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File  
Priority 12/18/96

**PUBLIC**

Our Reference No. IP-7-96  
The Equitable Life Assurance  
Society of the United States  
Equitable Variable Life Insurance  
Company  
Equico Securities, Inc.

**RESPONSE OF THE OFFICE OF  
INSURANCE PRODUCTS  
DIVISION OF INVESTMENT MANAGEMENT**

By letters dated December 29, 1995, and December 6, 1996, you seek assurance that the staff of the Division of Investment Management will not recommend enforcement action to the Commission against The Equitable Life Assurance Society of the United States ("Equitable"), Equitable Variable Life Insurance Company ("Equitable Variable"), or Equico Securities, Inc. ("Equico") under Section 5 of the Securities Act of 1933, as amended (the "1933 Act"), and Rule 145 thereunder, or Sections 8 and 11 of the Investment Company Act of 1940, as amended (the "1940 Act"), if Equitable succeeds to the position of depositor of certain separate accounts of Equitable Variable (the "Separate Accounts") in connection with the merger of Equitable Variable with and into its parent, Equitable (the "Merger"). You also request assurance that the staff will not recommend enforcement action to the Commission if: (1) the change in the depositor for the Separate Accounts as a result of the Merger is reflected through the filing of amendments to the registration statements on Form N-8B-2 under the 1940 Act for the Separate Accounts; and (2) new registration statements on Form S-6 under the 1933 Act are filed by Equitable and the Separate Accounts to cover any securities transactions effected under the variable life insurance policies funded by the Separate Accounts ("Policies") after the Merger.

You further request assurance that the staff will not recommend enforcement action to the Commission against Equitable and the Separate Accounts if, after consummation of the Merger, they continue to rely on the exemptive orders cited in your December 6, 1996 letter and obtained on behalf of Equitable Variable, the Separate Accounts, and any other parties named therein, without filing amended or new applications for the same relief previously granted by the Commission.

You state that Equitable and Equitable Variable are New York stock life insurance companies, and are currently authorized to sell insurance and annuities in all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. Equitable Variable is a wholly owned subsidiary of Equitable. You further state that Equitable Variable is the depositor of the Separate Accounts, which are registered as unit investment trusts under the 1940 Act on Form N-8B-2. Interests in the Separate Accounts are registered under the 1933 Act on Form S-6. You represent that Equitable Variable established the Separate Accounts to fund the Policies.

In addition, you represent that Equico is the principal underwriter of the Separate Accounts, and distributes the Policies that are currently being offered for sale. Equico is registered as a broker-dealer under the Securities Exchange Act of 1934.

In your letters, you explain that, on January 1, 1997, Equitable Variable will be merged with and into Equitable, with Equitable as the surviving entity. As a consequence of the Merger, Equitable will be the legal owner of all of the assets of Equitable Variable, including the Separate Accounts. You state that the Merger has been approved by the Boards of Directors and shareholders of both Equitable and Equitable Variable and by the New York Department of Insurance.

Based on the facts and representations in your letters, and without necessarily agreeing with your legal analysis, we would not recommend enforcement action to the Commission against Equitable, Equitable Variable, or Equico under Section 5 of the 1933 Act and Rule 145 thereunder or Sections 8 and 11 of the 1940 Act if Equitable succeeds to the position of depositor of the Separate Accounts in connection with the proposed Merger. In addition, we would not recommend enforcement action to the Commission if: (1) the change in the depositor for the Separate Accounts as a result of the Merger is reflected through the filing of amendments to the registration statements on Form N-8B-2 under the 1940 Act for the Separate Accounts; and (2) new registration statements on Form S-6 under the 1933 Act are filed by Equitable and the Separate Accounts to cover any securities transactions effected under the Policies after the Merger.

