

in the form were collected less frequently than a month after repurchases occur, the Commission and investing public would lack current information about closed-end funds that repurchase their own securities.

Commission staff estimates that each year approximately 19 closed-end funds use the repurchase procedures under rule 23c-1, and that these funds file a total of 115 forms each year.¹ The number of forms filed by each fund ranges from 1 to 12 depending on the number of months in which the fund repurchases its securities under rule 23c-1. Commission staff estimates that each response requires 1 burden hour to prepare and file Form N-23C-1 with a copy of any written solicitation to purchase securities under the rule (if necessary). Commission staff estimates each burden hour consists of 15 minutes of professional time and 45 minutes of support staff time.² Commission staff further estimates that each of the 19 funds expends between 1 and 12 hours annually in filing Form N-23C-1. The total annual burden of the rule's paperwork requirements is estimated to be 115 hours.

These estimates represent an increase of 92 hours from the prior estimate of 23 hours. The increase results primarily from the increase in the number of funds relying on the rule to purchase their securities. At the time of the last submission the Commission estimated that 4 funds filed a total of 23 Form N-23C-1s annually with the Commission (with each fund filing between 1 and 12 forms during the year). In 1999, 19 funds filed 115 forms with the Commission.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule and form is necessary to obtain the benefit of relying on the rule and form. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange

Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 30, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-8617 Filed 4-6-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24374; File No. 812-11888]

Alexander Hamilton Life Insurance Company of America, et al.

April 3, 2000.

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

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving a substitution of underlying fund shares (the "Substitution") and pursuant to Section 17(b) of the 1940 Act exempting certain in-kind transactions from Section 17(a) of the 1940 Act in connection with the Substitution.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered unit investment trusts to substitute shares of the S&P 500 Index Portfolio (the "JPVF 500 Portfolio") of the Jefferson Pilot Variable Fund, Inc. ("JPVF") for shares of the Fidelity Index 500 Portfolio (the "Fidelity 500 Portfolio") of the Fidelity Variable Insurance Products Fund II ("FVIPF II") currently held by those unit investment trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the Substitution.

APPLICANTS: Alexander Hamilton Life Insurance Company of America ("AH Life"), Alexander Hamilton Variable Annuity Separate Account ("AH Separate Account"), Jefferson Pilot Financial Insurance Company ("Jefferson Pilot Financial"), JPF Separate Account A ("JPF Account A"), JPF Separate Account C ("JPF Account C"), Jefferson Pilot LifeAmerica Insurance Company ("JP LifeAmerica"), JPF Separate Account B ("JPF Account B"), Jefferson-Pilot Life Insurance Company ("JP Life"), Jefferson-Pilot

Separate Account A ("JP Life Account A") and Jefferson Pilot Investment Advisory Corporation ("Jefferson Pilot Advisory") (collectively, the "Applicants").

FILING DATE: The application was filed on December 15, 1999, and amended and restated on March 8, 2000.

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 27, 2000, 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 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 20549-0609. Applicants: c/o Jefferson Pilot Financial Insurance Company, One Granite Place, Concord, New Hampshire 03301, Attn: Shari J. Lease, Esq.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior Counsel, or Susan M. Olson, 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. AH Life is a stock life insurance company organized under the insurance laws of the State of Michigan in 1963. AH Life commenced operations on October 31, 1964, and is engaged primarily in the sale of annuity contracts and life insurance policies. AH Life is authorized to write annuities and life insurance in Canada, the District of Columbia, and all states except New York. Jefferson Pilot is a stock life insurance company chartered in 1903 in Tennessee. Prior to May 1, 1998, Jefferson Pilot Financial was known as Chubb Life Insurance Company of America ("Chubb Life"). In 1991 Chubb Life redomesticated from

¹ These estimates are based on Form N-23C-1 filings for 1999.

² The burden hour estimates are based upon consultation with lawyers and accountants familiar with the practices of fund boards and the staff of investment advisers.

