-kind and cash redemption proceeds to purchase shares of the Substituting Portfolio. In effecting the in-kind redemptions and transfers, the Trust has informed the Applicants that it will comply with the requirements of Rule 17a-7 under the 1940 Act and the procedures established

thereunder by the Board of Trustees of the Trust.

11. As noted above, the portfolio securities received from the in-kind redemptions will be used together with the cash proceeds to purchase the shares of the Substituting Portfolios. The Applicants have determined that partially effecting the redemption of shares of the Replaced Portfolios in-kind is appropriate, based on the similarity of certain types of portfolio securities that may be held by the Replaced Portfolio and its corresponding Substituting Portfolio. The Trust has advised the Applicants that the valuation of any in-kind redemptions will be made on a basis consistent with the normal valuation procedures of the Replaced Portfolio and that of the Substituting Portfolio.

12. The full net asset value of the redeemed shares held by the Separate Account Applicants will be reflected in the Owners' contract values following the Substitution. The Applicants represent that the Owners will not bear, directly or indirectly any expenses, including brokerage expenses, for the Substitution so that the full net asset value of redeemed shares of the Replaced Portfolio held by the Separate Account Applicants will be reflected in the Owners' contract values following the Substitution.

13. The Trust is fully advised of the terms of the Substitution. Applicants anticipate that until the Substitution occurs, the Trust will conduct the trading of portfolio securities in accordance with the investment objectives and strategies stated in the Trust's prospectus and in a manner that provides for the anticipated redemptions of shares held by the Separate Account Applicants.

14. Applicants have determined that the Contracts allow the Substitution as described in the application, and that the transactions can be consummated as described therein under applicable insurance laws and under the Contracts. In addition, prior to effecting the Substitution, Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

15. Affected Owners will not incur any fees or charges, directly or indirectly, as a result of the Substitution, nor will the rights or obligations of First Variable under the Contracts be altered in any way. The proposed Substitution will not have any adverse tax consequences to Owners. The proposed Substitution will not cause Contract fees and charges

currently being paid by existing Owners to be greater after the proposed Substitution than before the proposed Substitution. The proposed Substitution will not be treated as a transfer for the purpose of assessing transfer charges. Moreover, First Variable will allow the Owners, with respect to shares substituted, to transfer the Contract values held in the subaccount invested in the Substituting Portfolio for a period of thirty-one days without collecting transfer fees or imposing any additional restrictions on transfers. Moreover, such a transfer will not be counted as a transfer request under any contractual provisions of the Contracts that limit the number of transfers that may be made without charge.

16. In anticipation of the filing of this Application, the respective Applicants have supplemented the prospectuses for the Contracts to reflect the proposed Substitution. Within five days after the Substitution, First Variable will send to Owners written notice of the Substitution (the "Notice"), identifying the shares of the Replaced Portfolios that have been eliminated and the shares of the Substituting Portfolios that have been substituted. First Variable will include in such mailing the applicable prospectus supplement for the Contracts of the Separate Account Applicants describing the Substitution. For those Contracts that already include as a variable investment option the Substituting Portfolio, First Variable does not intend to mail a copy of the prospectus for the Substituting Portfolio to the Owners, because they already will have received a copy of a prospectus that includes the Substituting Portfolio in the ordinary course. For those Contracts that do not include as a variable investment option the Substituting Portfolio, First Variable will have amended the applicable registration statement and will provide a copy of the prospectus supplement for the Contract and the prospectus for the Substituting Portfolio with the Notice. Owners will be advised in the Notice that for a period of thirty-one days from the mailing of the Notice, Owners may transfer all assets, as substituted, to any other available subaccount without limitation or charge (the "Free Transfer Period").

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act provides that "[i]t 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 [SEC] shall have approved such substitution." Section 26(b) of the 1940

Act (now Section 26(c)) was enacted as part of the Investment Company Act Amendments of 1970. Prior to the enactment of these amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five (5) days after the substitution. In 1966, Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted security, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval.

2. Applicants submit that the Substitution does not present the type of costly forced redemption or other harms that Section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(a) The Substitution will continue to fulfill Owners' objectives and risk expectations, because the investment objectives of each Substituting Portfolio are substantially similar to those of each Replaced Portfolio.

(b) After receipt of the Notice informing an Owner of the Substitution, an Owner may request that his or her assets be reallocated to another subaccount at any time during the Free Transfer Period. The Free Transfer Period provides sufficient time for Owners to consider their reinvestment options;

(c) The Substitution will be at net asset value of the respective shares, without the imposition of any transfer or similar charge;

(d) Neither the Owners, the Replaced Portfolio nor the Substituting Portfolio will bear any costs of the Substitution, including brokerage fees, and accordingly, the Substitution will have no impact on the Owners' Contract values;

(e) The Substitution will in no way alter the contractual obligations of First Variable or the rights and privileges of Owners under the Contracts;

(f) The Substitution will in no way alter the tax benefits to Owners; and
(g) The Substitution is expected to confer certain economic benefits on Owners by virtue of enhanced asset size and lower expenses.

