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U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

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**BILLING CODE 6325-38-P**

## **RAILROAD RETIREMENT BOARD**

### **Proposed Collection; Comment Request**

**SUMMARY:** In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Investigation of Claim for Possible Days of Employment.

Under section 1(k) of the Railroad Unemployment Insurance Act (RUIA), unemployment and sickness benefits are not payable for any day with respect to which remuneration is payable or accrues to the claimant. Also section 4(a-1) of the RUIA provides that unemployment or sickness benefits are not payable for any day the claimant receives the same benefits under any law other than the RUIA. Under Railroad Retirement Board (RRB) regulations, 20 CFR 322.4(a), a claimant's certification or statement on an RRB provided claim form that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost shall constitute sufficient evidence unless there is conflicting evidence. Further, under 20 CFR 322.4(b), when there is a question raised as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed

day or days, investigation shall be made with a view to obtaining information sufficient for a finding.

Form ID-5S(SUP), Report of Cases for Which All Days Were Claimed During a Month Credited Per an Adjustment Report, collects required information about compensation credited to an employee during a period when the employee claimed either unemployment or sickness benefits from a railroad employer. The request is generated as a result of a computer match which compares data that is maintained in the RRB's RUIA Benefit Payment file with data maintained in the RRB's records of service. The ID-5S(SUP) is generated annually when the computer match indicates that an employee(s) of the railroad employer was paid unemployment or sickness benefits for every day in one or more months for which creditable compensation was adjusted due to the receipt of a report of creditable compensation adjustment (RRB FORM BA-4, OMB Approved 3220-0008) from their railroad employer.

The computer generated Form ID-5S(SUP) includes pertinent identifying information, the BA-4 adjustment process date and the claimed months in question. Space is provided on the report for the employer's use in supplying the information requested in the computer generated transmittal letter, Form ID-5S, which accompanies the report. To our knowledge no other agency uses forms similar to Form ID-5S(SUP). Completion is voluntary. One response is requested of each respondent. The RRB estimates that 80 are completed annually.

The RRB proposes no changes to Form ID-5S(SUP).

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363 or send an e-mail request to [Charles.Mierzwa@RRB.GOV](mailto:Charles.Mierzwa@RRB.GOV). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or send an e-mail to [Ronald.Hodapp@RRB.GOV](mailto:Ronald.Hodapp@RRB.GOV). Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**

*Clearance Officer.*

[FR Doc. 04-8144 Filed 4-9-04; 8:45 am]

**BILLING CODE 7905-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. IC-26411; File No. 812-13024]

### **Integrity Life Insurance Company, et al.**

April 6, 2004.

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

**ACTION:** Notice of application for an order of approval pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the "Act").

**APPLICANTS:** Integrity Life Insurance Company ("Integrity"), Separate Account I of Integrity Life Insurance Company ("Integrity Separate Account I"), Separate Account II of Integrity Life Insurance Company ("Integrity Separate Account II"), National Integrity Life Insurance Company ("National Integrity;" together with Integrity, the "Integrity Companies"), Separate Account I of National Integrity Life Insurance Company ("National Integrity Separate Account I"), and Separate Account II of National Integrity Life Insurance Company (National Integrity Separate Account II") (collectively, the "Applicants").

**SUMMARY OF APPLICATION:** Applicants seek an order approving the proposed substitution of shares of Fidelity VIP Asset Manager: Growth Portfolio with Fidelity VIP Asset Manager Portfolio, Fidelity VIP Aggressive Growth Portfolio and Janus Growth Portfolio with Fidelity VIP Growth Portfolio, Janus Mid Cap Growth Portfolio with Fidelity VIP Mid Cap Growth Portfolio, Janus International Growth Portfolio and Janus Worldwide Growth Portfolio with Scudder EAFE Equity Index Fund, MFS Investors Trust Portfolio with MFS Capital Opportunities Portfolio, MFS Research Portfolio with MFS Investors Growth Stock Portfolio, and Putnam New Opportunities Fund with Putnam Voyager Fund (the "Substitution").

**FILING DATE:** The application was filed on September 30, 2003, and amended on April 1, 2004.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 6, 2004, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for

the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, P.O. Box 740074, Louisville, Kentucky, 40202-3319.

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

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549-0102 (202-942-8090).

**Applicants' Representations**

1. Integrity is a stock life insurance company organized under the laws of Ohio. Integrity is a subsidiary of Western and Southern Life Insurance Company, a mutual life insurance company originally organized under the laws of Ohio in 1888.

2. Integrity Separate Account I was established under Ohio law in 1986. Integrity Separate Account I is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by Integrity. Three variable annuity contracts funded by Integrity Separate Account I are affected by this application.

3. Integrity Separate Account II was established under Ohio law in 1992. Integrity Separate Account II is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by Integrity. One variable annuity contract funded by Integrity Life Separate Account II is affected by this application.

4. National Integrity is a stock life insurance company organized under the

laws of New York. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of Western and Southern Life Insurance Company.