We also would not recommend enforcement action to the Commission against Equitable or the Separate Accounts if, after consummation of the Merger, they continue to rely on the exemptive orders cited in your December 6, 1996 letter and obtained on behalf of Equitable Variable, the Separate Accounts, and any other parties named therein, without filing amended or new applications for the same relief previously granted by the Commission.

Our position is based particularly on your representations that: (1) the succession of Equitable to the position of depositor of the Separate Accounts and issuer of the Policies will not result in the offer or sale of any new or different security or in the creation of a new or different investment company issuer; (2) Equitable and the Separate Accounts will file amendments to the existing registration statements of the Separate Accounts on Form N-8B-2 under the 1940 Act to reflect the change in legal ownership of the assets of the Separate Accounts as a result of the Merger; (3) Equitable and the Separate Accounts will file new registration statements on Form S-6 under the 1933 Act, which will become effective on or about the effective date of the Merger, so that registration statements will be effective for any securities transactions effected under the Policies after the Merger; and (4) the owners of the Policies will receive a prospectus that describes the Merger.

Because our position is based on the facts and representations in your letter, you should note that different facts or representations may require a different conclusion. Further, this response expresses the Division's position on enforcement action only, and does not purport to express any legal conclusions on the issues presented.

A handwritten signature in cursive script that reads "Pamela K. Ellis". The signature is written in black ink and is positioned above the typed name.

Pamela K. Ellis  
Senior Counsel

**Beth N. Zeiger**  
Counsel  
(212) 554-3607  
Fax: (212) 554-1266



# EQUITABLE

LAW DEPARTMENT

December 6, 1996

rec'd OIP  
12/9/96

Pamela K. Ellis, Esq.  
Office of Insurance Products  
Room 10159, Mail Stop 8-1  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: *The Equitable Life Assurance Society of the United States ("Equitable"),  
Equitable Variable Life Insurance Company ("Equitable Variable")  
and EQ Financial Consultants, Inc. (formerly Equico Securities, Inc.)*

Dear Ms. Ellis:

This letter is in response to the telephone conversation you had with Thomas C. Lauerman of Freedman, Levy, Kroll & Simonds on Tuesday, November 26, 1996, during which you advised Mr. Lauerman of the staff's comments with respect to the above-captioned no-action request dated December 29, 1995. Captioned terms in this letter have the same meanings as in the December 1995 Letter. The following responses and additional information supplements and/or supersedes, as applicable, the information contained in the December 1995 Letter.

You requested further explanation of the affiliation between The Hudson River Trust and Equitable. Alliance Capital Management L.P., the Trust's investment adviser, is indirectly majority-owned by Equitable. A statement to this effect was included in the December 1995 Letter in the first paragraph on page 3. Moreover, separate accounts of Equitable and Equitable Variable were the record owners of approximately 99.6% of the Trust's shares as of March 31, 1996; EQ Financial Consultants, Inc., the Trust's distributor, is a wholly-owned subsidiary of Equitable; and certain directors and officers of the Trust are also directors and/or officers of Equitable and its affiliated companies.

You have asked for an update on the status of the approvals necessary to consummate the Merger. The Merger is scheduled to occur on January 1, 1997. The Merger was approved by the Executive Committees of the Boards of Directors of Equitable and Equitable Variable on August 14, 1996, and such approval was ratified by the respective Boards on September 19, 1996 and September 20, 1996, respectively. The Merger was approved by votes of shareholders of both Equitable and Equitable Variable on September 19, 1996. The Merger was approved by the New York Department of Insurance on September 27, 1996. No other approvals, regulatory or other, are required

to consummate the Merger. The parties fully intend to consummate the Merger and are aware of nothing at this time that would prevent such consummation.