Tennessee to New Hampshire and is now a New Hampshire life insurance company. Jefferson Pilot Financial is engaged primarily in the sale of annuities and life insurance. Jefferson Pilot Financial is authorized to write annuities and life insurance in 49 states, Puerto Rico, the U.S. Virgin Islands, Guam and the District of Columbia. JP LifeAmerica is a stock life insurance company chartered in 1897 in New Jersey. Prior to May 1, 1998, JP LifeAmerica was known as Chubb Colonial Life Insurance Company. JP LifeAmerica is engaged primarily in the sale of annuities and life insurance and writes individual life contracts, as well as group life policies. JP LifeAmerica is licensed to sell life insurance in all States, Puerto Rico, the U.S. Virgin Islands, Guam and the District of Columbia. JP Life is a stock life insurance company organized under the insurance laws of North Carolina in 1890. JP Life is primarily engaged in the writing of whole life, term, endowment, and annuity policies on an individual ordinary basis, plus industrial and group insurance. JP Life is authorized to write annuities and other insurance in the Virgin Islands, Puerto Rico, the District of Columbia, and all States except New York. These four life insurance companies are referred to in the application and herein as the "Life Company Applicants," and they are affiliated companies wholly-owned by Jefferson-Pilot Corporation, a North Carolina corporation.

2. AH Separate Account is a segregated asset account of AH Life. It was established by AH Life pursuant to a resolution of its Board of Directors on January 24, 1994, in accordance with the laws of Michigan and is registered as a unit investment trust under the 1940 Act. AH Life issues certain variable annuity contracts through the AH Separate Account.

3. JPF Account A was established by Jefferson Pilot Financial pursuant to a resolution of its Board of Directors on August 20, 1984 in accordance with laws of New Hampshire and is registered as a unit investment trust under the 1940 Act. JPF Account A is used to fund certain variable life insurance policies issued by Jefferson Pilot Financial.

4. JPF Account C is a segregated asset account of Jefferson Pilot Financial. It was established by Jefferson Pilot Financial pursuant to a resolution of its Board of Directors on August 3, 1993, in accordance with the laws of New Hampshire and is registered as a unit investment trust under the 1940 Act. JPF Account C is used to fund certain

variable life insurance policies issued by Jefferson Pilot Financial.

5. JPF Account B is a segregated asset account of JP LifeAmerica. It was established by JP LifeAmerica pursuant to a resolution of its Board of Directors on March 2, 1994, in accordance with the laws of New Jersey and is registered as a unit investment trust under the 1940 Act. JPF Account B is used to fund certain variable life insurance policies issued by JP LifeAmerica.

6. JP Life Account A is a segregated asset account of JP Life. Its predecessor was established pursuant to a resolution of the Board of Directors of JP Life on May 13, 1969. JP Life Account A was established under the laws of North Carolina and is registered as a unit investment trust under the 1940 Act. JP Life Account A is used to fund certain variable annuity contracts issued by JP Life.

7. The above described segregated asset accounts are referred to in the application and herein as the "Separate Account Applicants." The variable annuity and variable life contracts issued by the Life Company Applicants (through the Separate Account Applicants) that would be affected by the Substitution are referred to in the application and herein as the "Contracts."¹ Each of the Contracts permits Contractowners to make a number of transfers between and among the sub-accounts of the respective Separate Account Applicant per contract or policy year and does not impose a transfer fee or charge on a number of such transfers.

