Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines and ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) certain mergers, consolidations or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants believe that rule 17a–8 may not be available in connection with the Reorganization because the Funds may be deemed to be affiliated persons (or affiliated persons of an affiliated person) by reason of SAFECO Insurance's ownership of more than 5% of the outstanding voting shares of the Insured Fund.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) exempting them from section 17(a) to the extent necessary to complete the reorganization. Applicants believe that the terms of the Reorganization are reasonable and fair and do not involve overreaching. Applicants state that the investment objectives, policies and restrictions of the Funds are substantially the same. Applicants also state that the Board, including a majority of the Independent Trustees, has determined that the participation by the funds in the Reorganization is in the best interests of each Fund and its shareholders, and that such participation will not dilute the interests of the existing shareholders of each Fund. In addition, applicants state that the Reorganization will be on the basis of the Funds' relative net asset values.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–9111 Filed 4–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24927; File No. 812–12210]

State Farm Life Insurance Company, *et al.*

April 5, 2001.

AGENCY: Securities and Exchange Commission (the ''Commission'' or ''SEC'').

ACTION: Notice of Application for an order under Section 11 of the Investment Company Act of 1940 (the 1940 Act'' or ''Act'') permitting certain exchange offers between certain unit investment trusts and certain open-end management investment companies.

Applicants: State Farm Insurance Company (''Life Company''), State Farm Life and Accident Assurance Company (''Accident Company''), State Farm Life Insurance Company Variable Annuity Separate Account (''Life Company VA Separate Account''), State Farm Life and Accident Assurance Company Variable Annuity Separate Account (''Accident Company VA Separate Account,'' and together with the Life Company VA Separate Account, the ''Separate Accounts'' and individually, a ''Separate Account''), State Farm Mutual Fund Trust (the ''Retail Fund'') and State Farm VP Management Corp. (''VP Management Corp.'').

Summary of Application: Applicants seek an order to permit exchanges between individual deferred variable annuity contracts (''Contracts'') of the Separate Accounts or any future Contracts offered by Life Company, Accident Company or any current and future affiliated insurance company (''Future Contracts'') and Retail Fund or any other registered, open-end management investment companies sponsored, organized and advised by a subsidiary of State Farm Mutual Automobile Insurance Company (''Auto Company''), the parent of Life Company, Accident Company and VP Management Corp. (''Future Funds, and together with Retail Fund, the ''Funds''). Auto Company together with its subsidiaries are referred to collectively as ''State Farm.''

Filing Date: The Application was filed on August 7, 2000, and amended and restated on April 3, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Any interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 27, 2001, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: c/o Alan Goldberg, Bell, Boyd & Lloyd LLC, 70 W. Madison, Suite 3300, Chicago, IL 60602.

FOR FURTHER INFORMATION CONTACT: Yolanda L. Ross, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

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

Applicants' Representations

1. Life Company and Accident Company are each stock life insurance companies organized under the laws of Illinois and wholly-owned by Auto Company Life Company and Accident Company issue the Contracts.

2. The Life Company VA Separate Account is a separate account of Life Company holding assets relating to the Contracts. Accident Company VA Separate Account is a separate account of Accident Company holding assets relating to Contracts. Each is registered as a unit investment trust under the 1940 Act. Each Separate Account currently has six separate subaccounts, each of which invests in a single corresponding portfolio of State Farm

Variable Product Trust (the ''Trust''), an open-end management investment company. Shares of the Trust are currently sold exclusively to separate accounts of Life Company and Accident Company to fund benefits under variable annuity and variable life contracts.