3. You have asked us to update the list of orders cited in footnote no. 12 of the December 1995 Letter. We have reviewed the orders listed in footnote no. 12.<sup>1</sup> Based on several factors, including the recent changes to Sections 26 and 27 of the 1940 Act, we amend our request to omit reliance on several of the orders listed in footnote no. 12. We continue, however, to desire the requested no-action relief for the following orders:

File No. 812-6159, Rel. No. 14860 (Dec. 18, 1985) (notice) and Rel. No. IC-14899 (Jan. 14, 1986) (order) (mixed and shared funding relief); File No. 812-5739, Rel. No. IC-13868 (Apr. 5, 1984) (notice) and Rel. No. IC-13931 (May 8, 1984) (order) (contingent deferred sales load relief for The Champion policy); File No. 812-5475, Rel. No. IC-13402 (Jul. 26, 1983) (notice) and Rel. No. IC-13443 (Aug. 18, 1983) (order) (contingent deferred sales load relief for the SP-1 policy).

4. You advised us that the staff does not intend to entertain any further requests for no-action relief under Sections 17(a) and 17(d) of the 1940 Act in situations where separate accounts are being transferred in connection with an insurance company merger unless novel circumstances are presented.<sup>2</sup> Accordingly, we withdraw our request in the December 1995 Letter that the staff not recommend any enforcement action in connection with the transactions described in the December 1995 Letter with respect to Section 17 of the 1940 Act.<sup>3</sup>

Please call either the undersigned at (212) 554-3607 or Thomas C. Lauerman at Freedman, Levy, Kroll & Simonds at (202) 457-5106 if you have any questions or require further information. Thank you for your assistance with respect to this matter.

Very truly yours,



Beth N. Zeiger

cc: Thomas C. Lauerman  
Mary P. Breen

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<sup>1</sup> There have been no additional orders obtained since the date of the December 1995 Letter.

<sup>2</sup> See Metropolitan Life Ins. Co., pub. avail. May 17, 1996, at footnote 1.

<sup>3</sup> We also acknowledge that the correct date of the Merrill Lynch Life Insurance Company no-action letter cited in footnote no. 11 to the December 1995 Letter is September 26, 1991.

Received Jan 3, 1996

**Mary P. Breen**  
Vice President  
and Counsel  
(212) 554-3841  
Fax: (212) 554-1117



THE  
**EQUITABLE**

LAW DEPARTMENT

1933 Act      Section 5  
                    Rule 145  
1940 Act      Section 8  
                    Section 11  
                    Section 17

December 29, 1995

Ms. Brenda D. Sneed  
Assistant Director  
Office of Insurance Products  
and Legal Compliance  
Room 10162, Stop 10-6  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: *The Equitable Life Assurance Society of the United States,  
Equitable Variable Life Insurance Company  
and Equico Securities, Inc.*

Dear Ms. Sneed:

I am writing on behalf of The Equitable Life Assurance Society of the United States ("Equitable"), Equitable Variable Life Insurance Company ("Equitable Variable") and Equico Securities, Inc. ("Equico") to request that the staff advise us that it would not recommend enforcement action to the Securities and Exchange Commission (the "Commission") under Section 5 of the Securities Act of 1933 (the "Securities Act") and Rule 145 thereunder, and Sections 8, 11 and 17 of the Investment Company Act of 1940 (the "1940 Act"), in connection with a merger of Equitable Variable with and into its parent, Equitable (the "Merger"), as set forth more fully below. The staff has, in the past, responded favorably to no-action requests seeking relief from these provisions of the Securities Act and 1940 Act for similar transactions.<sup>1</sup>

<sup>1</sup> See, e.g., *Allegiance Life Insurance Company Separate Account A* (pub. avail. July 31, 1990); *Mass Life Insurance Company of New York* (pub. avail. Nov. 14, 1989); *Anchor National Life Insurance Company* (pub. avail. Nov. 8, 1989); *Lincoln National Pension Insurance Company* (pub. avail. Dec. 29, 1988); *Provident Mutual Variable Life Insurance Company* (pub. avail. Feb. 2, 1987); *Jefferson National Life Insurance Company* (pub.