8. Jefferson Pilot Advisory (formerly, Chubb Investment Advisory Corporation) is the investment adviser to the Jefferson Pilot Variable Fund, Inc. ("JPVF"), which is registered as an open-end management investment company under the 1940 Act and which was incorporated in Maryland on October 19, 1984, and each of its portfolios. One of these portfolios is the S&P 500 Index Portfolio (the "JPVF 500 Portfolio"). Jefferson Pilot Advisory is a corporation organized under the laws of

¹ JP Life, through JP Life Account A, issued two forms of individual flexible payment variable annuity contracts (the "Alpha Contracts"). Applicants represent that the Alpha Contracts are not currently being offered and that JP Life Account A does not file updated post-effective amendments consistent with the terms and conditions of relevant SEC no-action precedent. *See, e.g.,* Great-West Life & Annuity and Insurance Company (pub. avail. Oct. 23, 1990) ("Great-West"). Applicants state that in reliance on such precedent, certain information about the Alpha Contracts, JP Life Account A, and JPVF is provided to Alpha Contractowners in lieu of filing post-effective amendments to the registration statements relating to the Alpha Contracts or delivering updated Contract prospectuses to those Contractowners.

Tennessee in 1984 and is registered as an investment adviser under the Investment Advisers Act of 1940. Jefferson Pilot Advisory is a wholly-owned subsidiary of Jefferson-Pilot Corporation. Jefferson Pilot Advisory has obtained an SEC order granting relief from Section 15(a) of the 1940 Act and certain other provisions (the "JPVF Order") permitting it to manage JPVF's portfolios pursuant to a "manager-of-managers" arrangement.² Pursuant to the JPVF Order, Jefferson Pilot Advisory may, subject to certain conditions, including approval of the Board of JPVF, and without the approval of shareholders, (a) employ a new sub-adviser or sub-advisers for any portfolio of JPVF pursuant to terms of a new investment advisory agreement, in each case either as a replacement for an existing sub-adviser or as an additional sub-adviser; (b) change the terms of any investment advisory agreement pertaining to a sub-adviser; and (c) continue the employment of an existing sub-adviser on the same contract terms where a contract has been assigned because of a change of control of the sub-adviser. In such circumstances, Contractowners would receive notice of any such action, including information concerning any new sub-adviser that normally is provided in proxy materials.

9. The Fidelity Index 500 Portfolio ("Fidelity 500 Portfolio" or the "Replaced Fund") is a series of the Fidelity Variable Insurance Products Fund II ("FVIPF II"), an open-end management investment company established as a Massachusetts business trust under a Declaration of Trust dated March 21, 1988. Shares of the Fidelity 500 Portfolio are currently available only through the purchase of variable annuity and variable life insurance contracts and through certain tax qualified retirement plans. Fidelity Management & Research Company ("FMR") acts as the Fidelity 500 Portfolio's investment adviser and has retained Bankers Trust Company ("BTC") to serve as sub-adviser to the Fidelity 500 Portfolio. The Fidelity 500 Portfolio is an investment option under each of the Contracts.

² *In the Matter of Jefferson Pilot Variable Fund, Inc. and Jefferson Pilot Advisory Corporation*, Investment Company Act Rel. Nos. 23301 (July 1, 1998) (Order) and 23242 (June 5, 1998) (Notice). Applicants state that, because the JPVF 500 Portfolio is a series of JPVF, it will be entitled to rely on the JPVF Order. As a condition to the application, Applicants state that they will take no action in reliance on the JPVF Order with respect to the JPVF 500 Portfolio unless and until the operation of the Portfolio in the manner contemplated by the JPVF Order is approved, following the Substitution, by the holders of a "majority of the outstanding voting securities" of the Portfolio within the meaning of the 1940 Act.

10. Applicants state that the Fidelity 500 Portfolio seeks investment results that correspond to the total return of common stocks publicly traded in the United States as represented by the Standard & Poor's 500 Composite Stock Price Index ("S&P 500 Index"). Under normal circumstances, the Fidelity 500 Portfolio intends to invest at least 80% of its assets in common stocks included in the S&P 500 Index. The Fidelity 500 Portfolio seeks to achieve a 98% or better correlation between its total return, before fees and expenses, and the total return of the S&P 500 Index.

