

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release Nos. 33-7514; IC-23066; File No. S7-9-98]

RIN 3235-AG37

Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing a new Form N-6 for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies. The form would be used by these separate accounts to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933. For these registrants, the proposed form would replace Form N-8B-2, currently used by all unit investment trusts to register under the Investment Company Act, and Form S-6, currently used by all unit investment trusts to offer their securities under the Securities Act. The proposed form would focus prospectus disclosure on essential information that would assist an investor in deciding whether to invest in a particular variable life insurance policy. The proposed form also would minimize prospectus disclosure about technical and legal matters, improve disclosure of fees and charges, and streamline the registration process by replacing two forms that were not specifically designed for variable life insurance policies with a single form tailored to these products.

DATES: Comments must be received on or before July 1, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-6009. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-9-98; 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, N.W., Washington, D.C. 20549-6009. Electronically submitted comments also

will be posted on the Commission's Internet site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, Ethan D. Corey, Senior Counsel, Megan L. Dunphy, Attorney, Michael B. Koffler, Attorney, Susan M. Olson, Attorney, Kevin M. Kirchoff, Branch Chief, Cindy J. Rose, Chief Financial Analyst, or Susan Nash, Assistant Director, (202) 942-0670, Office of Insurance Products, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5-6, Washington, D.C. 20549-6009.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing for comment a new Form N-6 [17 CFR 239.17c; 17 CFR 274.11d] for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies. The form would be used by these separate accounts 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"). For these registrants, the proposed form would replace Forms N-8B-2 [17 CFR 274.12] and S-6 [17 CFR 239.16], currently used by all unit investment trusts to register under the Investment Company Act and to offer their securities under the Securities Act. The Commission also is proposing technical amendments to rules 134b, 430, 430A, 495, 496, and 497 under the Securities Act [17 CFR 230.134b, 230.430, 230.430A, 230.495, 230.496, 230.497]; rules 8b-11 and 8b-12 under the Investment Company Act [17 CFR 270.8b-11, 270.8b-12]; and Form N-8B-2 [17 CFR 274.12]. Finally, the Commission is requesting comment on whether it should rescind Form N-1 [17 CFR 274.11], the registration form used by insurance company separate accounts that are registered as open-end management investment companies and that offer variable life insurance policies.

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I. Introduction and Executive Summary

Variable Life Insurance

Variable life insurance is similar to traditional life insurance, except that the cash value and/or death benefit vary based on the investment performance of the assets in which the premium payments are invested. Under a traditional life insurance policy, premium payments are allocated to an insurer's general account and invested, consistent with state law requirements, to enable the insurer to meet its death benefit and cash value guarantees. The investment return on assets in the general account has little or no direct effect on the cash value or the death benefit received.

Premium payments under a variable life policy, in contrast, are invested in an insurance company separate account, which generally is not subject to state law investment restrictions. A variable life policyholder typically is offered a variety of investment options (*e.g.*, equity, bond, and money market mutual funds). Death benefits and cash values are directly related to performance of the separate account, although typically there is a guaranteed minimum death benefit.

Variable life insurance was introduced in the early 1970s. During the years from the end of World War II to the late 1960s, there was a significant decline in the share of savings dollars invested with life insurance companies. In an effort to counteract this trend, insurers began to offer a greater variety of products, including equity-based products such as variable life

insurance.¹ In recent years, variable life insurance has become an increasingly important segment of the insurance industry. By the end of 1996, variable life insurance accounted for almost one quarter of U.S. life insurance sales, up from 6% four years earlier.² Throughout the 1990s, assets in variable life products have grown steadily, from \$4.3 billion in 1990 to more than \$33 billion in December 1997.³

Current Forms for Variable Life Insurance Registration

A separate account funding a variable life insurance policy most commonly is registered as a unit investment trust under the Investment Company Act.⁴ Separate accounts registered as unit investment trusts are divided into sub-accounts, each of which invests in a different open-end management investment company, or mutual fund ("Portfolio Company").⁵

Both separate account unit investment trusts and the Portfolio Companies in which they invest are registered as investment companies under the Investment Company Act, and their securities are registered under the Securities Act. Investors in variable life insurance policies receive the prospectuses for both the separate account unit investment trust and the Portfolio Companies. Portfolio Companies, as mutual funds, use Form N-1A to register under the Investment Company Act and to register their shares under the Securities Act.⁶ Variable life separate accounts, as unit investment trusts, register under the Investment Company Act on Form N-

8B-2 and register their securities under the Securities Act on Form S-6.

Forms N-8B-2 and S-6 were designed for non-separate account unit investment trusts and were adopted before the establishment of the first separate account to fund variable life insurance policies. While much of their required disclosure is useful, the forms request some information that is not typically of consequence to a buyer of variable life insurance. More importantly, many matters that would be significant to a buyer of a variable life insurance policy are not addressed at all by the forms. Over time, the Commission staff has sought to deal with these shortcomings on a piecemeal basis by developing disclosure standards that require a description of the important features of the variable life insurance policy and the separate account. The Commission believes that these standards should be codified in a more appropriately designed form.

Another shortcoming of Forms N-8B2 and S-6 is that they do not reflect fundamental improvements that the Commission has made to other investment company registration forms, such as Form N-4 for variable annuities and Form N-1A for mutual funds, which facilitate clearer and more concise disclosure to investors.⁷ As a result, variable life insurance prospectuses are often unnecessarily lengthy and complex.

When Form N-4 was considered in the 1980s, the Commission indicated that it did not expect to propose separate registration forms for variable life insurance registrants until it had acquired more experience with variable life insurance policies.⁸ The Commission now believes that the benefits of its prospectus improvement initiatives should be extended to unit investment trust separate accounts that offer variable life insurance policies. These benefits include a two-part registration form, consisting of a simplified prospectus designed to contain essential information that assists an investor in making an

investment decision, and a "Statement of Additional Information" ("SAI"), containing more extensive information and detailed discussion of matters included in the prospectus that investors could obtain upon request. They also include the use of a single integrated form for both Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.⁹

Improved Communication to Investors

The Commission is committed to improving the disclosure provided to variable life insurance investors. Toward that end, the Commission has developed Form N-6, which it proposes today for public comment. Unlike the current forms, proposed Form N-6 is specifically tailored to variable life insurance. The proposed requirements of the form focus on information that is essential to a decision to invest in a particular variable life insurance policy, and the form is intended to enhance the comparability of information about variable life insurance policies. The proposal seeks to promote more effective communication of information about variable life insurance policies.

Today's proposal is the latest Commission action in its continuing effort and long-standing commitment to improve the quality of disclosure available to investment company investors. In 1983, the Commission introduced the innovative two-part disclosure format for mutual funds.¹⁰ This format was extended to variable annuities in 1985.¹¹ Subsequently, the Commission adopted a number of other initiatives to improve investment company disclosure, including uniform fee tables for mutual funds and variable annuities.¹²

In the past few years, the Commission has taken significant steps to improve investment company disclosure. In 1995, the Commission issued a release requesting comment on ways to improve risk disclosure and comparability of mutual fund risk levels.¹³ Today, the Commission is adopting a comprehensive revision of Form N-1A,

¹ SEC, Division of Investment Management, Variable Life Insurance and the Petition for the Issuance and Amendment of Exemptive Rules at 1-2 (Jan. 1973).

² Rybka, *The Variable Life Revolution*, NAVA Outlook, July/Aug. 1997, at 1.

³ Lipper Variable Insurance Products Performance Analysis Service, Vol. I, at 190-91 (Jan. 1998).

⁴ Section 4(2) of the Investment Company Act defines "unit investment trust" as "an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust." 15 U.S.C. 80a-4(2).

⁵ An open-end management investment company is an investment company, other than a unit investment trust or face amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. Section 4(3) of the Investment Company Act [15 U.S.C. 80a-4(3)]; Section 5(a)(1) of the Investment Company Act [15 U.S.C. 80a-5(a)(1)]. As an alternative to the structure described in the text, a variable life insurance separate account can be organized in a single-tier structure, as an open-end management investment company. Today, this structure is used by few, if any, variable life insurance registrants.

⁶ 17 CFR 274.11A.

⁷ Form N-1A [17 CFR 274.11A]; Form N-4 [17 CFR 274.11c]; Investment Company Act Release No. 13689 (Dec. 23, 1983) [49 FR 614] ("N-4 Proposing Release"); Investment Company Act Release No. 14575 (June 14, 1985) [50 FR 26145] ("N-4 Adopting Release"); Investment Company Act Release No. 12927 (Dec. 27, 1982) [48 FR 813] ("1982 N-1A Proposing Release"); Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928] ("1983 N-1A Adopting Release"); Investment Company Act Release No. 22528 (Feb. 27, 1997) [62 FR 10898], correction [62 FR 24160] ("1997 N-1A Proposing Release"); Investment Company Act Release No. 23064 (Mar. 13, 1998) ("1998 N-1A Adopting Release").

⁸ N-4 Proposing Release, *supra* note 7, at 615, note 6.

⁹ See Investment Company Release No. 10378 (Aug. 28, 1978) [43 FR 39548] (integration of Investment Company Act and Securities Act reporting and disclosure requirements in adoption of Form N-1).

¹⁰ 1983 N-1A Adopting Release, *supra* note 7.

¹¹ N-4 Adopting Release, *supra* note 7.

¹² Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3192] ("N-1A Fee Table Adopting Release"); Investment Company Act Release No. 16766 (Jan. 23, 1989) [54 FR 4772] ("N-4 Fee Table Adopting Release").

¹³ Investment Company Act Release No. 20974 (Mar. 29, 1995) [60 FR 17172] ("Risk Concept Release").

the mutual fund disclosure form, to provide a standardized risk/return summary at the beginning of every mutual fund prospectus, require mutual funds to prepare disclosure documents using plain English, and eliminate prospectus clutter that obscures information that is helpful to investors making an investment decision.¹⁴ The Commission also is adopting a new rule to permit mutual funds to provide investors with a "profile," a disclosure document summarizing key information about a fund, including the fund's investment strategies, risks, performance, and fees, in a concise, standardized format. A fund that makes a profile available will be able to offer investors a choice of the amount of information that they wish to consider before making an investment decision.¹⁵

The Commission's investment company disclosure initiatives are part of its broad undertaking to bring sweeping revisions to prospectus disclosure for all public companies.¹⁶ The Commission is committed to making all prospectuses simpler, clearer, and more useful, and to eliminating jargon and boilerplate. As part of its commitment, the Commission recently adopted rule amendments to require the use of plain English principles in drafting prospectuses and to provide other guidance on improving the readability of prospectuses.¹⁷ The Commission's plain English principles reflect fundamentals of clear communication and contemplate disclosure documents that:

- Present information in an easily readable format;
- Use everyday language that investors can easily understand; and
- Eliminate repetition of disclosure that lengthens a document and overwhelms the investor.

Goals of Proposed Form N-6

The proposed Form N-6 is another significant step to improve disclosure to investment company investors. If adopted, Form N-6 would have the following benefits.

- *Tailored Registration Form.* Proposed Form N-6 would eliminate requirements in the current registration forms that are not relevant to variable life insurance.¹⁸ Proposed Form N-6 also would include items that are specifically addressed to variable life insurance products, such as descriptions of contractual provisions relating to premiums, death benefits, cash values, surrenders and withdrawals, and loans.¹⁹

- *Plain English.* The Commission's recently adopted plain English rule would apply to the front and back cover pages and the risk/benefit summary in the variable life insurance prospectus.²⁰ This should result in better, clearer disclosure to investors.

- *Reducing Complex and Lengthy Prospectus Disclosure.* Proposed Form N-6 would streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information that assists an investor in making an investment decision, and an SAI, containing more extensive information and detailed discussion of matters included in the prospectus that investors could obtain upon request.

- *Standardized Fee Information.* Mutual funds and variable annuities are required to provide a uniform, tabular presentation of fees and charges that is intended to improve investor understanding of fees and charges and increase comparability. Proposed Form N-6 would impose a similar requirement on variable life insurance registrants, in order to improve the disclosure to investors of the often complex charges associated with variable life insurance policies and increase, to the greatest extent possible, the comparability of charges among policies.

- *Integrated Disclosure Document.* Proposed Form N-6 would provide variable life insurance registrants with an integrated form for Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.

Proposed Form N-6 is designed to promote more effective communication of information about variable life insurance policies. The proposal would advance Commission efforts to improve investment company prospectus disclosure beginning with the adoption of the two-part disclosure format for mutual funds in 1983. Proposed Form N-6, if adopted, would represent a significant step toward the Commission's goal of better, clearer, more concise disclosure for all investors.

II. Discussion

To make the requirements of proposed Form N-6 easy to follow, this release addresses items in the order in which they appear in the form.

A. General Instructions

The proposed General Instructions to Form N-6 provide guidance on the use and content of the form. They are similar to the General Instructions to Forms N-4 and N-1A. The General Instructions to Form N-6 would consist of: (i) Definitions; (ii) Filing and Use of Form N-6; (iii) Preparation of the Registration Statement; and (iv) Incorporation by Reference. They reflect the recent amendments to Form N-1A that updated and reorganized the General Instructions to make them easier to use.²¹

Proposed General Instruction A would define certain terms used throughout Form N-6, providing clarity and avoiding repeated references throughout the form. Proposed General Instruction B on the filing and use of Form N-6 would incorporate the user-friendly, question-and-answer format of Form N-1A.²²

Proposed General Instruction C would provide streamlined instructions for preparing the registration statement. Like the comparable Instructions in Forms N-4 and N-1A, General Instruction C would emphasize the need to provide clear and concise prospectus disclosure.²³ It would permit a registrant to include in its prospectus or SAI information that is not otherwise required by Form N-6, as long as the information is not misleading and does not, because of its nature, quantity, or manner of presentation, obscure required disclosures.

Like the comparable instruction in Form N-1A, Proposed General Instruction C includes a statement of the

¹⁴ 1998 N-1A Adopting Release, *supra* note 7.

¹⁵ Rule 498 under the Securities Act [17 CFR 230.498]; Investment Company Act Release No. 23065 (Mar. 13, 1998) ("Profile Adopting Release").

¹⁶ See Levitt, Plain English in Prospectuses, N.Y. ST. B.J., Nov. 1997, at 36.

¹⁷ See Securities Act Release No. 7497 (Jan. 28, 1998) [63 FR 6370] ("Plain English Adopting Release"). The Commission adopted a plain English rule that sets out six basic principles of clear writing. Rule 421(d) under the Securities Act [17 CFR 230.421(d)]. The six principles specified in the rule are: (i) Active voice; (ii) short sentences; (iii) definite, concrete everyday words; (iv) tabular presentation or "bullet" lists for complex material, whenever possible; (v) no legal jargon, or highly technical business terms; and (vi) no multiple negatives. As part of the plain English initiatives, the Commission plans to issue A Handbook on Plain English: How to Create Clear SEC Disclosure Documents, prepared by the Commission's Office of Investor Education and Assistance.

¹⁸ For example, Item 33 of Form N-8B-2 requires extensive disclosure about compensation of the insurer's employees.

¹⁹ Proposed Items 7 (premiums), 8 (death benefits and cash values), 9 (surrenders and withdrawals), and 10 (loans).

²⁰ Rule 421(d) under the Securities Act [17 CFR 230.421(d)].

²¹ General Instructions to Form N-1A; 1998 N-1A Adopting Release, *supra* note 7; 1997 N-1A Proposing Release, *supra* note 7, at 10919-20.

²² General Instruction B of Form N-1A.

²³ General Instruction C.1(a) of Form N-1A; General Instruction I of Form N-4.

basic disclosure principles that underlie today's proposal.²⁴ The Commission believes that applying these principles consistently when preparing variable life insurance disclosure documents will result in high quality documents that effectively communicate information to investors.

General Instruction C includes a set of drafting guidelines that are designed to improve prospectus disclosure. The proposed Instruction would encourage registrants to avoid cross-references in the prospectus to the SAI. Repeated cross-references to the SAI add unnecessary length and complexity to prospectuses and often preclude prospectuses from disclosing information effectively to investors.

Proposed General Instruction C would clarify that the recently adopted plain English requirements of rule 421 under the Securities Act apply to a prospectus prepared on Form N-6.²⁵ Rule 421(b) sets out general requirements that the entire prospectus be clear, concise, and understandable and provides guidance on how to draft prospectuses that meet this standard.

Under proposed Form N-6, a registrant would need to draft the front and back cover pages and the risk/benefit summary of a variable life insurance prospectus in accordance with the provisions of rule 421(d).²⁶ In meeting these requirements, a registrant would need to use plain English principles in the organization, language, and design of these sections of its prospectus. Registrants also would be required to comply substantially with the following six principles of clear writing:

- Short sentences;
- Definite, concrete, everyday language;
- Active voice;
- Tabular presentation or bullet lists for complex material, whenever possible;
- No legal jargon or highly technical business terms; and
- No multiple negatives.

Proposed General Instruction C would address the manner in which information should be presented when a single prospectus is used for more than one variable life insurance policy or for a policy that is sold in both the group and individual markets. Generally, registrants would be given flexibility to present the information in a format designed to communicate the information effectively. The

Commission notes, however, that a single prospectus should be used for more than one variable life insurance policy, or for a policy that is sold in both the group and individual markets, only when the disclosure can be presented clearly, concisely, and in a manner that is understandable to investors.

Proposed General Instruction D would address incorporation by reference in a manner similar to Form N-1A.²⁷ The proposed Instruction would permit, but not require, a registrant to incorporate the SAI by reference into the prospectus. The Instruction clarifies that incorporating information by reference from the SAI is not permitted as a response to information required to be included in the prospectus.

Form N-4 contains an instruction permitting the form to be used for registration under the Securities Act of variable annuity contracts funded by separate accounts that would be required to be registered under the Investment Company Act as unit investment trusts except for the exclusion in Section 3(c)(11) of the Act.²⁸ Proposed Form N-6 does not contain a comparable instruction because the Commission is not aware of any variable life insurance policies that are funded by separate accounts that are not registered under the Investment Company Act. Comment is requested on whether such an instruction should be included in Form N-6.

B. Part A—Information in the Prospectus

1. Item 1—Front and Back Cover Pages

Proposed Item 1 contains requirements for the outside front and back cover pages of the prospectus similar to those in Form N-1A.²⁹ The proposed requirements are intended to prevent "cluttering" the prospectus cover page and avoid repeating

²⁷ General Instruction D of Form N-1A.