5. National Integrity Separate Account I was established under New York law in 1986. National Integrity Separate Account I is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by National Integrity. Three variable annuity contracts funded by National Integrity Separate Account I are affected by this application.

6. National Integrity Separate Account II was established under New York law in 1992. National Integrity Separate Account II is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by National Integrity. One variable annuity contract funded by National Integrity Separate Account II is affected by this application (all eight variable annuities contracts affected by this application are hereinafter collectively referred to as the "Contracts").

7. Purchase payments under the Contracts are allocated to one or more subaccounts of the Separate Accounts. Income, gains and losses, whether or not realized, from assets allocated to the Separate Accounts are, as provided in the Contracts, credited to or charged against the Separate Accounts without regard to other income, gains or losses of Integrity or National Integrity, as applicable. The assets maintained in the Separate Accounts will not be charged with any liabilities arising out of any other business conducted by Integrity or National Integrity, as applicable. Nevertheless, all obligations arising under the Contracts, including the commitment to make annuity payments or death benefit payments, are general corporate obligations of Integrity or National Integrity, as applicable.

Accordingly, all of the assets of each of Integrity and National Integrity are available to meet its obligations under its Contracts.

8. Each of the Contracts permits allocations of accumulation value to

available subaccounts that invest in specific investment portfolios of underlying mutual funds. Each Contract offers between 53 and 60 portfolios.

9. Each of the Contracts permits transfers of accumulation value from one subaccount to another subaccount at any time prior to annuitization, subject to certain restrictions and charges described below. No sales charge applies to such a transfer of accumulation value among subaccounts.

10. The Contracts permit up to twelve free transfers during any contract year. A fee of \$20 may be imposed on transfers in excess of twelve transfers in a contract year. Transfers must be at least \$250, or, if less, the entire amount in the subaccount from which value is to be transferred. A variety of automatically scheduled transfers are permitted without charge and are not counted against the twelve free transfers in a contract year.

11. Each of the Contracts reserves the right, upon notice to contract owners and compliance with applicable law, to add, combine or remove subaccounts, or to withdraw assets from one subaccount and put them into another subaccount, and this reserved right is disclosed in each Contract's prospectus.

12. On an ongoing basis, the Integrity Companies review the performance of the portfolios underlying the Contracts. During the past several years, the Replaced Portfolios have not maintained the level of performance that was the basis for their inclusion in the Contracts. These unfavorable performance records have occurred on an absolute basis, as well as relative to comparable portfolios with other investment advisers. This performance record may be attributable to certain changes that were occurring at the investment adviser to the Replaced Portfolios.

13. Due to poor performance of the Replaced Portfolios in recent years, Applicants propose the following substitutions of shares:

Replaced Portfolio	Replacement Portfolio
Fidelity VIP Asset Manager: Growth Portfolio .....	Fidelity VIP Asset Manager Portfolio.
Fidelity VIP Aggressive Growth Portfolio .....	Fidelity VIP Growth Portfolio.
Janus Growth Portfolio .....	Fidelity VIP Growth Portfolio.
Janus Mid Cap Growth Portfolio .....	Fidelity VIP Mid Cap Growth Portfolio.
Janus International Growth Portfolio .....	Scudder EAFE Equity Index Fund.
Janus Worldwide Growth Portfolio .....	Scudder EAFE Equity Index Fund.
MFS Investors Trust Portfolio .....	MFS Capital Opportunities Portfolio.
MFS Research Portfolio .....	MFS Investors Growth Stock Portfolio.
Putnam New Opportunities Fund .....	Putnam Voyager Fund.

14. Janus Capital Corporation serves as the investment adviser for each of the Janus Portfolios. Fidelity Management and Research Corporation ("FMR") serves as the investment advisor for each of the Fidelity Portfolios. Massachusetts Financial Services Company ("MFSC") is the investment advisor to the MFS Funds. Deutsche Asset Management, Inc. ("DeAM") serves as the investment advisor for the Scudder Portfolios. None of the Applicants are affiliated with any of the Replaced or Replacement Portfolios or their respective investment advisers.

15. The 2003 expenses for each of the Replaced and Replacement Portfolios are shown in Chart A. Historical performance as of December 31, 2003 is shown in Chart B.

*Substitution 1*

16. Replaced Portfolio: Fidelity VIP Asset Manager: Growth Portfolio

Fidelity VIP Asset Manager: Growth Portfolio is an asset allocation fund that seeks to maximize total return over the long term through investments in stocks, bonds, and short-term money market instruments. The Portfolio has a neutral mix, which represents the way the Portfolio's investments will generally be allocated over the long term. The range and approximate neutral mix for each asset class are shown below:

	Range (percent)	Neutral mix (percent)
Stock Class .....	50-100	70
Bond Class .....	0-50	25
Short-Term/ Money Market Class .....	0-50	5

Since first being offered as an investment option more than two years ago, the Portfolio had only attracted about \$875,000 in net new sales and transfers at December 31, 2003.