11. Applicants state that the JPVF 500 Portfolio was established pursuant to a resolution of the JPVF's Board of Directors at a Board meeting held on February 7, 2000. Applicants represent that JPVF filed a post-effective amendment to its registration statement on February 16, 2000 to register shares of the JPVF 500 Portfolio. The Substitution proposed by the application cannot go forward unless and until the post-effective amendment relating to JPVF 500 Portfolio's shares becomes effective. Upon such effectiveness, shares of JPVF 500 Portfolio will be offered only to corresponding sub-accounts of separate accounts established by the Life Company Applicants and in the future may be offered to other insurance companies, including insurance companies that are not affiliated with the Life Company Applicants. Jefferson Pilot Advisory will serve as investment manager of the JPVF 500 Portfolio and will retain Barclays Global Investors ("Barclays") to act as sub-adviser to the JPVF 500 Portfolio.

12. As disclosed in the post-effective amendment, the JPVF 500 Portfolio's investment objective is to seek to approximate as closely as practicable, before fees and expenses, the total rate of return of common stock publicly traded in the United States, as represented by the S&P 500 Index. The JPVF 500 Portfolio will pursue its objective by investing in all the securities that make up the S&P 500 Index and by investing in these securities in proportions that match their index weights, although the Portfolio reserves the right not to invest in every security in the S&P 500 Index if it is not practical to do so under the circumstances. The JPVF 500 Portfolio may also invest in stock index futures as a substitute for a comparable market position in the securities underlying the S&P 500 Index.

13. Applicants represent that the fees of the Fidelity 500 Portfolio were as follows. There is an annual management fee of .24%, and operating expenses for

the fiscal year ending December 31, 1998 were .11%. Applicants state that since the Fidelity 500 Portfolio is subject to an expense cap of .28%, 07% of such expenses were reimbursed and shareholders were assessed annual fees of .28% for that fiscal year. The Fidelity 500 Portfolio's expense cap is a non-contractual voluntary cap which may be terminated at any time. Applicants represent that, as to the JPVF 500 Portfolio, like the Fidelity 500 Portfolio, there will be an annual management fee of .24%. Annual operating expenses are anticipated to be .10%. Like the Fidelity 500 Portfolio, the JPVF 500 Portfolio will also be subject to an expense cap of .28%. Therefore, Jefferson Pilot Advisory would reimburse the JPVF 500 Portfolio .06% of its expenses to maintain annual expenses at no greater than .28%. Like the Fidelity 500 Portfolio's expense cap, the JPVF 500 Portfolio's expense cap will be a non-contractual voluntary cap which can be terminated at any time. However, Applicant Jefferson Pilot Advisory has represented that it will waive investment management fees and reimburse expenses to the extent necessary to keep annual fees of the JPVF 500 Portfolio from exceeding .28% of the average daily net assets through April 30, 2001.

14. Applicants represent that, as of June 30, 1999, the Fidelity 500 Portfolio had assets of approximately \$8.3 billion. Since the JPVF 500 Portfolio will be a newly organized fund, it presently does not have any assets and will not have any assets prior to the Substitution. Applicants further represent that they anticipate, based on current figures, that \$150 million in assets attributable to the Contracts would be invested in the Replacement Fund upon the consummation of the Substitution. Jefferson Pilot Advisory and Barclays have determined that the assets that will initially comprise the JPVF 500 Portfolio (whether redemptions are effected for cash and/or portfolio securities) upon consummation of the Substitution are entirely sufficient for purposes of meeting the JPVF 500 Portfolio's objectives and that the JPVF 500 Portfolio will not be disadvantaged in any way by virtue of its smaller initial asset base as compared with the present asset base of the Fidelity 500 Portfolio.