²⁸ General Instruction A of Form N-4; N-4 Adopting Release, *supra* note 7, at 26148; N-4 Proposing Release, *supra* note 7, at 619. Section 3(c)(11) of the Investment Company Act excludes from the definition of investment company "any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of section 401 of the Internal Revenue Code of 1986 or the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, (B) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 5 of the Securities Act of 1933 by section 3(a)(2)(C) of such Act, and (C) advances made by an insurance company in connection with the operation of such separate account." 15 U.S.C. 80a-3(c)(11).

²⁹ Item 1 of Form N-1A; 1998 N-1A Adopting Release, *supra* note 7; 1997 N-1A Proposing Release, *supra* note 7, at 10902.

information contained within the prospectus.

The front cover page would be required to include the names of the registrant and depositor. In addition, the registrant would be required to indicate the types of variable life insurance policies offered by the prospectus (*e.g.*, group, individual, scheduled premium, flexible premium) and the date of the prospectus. Finally, the form would require the disclaimer pursuant to rule 481 under the Securities Act that the Commission has not approved the securities being offered or the accuracy or adequacy of the prospectus.³⁰

Unlike Form N-4, the cover page would not be required to state the names of the Portfolio Companies or to disclose limitations on the class or classes of purchasers to whom the policy is being offered.³¹ This disclosure would be repetitive because registrants would be required to provide the same information within the prospectus.³²

The proposal would consolidate disclosure about the availability of additional information on the back cover page of the prospectus. As in Form N-1A, the back cover page would include a statement that the SAI is available, without charge, on request and a telephone number that investors could use to obtain the SAI as well as other information. Registrants would be required to send the SAI within three days of receipt of a request. Registrants also would be required to indicate whether information is incorporated by reference into the prospectus and, unless the information is delivered with the prospectus, explain that it will be provided, without charge, on request. Finally, the proposal would require that the back cover page include disclosure that information about the registrant is available from the Commission and how that information may be obtained.³³

2. Item 2—Risk/Benefit Summary: Benefits and Risks

Proposed Form N-6 would require at the beginning of every prospectus a risk/benefit summary that would provide key information about a policy's risks, benefits, and fees. This information would be required to appear in a specific sequence. The risk/benefit summary is intended to respond to investors' strong preference for summary information in a standardized format.³⁴ It would provide all investors

³⁰ Proposed Item 1(a).

³¹ Items 1(a) (iv) and (viii) of Form N-4.

³² Proposed Items 4(c) and 6(f).

³³ Proposed Item 1(b).

³⁴ Participants in focus groups conducted on behalf of the Commission, for example, expressed

²⁴ 1998 N-1A Adopting Release, *supra* note 7.

²⁵ 17 CFR 230.421; Proposed General Instruction C.1.(e).

²⁶ 17 CFR 230.421(d); Proposed Items 1, 2, and 3.

with key information about a policy in a standardized, easily accessible place. This would help investors to evaluate and compare variable life insurance policies. The proposed risk/benefit summary is consistent with the approach taken in today's amendments to Form N-1A and the release adopting the plain English rule.³⁵ The Commission requests comment on the sequence requirement and whether any particular format should be required for the risk/benefit summary.

Risks associated with Portfolio Companies would be addressed in the Portfolio Companies' prospectuses and profiles, not the variable life insurance prospectus. Policies frequently offer 10 or more Portfolio Companies, and the Commission believes that a variable life insurance prospectus may become too long and complex if it includes risk information specific to each Portfolio Company. The Commission believes that investors are better served by consulting the Portfolio Company prospectus or profile for risk information relating to Portfolio Companies in which they are interested.

The risk/benefit summary, however, would require a registrant to present narrative information concerning the benefits available under the policy; the allocation of premium payments to insurance coverage, investments, and charges; and the risks of purchasing a policy in a single location in the variable life prospectus. Risks to be covered would include the risks of poor investment performance, the unsuitability of variable life insurance policies as short-term savings vehicles, the risks of policy lapse, limitations on access to cash value through withdrawals, and the possibility of adverse tax consequences. Variable life insurance prospectuses generally disclose this information, particularly risk information, in the context of long, often complex descriptions of the policy. The Commission believes that the proposed narrative summary will

strong support for summary information about mutual funds in a standardized format. In addition, in connection with an initiative to permit mutual funds to use profiles summarizing key information, many individual investors have written to the Commission about the need for concise, summary information relating to a fund. In keeping with the goal of providing key information in a standardized summary, proposed General Instruction C.3.(b) would not permit a registrant to include in the risk/benefit summary information that is not required or otherwise permitted by the items prescribing the risk/benefit summary.

³⁵ 1998 Form N-1A Adopting Release, *supra* note 7; Plain English Adopting Release, *supra* note 17, at 6373.

help achieve more effective communication of risks.³⁶

The Commission requests comment on the proposed narrative summary of policy benefits, allocation of premiums, and risks. Is this narrative summary necessary or helpful for variable life insurance prospectuses? Are the particular items included useful, and should other items be included? Should the risks of particular Portfolio Companies be described in the variable life insurance prospectus?

3. Item 3—Risk/Benefit Summary: Fee Table

Purpose of Fee Table. Along with investment performance, fees and charges are a crucial element in determining the return that an investor will realize from any investment company. For that reason, the Commission has required a fee table in the prospectuses of both mutual funds and variable annuities.³⁷ Through the fee tables, the Commission has sought to provide uniformity, simplicity, and comparability in fee disclosure.³⁸ The Commission believes that clear, understandable disclosure of fees and charges is equally important to investors considering the purchase of variable life insurance and, for that reason, Item 3 of Proposed Form N-6 would extend a fee table requirement to variable life insurance.

The fees and charges associated with variable life insurance products often are quite complex for several reasons. First, the structure of fees often differs from one policy to another, making comparisons among products difficult. Second, fees typically are imposed at several levels within a variable life insurance policy, making it difficult to assess the aggregate effect of charges. For example, management and other expenses may be deducted at the Portfolio Company level, asset-based charges such as a mortality and expense risk charge may be deducted against separate account assets, and other charges, such as cost of insurance, may be assessed against a policyholder's individual cash value. Third, some variable life charges, particularly cost of insurance (i.e., the charge imposed for

³⁶ In 1995, the Commission issued a release requesting comment on ways to improve risk disclosure and comparability of investment company risk levels. Risk Concept Release, *supra* note 13. More than 75% of the individual investors commenting on the Risk Concept Release specifically favored requiring a risk summary in mutual fund prospectuses.

³⁷ Item 3 of Form N-1A; Item 3 of Form N-4.

³⁸ N-1A Fee Table Adopting Release, *supra* note 12, at 3194; Investment Company Act Release No. 15932 (Aug. 18, 1987) [52 FR 32018, 32019] ("N-1A Fee Table Proposing Release").

death benefit coverage), vary based upon the individual characteristics of the purchaser and change over the life of a policy.

The complexity of variable life insurance fees and charges makes it more difficult to prescribe a standardized disclosure format than for mutual funds or variable annuities. The Commission believes, however, that this complexity also makes it particularly important that investors receive clear, understandable disclosure about this essential aspect of the investment decision. The importance of this disclosure has been heightened since the passage of the National Securities Markets Improvement Act of 1996 ("NSMIA"). NSMIA amended Sections 26 and 27 of the Investment Company Act to replace specific limits on the amount, type, and timing of charges that applied to variable insurance contracts with a requirement that aggregate charges be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.³⁹ The increased flexibility to structure variable life insurance charges given to insurers by NSMIA increases the need for clear, understandable disclosure of charges.⁴⁰ Proposed Item 3 is intended to facilitate uniformity, simplicity, and comparability of variable life insurance fees and charges, while permitting flexibility when the nature of the product requires it.

Variable life insurance prospectuses typically have included hypothetical illustrations that reflect the effect of charges under specified assumptions and thereby serve some of the purposes of a fee table.⁴¹ The Commission is concerned, however, that the illustration of one or a limited number of scenarios that demonstrate the effect of policy charges on particular policyholders with particular premium payment patterns is not an adequate substitute for clear, tabular disclosure of

³⁹ 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) ("Senate Report"); H. Rep. No. 622, 104th Cong., 2d Sess. 45-46 (1996) ("House Report").

⁴⁰ In addition, in light of NSMIA, the National Association of Securities Dealers, Inc. ("NASD") recently filed with the Commission a proposed rule change that would eliminate the maximum sales charge limitations applicable to variable insurance contracts. SR-NASD-98-14 (filed Feb. 17, 1998) (available in the Commission's Public Reference Room).

⁴¹ See N-1A Fee Table Adopting Release, *supra* note 12, at 3194; N-4 Fee Table Adopting Release, *supra* note 12, at 4775.

the level of each charge imposed by a policy.⁴²

Further, in recent years, the Commission has observed that a number of variable life insurance registrants, on their own initiative, have added relatively simple, tabular presentations of fees and charges to their prospectuses. The Commission believes that these efforts represent a significant step toward enhanced communication with investors about fees and charges and that it is appropriate, at this time, to extend these voluntary efforts to the industry as a whole. Commenters are requested to discuss the relative merits of hypothetical illustrations and fee tables in communicating charges to investors in a manner that is clear and understandable and that facilitates comparisons from one policy to another.

Fee Table Format. The proposed fee table consists of three separate sections. The first section shows policyholder transaction fees, such as sales loads, surrender charges, and transfer fees. The second section shows annual charges, excluding annual Portfolio Company operating expenses. The third section shows annual Portfolio Company operating expenses, including management fees, distribution fees, and other expenses. Comment is requested on the proposed organization of the fee table and whether it would facilitate investor understanding of fees and charges. Is some other organization preferable? Should registrants have greater flexibility to organize the presentation of charges?

For each charge, the proposed table would use a four-column format to require a registrant to identify the charge, when the charge is deducted, the amount of the charge, and whether the charge is deducted from all policies or only certain policies. This format differs from that of the fee tables in Form N-1A and Form N-4, which simply require identification of the charge, with a parenthetical statement of the basis on which it is imposed, and specification of the amount of the charge.

The proposed format is intended to recognize the complexity of variable life insurance charges, help investors to locate information about charges readily, and provide flexibility to registrants to describe policy charges completely. The "Amount Deducted" column, for example, will provide an opportunity for registrants to describe the level of a particular charge and the basis on which it is deducted, *e.g.*, percentage of premiums, cost per \$1,000

of face amount, percentage of average daily net assets. The "Policies from Which Charge is Deducted" column will permit registrants to identify clearly charges that apply to all policies and those that do not, *e.g.*, charges that apply only to policyholders with a certain account value or that elect a particular death benefit option or optional rider.

The Commission requests comment on the four-column format of the table. Should the information required by each of the columns be included in a variable life fee table? Is the four-column format the best means for providing this information or are there better ways for communicating this information to investors?

Fee Table Requirements. The proposed fee table would require registrants to disclose all fees and charges, whether or not a specific caption is provided for a charge in the proposed fee table.⁴³ The Commission believes that complete disclosure of fees and charges is appropriate. At the same time, the Commission is concerned that disclosure of fees and charges that apply to a very small proportion of policyholders could potentially overwhelm investors with information of limited relevance. The Commission therefore requests comment on whether there should be any limitations on the charges required to be disclosed in the fee table. For example, should charges be disclosed only if they apply to some minimum number or percentage of policyholders? Should all charges for optional riders, *e.g.*, accidental death benefit, children's insurance, or guaranteed insurability, be disclosed? Should the instructions provide additional guidance on the fees that are required to be disclosed?

Disclosure of the maximum charge for each item is required unless a specific instruction directs otherwise.⁴⁴ For cost of insurance, registrants are required to disclose the minimum and maximum charges. Cost of insurance generally is a significant expense item for variable life insurance policyholders.⁴⁵ For that reason, the Commission believes that it is important for investors to receive information about the level of this charge. The Commission recognizes, however, that this charge varies from policyholder to policyholder, based on individual characteristics such as age, sex, and risk classification, so that the

charge does not readily lend itself to quantification in a table that applies to all policyholders. The Commission has proposed disclosure of the range of this charge, which could be accompanied by brief explanatory material, such as the factors that affect the level of the charge.

The Commission requests comment on the possible approaches to disclosure of the cost of insurance, including the range of the charge, the maximum charge, the average charge for existing policyholders, the level of the charge for a policyholder with characteristics that are fairly representative of purchasers of the policy, and line item narrative disclosure that the charge is imposed and the factors on which it is based. Commenters also are requested to address whether charges other than the cost of insurance may be quantified in the manner that would be required by the proposed fee table.

If a registrant invests in multiple Portfolio Companies, the proposed fee table would require disclosure of the range of expenses for all of the Portfolio Companies.⁴⁶ This approach is different from Form N-4, which requires separate disclosure of the expenses of each Portfolio Company.⁴⁷ Because variable life fees and charges are complex, and because policies frequently offer 10 or more Portfolio Companies, the Commission believes that investors could be overwhelmed by information of limited relevance if the fees and charges for each Portfolio Company were separately stated in the fee table.⁴⁸ The Commission requests comment on how Portfolio Company fees and charges should be disclosed in Form N-6. Should a range be used, as proposed; should the fees and charges for each

⁴⁶ Instruction 4(b) to proposed Item 3. Portfolio Company operating expenses would be required to be disclosed before expense reimbursements and fee waiver arrangements. Registrants would be permitted to disclose expenses after reimbursement or waiver in a footnote. See Instructions 4(f)(i) and (g) to proposed Item 3. This approach mirrors the approach recently adopted by the Commission in Form N-1A. Item 3 of Form N-1A; 1998 Form N-1A Adopting Release, *supra* note 7; 1997 Form N-1A Proposing Release, *supra* note 7, at 10908.

⁴⁷ Item 3 of Form N-4; Investment Company Act Release No. 16482 (July 15, 1988) [53 FR 27872, 27873-74] ("N-4 Fee Table Proposing Release").

⁴⁸ This is less of a concern in the case of Form N-4 because the simpler, more uniform nature of variable annuity charges results in a less complex fee table. The Commission notes, however, that, in recent years, the number of investment options that is typically available in variable annuity contracts has expanded. See O'Brian and Fitzsimmons, Variable Annuities Put More Eggs In The Basket, THE WALL STREET JOURNAL, Sept. 29, 1997, at C22. For that reason, the Commission expects to reconsider the appropriate disclosure of Portfolio Company fees and charges in a variable annuity prospectus as part of a broader consideration of ways to improve communication of information to variable annuity investors.

⁴³ Instructions 2(c) and 3(e) to proposed Item 3.

⁴⁴ Instruction 1(e) to proposed Item 3.

⁴⁵ See Blease, Costs Count: A Best's Policy Reports Survey Examines the Costs Incurred with the Life Insurance Portion of Variable Universal Life Policies, BEST'S REVIEW—LIFE-HEALTH INSURANCE EDITION, Jan. 1997, at 37.

⁴² See discussion of illustrations *infra* Section II.C.3.

Portfolio Company be separately stated; or should some other approach be adopted?

Form N-1A does not require a mutual fund that offers its shares exclusively as investment options for variable annuity and variable life insurance contracts to include the fee table in its prospectus.⁴⁹ The Commission intends to amend Form N-1A to require the prospectus of a mutual fund that offers its shares as investment options for variable life insurance policies to include a fee table if the Form N-6, as adopted, does not require separate disclosure of the operating expenses of each Portfolio Company. This would ensure that variable life insurance investors have access to complete information about Portfolio Company fees and expenses. The Commission requests comment on whether the exemption from the fee table requirement in Form N-1A should be eliminated for mutual funds that offer their shares as investment options for variable life insurance policies. The Commission also requests comment on whether the exemption from the fee table requirement in Form N-1A should be eliminated for mutual funds that offer their shares as investment options for variable annuity contracts if the exemption is eliminated for mutual funds that offer their shares as investment options for variable life insurance policies.

Fee Table Example. Proposed Item 3 would not require an example of the expenses that would be incurred by an investor over specified periods. This is different from the fee tables of Form N-1A and Form N-4, both of which require such an example.⁵⁰ Because of the individualized nature of fees and charges associated with variable life insurance, particularly the cost of insurance, the Commission believes that it would be difficult to design a single example or small number of examples that would provide a useful comparison tool for investors considering different variable life insurance policies.

In amending Form N-1A, the Commission today is reiterating its belief that the fee table example provides useful information that helps a typical mutual fund investor understand and compare the expenses of different funds.⁵¹ The Commission concluded that expressing expense amounts solely as a percentage, as is done in the fee table, may not give the average mutual fund investor enough information to assess the likely effect of a fund's

expenses on an investment in the fund. Mutual fund fees, which typically are less individualized than the fees of variable life insurance policies, may be easier to reflect in an example that has broad application. The Commission requests comment on whether a fee table example should be required by Form N-6 and, if so, what should be required by the example.

4. Item 4—General Description of Registrant, Depositor, and Portfolio Companies

Proposed Item 4 would require a concise discussion of the organization and operation of the registrant, including the name and address of the depositor and a brief description of the registrant. This requirement is similar to, but more streamlined than, Item 5 of Form N-4. For example, Item 5 of Form N-4 requires registrants to disclose the general nature of the depositor's business, the date and form of organization of the depositor and the state in which it is organized, the name of any ultimate controlling person of the depositor and the general nature of its business, and the date and form of organization of the registrant and its classification under the Investment Company Act. Proposed Form N-6 would include this information in the SAI because it is technical information that does not appear to be essential to an investor when evaluating a particular variable life insurance policy or comparing different variable life insurance policies.⁵² The Commission requests comment on appropriate disclosure of matters relating to the general description of the registrant and depositor. For example, is any information omitted from proposed Item 4 that is essential to an investment decision? Is any information included in Item 4 that is not essential to an investment decision?

Proposed Item 4 also would require that the prospectus briefly describe each Portfolio Company, including (i) its name; (ii) its type (e.g., money market fund, bond fund, balanced fund) or a brief statement concerning its investment objectives; and (iii) its investment adviser and any sub-adviser. Registrants would be required to state how investors may obtain a prospectus and, if available, a profile for the Portfolio Companies. Item 4 also would require a discussion of the rights of policyholders to instruct the depositor

on the voting of Portfolio Company shares.

Over time, many registrants have included the investment objectives of Portfolio Companies along with additional information about the investment advisers and the risks associated with the Portfolio Companies in variable life prospectuses, as well as in the Portfolio Company prospectuses. The Commission believes that including detailed information about Portfolio Companies in a variable life prospectus is redundant and conflicts with the Commission's efforts to eliminate prospectus clutter that tends to obscure information that could help an investor make a decision about purchasing a variable life insurance policy.⁵³ Instruction 2 therefore would clarify that detailed Portfolio Company information is not required in the variable life insurance prospectus. In addition, if a Portfolio Company's name describes its type, the prospectus would not be required to include the Portfolio Company's type or a statement concerning its investment objectives.⁵⁴ Commenters are asked to address whether proposed Item 4 requires sufficient information about Portfolio Companies or whether additional information should be included.