17. Replacement Portfolio: Fidelity VIP Asset Manager Portfolio

Fidelity VIP Asset Manager Portfolio seeks high total return with reduced risk over the long-term by allocating its assets among stocks, bonds and short-term money market instruments. The Portfolio has a neutral mix, which represents the way the Portfolio's investments will generally be allocated over the long term. The range and approximate neutral mix for each asset class are shown below:

	Range (percent)	Neutral mix (percent)
Stock Class .....	30-70	50

	Range (percent)	Neutral mix (percent)
Bond Class .....	20-60	40
Short-Term/ Money Market Class .....	0-50	10

*Substitution 2*

18.a. Replaced Portfolio: Janus Growth Portfolio

Janus Growth Portfolio seeks long-term growth of capital in a manner consistent with the preservation of capital. It is a diversified portfolio that pursues its objective by investing primarily in common stocks selected for their growth potential. Although the Portfolio can invest in companies of any size, it generally invests in larger, more established companies. When the Janus market timing scandal surfaced in early September 2003 more than \$1.4 million was redeemed from this Portfolio in less than one month, leaving it with assets at December 31, 2003 of only approximately \$3.6 million.

18.b. Replaced Portfolio: Fidelity VIP Aggressive Growth Portfolio

Fidelity VIP Aggressive Growth Portfolio seeks capital appreciation. FMR invests the Portfolio's assets in companies FMR believes offer potential for accelerated earnings or revenue growth. FMR focuses investments in medium-sized companies but may also invest substantially in larger or smaller companies.

Fidelity VIP Aggressive Growth Portfolio was opened as a portfolio option on May 1, 2001 and closed exactly one year later because it was frequently being used by market timers. At December 3, 2003, it had approximately \$56,000 invested in it via the Integrity Companies.

19. Replacement Portfolio: Fidelity VIP Growth Portfolio

Fidelity VIP Growth Portfolio seeks capital appreciation. FMR invests the Portfolio's assets in companies FMR believes have above-average growth potential. Growth may be measured by factors such as earnings or revenue. Companies with high growth potential tend to be companies with higher than average price/earnings (P/E) ratios. Companies with strong growth potential often have new products, technologies, distribution channels or other opportunities or have a strong industry or market position. The stocks of these companies are often called "growth" stocks.

*Substitution 3*

20.a. Replaced Portfolio: Janus International Growth Portfolio

Janus International Growth Portfolio seeks long-term growth of capital. It invests, under normal circumstances, at least 80% of its net assets in securities of issuers from at least five different countries, excluding the United States. Although the Portfolio intends to invest substantially all of its assets in issuers located outside the United States, it may invest in U.S. issuers and it may at times invest all of its assets in fewer than five countries, or even a single country. When the Janus market timing scandal surfaced in early September 2003 more than \$1.3 million was redeemed from this Portfolio in less than one month, leaving it with assets of only approximately \$3.3 million at December 31, 2003.

20.b. Replaced Portfolio: Janus Worldwide Growth Portfolio

Janus Worldwide Growth Portfolio seeks long-term growth of capital in a manner consistent with the preservation of capital. It is a diversified portfolio that pursues its objective by investing primarily in common stocks of companies of any size throughout the world. The Portfolio normally invests in issuers from at least five different countries, including the United States. The Portfolio may at times invest in fewer than five countries or even a single country. Following redemptions of more than \$1.4 million in less than one month after the Janus market timing scandal surfaced in September 2003, and net transfers and redemptions for the year ended December 31, 2003 of \$7.3 million, approximately \$25 million was invested in this Portfolio's two service classes as of December 31, 2003.

21. Replacement Portfolio: Scudder EAFE Equity Index Fund

The EAFE Equity Index Fund seeks to match, as closely as possible (before expenses are deducted), the performance of the EAFE Index, which measures international stock market performance. The Fund attempts to invest in stocks and other securities that are representative of the EAFE Index as a whole.

*Substitution 4*

22. Replaced Portfolio: Janus Mid Cap Growth Portfolio

Janus Mid Cap Growth Portfolio seeks long-term growth of capital. It is a non-diversified portfolio that pursues its objective by normally investing at least 80% of its equity assets in securities issued by medium-sized companies.

Medium-sized companies are those whose market capitalization falls within the range of companies in the S&P MidCap 400 Index. Market capitalization is a commonly used measure of the size and value of a company. The market capitalizations within the Index will vary, but as of December 31, 2003, they ranged from approximately \$695 million to \$17 billion. The Portfolio had only approximately \$3.1 million invested in it via the Integrity Companies at December 31, 2003.

#### 23. Replacement Portfolio: Fidelity VIP Mid Cap Portfolio

FMR normally invests the Portfolio's assets primarily in common stocks. FMR normally invests at least 80% of the Portfolio's total assets in securities of companies with medium market capitalizations. Medium market capitalization companies are those whose market capitalization is similar to the capitalization of companies in the S&P Mid Cap 400 at the time of the investment. Companies whose capitalization no longer meets this definition after purchase continue to be considered to have a medium market capitalization for purposes of the 80% policy.