15. Applicants represent that Barclays presently manages a publicly available S&P 500 fund called the Barclays Global Investors S&P 500 Fund ("Barclays S&P 500 Fund"), a series of Barclays Global Investors fund, Inc., that has assets of approximately \$2.6 billion as of August 31, 1999. The Barclays S&P 500 Fund seeks to approximate as closely as

practicable, before fees and expenses, the capitalization-weighted total return of the S&P 500 Index. The Barclays S&P 500 Fund pursues its objectives by investing in all the securities that make up the S&P 500 Index and by investing in these securities in proportions that match their index weights. The Barclays S&P 500 Fund seeks to come within 95% of the total return of the S&P 500 Index, before fees and expenses, in falling as well as rising markets and does not seek to "beat" the market and does not seek temporary defensive positions when markets appear overvalued. It is anticipated that Barclays would "bunch" orders for the purchase and sale of securities for the JPVF 500 Portfolio with the publicly available Barclays S&P 500 Fund under appropriate circumstances, and subject to any regulatory requirements. Accordingly, the asset base of the publicly available Barclays S&P 500 Fund managed by Barclays will afford the JPVF 500 Portfolio certain economies of scale and other tangible benefits.

16. Applicants state that the prospectuses by which the Contracts were offered reserve to the respective Life Company Applicants the right to replace the shares of any underlying registered investment company held by the applicable Separate Account Applicant with shares of another registered investment company, provided any such substitution is approved by the SEC to the extent required by applicable law.

17. The Life Company Applicants propose to redeem all of the shares of the Fidelity 500 Portfolio they currently hold on behalf of the Separate Account Applicants at the close of business on the effective date of the Substitution. Applicants state that, in connection with such redemptions and the purchase of portfolio securities by the JPVF 500 Portfolio, the Fidelity 500 and JPVF 500 Portfolios would normally incur brokerage costs as the Fidelity 500 Portfolio would have to dispose of portfolio securities to satisfy redemption requests and the JPVF 500 Portfolio would have to purchase securities with the redemption proceeds. In order that such costs can be avoided, the redemption of shares of the Fidelity 500 Portfolio may be effected in whole or in part for portfolio securities (*i.e.*, "in-kind" redemptions). Applicants state that to this end, at the effective date of the Substitution, the Fidelity 500 Portfolio will transfer to the Separate Account Applicants portfolio securities held by the Fidelity 500 Portfolio, and the Separate Account Applicants will purchase shares of the JPVF 500

Portfolio with these portfolio securities. Applicants represent that in connection with the proposed in-kind redemption transactions, the JPVF 500 Portfolio and the Separate Account Applicants will comply with the requirements of Rule 17a-7 under the 1940 Act and pertinent SEC no action letters and the procedures JPVF and the Separate Account Applicants have established thereunder.³ Applicants state that, in view of the identity of investment objectives and policies of both Portfolios and the above noted cost savings anticipated to be derived from in-kind redemption transactions, they have determined such transactions would be appropriate. Applicants state that the valuation of any in-kind redemptions will be made on a basis consistent with the normal valuation procedures of the Fidelity 500 Portfolio and the normal valuation procedures of the JPVF 500 Portfolio, as provided in those Portfolios' established valuation procedures. Applicants state that it is presently anticipated that 100% of the redemption orders of the Separate Account Applicants will be effected on an in-kind basis, and, thus, there will be no brokerage costs. To the extent that the Substitution requires the purchase of portfolio securities, the Life Company Applicants and/or Jefferson Pilot Advisory will pay the related brokerage costs.

18. Applicants state that in all cases, the Life Company Applicants on behalf of their respective Separate Account Applicants will simultaneously place redemption requests with the Fidelity 500 Portfolio and purchase orders with the JPVF 500 Portfolio so that purchases will be for the exact amount of the redemption proceeds. As a result, at all times, monies attributable to Contractowners who have allocated value to the Fidelity 500 Portfolio will remain fully invested.

19. Applicants represent that the full net asset value of the redeemed shares held by the Separate Account Applicants will be reflected in Contractowners' accumulation unit or

annuity unit values following the Substitution. The Life Company Applicants represent that they will assume all transaction costs and expenses relating to the Substitution.