5. Item 5—Charges

Proposed Item 5 would require registrants to describe briefly all charges deducted from premiums, cash value, assets of the registrant, or any other source. These charges include sales loads, premium and other taxes, administrative and transaction charges, risk charges, contract loan charges, cost of insurance, and rider charges. Registrants would be required to indicate the source from which each charge will be deducted, and specify the amount of the charge as a percentage or dollar figure and the frequency of its deduction. Registrants also would be required to identify the recipient of any amount deducted and the consideration provided for any charge, and explain the extent to which the charge can be modified.

The cost of insurance charge represents a significant expense associated with a variable life insurance policy. Instruction 2 to Item 5(a) would require a registrant to identify the factors upon which the cost of insurance

⁴⁹ See, e.g., 1998 Form N-1A Adopting Release, *supra* note 7; 1997 Form N-1A Proposing Release, *supra* note 7, at 10900.

⁵⁰ *Cf.* Cova Financial Services Life Ins. Co. (pub. avail. Apr. 15, 1996) (clarifying that variable annuity separate account prospectuses need not include detailed information about Portfolio Companies).

⁴⁹ Item 3 of Form N-1A.

⁵⁰ Item 3 of Form N-1A; Item 3(a) of Form N-4.

⁵¹ 1998 Form N-1A Adopting Release, *supra* note 7.

⁵² Proposed Item 16. *Cf.* 1998 Form N-1A Adopting Release, *supra* note 7 (moves to SAI disclosure about a fund's form and date of organization and state of incorporation).

charge will be based, including the insurer's amount at risk and the expected longevity of the insureds. A registrant would be required to identify the factors reflected in the rate scale, and specify whether the mortality charges guaranteed in the contracts differ from the current charges. A registrant also would be required to identify the factors that affect the amount at risk, including investment performance, payment of premiums, and charges. If the insurer intends to use simplified underwriting or other underwriting methods that would cause healthy individuals to pay higher cost of insurance charges than they would pay if the insurance company used conventional underwriting methods, a registrant would be required to state that the cost of insurance charges are higher for healthy individuals when this method of underwriting is used.

Proposed Item 5 also would require registrants to state that there are charges deducted from and expenses paid out of the assets of the Portfolio Companies that are described in the prospectuses for those companies and to disclose, if applicable, that charges will be deducted for incidental insurance benefits offered with the policy. The item also would require a statement about the registrant's expenses. If the organizational expenses of the registrant are to be paid out of its assets, the registrant would be required to disclose, if applicable, how the expenses will be amortized and the period of amortization.

6. Item 6—General Description of Contracts

Proposed Item 6 would require registrants to identify all persons who have material rights under the variable life insurance policies and the nature of those rights. The item also would require a brief description of any provisions for allocation of premiums among sub-accounts of the registrant, transfer of cash value between sub-accounts, and conversion or exchange of policies for other life insurance or annuity contracts.

The item also would require a brief description of the changes that can be made in the policies or the operations of the registrant by the registrant or its depositor, including (i) why a change may be made, (ii) who must approve any change, and (iii) who must be notified of any change. The instruction to Proposed Item 6(c) specifically restricts the information that must be provided to changes that would be material to a purchaser of the policies, such as a reservation of the right to deregister the registrant under the

Investment Company Act. The item would require a registrant to identify any other material incidental benefits in the policies. Finally, the item would require disclosure of any limitations on the class of purchasers to whom the policies are being offered.

7. Item 7—Premiums

Proposed Item 7 would require registrants to describe how to purchase a variable life insurance policy and the provisions of the policy relating to premiums. Registrants would be required to disclose the minimum initial and subsequent premiums required, any limits on the amount and frequency of premiums that will be accepted, how long investors must continue to pay premiums, and whether investors can prevent a policy from lapsing by paying a certain level of premiums. The item also would require registrants to discuss any circumstances in which (i) premiums may be required to prevent lapse and how the amount of additional premiums will be determined; (ii) a policy will not lapse if an investor does not pay a required premium; (iii) an investor may pay more in premiums than the policy requires; and (iv) the level of a policy's required premiums may change, and, if so, how the amount of the change will be determined. The item also would require disclosure of the factors that determine the amount of any required premiums, such as face amount, death benefit option, and charges and expenses.

The item would require registrants to identify the premium payment plans available. Registrants would be required to include the available payment frequencies, payment mechanisms such as payroll deduction plans and preauthorized checking arrangements, and any special billing arrangements. Registrants would be required to indicate whether the premium payment plan or schedule may be changed.

Registrants also would be required to explain the policy's provisions regarding premium due dates and how any grace period operates. The item would require registrants to describe any circumstances under which required premiums may be paid by means of an automatic premium loan.

Finally, proposed Item 7 would require registrants to describe when sub-account assets are valued and when required premiums and additional premiums are credited to cash value. Registrants would be required to explain the basis on which premiums are credited. Registrants would be instructed to describe where premiums are held during any time period (e.g., a "free-look" period) in which the

crediting of premiums to sub-accounts is delayed.

8. Item 8—Death Benefits and Contract Values

Proposed Item 8 would require registrants to describe briefly the death benefits available under the variable life insurance policy. The prospectus would be required to disclose when insurance coverage is effective, when the death benefit is calculated and payable, how the death benefit is calculated, what forms of death benefit are available, who may choose the form of death benefit and how, what the default death benefit is, and whether the policy guarantees a minimum death benefit. Registrants also would be required to describe if and how a policyholder may increase or decrease the face amount. The item also would require registrants to explain how the investment performance of the Portfolio Companies and expenses and charges affect policy values and death benefits.

9. Item 9—Surrenders, Partial Surrenders, and Partial Withdrawals

Proposed Item 9 would require registrants to describe briefly how a policyholder may surrender a policy. Registrants would be required to disclose any limits on the ability to surrender, how surrender proceeds are calculated, and when proceeds are payable. The item also would require registrants to disclose whether and under what circumstances partial surrenders and partial withdrawals are available under a policy, including the minimum and maximum amounts that may be surrendered or withdrawn and any limits on the availability of partial surrenders or partial withdrawals. The item also would require registrants to describe whether partial surrenders or partial withdrawals will affect a policy's cash value or death benefit, whether any charges will apply, and the manner in which partial surrenders and partial withdrawals will be allocated among sub-accounts.

Finally, the item would require registrants to describe briefly any revocation rights (e.g., free-look provisions). Registrants would be required to describe how the amount refunded is determined, the method for crediting earnings to premiums during the free-look period, and whether investment options are limited during the free-look period (e.g., premiums must be allocated to the money market sub-account).

10. Item 10—Loans

Proposed Item 10 would require registrants to describe the policy

provisions governing loans of a policy's cash value and any limits on loan availability. Registrants would be required to state the amount of interest charged on a loan and the amount of interest credited to the policy in connection with the loan. A description of loan procedures would be required, including how and when amounts borrowed are transferred out of the registrant and how and when amounts repaid are credited to the registrant. A registrant would be required to explain briefly that amounts borrowed do not participate in the registrant's investment experience and that loans can affect the policy's cash value and death benefit regardless of whether the loan is repaid. Registrants also would be required to explain that the cash surrender value and the proceeds payable on death will be reduced by the amount of any outstanding loan plus accrued interest.

11. Item 11—Lapse and Reinstatement

Proposed Item 11 would require registrants to state when a policy will lapse and under what circumstances a lapsed policy may be reinstated. Registrants would be required to explain any requirements for reinstatement, including payments of charges and outstanding loans and presentation of evidence of insurability. Registrants also would be required to describe briefly any lapse options available, indicate whether any of those options is subject to limits on availability, and indicate which options will not apply unless elected and which options are default options. Registrants would be required to describe briefly the factors that will determine the amount of insurance coverage provided under the available lapse options. Registrants would be required to describe concisely how the cash value, surrender value, and death benefit will be determined upon lapse.

12. Item 12—Taxes

Proposed Item 12 would require registrants to describe the material tax consequences to the policyholder and beneficiary of buying, holding, exchanging, or exercising rights under the policy. Registrants would be required to discuss the taxation of death benefit proceeds, periodic and non-periodic withdrawals, loans, and any other distribution that may be received under the policy, as well as tax benefits accorded the policy.

Proposed Item 12 is intended to focus tax disclosure on the likely tax consequences to policyholders of purchasing a variable life insurance policy. The proposal is intended to elicit disclosure that is not overly lengthy or technical and that does not

use jargon that is difficult for the average or typical investor to understand.

13. Item 13—Legal Proceedings

Proposed Item 13 would require a registrant to describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant, the registrant's principal underwriter, or the depositor is a party. Registrants also would be required to include information as to legal proceedings contemplated by a governmental authority. For purposes of this item, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the registrant, the ability of the principal underwriter to perform its contract with the registrant, or the ability of the depositor to perform its obligations under the policies. Proposed Item 13 would require information comparable to that required by Form N-1A and Commission forms that apply to other issuers.⁵⁵

14. Item 14—Financial Statements

Proposed Form N-6, like Form N-4, would not require financial statements of the registrant and the depositor to be included in the prospectus. Item 14, however, would require the registrant to state in the prospectus where the financial statements may be found and explain how any financial statements not in the SAI may be obtained. This requirement is similar to Item 4(c) of Form N-4.

Unlike Form N-4 and Form N-1A, proposed Form N-6 would not require a registrant to include summary financial information in its prospectus.⁵⁶ Form N-4 requires a registrant to disclose, for the last ten fiscal years and for each sub-account, the accumulation unit value at the beginning and end of each period and the number of accumulation units outstanding at the end of each period. For variable annuity contracts, the change in accumulation unit value provides a measure of performance of the registrant's sub-accounts. Because of the individual nature of variable life insurance charges, such as the cost of insurance, there does not appear to be a comparable measure of performance

⁵⁵ See Item 6(a)(3) of Form N-1A; Item 12 of Form N-2 [17 CFR 274.11a-1] (closed-end investment companies); Item 103 of Regulation S-K [17 CFR 229.103] (non-investment company issuers). See also Investment Company Act Release No. 19155 (Nov. 30, 1992) [57 FR 56862] (modifying Form N-2 to conform to Item 103).

⁵⁶ See Item 4(a) of Form N-4; Item 9 of Form N-1A.

that is applicable to all holders of a particular variable life insurance policy.⁵⁷ Each Portfolio Company, however, would continue to provide its own summary financial information in its prospectus.⁵⁸

The Commission requests comment on the appropriate location for registrant and depositor financial statements. The Commission also requests comment on whether variable life insurance registrants should be required to include summary financial information in their prospectuses. Can sub-account performance be meaningfully measured in a manner that is applicable to all holders of a particular variable life insurance policy, e.g., by reflecting Portfolio Company fees and expenses and any other charges that are uniformly applied to all policyholders? Should summary financial information of the Portfolio Companies be required to be included in the Form N-6 prospectus?

C. Part B—Statement of Additional Information

The SAI would provide a more detailed discussion of matters described in the prospectus as well as additional information about a fund.⁵⁹ Many of the items are similar to the items in Part B of Forms N-4 and N-1A and therefore are not discussed in this release. Three items, however, merit separate attention.

1. Item 24—Financial Statements

The financial statements of the registrant required by proposed Item 24 are the same as the financial statements required by Item 23 of Form N-4. The full financial statements of the registrant would be in the SAI. The only financial information for the depositor required to be in the SAI would be comparative balance sheets for the last two fiscal years and, in certain cases, a more current interim balance sheet. As with Form N-4, the other financial statements of the depositor (e.g., statement of operations and statement of changes) would be required to be included in the registration statement, but could be included in Part C rather than the SAI. These financial statements would be required to be made available to investors upon request, free of charge. The Commission believes that this would allow a shorter SAI, while still providing investors with adequate information about the solvency of the depositor.

⁵⁷ See discussion of performance data *infra* Section I.I.C.2.

⁵⁸ See Item 9 of Form N-1A.

⁵⁹ See proposed General Instruction C.2.(b).

Instruction 1 to proposed Item 24, like Instruction 1 to Item 23 of Form N-4, would provide that a depositor's financial statements may be prepared in accordance with statutory requirements if the depositor would not have to prepare financial statements in accordance with generally accepted accounting principles ("GAAP") except for use in a registration statement filed on Form N-3, N-4, or N-6.⁶⁰ In recent years, increasing numbers of depositors have elected to prepare financial statements in accordance with GAAP for use in business transactions.⁶¹ In addition, when a depositor's parent company prepares financial statements on a GAAP basis, the depositor typically prepares either partial GAAP financial statements or a GAAP reporting package to be used by the parent in its consolidated financial statements. In these circumstances, Form N-6 would

⁶⁰ GAAP is an accounting term that encompasses the conventions, rules, and practices that define accepted accounting at a particular time issued by various authoritative bodies including the Financial Accounting Standards Board ("FASB") and the American Institute of Certified Public Accountants ("AICPA"). See Codification of Financial Reporting Policies of the SEC, Section 101. Financial statements prepared in accordance with statutory requirements, which may vary from state to state, differ from those prepared in accordance with GAAP. Statutory requirements are the basis of accounting that insurance companies use to comply with the financial reporting requirements of state insurance regulations. Regulation S-X permits financial statements for mutual life insurance companies and wholly owned stock insurance company subsidiaries of mutual life insurance companies to be prepared in accordance with statutory requirements, except when the applicable registration forms specifically provide otherwise. 17 CFR 210.1-01(a); 17 CFR 210.7-02(b).

⁶¹ Prior to the 1993 issuance of Interpretation 40 ("IN 40") by FASB, many mutual life insurance companies prepared financial statements solely on a statutory basis. The FASB became aware that financial statements prepared in accordance with statutory accounting practices were often described as having been prepared in accordance with GAAP. IN 40 clarified that companies, including mutual life insurance companies, that issue financial statements described as prepared in conformity with GAAP must apply all applicable authoritative accounting pronouncements in preparing those statements. FASB Interpretation No. 40, Applicability of Generally Accepted Accounting Principles to Mutual Life Insurance and Other Enterprises (Apr. 1993). See also Financial Accounting Standards Board, Statement on Financial Accounting Standards No. 120, Accounting and Reporting by Mutual Life Insurance Enterprises and by Insurance Enterprises for Certain Long-Duration Participation Contracts (Jan. 1995) ("SFAS 120") (deferring the effective date of IN 40 and stating that mutual life insurance companies that prepare financial statements based on statutory accounting practices that differ from GAAP and distribute those financial statements to regulators should not describe the financial statements as prepared in accordance with GAAP). As a result of SFAS 120, if insurance company financial statements are not prepared in accordance with GAAP, the financial statements must include either an adverse or qualified audit opinion as to conformity with GAAP. Codification on Statements on Auditing Standards, AU Section 544 (AICPA).

require full GAAP financial statements of the depositor. In those limited circumstances when GAAP financial statements are not prepared for either the depositor or its parent, or the depositor's accounts are immaterial to its parent's consolidated financial statements and, therefore, neither partial GAAP financial statements nor a GAAP reporting package is prepared by the depositor, statutory financial statements could be used in Form N-6.

Instruction 3 to proposed Item 24, like Instruction 3 to Item 23 of Form N-4, would provide that the financial statements of the depositor need not be more current than as of the end of the most recent fiscal year of the depositor. In addition, Instruction 3 would provide that if the anticipated effective date of a registration statement is within 90 days of the end of the depositor's fiscal year and audited financial statements for the fiscal year are unavailable, the financial statements of the depositor need not be more current than the close of the third quarter of the previous fiscal year.⁶² This instruction would extend to depositors of variable life insurance separate accounts the relief that is generally provided by Regulation S-X when the anticipated effective date of a filing falls within 46 to 90 days of the end of a registrant's fiscal year.⁶³ The instruction codifies relief that the Commission staff has informally provided to variable annuity and variable life insurance registrants.

The Commission requests comment on the requirements concerning the use of financial statements prepared in accordance with GAAP and financial statements prepared in accordance with statutory requirements. The Commission also requests comment on the requirements concerning the age of financial statements.

2. Item 25—Performance Data

Proposed Item 25 would require the registrant to include in the SAI an explanation of how it calculates

⁶² Third quarter financial statements would not need to be audited in these circumstances. Rule 10-01(a)(1) of Regulation S-X [17 CFR 210.10-01].

⁶³ See Rule 3-12(b) of Regulation S-X [17 CFR 210.3-12] (when anticipated effective date of filing falls within 90 days subsequent to the fiscal year, the filing need not include financial statements more current than as of the end of the third fiscal quarter, unless the audited financial statements of such fiscal year are available, or the anticipated effective date falls after 45 days subsequent to the end of the fiscal year and the registrant does not meet the conditions of Rule 3-01(c)). The relief provided in Rule 3-12(b) is not available to mutual insurance companies, when the anticipated effective date falls within 46 to 90 days subsequent to the fiscal year end, because those companies do not file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934, which is a condition of Rule 3-01(c).

performance data used in advertising, including how charges are reflected in the data. Registrants also would be required to provide a quotation of performance for each sub-account for which performance data is advertised.

Proposed Form N-6 would not require disclosure of any historical performance information. The Commission believes that, at the present time, no method of measuring variable life insurance performance has been devised that is useful enough that its disclosure should be required.

Variable life insurance performance is difficult to measure because of the complexity of the product and because policy charges and values are linked to individual characteristics of a particular investor. In addition, variable life policies provide cash value and death benefits, and both of these may be affected over time, in different ways, by policy charges and earnings.

Three types of performance information are sometimes included in variable life insurance registration statements, but each has the limitations noted.

- *Portfolio Company performance.*

This measure is net of investment management fees and other Portfolio Company fees and expenses, but unadjusted for fees and expenses imposed on the separate account or individual policyholders. It may be useful as a measure of Portfolio Company performance, but it significantly overstates the performance policyholders will receive after deductions for all charges.

- *Portfolio Company performance adjusted for separate account asset-based charges.* This is a hybrid measure that is net of investment management fees, other Portfolio Company fees and expenses, and separate account asset-based charges. This form of performance does not measure either Portfolio Company performance (because of the deduction of separate account asset-based charges) or the performance a policyholder will receive (because of the failure to deduct charges imposed on the individual policyholder).