3. The Funds are composed of the Retail Fund and Future Funds. The Retail Fund offers two classes of shares. Class A shares are offered with a maximum front-end sales charge of 3%, a distribution fee of 0.25% pursuant to Rule 12b–1 under the Act (''Rule 12b–1 fee'') and a shareholder servicing fee of 0.25% not subject to Rule 12b–1. Class B shares are offered with a maximum contingent deferred sales charge of 3%, a distribution Rule 12b–1 fee of 0.65% and shareholder servicing fee of 0.25% not subject to Rule 12b–1. The contingent deferred sales charge is imposed according to the following schedule: first year—3%; second year—2.75%; third year—2.75%; fourth year—2.5%; fifth year—2%; and sixth year—1%. The Retail Fund also will offer an institutional class of shares, which will not be able to participate in an offer of exchange. Each portfolio of the Retail Fund will pay an advisory fee and certain other expenses. Future Funds may have similar types of fees and expenses.

4. VP Management Corp. is wholly-owned by Auto Company, and is registered as a broker-dealer under the Securities Exchange Act of 1934. VP Management Corp. distributes the Contracts and will distribute the shares of the Retail Fund and any Future Funds.

5. Life Company offers Contracts to individuals through the Life Company VA Separate Account, and Accident Company offers Contracts to individuals through the Accident Company VA Separate Account. A Contract Owner may choose to have purchase payments invested in any of the respective Separate Account's subaccounts. Subject to certain limitations, Contract Owners may transfer subaccount units at net asset value among the various subaccounts. Applicants may deduct a surrender charge when a Contract Owner makes a withdrawal or surrenders the Contract during the first seven years of the Contract, but does not deduct any sales charge from premium payments. Applicants calculate the surrender charge as a percentage of the amount withdrawn or surrendered that is not eligible for a free withdrawal as described in the Application. The applicable percentage is 7% the first year of the Contract, and declines by 1% in each following year, until it reaches 0% in the eighth year of the Contract. Applicants deduct from each Contract, or respective Separate Account, a daily charge for mortality and expense risk currently equal on an annual basis to 1.15% of net assets, and an annual administrative fee (currently $30) on each Contract anniversary, on the surrender date or on the annuity date.

6. Proposed Exchange from Contracts to Funds. The Funds propose to offer Contract Owners who desire to surrender their Contracts or withdraw part of their Accumulation Value (as defined in the Contract) and use the proceeds to purchase either Class A or Class B shares of the Funds (except in limited circumstances), the option to transfer such proceeds directly to the Funds for the purchase of such shares. Applicants will waive any otherwise applicable surrender charge on the surrenders or withdrawals in connection with an exchange. Any front-end sales charge usually imposed on purchases of Class A Fund shares will be imposed on Class A Fund shares purchased with that portion, if any, of the redemption proceeds of a Contract on which the Contract Owner would have paid a surrender charge had it not been waived. Any front-end sales charge usually imposed on purchases of Fund shares will be waived with respect to Fund shares purchased with that portion, if any, of the redemption proceeds of a Contract on which a Contract Owner would not have paid a surrender charge. Any contingent deferred sales charge usually imposed on redemption of Class B Fund shares will be imposed on Class B Fund shares purchased with that portion, if any, of the redemption proceeds of a Contract on which the Contract Owner would have paid a surrender charge had it not been waived. Any contingent deferred sales charge will be calculated as if the Class B Fund shares were held as of the date of the Contract was held and the Class B Fund shares were purchased at the time the purchase payments were made. For those Contract Owners whose surrender charge would have been less than the front-end sales charge on Class A Fund shares had Life Company or Accident Company imposed the surrender charge at the time of the exchange, Applicants will apply the proceeds of the exchange solely to Class B Fund shares.

7. Proposed Exchange from the Funds to the Contracts. The Life Company, the Accident Company and the Separate Accounts propose to offer Fund shareholders who desire to redeem their shares (including shares acquired through the reinvestment of dividends and distributions arising from ownership of shares of the Funds) and use the redemption proceeds to purchase a Contract, the option to transfer such redemption proceeds directly from the Funds to Applicants along with an application for a Contract. The contingent deferred sales charge customarily imposed on redemption of Fund shares will be waived; and any surrender charge on the subsequent surrender of the Contracts will be waived to the extent such Contracts were purchased with the redemption proceeds of Class A Fund shares. Any surrender charge on the subsequent surrender of the Contracts will be imposed to the extent such Contracts were purchased with the redemption proceeds of Class B Fund shares. Any surrender charge will be calculated as if the Contract were held as of the date the Fund shares were held and the purchase payments under the Contract were made at the time the Fund shares were purchased.