20. The Life Company Applicants have determined, for reasons based upon administrative, economic and marketing concerns, to use a proprietary mutual fund to serve as the S&P 500 fund that will serve as an underlying investment option for the Contracts, as well as other variable life and variable annuity contracts which they may offer in the future. Applicants state that the proposed Substitution will allow the Life Company Applicants to maintain a greater proprietary identity between their variable products and the S&P 500 investment option, which historically has been one of the most popular investment options among Contractowners. The proposed Substitution will afford the Life Company Applicants greater control with respect to administrative and compliance issues over this investment option and afford Jefferson Pilot Advisory the ability to make sub-adviser changes when necessary or appropriate as consistent with the above-noted manager-of-managers arrangement, subject to the conditions as set forth in the application.

21. Applicants also believe that Jefferson Pilot Advisory, as an affiliate of each Life Company Applicants, will have greater incentive to provide superior shareholder services to Contractowners. Correspondingly, the Life Company Applicants will have greater opportunity to contribute to and review the adequacy of the services being provided in connection with this investment option. Given the relative simplicity involved in managing an S&P 500 fund, Applicants believe that when comparing two S&P 500 funds which have the same fee structures and which are managed by experienced and suitable investment advisers, the difference between the respective funds lies mainly in the nature and quality of the non-advisory services provided by management of the respective funds. In this regard, Applicants believe Contractowners will be better served if the S&P 500 fund becomes a proprietary fund.

22. Applicants state that their desire to effect the Substitution also relates, in part, to BTC's role as sub-adviser to the Fidelity 500 Portfolio. Applicants represent that BTC has recently experienced turnover of portfolio management personnel which included the departure of the team which managed the Fidelity 500 Portfolio. Applicants believe that these events are

the kind of events that can be better managed for the benefit of Contractowners by including the JPVF 500 Portfolio in the funds over which Jefferson Pilot Advisory has overall management authority. Applicants further represent BTC recently encountered certain compliance problems that will require a permanent order to exemption issued by the SEC under Section 9(c) of the 1940 Act to permit it to continue to serve as an investment adviser to registered mutual funds. Applicants state that the substance of these compliance problems presently must be disclosed in the Fidelity 500 Portfolio's prospectus and will continue to be disclosed therein in the future. The Life Company Applicants find this type of disclosure to be troubling in connection with underlying mutual funds that serve as investment vehicles for their products.

23. Applicants represent that each of the Life Company Applicants supplemented the prospectus for its applicable Separate Account Applicant at the time of filing of the original application to reflect the proposed Substitution and its essential terms and mailed such supplement to Contractowners at that time. The supplement informed Contractowners (among other things) that they have the right to transfer amounts allocated to the Fidelity 500 Portfolio to any other investment option available under the Contracts at any time prior to the Substitution, and for a period of 31 days after the Substitution, and that any such transfer would not count toward the number of free transfers permitted in a Contract year. Within five (5) days after the Substitution, the Life Company Applicants will send to their respective Contractowners a written notice ("Notice") of the Substitution, identifying the shares of the Replaced Fund that have been eliminated and the shares of the Replacement Fund that have been substituted and other relevant information. The Applicants will include in such mailing the prospectus for the Replacement Fund and the applicable revised prospectus or supplement for the Contracts describing the Substitution.

24. Contractowners will be advised in the Notice that for a period of thirty-one (31) days from the mailing of the Notice, Contractowners may transfer any substituted assets to any other sub-account available under their Contracts without limitation or charge and without any such transfer counting as one of the free transfers permitted per

³ As here applicable, Rule 17a-7 exempts transactions between registered investment companies or separate series of registered investment companies from Section 17(a) of the 1940 Act, provided the conditions specified in that Rule are met. Applicants cannot literally comply with the terms of Rule 17a-17 because paragraph (a) thereof requires that the transaction be "for no consideration other than cash," whereas the subject transactions will involve the use of portfolio securities as consideration. However, the SEC Staff has granted several no-action letters under similar circumstances. See, e.g., Federated Investors (pub. avail. April 21, 1994); Trust Funds Institutional Managers Trust (pub. avail. July 20, 1988); Metropolitan Series Fund, Inc. (pub. avail. Aug. 29, 1986).