- *Illustrations of cash values and death benefits.* These illustrations are based on actual investment performance of a Portfolio Company and specified assumptions about premiums and the insured individual (e.g., sex, age, rating classification). This form of performance does not have the defects of the other two, because it reflects all of the fees and charges at the Portfolio Company, separate account, and individual policyholder levels. It has very limited usefulness, however, to the many prospective investors whose proposed

premium payment patterns and individual characteristics diverge from those assumed.

Proposed Form N-6 would not require performance information in the prospectus. Nothing in the proposal, however, would preclude the inclusion of historical performance information, including Portfolio Company performance information, provided that the information is not incomplete, inaccurate, or misleading and does not obscure or impede understanding of the information that is required to be included.⁶⁴ The Commission believes, however, that Portfolio Company performance information is most appropriately included in the Portfolio Company's prospectus, where it can be considered along with the risks of investing in the Portfolio Company.⁶⁵ Registrants should bear this in mind in determining whether it is appropriate to include Portfolio Company performance information in a Form N-6 prospectus.

The Commission requests that commenters discuss the advantages and disadvantages of various forms of variable life insurance performance information. Should any form of historical performance information be required by Form N-6? What forms of performance information should be permitted by Form N-6? Should any types of performance information be prohibited by Form N-6?

3. Item 26—Illustrations

Permitted Use of Hypothetical Illustrations. Proposed Item 26 would permit, but not require, registrants to include hypothetical illustrations of a variable life insurance policy in either the prospectus or the SAI. These are tabular presentations of numbers that demonstrate how the cash value, cash surrender value, and death benefit under a policy change over time based on (i) assumed gross rates of return of the Portfolio Companies; and (ii) deduction of fees and charges for a hypothetical policyholder (e.g., a 40-year old, non-smoking male) with a specified policy face amount and premium payment pattern. Currently, variable life insurance prospectuses commonly include hypothetical illustrations using several different gross rates of return (e.g., 0%, 6%, and 12%), two different expense levels (current charges and guaranteed maximum charges), and multiple death benefit options.

The Commission believes that hypothetical illustrations can enhance an investor's understanding of the mechanics of a variable life insurance policy. Illustrations of varying rates of investment return, with other elements (e.g., policy face amount, premium payment pattern, expenses, rating classification) held constant, can provide general information about the relationship among death benefits, cash values, and investment returns. Similarly, illustrations reflecting varying expense levels, with other elements held constant, can provide general information about how a policy would perform under different expense scenarios.

The Commission believes, however, that there are some limits on the usefulness of hypothetical illustrations. Any particular illustration has limited relevance for most investors, because it is based on a hypothetical investor with unique characteristics of age, sex, rating classification, policy face amount, and premium payments that is different from most investors. Further, it is probably impractical to provide enough hypothetical illustrations in a variable life insurance prospectus to permit comparison shopping among variable life insurance policies by a broad range of investors, each with unique characteristics. Because of the individualized nature of variable life insurance policies and associated charges, comparison of illustrations could show one product to be more advantageous than another, but a change in the assumptions used in the illustrations could have the opposite result. Finally, hypothetical illustrations are fairly extensive tables of numbers that add complexity to a prospectus and can be difficult to understand.

In light of the limited nature of hypothetical illustrations and the complexity that they can add to variable life insurance prospectuses, proposed Form N-6 would not require hypothetical illustrations. The Commission believes, however, that hypothetical illustrations can be useful tools to improve investor understanding of a variable life insurance policy when they are presented clearly and in a manner designed to help investors understand both the information presented and the limited nature of that information. For that reason, proposed Form N-6 would give a registrant the flexibility to include hypothetical illustrations in the prospectus or SAI when it believes that they would be helpful to investors. The Commission requests comment on whether hypothetical illustrations should be permitted, required, or prohibited in a

variable life insurance prospectus or SAI.

Requirements for Hypothetical Illustrations. Proposed Item 26 would impose requirements for any hypothetical illustrations included in the prospectus or SAI. The proposed requirements are not intended to standardize illustrations in order to permit comparison shopping because, as noted above, the Commission believes that this goal may be impractical within the bounds of a prospectus. Rather, the requirements are intended to place reasonable limits on the assumptions that may be used and discourage the presentation of misleading illustrations. Registrants would, however, remain responsible for ensuring that the illustrations are not incomplete, inaccurate, or misleading and do not, because of their nature, quantity, or manner of presentation, obscure or impede understanding of information required to be included.⁶⁶

Consistent with the Commission's commitment to the principles of plain English, illustrations would be required to be preceded by a clear and concise explanation.⁶⁷ Similarly, headings for the illustrations would be required to contain the information necessary to identify clearly the scenario illustrated, including sex, age, rating classification, premium amount and payment schedule, face amount, and death benefit option.⁶⁸

Premium amounts used in the illustrations should not be unduly larger or smaller than the actual or expected average policy size, and ages used should be representative of actual or expected policy sales.⁶⁹ The proposal would require that illustrations be shown for the rating classification with the greatest number of outstanding policies.⁷⁰

Proposed Item 26 would require illustrated values to be provided for policy years one through ten, for every five years beyond the tenth policy year, and for the year of policy maturity.⁷¹ Registrants using illustrations would be required to illustrate death benefits and cash surrender values and could also illustrate cash values. Illustrated values would be determined as of the end of the policy year.⁷²

Proposed Item 26 would require registrants to use gross rates of return of 0% and one other rate not exceeding

⁶⁶ Proposed General Instruction C.3.(b).

⁶⁷ Proposed Item 26(a).

⁶⁸ Proposed Item 26(b).

⁶⁹ Proposed Item 26(c).

⁷⁰ Proposed Item 26(d).

⁷¹ Proposed Item 26(e).

⁷² Proposed Item 26(f).

⁶⁴ Proposed General Instruction C.3.(b).

⁶⁵ See 1998 Form N-1A Adopting Release, *supra* note 7; 1997 Form N-1A Proposing Release, *supra* note 7, at 10902.

10%. Additional gross rates of return not greater than 10% would be permitted.⁷³ Currently, variable life insurance prospectuses typically use rates of 0%, 6%, and 12% in illustrations.⁷⁴ The Commission believes that the use of two rates of return is necessary to fulfill a basic purpose of illustrations, demonstrating the effect of changing investment returns. The Commission does not believe, however, that it would be helpful to require registrants using illustrations to use more than two rates of return because of the potential for overwhelming investors with excessive quantitative information that is of limited relevance to their particular circumstances. Notwithstanding current practice, which permits illustrations at rates up to 12%, the proposal would cap the maximum permissible rate at 10%. This reflects the Commission's concern that rates above 10% may have a significant tendency to invite unrealistic investor expectations because long-term stock market returns have averaged approximately 10–11% per year and long-term returns on other asset classes have been lower. Moreover, investors may give undue weight to a 12% illustration because they may discount a 0% illustration as unrealistically low.

The Commission invites comment on the number of rates of return that should be required for registrants using illustrations. The Commission also invites comment on the appropriate minimum and maximum rates to be used for hypothetical illustrations.

Proposed Item 26 would require that Portfolio Company management fees and other Portfolio Company charges and expenses be reflected using the arithmetic average of those charges and expenses for all available Portfolio Companies. The average would be based on Portfolio Company charges and expenses incurred during the most recent fiscal year or any materially greater amount expected to be incurred during the current fiscal year.⁷⁵ The Commission requests comment on how Portfolio Company charges and expenses should be reflected in illustrations.

Proposed Item 26 would require that illustrations reflect both current and guaranteed maximum charges for

charges not attributable to the Portfolio Companies. The proposal would require that illustrations reflect all charges deducted under the policy, as well as the timing of those charges.⁷⁶ The Commission believes that requiring illustrations of both current and maximum guaranteed charges would be useful to investors in comparing the interaction of different rates of return and different charge levels. Commenters are requested to address how charges not attributable to the Portfolio Companies should be reflected in illustrations, including whether both current and guaranteed maximum charges should be required.

Finally, proposed Item 26 would permit additional information to be included in illustrations, provided that it is consistent with the standards of Item 26.⁷⁷ The Commission believes this flexibility is important to permit registrants to design illustrations that are useful to investors. Comment is requested on this approach.

Commenters are requested to address the proposed requirements for the optional hypothetical illustrations. Is each of these requirements appropriate and, if not, how should it be modified? Should any of the requirements be eliminated or should others be added? Is it possible to standardize hypothetical illustrations in a manner that would facilitate comparison shopping among variable life insurance policies? Commenters who believe that hypothetical illustrations should be required, rather than permitted, also should address the criteria that they believe would be appropriate for required hypothetical illustrations.

Hypothetical Illustrations Based on Historical Rates of Return. The Commission also is seeking comment on the use of hypothetical illustrations constructed using historical rates of return for the Portfolio Companies ("hypothetical historical illustrations") rather than assumed rates of return (e.g., 0% and 10%). Some variable life insurance registrants currently include these illustrations in their prospectuses, although this practice is not widespread. Proposed Form N-6 does not specifically address hypothetical historical illustrations.

The Commission has some concerns about the use of hypothetical historical illustrations. Hypothetical historical illustrations share all of the limitations of other hypothetical illustrations. They are of limited relevance to investors having characteristics other than those illustrated, they are not useful for

comparison shopping, and they add complexity to the prospectus. Further, hypothetical illustrations that show a pattern of assumed returns, e.g., 0%, 5%, and 10%, can help investors understand how different rates of return affect policy performance. The actual historical rates of return illustrated in hypothetical historical illustrations, however, will not have a pattern and therefore are not useful to an investor attempting to understand how a particular change in rates might affect policy values.

In addition, hypothetical historical illustrations are not a useful means for presenting past performance because they depend on the particular hypothetical policyholder, face amount, and premium payment pattern selected.⁷⁸ Hypothetical historical illustrations also tend to invite prospective investors to assume that the cash values and death benefits presented represent the values that they can expect and may be misconstrued as projections. Finally, if a prospectus were to include a hypothetical historical illustration for each Portfolio Company, this could entail many pages of complex data. On the other hand, creating a single hypothetical historical illustration with a composite rate of return earned by all available Portfolio Companies would render the illustration of still more limited relevance to an investor who did not intend to allocate his or her investment in the manner used to determine the composite rate of return.

The Commission requests comment on hypothetical historical illustrations and whether they should be required, permitted, or prohibited by Form N-6. If hypothetical historical illustrations should be required or permitted, should the Commission specify any standards for their use?

Personalized Illustrations. Personalized illustrations are frequently provided by insurers to prospective variable life insurance investors at the point of sale. These illustrations reflect the investor's particular circumstances, including age, sex, risk classification, proposed face amount, and expected premium payment pattern. The Commission believes that such illustrations can be a highly useful tool for investors. Unlike hypothetical prospectus illustrations, they reflect policy values based on an individual's unique characteristics and therefore can provide more relevant information for a particular investor. Further, personalized illustrations are a

⁷³ Proposed Item 26(g).

⁷⁴ The Commission staff has required registrants using illustrations to include a 0% illustration and has prohibited rates greater than 12%. See also NASD Conduct Rules, "Communications with the Public About Variable Life Insurance and Variable Annuities," IM-2210-2(b)(5)(A)(ii) (requiring variable life insurance illustrations used for advertising and sales literature to use a rate of 0% and any other rates not greater than 12%).

⁷⁵ Proposed Item 26(h).

⁷⁶ Proposed Item 26(i).

⁷⁷ Proposed Item 26(j).

⁷⁸ See discussion of performance data *supra* Section II.C.2.

potentially useful comparison shopping tool, enabling a particular investor to compare how different variable life insurance policies would operate in the investor's particular circumstances.

Proposed Form N-6 does not address personalized illustrations because these are customized for individual investors, delivered at the point of sale, and not susceptible to inclusion in a prospectus. Absent Commission action, insurers may use personalized illustrations in sales literature subject to the antifraud provisions of the federal securities laws and rule 156 under the Securities Act, as long as the sales literature is preceded or accompanied by the prospectus.⁷⁹ The antifraud provisions make it unlawful to use materially misleading sales literature in connection with the purchase or sale of investment company securities.

Although personalized illustrations do not appear in a variable life insurance prospectus, these illustrations can be a very important part of the information communicated to prospective variable life insurance investors. For that reason, the Commission is requesting comment on personalized illustrations. Should the prospectus be required to state whether or not personalized illustrations are available? Should the Commission require variable life insurance registrants to deliver personalized illustrations to prospective investors? If not, should the Commission nonetheless prescribe requirements governing personalized illustrations for registrants that elect to use them? What, if any, requirements should the Commission prescribe for registrants using personalized illustrations? Should they be the same criteria as those that apply to hypothetical illustrations in proposed Form N-6, or should there be other requirements? The Commission also seeks comment regarding the use of Portfolio Company historical rates of return in personalized illustrations. Should the Commission address this area and, if so, how?

The Commission understands that some insurers are using personalized illustrations that reflect assumed rates of return, together with the fees and charges of a single Portfolio Company rather than the arithmetic average of fees and charges for all available Portfolio Companies. In some cases, the

chosen Portfolio Company may have fees and charges that are lower than the arithmetic average for all available Portfolio Companies. For example, personalized illustrations might be based on the relatively low expenses of a money market fund.

As discussed above, proposed Form N-6 would require that hypothetical prospectus illustrations reflect the arithmetic average of fees and charges for all available Portfolio Companies. The proposal incorporates the Commission's view that it may be misleading to market a variable life insurance policy based on illustrations that reflect assumed rates of return and the fees and charges of a single Portfolio Company when those fees and charges are less than the arithmetic average of fees and charges for all available Portfolio Companies. For that reason, the Commission is concerned about the practice of using a single Portfolio Company's fees and charges in personalized illustrations. The Commission has directed its examinations staff to give heightened scrutiny to this issue in inspections of variable life insurance registrants. The Commission also has discussed this matter with the staff of the National Association of Securities Dealers Regulation, Inc., ("NASD Regulation") and requested that the NASD Regulation staff consider this issue in its review of variable life insurance sales literature. Comment is requested on whether Form N-6 should address the use of personalized illustrations that reflect the fees and charges of a single available Portfolio Company.

D. Part C—Other Information

Part C of proposed Form N-6 would contain information in support of a variable life insurance registration statement that is not included in the prospectus or the SAI. Part C of proposed Form N-6 is based on Part C of Form N-4 and Form N-1A, modified as appropriate to variable life insurance. Certain exhibits required under proposed Item 27; proposed Item 34, the fee representation; and an undertaking required by Form N-4 but not proposed Form N-6 merit separate attention.

1. Item 27—Exhibits

If illustrations are included in the registration statement as permitted by proposed Item 26, an opinion of an actuarial officer of the depositor would be required by Item 27(l). The actuarial opinion would be required to indicate that: (i) The values illustrated are consistent with the provisions of the policy and the depositor's administrative procedures; (ii) the rate

structure of the policy, and the assumptions selected for the illustrations, do not result in an illustration of the relationship between premiums and benefits that is materially more favorable than for a substantial majority of other prospective policyholders; and (iii) the illustrations are based on a commonly used rating classification and premium amounts and ages appropriate for the markets in which the policy is sold.

Proposed Item 27(l) would require the opinion to indicate that the rate structure and selected assumptions do not, in fact, have certain results. As an alternative, the Commission considered whether the actuary should be required to opine only that the rate structure and the selected assumptions were not intended or designed to have certain results. The Commission rejected the "intent or design" test because it would permit illustrations that, in fact, distort the relationship between premiums and benefits for a policy. Comment is requested on the actuarial opinion requirement, including the "in fact" and "intent or design" tests and other tests that could be used. Commenters are requested to address the "substantial majority of other prospective policyholders" standard in the second prong of the opinion. Should this standard be stricter (e.g., all policyholders) or less strict (e.g., majority of policyholders)?

Proposed Item 27(m) would require registrants that include illustrations in their registration statements to provide one sample calculation for each item illustrated, showing how the illustrated values for the fifth policy year have been calculated. The calculation would be required to demonstrate how the annual investment returns of the sub-accounts were derived from the hypothetical gross rates of return, how charges against sub-account assets were deducted from the returns of the sub-accounts, and how the periodic deductions for policy charges were made. Finally, the exhibit would be required to describe how the calculation would differ for other years.

Consistent with the approach previously announced by the Commission staff in connection with Form N-4, proposed Form N-6 would not require submission of a financial data schedule meeting the requirements of rule 483 under the Securities Act.⁸⁰ In addition, the staff currently does not require financial data schedules in connection with filings on Form S-6 by

⁷⁹ Section 17(a) of the Securities Act [15 U.S.C. 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 CFR 240.10b-5]; Rule 156 under the Securities Act [17 CFR 230.156]; Section 34(b) of the Investment Company Act [15 U.S.C. 80a-33(b)]; Section 2(a)(10)(a) of the Securities Act [15 U.S.C. 77b(a)(10)(a)].

⁸⁰ Sec Edgar News, Third Quarter 1996, at 3.

separate accounts offering variable life insurance policies.

2. Item 34—Fee Representation

NSMIA amended Sections 26 and 27 of the Investment Company Act, replacing specific limits on the amount, type, and timing of charges that applied to variable insurance contracts with a requirement that aggregate charges be reasonable.⁸¹ Section 26(e) of the Investment Company Act, added by NSMIA, requires that fees and charges deducted under variable insurance contracts, in the aggregate, be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company. Section 26(e) also requires insurance companies to represent in variable insurance registration statements that the reasonableness standard of Section 26(e) is satisfied. Proposed Item 34 requests the representation required by Section 26(e).

3. Undertaking to Update Prospectus

Section 10(a)(3) of the Securities Act requires an issuer that is engaging in a continuous offering to update the information in its registration statement, so that the information is not more than 16 months old.⁸² Form N-4 requires a separate account registered as a unit investment trust that offers variable annuity contracts to include in Part C of its registration statement an undertaking to maintain a current prospectus for so long as payments may be accepted under the contracts.⁸³ Proposed Form N-6 would not require a similar undertaking. This reflects the Commission's view that issuers of variable life insurance policies, like issuers of variable annuity contracts, are required by Section 10(a)(3) of the Securities Act to maintain a current prospectus for so long as payments may be accepted under the policies, regardless of whether new policies are being sold. The Commission believes that it is unnecessary to include in proposed Form N-6 a requirement for an undertaking similar to that in Form N-4, because this undertaking simply restates an issuer's obligation under the Securities Act.