3. The Applicants have determined that each Substituting Portfolio is an appropriate replacement for each Replaced Portfolio and an appropriate investment vehicle for the Owners

because they share similar investment objectives. Accordingly, the Insurance Company Applicant has specifically determined that the Substituting Portfolios are appropriate investment vehicles for owners who have allocated values to the Replaced Portfolios and that the Substitution will be consistent with Owners' investment objectives.

4. As of December 31, 2000, each Substituting Portfolio had lower expense ratios than its corresponding Replaced Portfolio, and with the exception of American Century VP International Growth Fund, American Century VP Income and Growth Fund and American Century VP Ultra Fund, each Substituting Portfolio pays management fees that are equal to or less than the corresponding Replaced Portfolio. Applicants believe that the addition of assets resulting from the Substitution will likely result in lower expense ratios for the Owners that have allocated their Contract values to the Substituting Portfolios.

The expense structure of the American Century Fund is substantially different from that of the Trust. The Trust pays, in addition to a management fee, all of its own expenses, which may vary from year to year. In contrast, services provided by American Century under the American Century Management Agreement are offered under a unified fee arrangement. For the services it provides to the American Century Fund, American Century receives a unified management fee based on a percentage of the average net assets of the series of the Fund, including each of the American Century Substituting Portfolios. Out of that fee American Century pays all expenses of managing and operating the American Century Fund except brokerage expenses, taxes, interest, fees and expenses of the Fund's independent directors (including legal counsel fees), and extraordinary expenses. In each substitution into the American Century Fund, the overall expense ratios of the Substituting Portfolios are lower and, in some cases, significantly so.

5. With respect to the First Variable separate accounts investing in the American Century Substituting Portfolios, Applicants represent that there will be no increase in the contract charges from their current levels for a period of at least two years from the date of the Commission order requested herein.

6. Applicants represent that First Variable does not currently receive (and will not receive for three years from the date of the Commission order requested herein) any direct or indirect benefit from the Substituting Portfolios (other

than the American Century Substituting Portfolios), their advisers and/or their affiliates, that would exceed the amounts that First Variable or FVAS, the Trust's adviser, had received from the Replaced Portfolios, including without limitations, 12b-1, shareholder service, administrative or other service fees, revenue sharing or other arrangements, either with respect to specific reference to the Substituting Portfolios or as part of an overall business arrangement.

7. Applicants represent that the returns for most of the Substituting Portfolios have generally been higher than the returns of the corresponding Replaced Portfolios, and that while there is no guarantee that past performance will continue, the return data supports Applicants' view that the Substitution is not expected to give rise to diminution in performance or other adverse effects on Contract values.

8. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company. The proposed Substitution will be effected in part through in-kind redemptions and purchases and may be deemed to entail the indirect purchase of shares of a related Substituting Portfolio with portfolio securities of the Replaced Portfolio and the indirect sale of securities of the Replaced Portfolio for shares of the Substituting Portfolio.

9. Section 17(b) of the 1940 Act provides that the Commission may grant an Order exempting transactions prohibited by Section 17(a) of the 1940 Act upon application if evidence establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned;

(b) The proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and

(c) The proposed transaction is consistent with the general purposes of the 1940 Act.

The Applicants represent that the terms of the proposed transactions, as described in this Application are: reasonable and fair, including the

consideration to be paid and received; do not involve over-reaching; are consistent with the policies of the Replaced Portfolios of the Trust; and are consistent with the general purposes of the 1940 Act.

10. Applicants represent that for all the reasons stated above, with regard to Section 26(c) of the 1940 Act, the Substitution is reasonable and fair. It is expected that existing and future Owners will benefit from the consolidation of assets in the Substituting Portfolios. The transactions effecting the Substitution will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c-1 thereunder. Moreover, the partial in-kind redemptions of portfolios' securities of the Replaced Portfolios will be effected in conformity with Rule 17a-7 under the 1940 Act and the procedures of the Trust established pursuant to Rule 17a-7. The Owners' interests after the Substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. In each case, the consideration to be received and paid is, therefore, reasonable and fair.

Conclusion

Applicants submit, for all of the reasons stated herein, that their requests meet the standards set out in Sections 6(c), 17(b) and 26(c) of the 1940 Act and that an Order should, therefore, be granted. Accordingly, Applicants request an Order pursuant to Sections 6(c), 17(b) and 26(c) of the 1940 Act approving the Substitution.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 01-30442 Filed 12-7-01; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8039, 34-45124, FR-59]

Cautionary Advice Regarding the Use of "Pro Forma" Financial Information in Earnings Releases

AGENCY: Securities and Exchange Commission.

SUMMARY: The Securities and Exchange Commission is issuing a statement regarding the use by public companies of "pro forma" financial information in earnings releases.

FOR FURTHER INFORMATION CONTACT: John M. Morrissey, Deputy Chief Accountant,