#### Substitution 5

#### 24. Replaced Portfolio: MFS Investors Trust Portfolio

MFS Investors Trust Portfolio seeks mainly to provide long-term growth of capital, with a secondary objective of current income, by normally investing at least 65% of its net assets in common stocks and related securities. While the Portfolio may invest in companies of any size, it generally focuses on companies with larger market capitalizations that MFS believes have sustainable growth prospects and attractive valuations based on current and expected earnings or cash flow. The Portfolio will also seek to generate gross income equal to approximately 90% of the dividend yield on the Standard &

Poor's 500 Composite Index. The Portfolio had only approximately \$3.5 million invested in it via the Integrity Companies at December 31, 2003.

#### 25. Replacement Portfolio: MFS Capital Opportunities Portfolio

MFS Capital Opportunities Portfolio seeks capital appreciation by normally investing at least 65% of its net assets in common stocks and related securities. The Portfolio focuses on companies that MFS believes have favorable growth prospects and attractive valuations based on current and expected earnings or cash flow.

#### Substitution 6

#### 26. Replaced Portfolio: MFS Research Portfolio

The MFS Research Portfolio seeks to provide long-term growth of capital and future income. The Portfolio invests, under normal market conditions, at least 80% of its net assets in common stocks and related securities, such as preferred stocks, convertible securities and depository receipts. The Portfolio focuses on companies that MFS believes have favorable prospects for long-term growth, attractive valuations based on current and expected earnings or cash flow, dominant or growing market share, and superior management. The Portfolio may invest in companies of any size. The investments may include securities traded on securities exchanges or in the over-the-counter markets. The Portfolio may invest in foreign securities (including emerging market securities), through which it may have exposure to foreign currencies. MFS Research Portfolio was first offered as a portfolio option by the Integrity Companies on May 1, 2001, but had garnered only approximately \$858,000 in assets in the Contracts at December 31, 2003.

#### 27. Replacement Portfolio: MFS Investors Growth Stock Portfolio

MFS Investors Growth Stock Portfolio seeks to provide long-term growth of

capital and future income rather than current income by investing, under normal market conditions, at least 80% of its net assets in common stocks and related securities, such as preferred stocks, convertible securities and depository receipts for those securities, of companies which MFS believes offer better than average prospects for long-term growth. MFS looks particularly for companies which demonstrate: (a) A strong franchise, strong cash flows and a recurring revenue stream; (b) a strong industry position where there is potential for high profit margins or substantial barriers to new entry in the industry; (c) a strong management with a clearly defined strategy; and (d) new products or services.

#### Substitution 7

#### 28. Replaced Portfolio: Putnam New Opportunities Fund

Putnam New Opportunities Fund seeks long-term capital appreciation by investing mainly in common stocks of U.S. companies, with a focus on growth stocks in sectors of the economy that Putnam Management believes have high growth potential. Growth stocks are issued by companies that Putnam Management believes are fast-growing and whose earnings it believes are likely to increase over time. At December 31, 2003, Putnam New Opportunities Fund had attracted only about \$7.2 million in investments through the Integrity Companies since it was offered in all Contracts in January 2003.

#### 29. Replacement Portfolio: Putnam Voyager Fund

Putnam Voyager Fund seeks capital appreciation by investing mainly in common stocks of U.S. companies, with a focus on growth stocks. Growth stocks are issued by companies that Putnam Management believes are fast-growing and whose earnings it believes are likely to increase over time.

### CHART A.—2003 PORTFOLIO EXPENSES

Portfolio	Mgmt. Fee (Percent)	12b-1 Fee (Percent)	Other Expenses (Percent)	Total Annual Operating Expenses (Percent)	Fee Reduction (Percent)	Net Total Annual Expenses (Percent)
Service Class Shares or Class B Shares to Service Class 2 Shares:						
Fidelity Asset Manager: Growth .....	0.58	0.25	0.22	1.05	N/A	1.05
Fidelity Asset Manager .....	0.53	0.25	0.13	0.91	N/A	0.91
Janus Growth .....	0.65	0.25	0.02	0.92	N/A	0.92
Fidelity Aggressive Growth .....	0.63	0.25	2.26	3.14	1.89	1.25
Fidelity Growth .....	0.58	0.25	0.09	0.92	N/A	0.92
Janus Worldwide Growth .....	0.65	0.25	0.06	0.96	N/A	0.96