## I. Background

### A. The Equitable Life Assurance Society of the United States

Equitable is a stock life insurance company organized under the laws of the State of New York and has been in continuous operation since 1859. Equitable is currently authorized to sell insurance and annuities in all fifty states, the District of Columbia, Puerto Rico and the Virgin Islands. Equitable is a wholly-owned subsidiary of The Equitable Companies Incorporated. As of June 30, 1995, Equitable had assets in excess of \$100 billion.

### B. Equitable Variable Life Insurance Company

Equitable Variable is a stock life insurance company organized under the laws of the state of New York in 1972. Equitable Variable is authorized to sell insurance and annuities in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. Equitable Variable is a wholly-owned subsidiary of Equitable. As of June 30, 1995, Equitable Variable had assets in excess of \$13 billion.

Equitable Variable is the depositor of Separate Account I and Separate Account FP (the "Separate Accounts"), which are registered as unit investment trusts under the 1940 Act on Form N-8B-2.<sup>2</sup> The Separate Accounts were established pursuant to New York Insurance Law<sup>3</sup> to fund variable life insurance policies issued by Equitable Variable (the "Policies"). Interests in the Separate Accounts are registered under the Securities Act on Form S-6.<sup>4</sup> As of June 30, 1995, the Separate Accounts had net assets of nearly \$4 billion.

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avail. Oct. 9, 1986); *American General Life Insurance of Delaware* (pub. avail. Mar. 13, 1986); and *Voyager Life Insurance Company* (pub. avail. Jan. 10, 1986).

<sup>2</sup> File Nos. 811-2581 (Separate Account I) and 811-4335 (Separate Account FP). The term "depositor" with respect to a unit investment trust (UIT) is defined to include the person primarily responsible for the organization of the UIT and the person who has continuing functions or responsibilities with respect to the administration and affairs of the UIT other than as trustee or custodian. See, Form N-8B-2.

<sup>3</sup> Separate Account I was established on June 28, 1973, and Separate Account FP was established on April 19, 1985.

<sup>4</sup> File Nos. 2-54015, 2-98590, 33-40590, 33-8237, 33-38594, 33-47928 and 33-83948. Equitable Variable also may have additional registration statements effective sometime next year relating to new forms of Policies. Other than the Separate Accounts, Equitable Variable has no separate accounts that are registered under the 1940 Act. Nor does Equitable Variable or any of its separate accounts have any Securities Act registration statement on file with the Commission, except as described herein.

Divisions of the Separate Accounts invest solely in the shares of corresponding portfolios of The Hudson River Trust ("the Trust"). The Trust is an open-end management investment company for which a Form N1-A registration statement is currently effective.<sup>5</sup> The Trust is a "series" fund, which is currently divided into thirteen separate portfolios. Alliance Capital Management L.P. ("Alliance") serves as investment adviser to the Trust. Alliance is indirectly majority-owned by Equitable.

C. Equico Securities, Inc.

Equico is the principal underwriter of the Separate Accounts and, pursuant to an agreement with Equitable and Equitable Variable, distributes the Policies that are currently being offered for sale. Equico was organized under the laws of the State of Delaware in 1971. Equico is registered as a broker-dealer under the Securities Exchange Act of 1934.<sup>6</sup>

II. The Proposed Transactions

Equitable and Equitable Variable have under consideration entering into an agreement and plan of merger (the "Merger Agreement") under which, pursuant to applicable state law, Equitable Variable would be merged with and into Equitable, with Equitable as the surviving corporation. Upon consummation of the Merger, which would be expected to occur on or about January 1, 1997, Equitable Variable's separate corporate existence would cease by operation of law and the business conducted by Equitable Variable would thereafter be conducted by Equitable. As a consequence of the Merger, Equitable would be the legal owner of all of the assets of Equitable Variable, including the Separate Accounts. Equitable would also become responsible for all of Equitable Variable's liabilities and obligations, including those created under the Policies outstanding at the time of the Merger. Section 7112 of the New York Insurance Law provides:

"Upon the merger or consolidation of any companies in the manner herein provided, all the rights, franchises and interests of the constituent companies, in and to every species of property, real, personal and mixed, and things in action thereunto belonging, shall be deemed as transferred to and vested in the surviving or consolidated company, without any other deed or transfer, and simultaneously therewith such surviving or consolidated company shall be deemed to have assumed all of the liabilities of the constituent companies."