E. Technical Rule Amendments

The Commission is proposing technical amendments to several rules under the Securities Act and Investment Company Act to accommodate proposed

Form N-6. The Commission is proposing to amend rules 134b, 430, 430A, 495, 496, and 497 under the Securities Act and rules 8b-11 and 8b-12 under the Investment Company Act to add Form N-6 to the list of forms referenced in those rules.⁸⁴ The Commission also is proposing new rules prescribing the use of Form N-6 to register insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies under the Investment Company Act and to register their securities under the Securities Act.⁸⁵ Finally, the Commission proposes to amend Form N-8B-2 to clarify that Form N-8B-2 is not the proper form for Investment Company Act registration of insurance company separate accounts registered as unit investment trusts.⁸⁶

F. Transition Period

If the Commission adopts proposed Form N-6, it would replace current Forms S-6 and N-8B-2 for registration of unit investment trust separate accounts funding variable life insurance policies. The Commission expects to provide for a transition period after the effective date of Form N-6 to give registrants sufficient time to update their registration statements or to prepare new registration statements on Form N-6. All new registration statements and post-effective amendments that are annual updates to effective registration statements filed 6 months after the effective date of Form N-6 would be required to comply with its requirements. The final compliance date for filing amendments to effective registration statements to conform with the Form N-6 requirements would be 18 months after the effective date of the form. At its option, a registrant could comply with the requirements of Form N-6 at any time after the effective date of the form. The Commission requests comment on the proposed transition period.

G. Form N-1

The Commission previously prescribed Form N-1 as the registration form to be used by open-end management investment companies that

are separate accounts of insurance companies for registering under the Investment Company Act and for registering their securities under the Securities Act.⁸⁷ In 1985, Form N-1 was superseded by Form N-3 for open-end management investment companies that are separate accounts of insurance companies issuing variable annuity contracts.⁸⁸ Currently, Form N-1 would be used only by an open-end management investment company that is a separate account of an insurance company offering variable life insurance policies.⁸⁹ Today, virtually all separate accounts issuing variable life insurance policies are organized as unit investment trusts. For that reason, few, if any, registrants continue to use Form N-1.

The Commission requests comment on whether Form N-1 should be rescinded as obsolete and whether there is any continuing need for the form. Would any registrants, including any variable annuity or variable life registrants no longer offering contracts to new purchasers and using Form N-1, be affected by the rescission of Form N-1? If Form N-1 is rescinded, should the Commission prescribe another registration form for use by open-end management investment companies that are separate accounts of insurance companies issuing variable life insurance policies? If so, what form should be used for this purpose and what changes should be made to the suggested form to adapt it for this category of registrants?

III. General Request for Comments

The Commission requests that any interested persons submit comments on the proposed Form N-6, suggest changes (including changes to related provisions of rules and forms that the Commission is not proposing to amend), or submit comments on other matters that might affect the proposed form. Commenters suggesting alternative approaches are encouraged to submit proposed rule or form text. 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

⁸¹ See Senate Report, *supra* note 39, at 22; House Report, *supra* note 39, at 12, 17.

⁸² 15 U.S.C. 77j(a)(3).

⁸³ Item 32(a) of Form N-4. See also N-4 Adopting Release, *supra* note 7, at 26155.

⁸⁴ 17 CFR 230.134b, 230.430, 230.430A, 230.495, 230.496, and 230.497; 17 CFR 270.8b-11 and 270.8b-12.

⁸⁵ Proposed 17 CFR 239.17c; Proposed 17 CFR 274.11d.

⁸⁶ See proposed amendments to Form N-8B-2 and 17 CFR 274.12 (prescribing Form N-8B-2). The Commission is not proposing to amend Form S-6 or 17 CFR 239.16 (prescribing Form S-6) because the form and the rule state that Form S-6 is to be used to register the securities of unit investment trusts registered on Form N-8B-2.

⁸⁷ 17 CFR 274.11; General Instruction A of Form N-1; Investment Company Act Release No. 14084 [49 FR 32058] (Aug. 7, 1984).

⁸⁸ 17 CFR 274.11b; N-4 Adopting Release, *supra* note 7, at 26156; N-4 Proposing Release, *supra* note 7, at 620.

⁸⁹ When Form N-3 was implemented, separate accounts funding variable annuity contracts were permitted to continue to use Form N-1 if they no longer offered the contracts to new purchasers. N-4 Adopting Release, *supra* note 7, at 26156. The Commission is not aware of any such variable annuity registrants that continue to use Form N-1.

potential effect of proposed Form N-6 on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Paperwork Reduction Act

Proposed Form N-6 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("Paperwork Reduction Act") [44 U.S.C. 3501 *et seq.*], and the Commission has submitted the amendments to the Office of Management and Budget ("OMB") 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-6 Under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Variable Life Insurance Separate Accounts Registered as Unit Investment Trusts."

A registration statement on proposed Form N-6 would be required to contain information the Commission has determined to be necessary or appropriate in the public interest or for the protection of investors. Forms S-6 and N-8B-2 were not designed for variable life insurance registrants and do not reflect fundamental improvements that the Commission has made to other investment company registration forms, including Forms N-1A and N-4, which facilitate clearer and more concise disclosure. If adopted, proposed Form N-6 would:

- Eliminate requirements in the current registration forms that are not relevant to variable life insurance and include items that are specifically addressed to variable life insurance;
- Streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information, and an SAI, containing more extensive information that investors could obtain upon request; and
- Provide variable life insurance separate accounts a single, integrated form for Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.⁹⁰

For purposes of the Paperwork Reduction Act, the Commission has estimated the hour burden and the cost burden that proposed Form N-6 would impose on variable life insurance registrants. The hour burden is the number of hours of staff time a variable life insurance registrant will use annually to comply with the requirements of proposed Form N-6. The cost burden is the annual cost of

services purchased to prepare and update proposed Form N-6, such as the cost of independent auditors and outside counsel. The cost burden does not include the wages, salaries, or fees paid for the hour burden. Each of the hour burden and the cost burden are calculated for both initial registration statements on proposed Form N-6 and post-effective amendments to the form.

The Commission estimates that there are approximately 200 separate accounts registered as unit investment trusts and offering variable life insurance policies that would file registration statements on proposed Form N-6. The Commission estimates that there will be as many as 50 initial registration statements on proposed Form N-6 filed annually. The Commission estimates, therefore, that approximately 250 registration statements (200 post-effective amendments plus 50 initial registration statements) will be filed on Form N-6 annually.

The Commission estimates that the hour burden for preparing and filing a post-effective amendment on proposed Form N-6 will be 100 hours. Thus, the total annual hour burden for preparing and filing post-effective amendments would be 20,000 hours (200 post-effective amendments annually times 100 hours per amendment). The Commission estimates that the hour burden for preparing and filing an initial registration statement on proposed Form N-6 will be 800 hours. Thus, the annual hour burden for preparing and filing initial registration statements would be 40,000 hours (50 initial registration statements annually times 800 hours per registration statement). The total annual hour burden for proposed Form N-6, therefore, is estimated to be 60,000 hours (20,000 hours for post-effective amendments plus 40,000 hours for initial registration statements).

The Commission estimates that the cost burden for preparing and filing a post-effective amendment on proposed Form N-6 will be \$7,500. Thus, the total annual cost burden for preparing and filing post-effective amendments would be \$1,500,000 (200 post-effective amendments annually times \$7,500 per amendment). The Commission estimates that the cost burden for preparing and filing an initial registration statement on proposed Form N-6 will be \$20,000. Thus, the annual cost burden for preparing and filing initial registration statements would be \$1,000,000 (50 initial registration statements annually times \$20,000 per registration statement). The total annual cost burden for proposed Form N-6, therefore, is estimated to be \$2,500,000 (\$1,500,000

for post-effective amendments plus \$1,000,000 for initial registration statements).

The number of post-effective amendments is estimated based on the Commission's records and industry statistics. The number of initial registration statements is estimated based on the Commission's records for the past year. The hour and cost burdens are estimated on the basis of comparison of proposed Form N-6 with other forms that are used for registration under both the Investment Company Act and the Securities Act.

The hour and cost burdens would be offset by a decrease in the burdens attributable to Forms N-8B-2 and S-6 because separate accounts registering on Form N-6 would no longer be required to register on Forms N-8B-2 and S-6. The Commission expects that the aggregate burden imposed by Forms N-6, S-6, and N-8B-2 after Form N-6 is adopted will be no greater, and may be less, than the burden currently imposed by Forms S-6 and N-8B-2.

The information collection requirements that would be imposed by Form N-6 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.

Under 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. The Commission also requests comment on whether the burden imposed on registrants using proposed Form N-6 will be less than that currently imposed on these registrants by Forms S-6 and N-8B-2.

Those who want to submit comments on the collection of information requirements should direct their comments to OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange

⁹⁰ See *supra* Section I.

Commission, 450 5th Street, N.W., Washington, D.C. 20549-6009 with reference to File No. S7-9-98. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost/Benefit Analysis

The Commission believes that proposed Form N-6 would facilitate improved disclosure to investors; be simpler to use than the registration forms that it would replace, Forms S-6 and N-8B-2; and eliminate unnecessary paperwork and reporting. Specifically, proposed Form N-6, if adopted, would:

- Eliminate requirements in the current registration forms that are not relevant to variable life insurance and include items that are specifically addressed to variable life insurance products;
- Streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information, and an SAI, containing more extensive information; and
- Provide an integrated form for Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.⁹¹

The Commission believes that proposed Form N-6 would not impose greater costs on variable life insurance registrants than the forms that it would replace, Forms S-6 and N-8B-2. The Commission believes that proposed Form N-6 may impose lesser costs on variable life insurance registrants than Forms S-6 and N-8B-2. The Commission requests comment on this cost/benefit analysis. Commenters are requested to provide views and empirical data relating to any costs and benefits associated with the proposed form.

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 proposed Form N-6 would not, if adopted, have a significant economic impact on a substantial number of small entities. Few, if any, small entities would be affected by Form N-6. The Chairman's certification 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 the Commission's rules and forms 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, 22, 24(g), 26(e), 30, and 38 of the Investment Company Act [15 U.S.C. 80a-8, 80a-22, 80a-24(g), 80a-26(e), 80a-29, and 80a-37]. The authority citations for the amendments to the rules and forms precede the text of the amendments.

Text of Proposed Amendments

List of Subjects in 17 CFR Parts 230, 239, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

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 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Revise § 230.134b to read as follows:

§ 230.134b Statements of additional information.

For the purpose only of Section 5(b) of the Act (15 U.S.C. 77e(b)), the term "prospectus" as defined in Section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) does not include a Statement of Additional Information filed as part of a registration statement on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), Form N-4 (§ 239.17b and § 274.11c of this chapter), or Form N-6 (§ 239.17c and § 274.11d of this chapter) transmitted prior to the effective date of the registration statement if it is accompanied or preceded by a preliminary prospectus meeting the requirements of § 230.430.

3. Amend § 230.430 to revise the introductory text of paragraph (b) to read as follows:

§ 230.430 Prospectus for use prior to effective date.

* * * * *

(b) A form of prospectus filed as part of a registration statement on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), Form N-4 (§ 239.17b and § 274.11c of this chapter), or Form N-6 (§ 239.17c and § 274.11d of this chapter) shall be deemed to meet the requirements of Section 10 of the Act (15 U.S.C. 77j) for the purpose of Section 5(b)(1) thereof (15 U.S.C. 77e(b)(1)) prior to the effective date of the registration statement, provided that:

* * * * *

4. Amend § 230.430A to revise paragraph (e) before the Note to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

(e) In the case of a registration statement filed on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), Form N-4 (§ 239.17b and § 274.11c of this chapter), or Form N-6 (§ 239.17c and § 274.11d of this chapter), the references to "form of prospectus" in paragraphs (a) and (b) of this section and the accompanying Note shall be deemed also to refer to the form of Statement of Additional Information filed as part of such a registration statement.

* * * * *

5. Amend § 230.495 to revise paragraphs (a), (c), and (d) to read as follows:

§ 230.495 Preparation of registration statement.

(a) A registration statement on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), Form N-4 (§ 239.17b and § 274.11c of this chapter), or Form N-6 (§ 239.17c and § 274.11d of this chapter), shall consist of the facing sheet of the applicable form; a prospectus containing the information called for by such form; the information, list of exhibits, undertakings and signatures required to be set forth in such form; financial statements and schedules; exhibits; and other information or documents filed as part of the registration statement; and all documents or information incorporated

⁹¹ See supra Section I.

by reference in the foregoing (whether or not required to be filed).

* * * * *

(c) In the case of a registration statement filed on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), Form N-4 (§ 239.17b and § 274.11c of this chapter), or Form N-6 (§ 239.17c and § 274.11d of this chapter), Parts A and B shall contain the information called for by each of the items of the applicable Part, except that unless otherwise specified, no reference need be made to inapplicable items, and negative answers to any item may be omitted. Copies of Parts A and B may be filed as part of the registration statement in lieu of furnishing the information in item-and-answer form. Wherever such copies are filed in lieu of information in item-and-answer form, the text of the items of the form is to be omitted from the registration statement, as well as from Parts A and B, except to the extent provided in paragraph (d) of the section.

(d) In the case of a registration statement filed on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), Form N-4 (§ 239.17b and § 274.11c of this chapter), or Form N-6 (§ 239.17c and § 274.11d of this chapter), where any item of those forms calls for information not required to be included in Parts A and B (generally Part C of such form), the text of such items, including the numbers and captions thereof, together with the answers thereto, shall be filed with Parts A or B under cover of the facing sheet of the form as part of the registration statement. However, the text of such items may be omitted, provided the answers are so prepared as to indicate the coverage of the item without the necessity of reference to the text of the item. If any such item is inapplicable, or the answer thereto is in the negative, a statement to that effect shall be made. Any financial statements not required to be included in Parts A and B shall also be filed as part of the registration statement proper, unless incorporated by reference pursuant to § 230.411.

* * * * *

6. Revise § 230.496 to read as follows:

§ 230.496 Contents of prospectus and statement of additional information used after nine months.

In the case of a registration statement filed on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2

(§ 239.14 and § 274.11a-1 of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), Form N-4 (§ 239.17b and § 274.11c of this chapter), or Form N-6 (§ 239.17c and § 274.11d of this chapter), there may be omitted from any prospectus or Statement of Additional Information used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus or the Statement of Additional Information insofar as later information covering the same subjects, including the latest available certified financial statements, as of a date not more than 16 months prior to the use of the prospectus or the Statement of Additional Information is contained therein.

7. Amend § 230.497 to revise paragraphs (c) and (e) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(c) For investment companies filing on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), Form N-4 (§ 239.17b and § 274.11c of this chapter), or Form N-6 (§ 239.17c and § 274.11d of this chapter), within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, ten copies of each form of prospectus and form of Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used.

* * * * *

(e) For investment companies filing on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), Form N-4 (§ 239.17b and § 274.11c of this chapter), or Form N-6 (§ 239.17c and § 274.11d of this chapter), after the effective date of a registration statement, no prospectus that purports to comply with Section 10 of the Act (15 U.S.C. 77j) or Statement of Additional Information that varies from any form of prospectus or form of Statement of Additional Information filed pursuant to paragraph (c) of this section shall be used until five copies thereof have been filed with, or mailed for filing to the Commission.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. 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.

9. Add § 239.17c to read as follows:

§ 239.17c Form N-6, registration statement for separate accounts organized as unit investment trusts that offer variable life insurance policies.

Form N-6 shall be used for registration under the Securities Act of 1933 of securities of separate accounts that offer variable life insurance policies and that register under the Investment Company Act of 1940 as unit investment trusts. This form is also to be used for the registration statement of such separate accounts pursuant to section 8(b) of the Investment Company Act of 1940 (§ 274.11d of this chapter).

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1, *et seq.*, 80a-34(d), 80a-37, 80a-39 unless otherwise noted;
* * * * *

11. Amend § 270.8b-11 to revise paragraph (b) to read as follows:

§ 270.8b-11 Number of copies; signatures; binding.

* * * * *

(b) In the case of a registration statement filed on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), Form N-4 (§ 239.17b and § 274.11c of this chapter), or Form N-6 (§ 239.17c and § 274.11d of this chapter), three complete copies of each part of the registration statement (including, if applicable, exhibits and all other papers and documents filed as part of Part C of the registration statement) shall be filed with the Commission.

* * * * *

12. Amend § 270.8b-12 to revise paragraph (b) to read as follows:

§ 270.8b-12 Requirements as to paper, printing and language.

* * * * *

(b) In the case of a registration statement filed on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2 (§ 239.14 and

§ 274.11a-1 of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), Form N-4 (§ 239.17b and § 274.11c of this chapter), or Form N-6 (§ 239.17c and § 274.11d of this chapter), Part C of the registration statement shall be filed on good quality, unglazed, white paper, no larger than 8 1/2 x 11 inches in size, insofar as practicable. The prospectus and, if applicable, the Statement of Additional Information, however, may be filed on smaller-sized paper provided that the size of paper used in each document is uniform.

* * * * *

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

13. The general 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.

14. Add § 274.11d to read as follows:

OMB Approval
 OMB Number:
 Expires:
 Estimated average burden hours per response

§ 274.11d Form N-6, registration statement of separate accounts organized as unit investment trusts that offer variable life insurance policies.

Form N-6 shall be used as the registration statement to be filed pursuant to section 8(b) of the Investment Company Act of 1940 by separate accounts that offer variable life insurance policies to register as unit investment trusts. This form shall also be used for registration under the Securities Act of 1933 of the securities of such separate accounts (§ 239.17c of this chapter).

15. Revise § 274.12 to read as follows:

§ 274.12 Form N-8B-2, registration statement of unit investment trusts that are currently issuing securities.

This form shall be used as the registration statement to be filed, pursuant to section 8(b) of the Investment Company Act of 1940, by unit investment trusts other than separate accounts that are currently issuing securities, including unit investment trusts that are issuers of periodic payment plan certificates.

16. Revise General Instruction 1 of Form N-8B-2 (referenced in § 274.12) to read as follows:

Note: The text of Form N-8B-2 does not and this amendment will not appear in the *Code of Federal Regulations*.

Form N-8B-2

* * * * *
 General Instructions for Form N-8B-2.
 * * * * *

1. Rule as to Use of Form

This form shall be used as the form for registration statements to be filed, pursuant to Section 8(b) of the Investment Company Act of 1940, by unit investment trusts other than separate accounts that are currently issuing securities, including unit investment trusts that are issuers of periodic payment plan certificates and unit investment trusts of which a management investment company is the sponsor or depositor.

* * * * *

17. Add Form N-6 (referenced in § 239.17c and § 274.11d) to read as follows:

Note: The text of Form N-6 will not appear in the *Code of Federal Regulations*.