CHART A.—2003 PORTFOLIO EXPENSES—Continued

Portfolio	Mgmt. Fee (Percent)	12b-1 Fee (Percent)	Other Expenses (Percent)	Total Annual Operating Expenses (Percent)	Fee Reduction (Percent)	Net Total Annual Expenses (Percent)
Janus International Growth .....	0.65	0.25	0.11	1.01	N/A	1.01
Scudder EAFE Equity Index .....	0.45	0.25	0.67	1.37	0.47	<sup>1</sup> 0.90
Janus Mid Cap Growth .....	0.65	0.25	0.02	0.92	N/A	0.92
Fidelity Mid Cap .....	0.58	0.25	0.12	0.95	N/A	0.95
MFS Investors Trust .....	0.75	0.25	0.12	1.12	N/A	1.12
MFS Capital Opportunities .....	0.75	0.25	0.19	1.19	0.04	1.15
MFS Research .....	0.75	0.25	0.13	1.13	N/A	1.13
MFS Investors Growth Stock .....	0.75	0.25	0.13	1.13	N/A	1.13
Putnam New Opportunities .....	0.59	0.25	0.08	0.92	N/A	0.92
Putnam Voyager Fund .....	0.55	0.25	0.07	0.87	N/A	0.87
Service Class to Service Class Shares:						
Fidelity Asset Manager: Growth .....	0.58	0.10	0.17	0.85	N/A	0.85
Fidelity Asset Manager .....	0.53	0.10	0.11	0.74	N/A	0.74
Institutional Class or Class A to Initial Class Shares:						
Fidelity Asset Manager: Growth .....	0.58	0.00	0.15	0.73	N/A	0.73
Fidelity Asset Manager .....	0.53	0.00	0.10	0.63	N/A	0.63
Janus Growth .....	0.65	0.00	0.02	0.67	N/A	0.67
Fidelity Growth .....	0.58	0.00	0.09	0.67	N/A	0.67
Janus Worldwide Growth .....	0.65	0.00	0.06	0.71	N/A	0.71
Janus International Growth .....	0.65	0.00	0.11	0.76	N/A	0.76
Scudder EAFE Equity Index .....	0.45	0.00	0.64	1.09	0.44	<sup>2</sup> 0.65
Janus Mid Cap Growth .....	0.65	0.00	0.02	0.67	N/A	0.67
Fidelity Mid Cap .....	0.58	0.00	0.12	0.70	N/A	0.70

<sup>1</sup> The Advisor has contractually agreed to waive its fees and/or reimburse expenses of the Fund, to the extent necessary, to limit all expenses to .90% of the average daily net assets of the Fund until April 30, 2005.

<sup>2</sup> The Advisor has contractually agreed to waive its fees and/or reimburse expenses of the Fund, to the extent necessary, to limit all expenses to .65% of the average daily net assets of the Fund until April 30, 2005.

CHART B.—PORTFOLIO PERFORMANCE AVERAGE ANNUAL RETURNS AS OF DECEMBER 31, 2003

Portfolio	1 year (Percent)	3 year (Percent)	5 year (Percent)
Service Class Shares, Service Class 2 or Class B Shares:			
Fidelity Asset Manager Growth .....	23.03	(1.48)	(0.78)
Fidelity Asset Manager .....	17.66	0.78	1.71
Janus Growth .....	31.49	(10.22)	(2.47)
Fidelity Aggressive Growth .....	30.28	(7.86)	N/A
Fidelity Growth .....	32.54	(8.79)	(1.55)
Janus Worldwide Growth .....	23.68	(10.74)	(0.47)
Janus International Growth .....	34.53	(8.55)	2.86
Scudder EAFE Equity Index .....	32.97	(7.94)	(3.76)
Janus Mid Cap Growth .....	34.76	(16.36)	(2.28)
Fidelity Mid Cap .....	38.25	6.27	18.97
MFS Investors Trust .....	21.84	(6.94)	(3.03)
MFS Capital Opportunities .....	27.11	(12.03)	(0.69)
MFS Research .....	24.37	(9.71)	(2.80)
MFS Investors Growth Stock .....	22.60	(12.03)	N/A
Putnam New Opportunities .....	32.43	(13.69)	(0.06)
Putnam Voyager Fund .....	24.91	(10.70)	(1.25)
Service Class Shares:			
Fidelity Asset Manager Growth .....	23.15	(1.19)	(0.54)
Fidelity Asset Manager .....	17.91	1.06	1.97
Institutional Class Shares, Initial Class or Class A Shares:			
Fidelity Asset Manager Growth .....	23.34	(1.19)	(0.54)
Fidelity Asset Manager .....	17.97	1.06	1.85
Janus Growth .....	31.73	(10.01)	(2.16)
Fidelity Growth .....	32.85	(8.56)	(1.32)
Janus Worldwide Growth .....	23.99	(10.52)	(0.13)
Janus International Growth .....	34.91	(8.31)	3.38
Scudder EAFE Equity Index .....	33.35	(7.66)	(3.49)
Janus Mid Cap Growth .....	35.10	(16.15)	(1.95)
Fidelity Mid Cap .....	38.64	6.54	19.25

30. The Substitution will take place at the portfolios' relative net asset values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c-1 thereunder with no change in the amount of any contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the subaccounts. Accordingly, there will be no financial impact on any contract owner. The Substitution will be effected by having each of the subaccounts that invests in the Replaced Portfolios redeem its shares at the net asset value calculated on the date of the Substitution and purchase shares of the respective Replacement Portfolios at the net asset value calculated on the same date.