Contract year (the "Free Transfer Period").⁴

25. Prior to effecting the Substitution, Applicants state that they will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Contracts allow the Substitution as described in the application, and that the transactions can be consummated as described therein under applicable insurance laws and under the Contracts.

26. Applicants further state that, prior to effecting the Substitution, they will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the [SEC] shall have approved such substitution." Section 26(b) of the 1940 Act was enacted as part of the Investment Company Act Amendments of 1970. Prior to the enactment of these amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five (5) days after the substitution. In 1966, the SEC, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted security, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior SEC approval. Congress responded to the SEC's concerns by enacting Section 26(b) to require that the Commission approve all substitutions by the depositor of investments held by unit investment trusts. As the legislative history makes clear, Congress intended Section 26(b) to provide SEC scrutiny of proposed substitutions which could otherwise, 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 purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both.

2. Applicants submit that the purposes, terms, and conditions of the Substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants assert that, simply put, Contractowners will be assessed no charges whatsoever in connection with the Substitution and their annual fund level charges will not increase. In addition, to the extent a Contractowner does not wish to participate in the Substitution, he or she is free to transfer to any other option available under the relevant Contract prior to the Substitution and after the Substitution during the Free Transfer Period, without such transfer counting toward the number of free transfers permitted per year under a Contract. Applicants assert that Contractowners will be substituted into a fund whose investment objectives, policies and expenses are substantially identical in all material respects to those of the Replaced Fund. Finally, Applicants have concluded that it would be appropriate and in the best interests of Contractowners to have a proprietary S&P 500 mutual fund underlying their variable products.

3. Applicants submit that the Substitution presents none of the harms that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(1) the Replacement Fund has objectives, policies, and restrictions substantially identical in all material respects to the objectives, policies, and restrictions of the Replaced Fund so as to continue to fulfill the Contractowners' objectives and risk expectations;

(2) after receipt of the Notice informing a Contractowner of the Substitution, a Contractowner may request that his or her assets be reallocated to another subaccount at any time during the Free Transfer Period. The Free Transfer Period provides sufficient time for Contractowners to consider their reinvestment options;

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

(4) the Life Company Applicants have undertaken to assume all expenses and transaction costs (or ensure that an

affiliate assumes such expenses and costs), in connection with the Substitution;

(5) the Substitution will in no way alter the contractual obligations of the Life Company Applicants or the rights and privileges of Contractowners under the Contracts;

(6) Applicants anticipate that the JPVF 500 Portfolio will seek to rely upon the JPVF Order. Applicants will take no action in reliance on the JPVF Order with respect to JPVF 500 Portfolio unless and until the operation of JPVF 500 Portfolio in the manner contemplated by the JPVF Order, is approved by the holders of a majority of the outstanding voting securities of JPVF 500 Portfolio within the meaning of the 1940 Act, by vote obtained following the Substitution in a manner consistent with all outstanding relief granted by the SEC;

(7) the Substitution will in no way alter the tax benefits to Contractowners;

(8) Contractowners will not incur any fees or charges as a result of the proposed Substitution, nor will the Contractowners' rights or the Life Company Applicants' obligations under the Contracts be altered in any way. The Life Company Applicants will bear all expenses incurred in connection with the proposed Substitution and related filings and notices, including legal, accounting, and other fees and expenses. The proposed Substitution will not cause Contract fees and charges currently being paid by existing Contractowners to be greater after the proposed Substitution than before the proposed Substitution; and

(9) Contractowners may withdraw amounts under the Contracts or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

4. Applicants maintain that the Replacement Fund and the Replaced Fund will have investment objectives and policies that are substantially the same in all material respects. Accordingly, Life Company Applicants have specifically made the determination that the Replacement fund is a suitable and appropriate investment vehicle for Contractowners who have allocated value to the Replaced Fund and that the Substitution will be consistent with Contractowners' investment expectations.