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form N-6

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 []

Pre-Effective Amendment No. _____ []

Post-Effective Amendment No. _____ []

and/or

REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940 []

Amendment No. _____ []

(Check appropriate box or boxes)

(Exact Name of Registrant)

(Name of Depositor)

(Address of Depositor's Principal Executive Offices)

(Zip Code)

Depositor's Telephone Number, including Area Code _____

(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering _____

It is proposed that this filing will become effective (check appropriate box)

[] Immediately upon filing pursuant to paragraph (b)

[] On (date) pursuant to paragraph (b)

[] 60 days after filing pursuant to paragraph (a)(1)

[] On (date) pursuant to paragraph (a)(1) of Rule 485.

If appropriate, check the following box:

[] This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Omit from the facing sheet reference to the other Act if the registration statement or amendment is filed under only one of the Acts. Include the "Approximate Date of Proposed Public Offering" only where securities are being registered under the Securities Act of 1933.

Form N-6 is to be used by separate accounts that are unit investment trusts that offer variable life insurance contracts to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933. The Commission has designed Form N-6 to provide investors with information that will assist them in making a decision about investing in a variable life insurance contract. The Commission also may use the information provided in Form N-6 in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N-6, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N-6 unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549-6009. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

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General Instructions

A. Definitions

References to sections and rules in this Form N-6 are to the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] (the "Investment Company Act"), unless otherwise indicated. Terms used in this Form N-6 have the same meaning as in the Investment Company Act or the related rules, unless otherwise indicated. As used in this Form N-6, the terms set out below have the following meanings:

"Depositor" means the person primarily responsible for the organization of the Registrant and the person, other than the trustee or custodian, who has continuing functions or responsibilities for the administration of the affairs of the Registrant. "Depositor" includes the sponsoring insurance company that establishes and maintains the Registrant. If there is more than one Depositor, the information called for in this Form about the Depositor must be provided for each Depositor.

"Portfolio Company" means any company in which the Registrant invests.

"Registrant" means the separate account (as defined in section 2(a)(37) of the Investment Company Act [15 U.S.C. 80a-2(a)(37)]) that offers the Variable Life Insurance Contracts.

"SAI" means the Statement of Additional Information required by Part B of this Form.

"Securities Act" means the Securities Act of 1933 [15 U.S.C. 77a *et seq.*].

"Securities Exchange Act" means the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*].

"Variable Life Insurance Contract" or "Contract" means a life insurance contract that provides for death benefits and cash values that may vary with the investment experience of any separate account. Unless the context otherwise requires, "Variable Life Insurance Contract" or "Contract" refers to the Variable Life Insurance Contracts being offered pursuant to the registration statement prepared on this Form.

B. Filing and Use of Form N-6

1. What is Form N-6 Used for?

Form N-6 is used by all separate accounts that are registered under the Investment Company Act as unit investment trusts and offering Variable Life Insurance Contracts to file:

- (a) An initial registration statement under the Investment Company Act and amendments to the registration statement;
- (b) An initial registration statement under the Securities Act and amendments to the registration statement, including amendments required by section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]; or
- (c) Any combination of the filings in paragraph (a) or (b).

2. What is Included in the Registration Statement?

- (a) For registration statements or amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, include the facing sheet of the Form, Parts A, B, and C, and the required signatures.
- (b) For registration statements or amendments filed only under the Investment Company Act, include the facing sheet of the Form, responses to all Items of Parts A (except Items 1, 2, 3, and 14), B, and C (except Items 27 (c), (k), (l), (n), and (o)), and the required signatures.

3. What Are the Fees for Form N-6?

No registration fees are required with the filing of Form N-6 to register as an investment company under the Investment Company Act or to register securities under the Securities Act. If Form N-6 is filed to register securities under the Securities Act and securities are sold to the public, registration fees must be paid on an ongoing basis after the end of the Registrant's fiscal year. See section 24(f) [15 U.S.C. 80a-24f-2] and related rule 24f-2 [17 CFR 270.24f-2].

4. What Rules Apply to the Filing of a Registration Statement on Form N-6?

- (a) For registration statements and amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, the general rules regarding the filing of registration statements in Regulation C under the Securities Act [17 CFR 230.400-230.497] apply to the filing of Form N-6. Specific requirements concerning investment companies appear in rules 480-485 and 495-497 of Regulation C.
- (b) For registration statements and amendments filed only under the Investment Company Act, the general provisions in rules 8b-1-8b-32 [17 CFR 270.8b-1-270.8b-32] apply to the filing of Form N-6.
- (c) The plain English requirements of rule 421 under the Securities Act [17 CFR 230.421] apply to prospectus disclosure in Part A of Form N-6.
- (d) Regulation S-T [17 CFR 232.10-232.903] applies to all filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR").

C. Preparation of the Registration Statement

1. Administration of the Form N-6 Requirements

(a) The requirements of Form N-6 are intended to promote effective communication between the Registrant and prospective investors. A Registrant's prospectus should clearly disclose the fundamental features and risks of the Variable Life Insurance Contracts, using concise, straightforward, and easy to understand language. A Registrant should use document design techniques that promote effective communication.

(b) The prospectus disclosure requirements in Form N-6 are intended to elicit information for an average or typical investor who may not be sophisticated in legal or financial matters. The prospectus should help investors to evaluate the risks of an investment and to decide whether to invest in a Variable Life Insurance Contract by providing a balanced disclosure of positive and negative factors. Disclosure in the prospectus should be designed to assist an investor in comparing and contrasting a Variable Life Insurance Contract with other Contracts.

(c) Responses to the Items in Form N-6 should be as simple and direct as reasonably possible and should include only as much information as is necessary to enable an average or typical investor to understand the particular characteristics of the Variable Life Insurance Contracts. The prospectus should avoid including lengthy legal and technical discussions and simply restating legal or regulatory requirements to which Contracts generally are subject. Brevity is especially important in describing the practices or aspects of the Registrant's operations that do not differ materially from those of other separate accounts. Avoid excessive detail, technical or legal terminology, and complex language. Also avoid lengthy sentences and paragraphs that may make the prospectus difficult for many investors to understand and detract from its usefulness.

(d) The requirements for prospectuses included in Form N-6 will be administered by the Commission in a way that will allow variances in disclosure or presentation if appropriate for the circumstances involved while remaining consistent with the objectives of Form N-6.

2. Form N-6 is Divided Into Three Parts:

(a) *Part A.* Part A includes the information required in a Registrant's prospectus under section 10(a) of the Securities Act. The purpose of the prospectus is to provide essential information about the Registrant and the Variable Life Insurance Contracts in a way that will help investors to make informed decisions about whether to purchase the securities described in the prospectus. In responding to the Items in Part A, avoid cross-references to the SAI. Cross-references within the prospectus are most useful when their use assists investors in understanding the information presented and does not add complexity to the prospectus.

(b) *Part B.* Part B includes the information required in a Registrant's SAI. The purpose of the SAI is to provide additional information about the Registrant and the Variable Life Insurance Contracts that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to be in the prospectus, but that some investors may find useful. Part B affords the Registrant an opportunity to expand discussions of the matters described in the prospectus by including additional information that the Registrant believes may be of interest to some investors. The Registrant should not duplicate in the SAI information that is provided in the prospectus, unless necessary to make the SAI comprehensible as a document independent of the prospectus.

(c) *Part C.* Part C includes other information required in a Registrant's registration statement.

3. Additional Matters

(a) *Organization of Information.* Organize the information in the prospectus and SAI to make it easy for investors to understand. Disclose the information required by Items 2 and 3 (the Risk/Benefit Summary) in numerical order at the front of the prospectus. Do not precede these Items with any other Item except the Cover Page (Item 1) or a table of contents meeting the requirements of rule 481(c) under the Securities Act [17 CFR 230.481(c)].

(b) *Other Information.* A Registrant may include, except in the Risk/Benefit Summary, information in the prospectus or the SAI that is not otherwise required. For example, a Registrant may include charts, graphs, or tables so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. Specifically, Registrants are free to include in the prospectus financial statements required to be in the SAI, and may include in the SAI financial statements that may be placed in Part C. The Risk/Benefit Summary may not include disclosure other than that required or permitted by Items 2 and 3.

(c) *Use of Form N-6 to Register Multiple Contracts or Contracts Sold in Both the Group and Individual Markets.*

(i) When disclosure is provided in a single prospectus for more than one Variable Life Insurance Contract, or for a Contract that is sold in both the group and individual markets, the disclosure should be presented in a format designed to communicate the information effectively. Registrants may order or group the response to any Item in any manner that organizes the information into readable and comprehensible segments and is consistent with the intent of the prospectus to provide clear and concise information about the Registrants or Variable Life Insurance Contracts. Registrants are encouraged to use, as appropriate, tables, side-by-side comparisons, captions, bullet points, or other organizational techniques when presenting disclosure for multiple Variable Life Insurance Contracts or for Contracts sold in both the group and individual markets.

(ii) Paragraph (a) requires Registrants to disclose the information required by Items 2 and 3 in numerical order at the front of the prospectus and not to precede the Items with other information. As a general matter, Registrants providing disclosure in a single prospectus for more than one Variable Life Insurance Contract, or for Contracts sold in both the group and individual markets, may depart from the requirement of paragraph (a) as necessary to present the required information clearly and effectively (although the order of information required by each Item must remain the same). For example, the prospectus may present all of the Item 2 information for several Variable Life Insurance Contracts followed by all of the Item 3 information for the Contracts, or may present Items 2 and 3 for each of several Contracts sequentially. Other presentations also would be acceptable if they are consistent with the Form's intent to disclose the information required by Items 2 and 3 in a standard order at the beginning of the prospectus.

(d) *Dates.* Rule 423 under the Securities Act [17 CFR 230.423] applies to the dates of the prospectus and the SAI. The SAI should be made available at the same time that the prospectus becomes available for purposes of rules 430 and 460 under the Securities Act [17 CFR 230.430 and 230.460].

(e) *Sales Literature.* A Registrant may include sales literature in the prospectus so long as the amount of this information does not add substantial length to the prospectus and its placement does not obscure essential disclosure.

D. Incorporation by Reference

1. Specific Rules for Incorporation by Reference in Form N-6

(a) A Registrant may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of the Form.

(b) A Registrant may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.

(c) A Registrant may incorporate by reference into the SAI or its response to Part C information that Parts B and C require to be included in the Registrant's registration statement.

2. General Requirements

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 10(d) of Regulation S-K under the Securities Act [17 CFR 229.10(d)] (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S-T [17 CFR 232.303] (specific requirements for electronically filed documents); and rules 0-4, 8b-23, and 8b-32 [17 CFR 270.0-4, 270.8b-23, and 270.8b-32] (additional rules on incorporation by reference for investment companies).

Part A: Information Required in a Prospectus

Item 1. Front and Back Cover Pages

(a) *Front Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], on the outside front cover page of the prospectus:

- (1) The Registrant's name.
- (2) The Depositor's name.
- (3) The types of Variable Life Insurance Contracts offered by the prospectus (e.g., group, individual, scheduled premium, flexible premium).
- (4) The date of the prospectus.
- (5) The statement required by rule 481(b)(1) under the Securities Act.

Instruction. A Registrant may include on the front cover page any additional information, subject to the requirement set out in General Instruction C.3.(b).

(b) *Back Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], on the outside back cover page of the prospectus:

- (1) A statement that the SAI includes additional information about the Registrant. Explain that the SAI is available, without charge, upon request, and explain how contractowners may make inquiries about their Contracts. Provide a toll-free (or collect) telephone number for investors to call: to request the SAI; to request other information about the Contracts; and to make contractowner inquiries.

Instructions.

1. A Registrant may indicate, if applicable, that the SAI and other information are available on its Internet site and/or by E-mail request.

2. A Registrant may indicate, if applicable, that the SAI and other information are available from an insurance agent or financial intermediary (such as a broker-dealer or bank) through which the Contracts may be purchased or sold.

3. When a Registrant (or an insurance agent or financial intermediary through which Contracts may be purchased or sold) receives a request for the SAI, the Registrant (or insurance agent or financial intermediary) must send the SAI within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(2) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D. Unless the information is delivered with the prospectus, explain that the Registrant will provide the information without charge, upon request (referring to the telephone number provided in response to paragraph (b)(1)).

Instruction. The Registrant may combine the information about incorporation by reference with the statements required under paragraph (b)(1).

(3) A statement that information about the Registrant (including the SAI) can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C. Also state that information on the operation of the public reference room may be obtained by calling the Commission at 1-800-SEC-0330. State that reports and other information about the Registrant are available on the Commission's Internet site at <http://www.sec.gov> and that copies of this information may be obtained, upon payment of a duplicating fee, by writing the Public Reference Section of the Commission, Washington, D.C. 20549-6009.

(4) The Registrant's Investment Company Act file number on the bottom of the back cover page in type size smaller than that generally used in the prospectus (e.g., 8-point modern type).

Item 2. Risk/Benefit Summary: Benefits and Risks

Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], in the order indicated:

(a) *Contract Benefits.* Summarize the benefits available under the Contract, including death benefits, withdrawal and surrender benefits, and loans.

(b) *Use of Premiums.* Disclose that part of the premium is allocated to insurance coverage, part of the premium is invested, and part of the premium payment is used to pay sales loads and other charges.

(c) *Contract Risks.* Summarize the principal risks of purchasing a Contract, including the risks of poor investment performance, that Contracts are unsuitable as short-term savings vehicles, the risks of Contract lapse, limitations on access to cash value through withdrawals, and the possibility of adverse tax consequences.

Item 3. Risk/Benefit Summary: Fee Table

Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], after Item 2:

The following tables describe the fees and expenses that you will pay when buying, owning, and surrendering the Policy. The first table describes the fees and expenses that you will pay at the time that you buy the Policy, surrender the Policy, or transfer cash value between investment options.

Transaction fees

Charge	When charge is deducted	Amount deducted	Policies from which charge is deducted
Maximum Sales Charge Imposed on Premiums (Load). Premium Taxes Maximum Deferred Sales Charge (Load). Other Surrender Fees Transfer Fees			

The next table describes the fees and expenses that you will pay periodically during the time that you own the Policy, not including [Portfolio Company] fees and expenses.

Annual charges other than [portfolio company] operating expenses

Charge	When charge is deducted	Amount deducted	Policies from which charge is deducted
Cost of Insurance Annual Maintenance Fee Mortality and Expense Risk Fees Administrative Fees			

The next table describes the [Portfolio Company] fees and expenses that you will pay periodically during the time that you own the Policy. 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

Charge	When charge is deducted	Amount deducted	Policies from which charge is deducted
Management Fees Distribution [and/or Service] (12b-1) Fees. Other Expenses Total [Portfolio Company] Annual Expenses.			

Instructions.

1. *General.*

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

(b) A Registrant may omit captions if the Registrant does not charge the fees or expenses covered by the captions.

(c) If a Registrant uses one prospectus to offer a Contract in both the group and individual variable life markets, the Registrant may include narrative disclosure in a footnote or following the tables identifying markets where certain fees are either inapplicable or waived or lower fees are charged. In the alternative, a Registrant may present the information for group and individual contracts in another format consistent with General Instruction C.3.(c).

(d) The "When Charge is Deducted" column must be used to show when a charge is deducted, e.g., upon purchase, surrender or partial surrender, policy anniversary, monthly, or daily.

(e) Under the "Amount Deducted" column, the Registrant must disclose the maximum charge unless a specific instruction directs otherwise. The Registrant should include the basis on which the charge is imposed (e.g., 0.95% of average daily net assets, \$5 per exchange, \$5 per thousand dollars of face amount). 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. Charges assessed on the basis of the face amount should be disclosed as the charge per \$1000 of face amount. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

(f) If a charge is deducted from all Contracts, the word "All" should be placed in the "Policies from Which Charge is Deducted" column. Otherwise, Registrant should specify the Contracts from which the charge is deducted.

2. *Transaction Fees.*

(a) "Other Surrender Fees" include any fees charged for surrender or partial surrender, other than sales charges imposed upon surrender or partial surrender.

(b) "Transfer Fees" include any fees charged for any transfer or exchange of cash value from the Registrant to another investment company, from one sub-account of the Registrant to another sub-account or the Depositor's general account, or from the Depositor's general account to the Registrant.

(c) If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and complete the other columns of the table for that fee.

3. Annual Charges Other Than [Portfolio Company] Operating Expenses.

(a) The Registrant may substitute the term used in the prospectus to refer to the Portfolio Companies for the bracketed portion of the caption provided.

(b) For "Cost of Insurance," the Registrant should disclose the minimum and maximum charges that may be imposed for a Contract.

(c) "[Annual] Maintenance Fee" includes any Contract, account, or similar fee imposed on any recurring basis. Any non-recurring Contract, account, or similar fee should be included in the "Transaction Fees" table.

(d) "Mortality and Expense Risk Fees" may be listed separately on two lines in the table.

(e) 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 complete the other columns of the table for that charge.

4. Annual [Portfolio Company] Operating Expenses.

(a) The Registrant may substitute the term used in the prospectus to refer to the Portfolio Companies for the bracketed portion of the caption provided.

(b) 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 [Portfolio Company] Annual Expenses" should be the minimum and maximum "Total [Portfolio Company] Annual 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%, and other expenses of 0.30%; sub-account 2 has management fees of 0.90%, 12b-1 fees of 0.00%, and other expenses of 0.25%; and sub-account 3 has management fees of 1.00%, 12b-1 fees of 0.00%, and other expenses of 0.25%. 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 [Portfolio Company] annual expenses—1.05%-1.25%. The total [Portfolio Company] annual 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%.

(c) "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."

(d) "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]. Under an appropriate caption or subcaption of "Other Expenses," disclose the amount of any distribution or similar expenses deducted from a Portfolio Company's assets other than pursuant to a rule 12b-1 plan.

(e)(i) "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]).

(ii) "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.

(f)(i) 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."

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

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

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

(iii) 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.

(g) 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.

5. 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-6 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.

Item 4. General Description of Registrant, Depositor, and Portfolio Companies

Concisely discuss the organization and operation or proposed operation of the Registrant. Include the information specified below.