8. Each exchange would be effected at the relative net asset values of the securities exchanged, and would be priced according to Rule 22c–1 under the Act. Applicants would, in their sole discretion, determine to whom an exchange offer would be made, the time period during which the exchange offer would be in effect, and when to terminate an exchange offer. Applicants may establish fixed periods of time for certain exchanges (a ''window'') of at least 60 days. No open-ended exchange offer would be terminated or its terms amended materially without prominent notice to any shareholder or Contract Owners subject to that offer of the impending termination or amendment at least 60 days prior to that offer of the termination or the effective date of the amendment; provided, however, that no such notice would be required if, under extraordinary circumstances either: (a) there was a suspension in redemption of the exchanged security under section 22(e) of the Act or rules thereunder; or (b) the offering company was temporarily to delay or cease the sale of the security because it was unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

9. Applicants, subject to certain conditions more fully described in the Application, propose to retain the flexibility to impose holding periods, to limit exchanges by any one investor and to exclude specific Funds (or series or classes of shares thereof) from exchange offers, with the aim of curbing any pattern of abuse that might appear. No holding period will be imposed in connection with an exchange unless either no sales load is imposed on the

security to be acquired or such sales load imposed is less than the maximum that would be allowed if the restrictions in Rule 11a–3(b)(4) under the Act applied to the transaction. Any such holding period will be established by the offering entity and will apply uniformly to all security holders of the class specified.

10. Applicants represent that at the commencement of the exchange offers, and as long as the offers remain in effect, the prospectus of each applicable Contract and Fund will: (a) Describe the terms of each offer; (b) disclose any surrender charge, sales charge or administrative fee that would be imposed in connection with the exchange program; (c) disclose that each exchange offer is subject to termination and its terms are subject to change; and (d) describe the tax implications of the exchanges including, if appropriate, a description of any adverse tax consequences of an exchange.

11. Applicants request that the Commission order extend to: (a) all future Contracts issued by Life Company, Accident Company or any current and future State Farm insurance company, to the separate accounts relating to any such Contracts, and to the underwriters distributing the Contracts (''Future Contracts''); and (b) all Future Funds.

Applicants' Legal Analysis

1. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company, to exchange that security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) of the Act provides that, irrespective of the basis of exchange, Commission approval is required for any offer of exchange of any security of a registered unit investment trust for the securities of any other investment company. Accordingly, although Applicants believe that the proposed exchanges are at relative net asset value, Commission approval is required for the proposed exchanges because of the involvement of the Separate Accounts, each of which is a registered unit investment trust. Applicants state that they cannot rely on Rule 11a–2 nor rule 11a–3 because neither rule permits exchanges between a unit investment trust separate account and an open-end investment company that is not a separate account.

2. The legislative history of section 11 indicates that its purpose is to provide the Commission with an opportunity to review the terms of certain offers of exchange to ensure that a proposed offer is not being made ''solely for the purpose of exacting additional selling charges.'' H. Rep. No. 2639, 76th Cong., 2d Sess. 8 (1940). One of the practices Congress sought to prevent through Section 11 was the practice of inducing investors to switch securities so that the promoter could charge investors another sales load.

3. The proposed exchange offers will be based on the relative net asset values of the interests exchanged. Applicants represent that the offers of exchange will not generate duplicative sales charges or any other duplicative revenues, but will offer the Contract Owners and Fund shareholders the opportunity to use proceeds from one investment to acquire an interest in a different investment at a cost less than would apply in the absence of the exchange offer. Pursuant to each exchange offer, sales charges that would otherwise apply to the exchanged securities or the acquired securities are waived in certain cases.