31. The Substitution will be described in supplements to the prospectuses for the Contracts ("Stickers") filed with the Commission and mailed to contract owners. The Stickers will give contract owners notice of the Substitution and will describe the reasons for engaging in the Substitution. The Stickers will also inform contract owners with assets allocated to a subaccount investing in the Replaced Portfolios that no additional amount may be allocated to those subaccounts on or after the date of the Substitution. In addition, the Stickers will inform affected contract owners that they will have the opportunity to reallocate accumulation value:

- Prior to the Substitution from the subaccounts investing in the Replaced Portfolios, and
- For 30 days after the Substitution from the subaccounts investing in the Replacement Portfolios subaccounts investing in other portfolios available under the respective Contracts, without the imposition of any transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year.

32. The prospectuses for the Contracts, as supplemented by the Stickers, will reflect the Substitution. Each contract owner will be provided with a prospectus for the Replacement Portfolios before the Substitution. Within five days after the Substitution, the Integrity Companies will each send affected contract owners written confirmation that the Substitution has occurred.

33. The Integrity Companies will pay all expenses and transaction costs of the Substitution, including all legal, accounting and brokerage expenses relating to the Substitution. No costs will be borne by contract owners.

Affected contract owners will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of the Applicants under the Contracts be altered in any way. The Substitution will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitution than before the Substitution. The Substitution will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to contract owners.

34. Applicants believe that their request satisfies the standards for relief pursuant to section 26(c) of the Act, as set forth below, because the affected contract owners will have:

(a) contract values allocated to a subaccount invested in a Replacement Portfolio with an investment objective and policies substantially similar to the investment objective and policies of the Replaced Portfolio;

(b) for the three years ended December 31, 2003 all but three of the Replacement Portfolios have superior three year performance to that of the Replaced Portfolio. In the three exceptions, the performance difference is small or the five year performance is superior; and

(c) current total annual expenses are lower than those of the substituted portfolio, except in two cases where total annual expenses of the Replacement Portfolio are higher than those of the Replaced Portfolio, but by only 3 basis points in each case (in these two cases, as discussed below, the Integrity Companies propose to eliminate this difference through an expense reduction at the Separate Account level).

#### Applicants' Legal Analysis

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The purpose of section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer by preventing unscrutinized substitutions that might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted

from initial premium payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Moreover, in the insurance product context, a contract owner forced to redeem may suffer adverse tax consequences. Section 26(c) affords this protection to investors by preventing a depositor or trustee of a unit investment trust that holds shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

3. The purposes, terms and conditions of the Substitution are consistent with the principles and purposes of section 26(c) and do not entail any of the abuses that section 26(c) is designed to prevent. Applicants have reserved the right to make such a substitution under the Contracts and this reserved right is disclosed in each Contract's prospectus.

4. Substitutions have been common where the substituted portfolio has investment objectives and policies that are similar to those of the eliminated portfolio, current expenses that are similar to or lower than those of the eliminated portfolio, and performance that is similar to or better than that of the eliminated portfolio.

5. In all cases the investment objectives and policies of the Replacement Portfolios are sufficiently similar to those of the corresponding Replaced Portfolios that contract owners will have reasonable continuity in investment expectations. Accordingly, the Replacement Portfolios are appropriate investment vehicles for those contract owners who have contract values allocated to the Replaced Portfolios.

6. For the three years ended December 31, 2003 all but three of the Replacement Portfolios have superior performance to that of the Replaced Portfolios. The Replacement Portfolios have demonstrated superior performance over the last three years during a time of substantial market fluctuation and uncertainties. Applicants believe this superior performance shall continue to the benefit of shareholders. In addition, as noted previously, none of these three Replaced Portfolios has attracted significant assets, and two of the three are in the large cap asset class, where the Applicant has an overabundance of subaccount offerings.

7. In the first of the three exceptions, the proposed substitution of MFS Capital Opportunities Portfolio to replace MFS Investors Trust Portfolio, the performance of MFS Capital Opportunities Portfolio for both the five- and one-year periods ended December 31, 2003 was superior to that of MFS

Investors Trust Portfolio. The MFS Capital Opportunities Portfolio portfolio management team was replaced in October 2002, resulting in a significant turnaround in the Portfolio's performance since then.

8. In the second of the three exceptions, the proposed substitution of Fidelity Growth Portfolio to replace Fidelity Aggressive Growth Portfolio, the performance of Fidelity Growth Portfolio for the one-year period ended December 31, 2003 was superior to that of Fidelity Aggressive Growth Portfolio by more than 200 basis points.

Moreover, Fidelity Aggressive Growth Portfolio has not been offered by the Applicants since May 2002, and had only about \$56,000 invested in it at December 31, 2003.

9. In the last of the three exceptions, the proposed substitution of MFS Investors Growth Stock Portfolio to replace MFS Research Portfolio, the MFS Research Portfolio outperformed the MFS Investors Growth Stock Portfolio on an absolute basis for both the one- and three-year periods ended December 31, 2003. Importantly, however, the MFS Investors Growth Stock Portfolio provided better relative performance, according to Morningstar. MFS Investors Growth Stock Portfolio's three-year return places it in the 74th percentile among large cap growth funds, while MFS Research Portfolio's three-year return placed it in the 94th percentile among large cap blend funds.