- (a) *Depositor.* Provide the name and address of the Depositor.
- (b) *Registrant.* Briefly describe the Registrant. Include a statement indicating that:
- (1) income, gains, and losses credited to, or charged against, the Registrant reflect the Registrant's own investment experience and not the investment experience of the Depositor's other assets;
 - (2) the assets of the Registrant may not be used to pay any liabilities of the Depositor other than those arising from the Contracts;
- and
- (3) the Depositor is obligated to pay all amounts promised to Contractowners under the Contracts.
- (c) *Portfolio Companies.* Briefly describe the Registrant's sub-accounts and each Portfolio Company. For each Portfolio Company, include:
- (1) its name;
 - (2) its type (e.g., money market fund, bond fund, balanced fund, etc.) or a brief statement concerning its investment objectives;
- and
- (3) its investment adviser and any sub-investment adviser.
- Instructions.*
1. Do not describe sub-accounts that fund obligations of the Depositor under contracts that are not offered by this prospectus.
 2. Registrants are not required to include detailed information about Portfolio Companies in the prospectus. If a Portfolio Company's name describes its type, a Registrant need not separately provide the Portfolio Company's type or a statement concerning its investment objectives.
- (d) *Portfolio Company Prospectus.* State conspicuously how investors may obtain a prospectus and, if available, a fund profile, containing more complete information on each Portfolio Company.
- (e) *Voting.* Concisely discuss the rights of Contractowners to instruct the Depositor on the voting of shares of the Portfolio Companies, including the manner in which votes will be allocated.

Item 5. Charges

(a) *Description.* Briefly describe all charges deducted from premiums, cash value, assets of the Registrant, or any other source (e.g., sales loads, premium and other taxes, administrative and transaction charges, risk charges, contract loan charges, cost of insurance, and rider charges). Indicate whether each charge will be deducted from premium payments, cash value, the Registrant's assets, the proceeds of withdrawals or surrenders, or some other source. When possible, specify the amount of any charge as a percentage or dollar figure (e.g., 0.95% of average daily net assets, \$5 per exchange, \$5 per thousand dollars of face amount). For recurring charges, specify the frequency of the deduction (e.g., daily, monthly, annually). Identify the person who receives the amount deducted, briefly explain what is provided in consideration for each charge, and explain the extent to which the charge can be modified.

Instructions.

1. Describe the sales loads applicable to the Contract and how sales loads are charged and calculated, including the factors affecting the computation of the amount of the sales load. If the Contract has a front-end sales load, describe the sales load as a percentage of the applicable measure of premium payments (e.g., actual premiums paid, target or guideline premiums). For Contracts with a deferred sales load, describe the sales load as a percentage of the applicable measure of premium payments (or other basis) that the deferred sales load may represent. Percentages should be shown in a table. Identify any events on which a deferred sales load is deducted (e.g., surrender, partial surrender, increase or decrease in face amount). The description of any deferred sales load should include how the deduction will be allocated among sub-accounts of the Registrant and when, if ever, the sales load will be waived (e.g., if the Contract provides a free withdrawal amount).
 2. Identify the factors upon which the cost of insurance charge will be based, including the insurer's amount at risk and the expected longevity of the insureds. Identify the factors reflected in the rate scale, and specify whether the mortality charges guaranteed in the contracts differ from the current charges. Identify the factors that affect the amount at risk, including investment performance, payment of premiums, and charges. If the Depositor intends to use simplified underwriting or other underwriting methods that would cause healthy individuals to pay higher cost of insurance charges than they would pay if the insurance company used conventional underwriting methods, state that the cost of insurance charges are higher for healthy individuals when this method of underwriting is used.
 3. If the Contract's charge for premium or other taxes varies according to jurisdiction, identification of the range of current premium or other taxes is sufficient.
 4. Identify charges that may be different in amount or method of computation when imposed in connection with, or subsequent to, increases in face amount of a Contract and briefly describe the differences.
- (b) *Portfolio Company Charges.* State that charges are deducted from and expenses paid out of the assets of the Portfolio Companies that are described in the prospectuses for those companies.
- (c) *Incidental Insurance Charges.* If incidental insurance benefits (as defined in Rules 6e-2 and 6e-3(T) [17 CFR 270.6e-2, 17 CFR 270.6e-3(T)]) are offered along with the Contract, state that charges also will be made for those benefits.
- (d) *Operating and Organizational Expenses.* Describe the type of operating expenses for which the Registrant is responsible. If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized and identify the period over which the amortization will occur.

Item 6. General Description of Contracts

- (a) *Contract Rights.* Identify the person or persons (e.g., the Contract owner, insured, or beneficiary) who have material rights under the Contracts, and the nature of those rights.
- (b) *Contract Limitations.* Briefly describe any provisions for and limitations on:
- (1) allocation of premiums among sub-accounts of the Registrant;
 - (2) transfer of Contract values between sub-accounts of the Registrant; and
 - (3) conversion or exchange of Contracts for another contract, including a fixed or variable annuity or life insurance contract.
- Instruction.* In discussing conversion or exchange of Contracts, the Registrant should include any time limits on conversion or exchange, the name of the company issuing the other contract and whether that company is affiliated with the issuer of the Contract, and how the cash value of the Contract will be affected by the conversion or exchange.
- (c) *Contract or Registrant Changes.* Briefly describe the changes that can be made in the Contracts or the operations of the Registrant by the Registrant or the Depositor, including:
- (1) why a change may be made (e.g., changes in applicable law or interpretations of law);
 - (2) who, if anyone, must approve any change (e.g., the Contract owner or the Commission); and
 - (3) who, if anyone, must be notified of any change.
- Instruction.* Describe only those changes that would be material to a purchaser of the Contracts, such as a reservation of the right to deregister the Registrant under the Investment Company Act. Do not describe possible non-material changes, such as changing the time of day at which Contract values are determined.
- (d) *Other Benefits.* Identify any other material incidental benefits in the Contracts.

(e) *Class of Purchasers.* Disclose any limitations on the class or classes of purchasers to whom the Contracts are being offered.

Item 7. Premiums

(a) *Purchase Procedures.* Describe the provisions of the Contract that relate to premiums and the procedures for purchasing a Contract, including:

(1) the minimum initial and subsequent premiums required and any limitations on the amount and the frequency of premiums that will be accepted. If there are separate limits for each sub-account, state these limits;

(2) whether required premiums, if any, are payable for the life of the Contract or some other term;

(3) whether payment of certain levels of premiums will guarantee that the Contract will not lapse regardless of the Contract's cash value;

(4) if applicable, under what circumstances premiums may be required in order to avoid lapse and how the amount of the additional premiums will be determined;

(5) if applicable, under what circumstances nonpayment of a required premium will not cause the Contract to lapse;

(6) if applicable, under what circumstances premiums in addition to the required premiums will be permitted; and

(7) if applicable, whether the level of the Contract's required premiums may change and, if so, how the amount of the change will be determined.

(b) *Premium Amount.* Briefly describe the factors that determine the amount of any required premiums (e.g., face amount, death benefit option, and charges and expenses).

(c) *Premium Payment Plans.* Identify the premium payment plans available. Include the available payment frequencies, payment facilities such as employee payroll deduction plans and preauthorized checking arrangements, and any special billing arrangements. Indicate whether the premium payment plan or schedule may be changed.

(d) *Premium Due Dates.* Briefly explain the provisions of the Contract that relate to premium due dates and the operation of any grace period, including the effect of the insured's death during the grace period.

(e) *Automatic Premium Loans.* If applicable, briefly describe the circumstances under which required premiums may be paid by means of an automatic premium loan.

(f) *Sub-Account Valuation.* Describe the procedures for valuing sub-account assets, including:

(1) an explanation of when the required premiums and additional premiums are credited to the Contract's cash value in the sub-accounts, and the basis (e.g., accumulation unit value) on which premiums are credited;

(2) an explanation, to the extent applicable, that premiums are credited to the Contract's cash value on the basis of the sub-account valuation next determined after receipt of a premium;

Instruction. If, in any case, a delay occurs between the receipt of premiums and the crediting of premiums to the sub-accounts (e.g., a delay during the "free-look" period), describe where the premiums are held in the interim.

(3) an explanation of when valuations of the assets of the sub-accounts are made; and

(4) a statement identifying in a general manner any national holidays when sub-account assets will not be valued and specifying any additional local or regional holidays when sub-account assets will not be valued.

Instruction. In responding to this paragraph, a Registrant may use a list of specific days or any other means that effectively communicates the information (e.g., explaining that sub-account assets will not be valued on the days on which the New York Stock Exchange is closed for trading).

Item 8. Death Benefits and Contract Values

(a) *Death Benefits.* Briefly describe the death benefits available under the Contract.

Instruction. Include:

(i) when insurance coverage is effective;

(ii) when the death benefit is calculated and payable;

(iii) how the death benefit is calculated;

(iv) who has the right to choose the form of benefit and the procedure for choosing the form of benefit, including when the choice is made and whether the choice is revocable;

(v) the forms the benefit may take and the form of benefit that will be provided if a particular form has not been elected; and

(vi) whether there is a minimum death benefit guarantee associated with the Contract.

Also describe if and how a Contract owner may increase or decrease the face amount, including the minimum and the maximum amounts, any requirement of additional evidence of insurability, and whether charges, including sales load, are affected.

(b) *Charges and Contract Values.* Explain how the investment performance of the Portfolio Companies, expenses, and deduction of charges affect Contract values and death benefits.

Item 9. Surrenders, Partial Surrenders, and Partial Withdrawals

(a) *Surrender.* Briefly describe how a Contract owner can surrender a Contract, including any limits on the ability to surrender, how the proceeds are calculated, and when they are payable.

(b) *Partial Surrender and Withdrawal.* Indicate generally whether and under what circumstances partial surrenders and partial withdrawals are available under a Contract, including the minimum and maximum amounts that may be surrendered or withdrawn, any limits on their availability, how the proceeds are calculated, and when the proceeds are payable.

(c) *Effect of Partial Surrender and Withdrawal.* Briefly describe whether partial surrenders or partial withdrawals will affect a Contract's cash value or death benefit and whether any charge(s) will apply.

(d) *Sub-Account Allocation.* Describe how partial surrenders and partial withdrawals will be allocated among the sub-accounts.

Instruction. The Registrant should generally describe the terms and conditions that apply to these transactions. Technical information regarding the determination of amounts available to be surrendered or withdrawn should be included in the SAI.

(e) *Revocation Rights.* Briefly describe any revocation rights (e.g., "free-look" provisions), including a description of how the amount refunded is determined, the method for crediting earnings to premiums during the free-look period, and whether investment options are limited during the free look period.

Item 10. Loans

Briefly describe the loan provisions of the Contract, including any of the following that are applicable.

(a) *Availability of Loans.* A brief statement that a portion of the Contract's cash surrender value may be borrowed.

(b) *Limitations.* Any limits on availability of loans (e.g., a prohibition on loans during the first contract year).

(c) *Interest.* A statement of the amount of interest charged on the loan and the amount of interest credited to the Contract in connection with the loaned amount.

(d) *Effect on Cash Value and Death Benefit.* A brief explanation that amounts borrowed under a Contract do not participate in a Registrant's investment experience and that loans, therefore, can affect the Contract's cash value and death benefit whether or not the loan is repaid. Also, a brief explanation that the cash surrender value and the death proceeds payable will be reduced by the amount of any outstanding Contract loan plus accrued interest.

(e) *Procedures.* The loan procedures, including how and when amounts borrowed are transferred out of the Registrant and how and when amounts repaid are credited to the Registrant.

Item 11. Lapse and Reinstatement

- (a) *Lapse*. State when and under what circumstances a Contract will lapse.
- (b) *Lapse Options*. Describe briefly any lapse options available. Indicate those that will not apply unless they are elected and those that will apply in the absence of an election. Indicate whether the availability of any of the lapse options is limited.
- (c) *Effect of Lapse*. Describe briefly the factors that will determine the amount of insurance coverage provided under the available lapse options. Describe concisely how the cash value, surrender value, and death benefit will be determined. If these values and benefits will be determined in the same manner as prior to lapse, a statement to that effect is sufficient.
- (d) *Reinstatement*. State under what circumstances a Contract may be reinstated. Explain any requirements for reinstatement, including charges to be paid by the Contractowner, outstanding loan repayments, and evidence of insurability.

Item 12. Taxes

- (a) *Tax Consequences*. Describe the material tax consequences to the Contractowner and beneficiary of buying, holding, exchanging, or exercising rights under the Contract.
- Instruction*. Discuss the taxation of death benefit proceeds, periodic and non-periodic withdrawals, loans, and any other distribution that may be received under the Contract, as well as the tax benefits accorded the Contract and other material tax consequences. Describe, if applicable, whether the tax consequences vary with different uses of the Contract.
- (b) *Effect*. Describe the effect, if any, of taxation on the determination of cash values or sub-account values.

Item 13. Legal Proceedings

Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, the Registrant's principal underwriter, or the Depositor is a party. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any legal proceedings instituted, or known to be contemplated, by a governmental authority.

Instruction. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Registrant, the ability of the principal underwriter to perform its contract with the Registrant, or the ability of the Depositor to meet its obligations under the Contracts.

Item 14. Financial Statements

If all of the required financial statements of the Registrant and the Depositor (see Item 24) are not in the prospectus, state, under a separate caption, where the financial statements may be found. Briefly explain how investors may obtain any financial statements not in the Statement of Additional Information.

Part B: Information Required in a Statement of Additional Information*Item 15. Cover Page and Table of Contents*

- (a) *Front Cover Page*. Include the following information on the outside front cover page of the SAI:
- (1) The Registrant's name.
 - (2) The Depositor's name.
 - (3) A statement or statements:
 - (A) That the SAI is not a prospectus;
 - (B) How the prospectus may be obtained; and
 - (C) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.
- Instruction*. Any information incorporated by reference into the SAI must be delivered with the SAI.
- (4) The date of the SAI and of the prospectus to which the SAI relates.
- (b) *Table of Contents*. Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.

Item 16. General Information and History

(a) *Depositor*. Provide the date and form of organization of the Depositor, the name of the state or other jurisdiction in which the Depositor is organized, and a description of the general nature of the Depositor's business.

Instruction. The description of the Depositor's business should be short and need not list all of the businesses in which the Depositor engages or identify the jurisdictions in which it does business if a general description (e.g., "life insurance" or "reinsurance") is provided.

(b) *Registrant*. Provide the date and form of organization of the Registrant and the Registrant's classification pursuant to Section 4 [15 U.S.C. 80a-4] (i.e., a separate account and a unit investment trust).

(c) *History of Depositor and Registrant*. If the Depositor's name was changed during the past five years, state its former name and the approximate date on which it was changed. If, at the request of any state, sales of contracts offered by the Registrant have been suspended at any time, or if sales of contracts offered by the Depositor have been suspended during the past five years, briefly describe the reasons for and results of the suspension. Briefly describe the nature and results of any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment, or succession of Depositor during the past five years.

(d) *Ownership of Sub-Account Assets*. If 10 percent or more of the assets of any sub-account are not attributable to Contracts or to accumulated deductions or reserves (e.g., initial capital contributed by the Depositor), state what percentage those assets are of the total assets of the Registrant. If the Depositor, or any other person controlling the assets, has any present intention of removing the assets from the sub-account, so state.

(e) *Control of Depositor*. State the name of each person who controls the Depositor and the nature of its business.

Instruction. If the Depositor is controlled by another person that, in turn, is controlled by another person, give the name of each control person and the nature of its business.

Item 17. Services

(a) *Expenses Paid by Third Parties*. Describe all fees, expenses, and costs of the Registrant that are to be paid by persons other than the Depositor or the Registrant, and identify those persons.

(b) *Service Agreements*. Summarize the substantive provisions of any management-related service contract that may be of interest to a purchaser of the Registrant's securities, under which services are provided to the Registrant, unless the contract is described in response to some other item of this form. Indicate the parties to the contract, and the total dollars paid and by whom for each of the past three years.

Instructions

1. The term "management-related service contract" includes any contract with the Registrant to keep, prepare, or file accounts, books, records, or other documents required under federal or state law, or to provide any similar services with respect to the daily administration of the Registrant, but does not include the following:

(a) Any agreement with the Registrant to act as custodian or agent to administer purchases and redemptions under the Contracts; and
 (b) Any contract with the Registrant for outside legal or auditing services, or contract for personal employment entered into with the Registrant in the ordinary course of business.

2. In summarizing the substantive provisions of any management-related service contract, include the following:

(a) The name of the person providing the service;
 (b) The direct or indirect relationships, if any, of the person with the Registrant, its Depositor, or its principal underwriter; and
 (c) The nature of the services provided, and the basis of the compensation paid for the services for the Registrant's last three fiscal years.

(c) *Other Service Providers.*

(1) Unless disclosed in response to paragraph (b) or another item of this form, identify and state the principal business address of any person who provides significant administrative or business affairs management services for the Registrant (e.g., an "Administrator," "Sub-Administrator," "Servicing Agent"), describe the services provided, and the compensation paid for the services.

(2) State the name and principal business address of the Registrant's custodian and independent public accountant and describe generally the services performed by each.

(3) If the Registrant's assets are held by a person other than the Depositor, a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of that person.

(4) If an affiliated person of the Registrant or the Depositor, or an affiliated person of the affiliated person, acts as administrative or servicing agent for the Registrant, describe the services the person performs and the basis for remuneration. State, for the past three years, the total dollars paid for the services, and by whom.

Instruction. No disclosure need be given in response to paragraph (c)(4) of this item for an administrative or servicing agent who is also the Depositor.

(5) If the Depositor is the principal underwriter of the Contracts, so state.

Item 18. Premiums

(a) *Administrative Procedures.* Discuss generally the Registrant's administrative rules applicable to premium payments, to the extent that they are not discussed in the prospectus.

Instruction. Examples include information regarding any condition applicable to changes in premium payment schedules, any limitations on prepayments of premiums, any relevant rules for classifying payments made other than in response to a bill or in an amount other than the amount billed for, etc.

(b) *Automatic Premium Loans.* If the contract provides an automatic premium loan option, describe the option, including the circumstances under which it will be used to pay a required premium and whether, and how, interest will be charged on the loan. Describe any effect not described in the prospectus that an automatic premium loan could have on the Contract (e.g., how automatic premium loans affect cash value).

Item 19. Additional Information About Operation of Contracts and Registrant

(a) *Incidental Benefits.* To the extent not described in the prospectus, explain the manner in which the purchase or operation of other incidental benefits affects the exercise of rights and the determination of benefits under the Contract such as whether the Contract or any rider provides for a change of insured or for all or a portion of the death benefit to be paid while the insured is still alive.

(b) *Surrender and Withdrawal.* To the extent not described in the prospectus, explain the Contract's surrender and withdrawal provisions.

(c) *Material Contracts Relating to the Registrant.* Disclose any material contract relating to the operation or administration of the Registrant.