5. Applicants assert that the fees and expenses of the Replacement Fund will be equal to (or less than) those of the Replaced Fund and that the Replacement Fund will receive comparable (or better) overall services.

⁴ Applicants state that they have sent and will continue to send to Alpha Contractowners all relevant information about the proposed Substitution in accordance with the terms of *Great-West*. Applicants further state that the substance of the disclosures about the Substitution that they have made or will make to Alpha Contractowners was or will be essentially identical to the disclosures about the Substitution that have already been made or will be made to all other affected Contractowners. Applicants state that certain of these disclosures have already been delivered and that all such further disclosures will be sent at approximately the same time to owners of Alpha Contracts as to all other affected Contractowners.

Accordingly, Applicants argue that the proposed Substitution poses no concerns in connection with the fees and expenses that will arise therefrom.

6. Applicants state that the prospectuses by which the Contracts were offered reserve to the respective Life Company Applicants the right to replace the shares of any underlying registered investment company held by the applicable Separate Account Applicant with shares of another registered investment company, provided any such substitution is approved by the SEC to the extent required by applicable law.

7. Applicants submit that, for all the reasons stated in the application, that their request for approval meets the standard set forth in Section 26(b) of the 1940 Act and is consistent with applicable precedent and should, therefore, be granted.

8. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of such an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company.

9. Applicants state that the proposed transactions first involve a transfer of portfolio securities by the Fidelity 500 Portfolio to the Separate Account Applicants; immediately thereafter, the Separate Account Applicants purchase shares of the JPVF 500 Portfolio with the portfolio securities received from the Fidelity 500 Portfolio. Since the Separate Account Applicants and the JPVF 500 Portfolio could be affiliated persons under Section 2(a)(3)(C) of the 1940 Act due to their common control, Applicants submit that this aspect of the Substitution could be prohibited by Section 17(a). Accordingly, Applicants believe that it is prudent to seek relief from Section 17(a).

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

(1) the terms of the proposed 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;

(2) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration

statement and reports filed under the 1940 Act; and

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

11. Applicants represent that the terms of the proposed transactions: Are reasonable and fair, including the consideration to be paid and received; do not involve overreaching; are consistent with the policies of the affected registered investment companies; and are consistent with the general purposes of the 1940 Act.

12. Applicants maintain that the Substitution transactions, including the redemption of the Fidelity 500 Portfolio shares on an in-kind basis and the purchase of the JPVF 500 Portfolio shares, will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c-1 thereunder. Applicants also maintain that Contractowners will not incur any fees or charges as a result of the transfer of account values. Contractowners' rights and privileges under the Contracts and the Life Company Applicants' obligations thereunder will not be affected by the Substitution. Applicants assert that the Substitution will not increase Contract or separate account fees and charges after the Substitution. Expenses incurred in connection with the Substitution, including legal, accounting and other expenses, will not be borne by Contractowners. Contract values will remain unchanged and fully invested following the consummation of the Substitution. Accordingly, Applicants represent that Contractowner interests after the Substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. Applicants asserts that in each case, the consideration to be received and paid is, therefore, reasonable and fair.

13. Applicants assert that the investment objectives and policies of the JPVF 500 Portfolio are substantially similar to the investment objectives and policies of the Fidelity 500 Portfolio. Applicants maintain that, in this regard, the Substitution is consistent with the findings required under Section 17(b) of the 1940 Act.

14. Applicants assert that the proposed Substitution is consistent with the general purposes of the 1940 Act and that the proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent.

15. Applicants submit that the proposed in-kind redemption transactions meet all of the requirements of Section 17(b) of the 1940 Act and that their request for an

order pursuant to that section exempting the transactions from the provisions of Section 17(a) of the 1940 Act, to the extent necessary, should be granted.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions and related in-kind transactions should be granted.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 00-8645 Filed 4-6-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27161]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 31, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 25, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified or any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 25, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

GPU, Inc. (70-9629)

GPU, Inc. ("GPU"), 300 Madison Avenue, Morristown, New Jersey 07960,