10. MFS Research Portfolio's poor relative performance against its peers is an important consideration in Applicant's decision to seek to substitute it. Another is that MFS Investors Growth Stock Portfolio is considered a "flagship" fund by MFS and receives significant investment and marketing support. MFS Investors Growth Stock Portfolio supplemented its existing portfolio manager with two additional managers in October 2003, and saw favorable performance results for the year. Its return during 2003 placed it in the 28th percentile among its large cap growth peers, as compared to MFS Research Portfolio's 2003 return, which placed it in the 81st percentile among its large cap blend peers.

11. Finally, MFS Investors Growth Stock Portfolio has simply been a more attractive fund to investors. Though the inception date for both funds was May 2000, MFS Investors Growth Stock Portfolio (Service Class) has about \$209.2 million invested in it, while MFS Research (Service Class) has only about \$6.7 million invested in it. Similarly, since first being offered in Applicants' products in May 2000, MFS Investors Growth Stock Portfolio has more than

\$8 million invested in it via the Applicants, while MFS Research Portfolio has only about \$858,000 invested in it since first being offered by the Applicants in May 2002.

12. In all cases but two, the Replacement Portfolios will have lower annual expenses than the Replaced Portfolios. In the two substitutions that do not provide for lower expenses, the differences are *de minimis*. In each of these cases, the Replacement Portfolio's net total annual operating expenses as of the fiscal year ended December 31, 2003 were only 3 basis points higher than those of the corresponding Replaced Portfolio. To compensate for this small increase in expenses, Applicants propose the following. If, on the last day of each fiscal quarter (or, to the extent that Replacement Portfolio expense information is not available on a quarterly basis, on the last day of each fiscal semi-annual period) applicable to the 12 month period following the Substitution, the total operating expenses of either Replacement Portfolio (taking into account any expense waiver or reimbursement) exceed on an annualized basis the net expense level of the corresponding Replaced Portfolio for the fiscal year ended December 31, 2003, the Integrity Companies will, for each Contract outstanding on the date of the Substitution, reimburse the Separate Account as of the last day of such fiscal quarter (or, as applicable, fiscal semi-annual period), to the extent necessary so that the amount of the Replacement Portfolio's net expenses for such period, together with those of the corresponding Separate Account will, on an annualized basis, be no greater than the sum of the net expenses of the corresponding Replaced Portfolio and the expenses of the Separate Account for the 2003 fiscal year. In addition, for 12 months following the Substitution, the Integrity Companies will not increase asset-based fees or charges for Contracts outstanding on the day of the Substitution.

13. Importantly, in connection with assets held under Contracts affected by the Substitutions, the Integrity Companies will not receive, for three years from the date of the Substitutions, any direct or indirect benefits from the Replacement Portfolios, their advisors or underwriters (or their affiliates) at a rate higher than that which they had received from the Replaced Portfolios, their advisors or underwriters (or their affiliates), including without limitation 12b-1, shareholder service, administration or other service fees, revenue sharing or other arrangements in connection with such assets. The

Integrity Companies represent that the Substitutions and the selection of the Replacement Portfolios were not motivated by any financial consideration paid or to be paid by the Replacement Funds, their advisors or underwriters, or their respective affiliates.

14. The Substitution will not result in the type of costly forced redemption that section 26(c) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the Act:

(a) Each of the Replacement Portfolios is an appropriate portfolio to which to move contract owners with values allocated to the Replaced Portfolios because the portfolios have substantially similar investment objectives and policies.

(b) The costs of the Substitution, including any brokerage costs, will be borne by the Integrity Companies and will not be borne by contract owners. No charges will be assessed to effect the Substitution.

(c) The Substitution will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any contract owner's accumulation value.

(d) The Substitution will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitution than before the Substitution and will result in contract owners' contract values being moved to a Portfolios with the same or lower current total annual expenses, except in the case of two Replacement Portfolios where, as discussed above, the Integrity Companies propose to eliminate the difference in expenses through an expense reduction at the Separate Account level.

(e) All contract owners will be given notice of the Substitution prior to the Substitution and will have an opportunity for 30 days after the Substitution to reallocate accumulation value among other available subaccounts without the imposition of any transfer charge or limitation and without being counted as one of the contract owner's free transfers in a contract year.

(f) Within five days after the Substitution, the Integrity Companies will send to its affected contract owners written confirmation that the Substitution has occurred.

(g) The Substitution will in no way alter the insurance benefits to contract owners or the contractual obligations of the Integrity Companies.

(h) The Substitution will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to contract owners.

### Conclusion

Applicants request an order of the Commission pursuant to section 26(c) of the Act approving the Substitution. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in section 26(c) and should, therefore, be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49531; File No. SR-Amex-2003-105]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Exceptions to the Exchange's Quote Rule

April 6, 2004.