Item 20. Underwriters

(a) *Identification.* Identify each principal underwriter (other than the Depositor) of the Contracts, and state its principal business address. If the principal underwriter is affiliated with the Registrant, the Depositor, or any affiliated person of the Registrant or the Depositor, identify how they are affiliated (e.g., the principal underwriter is controlled by the Depositor).

(b) *Offering and Commissions.* For each principal underwriter distributing Contracts of the Registrant, state:

(1) whether the offering is continuous; and
 (2) the aggregate dollar amount of underwriting commissions paid to, and the amount retained by, the principal underwriter for each of the Registrant's last three fiscal years.

(c) *Other Payments.* With respect to any payments made by the Registrant to an underwriter or dealer in the Contracts during the Registrant's last fiscal year, disclose the name and address of the underwriter or dealer, the amount paid and basis for determining that amount, the circumstances surrounding the payments, and the consideration received by the Registrant. Do not include information about:

(1) Payments made through deduction from premiums paid at the time of sale of the Contracts; or
 (2) Payments made from cash values upon full or partial surrender of the Contracts or from an increase or decrease in the face amount of the Contracts.

Instructions.

1. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.
 2. Information need not be given about any service for which total payments of less than \$5,000 were made during each of the Registrant's last three fiscal years.

3. Information need not be given about payments made under any contract to act as administrative or servicing agent.

4. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

(d) *Commissions to Dealers.* State the commissions paid to dealers as a percentage of premiums.

Item 21. Additional Information About Charges

(a) *Sales Load.* Describe the method that will be used to determine the sales load on the Contracts offered by the Registrant.

(b) *Special Purchase Plans.* Describe any special purchase plans (e.g., group life insurance plans) or methods that reflect scheduled variations in, or elimination of, any applicable charges (e.g., group discounts, waiver of deferred sales loads for a specified percentage of cash value, investment of proceeds from another Contract, exchange privileges, employee benefit plans, or the terms of a merger, acquisition, or exchange offer made pursuant to a plan of reorganization). Identify each class of individuals or transactions to which the plans or methods apply, including officers, directors, members of the board of managers, or employees of the Depositor, underwriter, Portfolio Companies, or investment adviser to Portfolio Companies, and the amount of the reductions, and state from whom additional information may be obtained. For special purchase plans or methods that reflect variations in, or elimination of, charges other than according to a fixed schedule, describe the basis for the variation or elimination (e.g., the size of the purchaser, a prior existing relationship with the purchaser, the purchaser's assumption of certain administrative functions, or other characteristics that result in differences in costs or services).

(c) *Underwriting Procedures.* Briefly identify underwriting procedures used in connection with the Contract and any effect of different types of underwriting on the charges in the Contract. Specify the basis of the mortality charges guaranteed in the Contracts.

(d) *Increases in Face Amount.* Describe in more detail the charges assessed on increases in face amount, including the procedures used following an increase in face amount to allocate cash values and premium payments between the original Contract and incremental Contracts.

Item 22. Lapse and Reinstatement

To the extent that the prospectus does not do so, describe the lapse and reinstatement provisions of the Contract. Include a discussion of any time limits that apply, how the charge to reinstate is determined, and any other conditions that apply to reinstatement. Describe the features of any lapse options not described in the prospectus, including any factors that will determine the amount or duration of the insurance coverage, and the limitations and conditions on availability of each lapse option. Identify which contract transactions (e.g., loans, partial withdrawals and surrenders, transfers) are available while the Contract is continued under a lapse option. Indicate when limits on contract transactions are different from those that apply prior to lapse.

Item 23. Loans

(a) *Loan Provisions.* To the extent that the prospectus does not do so, explain the loan provisions of the Contract.

(b) *Amount Available.* State how the amount available for a policy loan is calculated.

(c) *Effect on Cash Value and Sub-Accounts.* Describe how loans and loan repayments affect cash value and how they are allocated among the sub-accounts.

(d) *Interest.* Describe how interest accrues on the loan, when it is payable, and how interest is treated if not paid. Explain how interest earned on the loaned amount is credited to the Contract and allocated to the sub-accounts.

(e) *Other Effects.* Describe any other effect not already described in the prospectus that a loan could have on the Contract (e.g., the effect of a Contract loan in excess of cash value).

Item 24. Financial Statements

(a) *Registrant.* Provide financial statements of the Registrant.

Instruction. Include, in a separate section, the financial statements and schedules required by Regulation S-X [17 CFR 210]. Financial statements of the Registrant may be limited to:

(i) An audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year;

(ii) An audited statement of operations for the most recent fiscal year conforming to the requirements of Rule 6-07 of Regulation S-X [17 CFR 210.6-07];

(iii) An audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles; and

(iv) Audited statements of changes in net assets conforming to the requirements of Rule 6-09 of Regulation S-X [17 CFR 210.6-09] for the two most recent fiscal years.

(b) *Depositor.* Provide financial statements of the Depositor.

Instructions.

1. Include, in a separate section, the financial statements and schedules of the Depositor required by Regulation S-X. If the Depositor would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Forms N-3, N-4, or N-6, its financial statements may be prepared in accordance with statutory requirements. The Depositor's financial statements must be prepared in accordance with generally accepted accounting principles if the Depositor prepares financial information in accordance with generally accepted accounting principles for use by Depositor's parent.

2. All statements and schedules of the Depositor required by Regulation S-X, except for the consolidated balance sheets described in Rule 3-01 of Regulation S-X [17 CFR 210.3-01], and any notes to these statements or schedules, may be omitted from Part B and instead included in Part C of the registration statement. If any of this information is omitted from Part B and included in Part C, the consolidated balance sheets included in Part B should be accompanied by a statement that additional financial information about the Depositor is available, without charge, upon request. When a request for the additional financial information is received, the Registrant should send the information within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. Notwithstanding Rule 3-12 of Regulation S-X [17 CFR 210.3-12], the financial statements of the Depositor need not be more current than as of the end of the most recent fiscal year of the Depositor. In addition, when the anticipated effective date of a registration statement falls within 90 days subsequent to the end of the fiscal year of the Depositor, the registration statement need not include financial statements of the Depositor more current than as of the end of the third fiscal quarter of the most recently completed fiscal year of the Depositor unless the audited financial statements for such fiscal year are available. The exceptions to Rule 3-12 of Regulation S-X contained in this Instruction 3 do not apply when:

(i) The Depositor's financial statements have never been included in an effective registration statement under the Securities Act of a separate account that offers variable annuity contracts or variable life insurance contracts; or

(ii) The balance sheet of the Depositor at the end of either of the two most recent fiscal years included in response to this Item shows a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than \$1,000,000; or

(iii) The balance sheet of the Depositor at the end of a fiscal quarter within 135 days of the expected date of effectiveness under the Securities Act (or a fiscal quarter within 90 days of filing if the registration statement is filed solely under the Investment Company Act) would show a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than \$1,000,000. If two fiscal quarters end within the 135 day period, the Depositor may choose either for purposes of this test.

4. Any interim financial statements required by this Item need not be comparative with financial statements for the same interim period of an earlier year.

Item 25. Performance Data

(a) *Calculation.* If the Registrant advertises any performance data, include an explanation of how performance is calculated, whether the data reflects all charges, the nature of any charges that are not reflected in the data, and the effect on performance of excluding those charges. If the Registrant advertises its performance calculated in more than one manner, briefly explain the material differences between the calculations.

(b) *Quotation.* For each sub-account for which the Registrant advertises any performance data, furnish:

(1) a quotation of performance, computed by each of the methods used in advertising; and

(2) the length of and the last day in the period used in computing the quotation.

Item 26. Illustrations

The Registrant may, but is not required to, include a table of hypothetical illustrations of death benefits, cash surrender values, and cash values in either the prospectus or the SAI. The following standards should be used to prepare any table of hypothetical illustrations that is included in the prospectus or the SAI:

- (a) *Narrative Information.* A clear and concise explanation of the illustrations should precede the illustrations.
- (b) *Headings.* The headings should contain the following information: sex, age, rating classification (e.g., nonsmoker, smoker, preferred, or standard), premium amount and payment schedule, face amount, and death benefit option.
- (c) *Premiums, Ages.* Premium amounts used in the illustrations should not be unduly larger or smaller than the actual or expected average Contract size. Ages used in the illustrations should be representative of actual or expected Contract sales.
- (d) *Rating Classifications.* Illustrations should be shown for the rating classification with the greatest number of outstanding Contracts (or expected Contracts in the case of a new Contract).
- (e) *Years.* Illustrated values should be provided for Contract years one through ten, for every five years beyond the tenth Contract year, and for the year of Contract maturity.
- (f) *Illustrated Values.* Death benefits and cash surrender values should be illustrated at two rates of return and two levels of charges (described in paragraphs (g) and (i)). The Registrant may also illustrate cash values, but cash values must be accompanied by corresponding cash surrender values. All illustrated values should be determined as of the end of the Contract year.
- (g) *Rates of Return.* The Registrant should use gross rates of return of 0% and one other rate not greater than 10%. Additional gross rates of return no greater than 10% may be used. Explain that the gross rates of return used in the illustrations do not reflect the deductions of the charges and expenses of the Portfolio Companies.
- (h) *Portfolio Company Charges.* Portfolio Company management fees and other Portfolio Company charges and expenses should be reflected using the arithmetic average of those charges and expenses incurred during the most recent fiscal year for all of the available Portfolio Companies or any materially greater amount expected to be incurred during the current fiscal year. In determining charges and expenses incurred during the most recent fiscal year or expected to be incurred during the current fiscal year, include amounts that would have been incurred absent expense reimbursement or fee waiver arrangements.
- (i) *Other Charges.* Values should be illustrated using both current and guaranteed maximum charges at both the 0% rate of return and one other rate of return no greater than 10%. Illustrated values should accurately reflect all charges deducted under the Contract (e.g., mortality and expense risk, administrative, cost of insurance) as well as the actual timing of the deduction of those charges (e.g., daily, monthly, annually). For example, for a Contract with a mortality and expense risk charge that is deducted from sub-account assets at a given annual rate, the illustrated values will be lower if the charge is deducted from assets on a daily basis rather than on a monthly or annual basis.
- (j) *Additional Information.* Subject to the requirement set out in General Instruction C.3.(b), additional information may be shown as part of the illustrations, provided that it is consistent with the standards of this Item 26.

Part C: Other Information

Item 27. Exhibits

Subject to General Instruction D regarding incorporation by reference and rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file copies rather than originals, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

- (a) *Board of Directors Resolution.* The resolution of the board of directors of the Depositor authorizing the establishment of the Registrant.
- (b) *Custodian Agreements.* All agreements for custody of securities and similar investments of the Registrant, including the schedule of remuneration.
- (c) *Underwriting Contracts.* Underwriting or distribution contracts between the Registrant or Depositor and a principal underwriter and agreements between principal underwriters or the Depositor and dealers.
- (d) *Contracts.* The form of each Contract, including any riders or endorsements.
- (e) *Applications.* The form of application used with any Contract provided in response to (d) above.
- (f) *Depositor's Certificate of Incorporation and By-Laws.* The Depositor's current certificate of incorporation or other instrument of organization and by-laws and any related amendment.
- (g) *Reinsurance Contracts.* Any contract of reinsurance related to a Contract.
- (h) *Participation Agreements.* Any participation agreement or other contract relating to the investment by the Registrant in a Portfolio Company.
- (i) *Administrative Contracts.* Any contract relating to the performance of administrative services in connection with administering a Contract.
- (j) *Other Material Contracts.* Other material contracts not made in the ordinary course of business to be performed in whole or in part on or after the filing date of the registration statement.
- (k) *Legal Opinion.* An opinion and consent of counsel regarding the legality of the securities being registered, stating whether the securities will, when sold, be legally issued and represent binding obligations of the Depositor.
- (l) *Actuarial Opinion.* If illustrations are included in the registration statement as permitted by Item 26, an opinion of an actuarial officer of the Depositor as to those illustrations indicating that:
- (1) the illustrations of cash surrender values, cash values, death benefits, and/or any other values illustrated are consistent with the provisions of the Contract and the Depositor's administrative procedures;
 - (2) the rate structure of the Contract, and the assumptions selected for the illustrations (including sex, age, rating classification, and premium amount and payment schedule), do not result in the relationship between premiums and benefits, as shown in the illustrations, being materially more favorable than for a substantial majority of other prospective Contractowners; and
 - (3) the illustrations are based on a commonly used rating classification and premium amounts and ages appropriate for the markets in which the Contract is sold.
- (m) *Calculation.* If illustrations are included in the registration statement as permitted by Item 26, one sample calculation for each item illustrated, e.g., cash surrender value, cash value, and death benefits, showing how the illustrated values for the fifth Contract year have been calculated. Demonstrate how the annual investment returns of the sub-accounts were derived from the hypothetical gross rates of return, how charges against sub-account assets were deducted from the annual investment returns of the sub-accounts, and how the periodic deductions for cost of insurance and other Contract charges were made to arrive at the illustrated values. Describe how the calculation would differ for other years.
- (n) *Other Opinions.* Any other opinions, appraisals, or rulings, and related consents relied on in preparing the registration statement and required by section 7 of the Securities Act [15 U.S.C. 77g].
- (o) *Omitted Financial Statements.* Financial statements omitted from Item 24.
- (p) *Initial Capital Agreements.* Any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, Depositor, underwriter, or initial Contractowners and written assurances from the Depositor or initial Contractowners that purchases were made for investment purposes and not with the intention of redeeming or reselling.
- (q) *Redeemability Exemption.* Disclosure (if not provided elsewhere in the registration statement) of insurance procedures for which the Registrant and Depositor claim any exemption pursuant to rule 6e-2(b)(12)(ii) or rule 6e-3(T)(b)(12)(iii) under the Investment Company Act.

Item 28. Directors and Officers of the Depositor

Provide the following information about each director or officer of the Depositor:

(1) Name and principal business address	(2) Positions and offices with depositor

Instruction. Registrants are required to provide the above information only for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the Contracts, and for executive officers including the Depositor's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

Item 29. Persons Controlled by or Under Common Control with the Depositor or the Registrant

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the Depositor or the Registrant. For any person controlled by another person, disclose the percentage of voting securities owned by the immediately controlling person or other basis of that person's control. For each company, also provide the state or other sovereign power under the laws of which the company is organized.

Instructions.

1. Include the Registrant and the Depositor in the list or diagram and show the relationship of each company to the Registrant and Depositor and to the other companies named, using cross-references if a company is controlled through direct ownership of its securities by two or more persons.

2. Indicate with appropriate symbols subsidiaries that file separate financial statements, subsidiaries included in consolidated financial statements, or unconsolidated subsidiaries included in group financial statements. Indicate for other subsidiaries why financial statements are not filed.

Item 30. Indemnification

State the general effect of any contract, arrangements, or statute under which any underwriter or affiliated person of the Registrant is insured or indemnified against any liability incurred in his or her official capacity, other than insurance provided by any underwriter or affiliated person for his or her own protection.

Item 31. Principal Underwriters

(a) *Other Activity.* State the name of each investment company (other than the Registrant) for which each principal underwriter currently distributing the Registrant's securities also acts as a principal underwriter, depositor, sponsor, or investment adviser.

(b) *Management.* Provide the information required by the following table for each director, officer, or partner of each principal underwriter named in the response to Item 20:

(1) Name and principal business address	(2) Positions and offices with depositor

Instruction. If a principal underwriter is the Depositor or an affiliate of the Depositor, and is also an insurance company, the above information for officers or directors need only be provided for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the Contracts, and for executive officers including the Depositor's or its affiliate's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

(c) *Compensation From the Registrant.* Provide the information required by the following table for all commissions and other compensation received, directly or indirectly, from the Registrant during the Registrant's last fiscal year by each principal underwriter:

(1) Name of principal underwriter	(2) Net underwriting discounts and commissions	(3) Compensation on events occasioning the deduction of a deferred sales load	(4) Brokerage commissions	(5) Other compensation

Instructions.

1. Disclose the type of services rendered in consideration for the compensation listed under column (5).

2. Exclude information about bona fide contracts with the Registrant or its Depositor for outside legal or auditing services, or bona fide contracts for personal employment entered into with the Registrant or its Depositor in the ordinary course of business.

3. Exclude information about any service for which total payments of less than \$5,000 were made during each of the Registrant's last three fiscal years.

4. Exclude information about payments made under any agreement whereby another person contracts with the Registrant or its Depositor to perform as custodian or administrative or servicing agent.

Item 32. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) [15 U.S.C. 80a-30(a)] and the rules under that section.

Item 33. Management Services

Provide a summary of the substantive provisions of any management-related service contract not discussed in Part A or B, disclosing the parties to the contract and the total amount paid and by whom for the Registrant's last three fiscal years.

Instructions.

1. The instructions to Item 17 also apply to this Item.

2. Exclude information about any service provided for payments totaling less than \$5,000 during each of the Registrant's last three fiscal years.

Item 34. Fee Representation

Provide a representation of the Depositor that the fees and charges deducted under the Contracts, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the Depositor.

SIGNATURES

Pursuant to the requirements of (the Securities Act and) the Investment Company Act, the Registrant (certifies that it meets all of the requirements for effectiveness of this registration statement under rule 485(b) under the Securities Act and) has duly caused this registration statement to be signed on its behalf by the undersigned, duly authorized, in the City of _____ and State of _____ on the day of _____

Registrant

By _____
(Signature and Title)

By _____
(Depositor)

By _____
(Name of officer of Depositor)

00 _____
(Title)

Instruction. If the registration statement is being filed only under the Securities Act or under both the Securities Act and the Investment Company Act, it should be signed by both the Registrant and the Depositor. If the registration statement is being filed only under the Investment Company Act, it should be signed only by the Registrant.

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

(Signature)

(Title)

(Date)

Dated: March 13, 1998.

By the Commission.

Margaret H. McFarland,
Deputy Secretary

Appendix A

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

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that proposed Form N-6, if adopted, would not have a significant economic impact on a substantial number of small entities. Form N-6 would be

used by insurance company separate accounts registered as unit investment trusts that offer variable life insurance policies for registration under the Investment Company Act of 1940 and offer securities under the Securities Act of 1933.

Proposed Form N-6 generally would not have a significant economic impact on small entities. Few, if any, registered insurance company separate accounts have 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 contained in rule 0-10 under the Investment Company Act and rule 157 under the Securities Act would be affected by proposed Form N-6.

Dated: March 2, 1998.

Arthur Levitt,
Chairman.

[FR Doc. 98-7072 Filed 3-20-98; 8:45 am]

BILLING CODE 8010-01-U