4. In each exchange, Applicants emphasize that in no case will more than the full sales load on one security be assessed in connection with the exchanged and acquired security. Accordingly, Applicants submit the relief they request is consistent with the policies and purposes of Rules 11a–2 and 11a–3 under the 1940 Act and that the exchange would satisfy the sales load requirements of rules 11a–2 and 11a–3 under the Act if such rules applied. Those rules would permit the imposition of the full sales charge on an acquired security where, as here, no other sales charges are imposed in connection with the exchanges. Applicants assert that their proposal to impose sales charges on certain exchanges has been designed to result in the exchanging investor more nearly bearing his or her fair share of sales expense.

5. Applicants assert that the Commission, in adopting Rule 11a–3 under the Act, did not prohibit or restrict exchange offers where the acquired mutual fund shares involve a Rule 12b–1 fee. They further assert that the Commission recognized the possibility that the acquired security might have a Rule 12b–1 fee, by considering that as a factor in calculating the holding period for deferred sales charges.

6. Under the Contracts, a $30 annual administrative charge will be deducted for the year of the surrender pursuant to Rule 6c–8 upon full surrender of the Contract. Applicants submit that the imposition of this charge in connection with exchanges is fair and reasonable and consistent with the spirit and purpose of Rules 11a–2 and 11a–3 under the Act. Failure to impose this charge would result in exchanging investors avoiding their fair share of the costs of administering the Contracts. Applicants represent that the administrative charge is not designed to yield a profit to any Applicant, and is used solely to cover the Applicants' administrative costs.

7. The proposed exchanges may constitute taxable events for the investors involved. Nevertheless, the Funds and the Contracts being offered pursuant to the exchange program incorporate features which are markedly different from each other. The differences, for example, include different underlying media; the presence of annuity coverage; differences in the timing, nature and amount of charges; and different tax consequences. Applicants submit, therefore, that the features of a security being offered may very well provide a useful complement to the security then owned by the investor. The security offered may also provide a useful alternative to the security then owned by the investor and may be more appropriate to the current economic, investment and tax needs of the investor. Full disclosure of the particulars of each exchange offer will be made in the prospectus or statement of additional information, as appropriate, for the relevant security being offered.

8. Applicants submit that providing class relief is appropriate. All exchanges that would be permitted under the order would be on the same terms as the exchanges between the Separate Accounts and the Funds. Therefore, there would be no possibility of the switching abuses Congress sought to prevent through section 11. Without class relief, before Contract Owners and Fund shareholders could be given additional exchange options, Applicants would have to apply for and obtain additional exemptive orders. Applicants believe that these additional applications would present no new issues under the Act not already addressed in their Application.

9. Applicants believe that for the reasons set forth above, none of the abuses which Section 11 was enacted to prevent would be present. Applicants submit that the proposed offers of

exchange are consistent with the intent and purpose of section 11, and would provide a benefit to Contract owners and Fund shareholders by providing new investment options, and an attractive way to exchange existing interests in the Contracts for interests in open-end management investment companies.

Conclusion

For the reasons summarized above, Applicants request that the Commission issue an order under Sections 11(a) and 11(c) of the Act approving the exchange offers described in the Amended Application.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 01–9112 Filed 4–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24933; File No. 812–12362]

USAA Life Insurance Company, et al.

April 9, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

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

SUMMARY OF APPLICATION: Applicants request an order to permit unit investment trusts to substitute: (a) shares of Vanguard Variable Investment Trust (''Vanguard VIT'') Equity Index Portfolio for shares of Deutsche VIT Funds (''Deutsche VIT'') Equity 500 Index; (b) shares of Vanguard VIT Small Company Growth Portfolio for Shares of Deutsche VIT Small Cap Index; (c) shares of Vanguard VIT International Portfolio for shares of USAA Life Investment Trust (''LIT'') International Fund and shares of Deutsche VIT EAFE® Equity Index; and (d) shares of Vanguard VIT Money Market Portfolio for shares of LIT Money Market Fund. The shares to be replaced are currently held by USAA Life Insurance Company Variable Annuity Separate Account and USAA Life Variable Universal Life Insurance Separate Account to support certain variable annuity contracts (''Contracts'') and variable universal life insurance policies (''Policies'').