#### I. Introduction

On December 1, 2003, the American Stock Exchange LLC ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to amend Amex Rule 958A to clarify the application of the rule's exceptions to different series within the same option class. The proposed rule change was published for comment in the **Federal Register** on December 29, 2003.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description

Amex Rule 958A requires each responsible broker or dealer to promptly communicate its best bid, offer, and size, and to execute any order presented to it, at a price at least as favorable as its best bid or offer in any amount up to the size of that bid or offer, subject to certain exceptions. In this filing, Amex proposes to amend Amex Rule 958A to clarify that a transaction in one option series would enable a responsible broker or dealer to avail itself of the exception provided in Amex Rule 958A(c)(ii) for that same series of options only, rather than for the entire class of options.

#### III. Discussion

On November 17, 2000, the Commission adopted several amendments to Rule 11Ac1-1 under the Act ("Quote Rule") to apply it to options exchanges and options market makers.<sup>4</sup> Under the Quote Rule, an options exchange must provide to quotation vendors the best bid and the best offer for each options series traded on the exchange, subject to certain exceptions. In addition, the Quote Rule requires responsible brokers and dealers to honor their bids and offers for each options series, subject to certain exceptions. One exception to the Quote Rule would relieve a responsible broker or dealer of its obligation to be firm for its bid or offer for a particular options series if, at the time an order sought to be executed is presented, such responsible broker or dealer is in the process of effecting a transaction in such options series and immediately revises its bid or offer after the completion of such transaction.<sup>5</sup>

The options exchanges, including the Amex, subsequently amended their rules for the purpose of conforming to the requirements of the Quote Rule.<sup>6</sup> The Amex amended its rules to, among other things, incorporate the exceptions to the requirement that a responsible broker or dealer be firm for its quotations set forth under Rule 11Ac1-1(c)(3) under the Act. Specifically, Amex Rule 958A(c)(ii)(A)(2) currently

provides that a responsible broker or dealer shall not be obligated to execute a transaction for any listed option if, at the time an order is presented, the responsible broker or dealer was in the process of effecting a transaction in "such class and/or series" of option and immediately thereafter communicates a revised quotation size. Similarly, Amex Rule 958A(c)(ii)(A)(4) provides that a responsible broker or dealer shall not be obligated to execute a transaction for any listed option if, at the time an order is presented, the responsible broker or dealer was in the process of effecting a transaction in "such class and/or series" of option and immediately thereafter communicates a revised bid or offer. The Amex has misinterpreted these provisions as to relieve specialists and registered options traders of their obligations to execute orders in multiple series of an options class at the disseminated bid or offer. Accordingly, the Amex now proposes to amend Amex Rule 958A to clarify that a transaction in one series of an options class would enable a responsible broker or dealer to avail itself of the exception provided in Amex Rule 958A only for that same series of option.

The Commission believes that it was clear at the time the Amex amended its rules to conform to the requirements of the Quote Rule that the exceptions contained in paragraph (c)(3) of the Quote Rule apply to each option series individually and not to the entire option class. In approving the option exchanges' rules in June 2001, the Commission noted that the Amex and the Chicago Board Options Exchange, Inc. ("CBOE")<sup>7</sup> incorporated into their own rules the exceptions from the Quote Rule regarding revised bids, offers and quotation sizes.<sup>8</sup> The Commission, however, approved Amex Rule 958A and the comparable CBOE rule, stating that it "believes that including such provisions in the exchanges' rules is consistent with the Exchange Act, provided that the Exchanges interpret them in a manner consistent with paragraph (c)(3) of Rule 11Ac1-1 under the Act."<sup>9</sup> The CBOE represents that it has correctly interpreted, and enforced compliance with, its rule in a manner consistent with the Quote Rule, namely, to treat

<sup>4</sup> See Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000) (the "Adopting Release").

<sup>5</sup> See SEC Rule 11Ac1-1(c)(3).

<sup>6</sup> See Securities Exchange Act Release Nos. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) (notice and order granting partial accelerated approval for a pilot program with respect to File Nos. SR-Amex-2001-18; SR-CBOE-2001-15; SR-ISE-2001-07; SR-PCX-2001-18; and SR-Phlx-2001-37) ("SRO Rules Pilot Program Approval Order"); and 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001) (approval of File Nos. SR-Amex-2001-18; SR-CBOE-2001-15; SR-ISE-2001-07; SR-PCX-2001-18; and SR-Phlx-2001-37) ("SRO Rules Final Approval Order").

<sup>7</sup> The language in the Amex rule and the CBOE rule were similar in that the CBOE rule also included the language "such class and/or series."  
<sup>8</sup> See SRO Rules Final Approval Order, *supra* note 6.

<sup>9</sup> See Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001) (approving File Nos. SR-Amex-2001-18; SR-CBOE-2001-15; SR-ISE-2001-07; SR-PCX-2001-18; and SR-Phlx-2001-37).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 48948 (December 18, 2003), 68 FR 74989 ("Notice").