APPLICANTS: USAA Life Insurance Company (''USAA Life''); USAA Life Insurance Company Variable Annuity Separate Account (''VA Separate Account'') and USAA Life Variable Universal Life Insurance Separate Account (''VUL Separate Account'') VA Separate Account and VUL Separate Account are referred to collectively as the ''Accounts'').

FILING DATE: The application was filed on December 13, 2000 and amended on April 5, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally, or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 30, 2001 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Cynthia A. Toles, Esq., General Counsel, C–3–W, USAA Life Insurance Company, 9800 Fredericksburg Road, San Antonio, Texas 78288–3051, and Diane E. Ambler, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Fang, Attorney, or Keith E. Carpenter, 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 may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations:

1. USAA Life is a stock life insurance company organized under Texas law. USAA Life is a wholly-owned subsidiary of United Services Automobile Association.

2. The Accounts are registered under the Act as unit investment trusts (File Nos. 811–08670 (the VA Account) and 811–08625 (the VUL Account)). The assets of the VA Account support certain VA Contracts. The assets of the VUL Account support certain VUL Policies. Units of interest under the Contracts have been registered under the Securities Act of 1933 (''1933 Act'') on Form N–4 and interests in the Policies have been registered under the 1933 Act on Form S–6.

3. Each Account is divided into twelve ''Variable Fund Accounts,'' each of which invests in a different investment portfolio (''Portfolio''). Seven of these Portfolios are series of LIT, one is a series of Scudder Variable Life Investment Fund, one is a series of Alger American Fund and three are series of Deutsche VIT.

4. USAA Life has reserved the right under the Contracts and the Policies to substitute shares of another eligible investment fund for any of the current Portfolios.

5. USAA Life and the Accounts proposes to substitute: (a) shares of the Vanguard VIT Equity Index Portfolio (''Equity Index Replacement Portfolio'') for shares of the Deutsche VIT Equity 500 Index (''Equity 500 Index Eliminated Fund''); (b) shares of the Vanguard VIT Small Company Growth Portfolio (''Small Company Growth Replacement Portfolio'') for shares of the Deutsche VIT Small Cap Index (''Small Cap Index Eliminated Fund''); (c) shares of the Vanguard VIT International Portfolio (''International Replacement Portfolio'') for shares of the LIT International Fund (''International Eliminated fund'') and shares of Deutsche VIT EAFE® Equity Index (''EAFE® Equity Index Eliminated Fund''); and (d) shares of Vanguard VIT Money Market Portfolio (''Money Market Replacement Portfolio'') for shares of LIT Money Market Fund (''Money Market Eliminated Fund''). Each of the Equity 500 Index Eliminated Fund, Small Cap Index Eliminated Fund, International Eliminated Fund, EAFE® Equity Index Eliminated Fund, and Money Market Eliminated Fund also may be referred to herein as an ''Eliminated Portfolio.'' Each of the Equity Index Replacement Portfolio, Small Company Growth Replacement Portfolio, International Replacement Portfolio and Money Market Replacement Portfolio also may be referred to herein as a ''Replacement Portfolio.''

6. The investment objectives, strategies and risks of the Equity Index Replacement Portfolio and the Equity 500 Index Eliminated Fund are substantially similar. Both funds are passively managed index funds which seek to replicate the performance of the S&P 500 Index by investing primarily in the stocks of large U.S. companies listed on the S&P 500 Index. Both funds are subject to market, investment style and