N.Y. Insurance Law §7112 (McKinney 1985).

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<sup>5</sup> File Nos. 2-94996 and 811-4185.

<sup>6</sup> File No. 8-17883.



Thus, in effect, the Policies would become variable life insurance policies funded by separate accounts of Equitable. The Separate Accounts would continue to receive additional payments made under the Policies to the extent allocated to the Separate Accounts.<sup>7</sup> Equitable also might continue to offer to new customers those Policies currently available for sale, and may in the future issue new forms of variable life insurance policies that will be funded by the Separate Accounts.

The Merger would have the effect of changing the ownership of Trust shares held by Equitable Variable, as depositor for the Separate Accounts, to Equitable, as the new depositor for the Separate Accounts. This change would not affect the respective net asset values of the Trust shares involved, and no charges will be imposed, or other deductions made, in connection therewith. The Merger would not affect any unit values of the Separate Account investment divisions investing in the Trust shares. All costs of the Merger would be borne by Equitable and Equitable Variable.

The Merger Agreement would be subject to approval by the respective Boards of Directors of Equitable and Equitable Variable, as well as by their respective shareholders, in accordance with applicable state law. Prior approval of the Merger would also be obtained from the New York Department of Insurance and any other applicable regulatory authority. No vote or consent of owners of either Equitable Variable's policies or Equitable's contracts would be solicited with respect to the Merger because Equitable and Equitable Variable believe that under applicable state law no such vote would be required to consummate the Merger.

The Merger would have no effect on the Separate Accounts, except for the change in the insurance company acting as depositor for the Separate Accounts. The assets and liabilities that comprise the Separate Accounts immediately before the Merger would remain intact, physically and legally segregated from any other business, including any other separate accounts, of Equitable after the Merger. The Separate Accounts would continue to maintain their separate status as unit investment trusts registered under the 1940 Act.<sup>8</sup> There would be no event affecting the Separate Accounts in connection with the Merger that would require a vote of the owners of the Policies under the 1940 Act. In sum, the Separate Accounts after the Merger would operate in the same manner as before the Merger.

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<sup>7</sup> Some of the Policies also permit premiums to be allocated to a general account option. In reliance on Securities Act Section 3(a)(8), Equitable Variable has not registered interests under such option.

<sup>8</sup> The so-called "ectoplasm" theory of the nature of a separate account, in our view, supports the position that the Separate Accounts, as such, would have a continuing, uninterrupted existence, notwithstanding the change of the insurance company serving as their depositor and having legal ownership of their assets. See L. Loss and J. Seligman, *Securities Regulation*, 1008-1011 (1989); *Prudential Life Ins. Co. of Am.*, 41 SEC 335, 340-341 (1963), *aff'd sub. nom.*, *Prudential Life Ins. Co. of Am. v. SEC*, 326 F.2d 383 (3rd Cir. 1984), *cert. denied*, 377 U.S. 953 (1964).

Moreover, except for the succession of Equitable to Equitable Variable's obligations and liabilities arising under the then outstanding Policies, the Merger would not affect the provisions of, or rights and obligations under, the Policies; nor would the Merger affect the values determined under the Policies. None of the existing investment options would be substituted or terminated in connection with the merger. No payments would be required or charges imposed under the Policies in connection with, or by virtue of, the Merger that would not otherwise be required or imposed had the Merger not occurred. In view of the foregoing, owners of the Policies would have no investment decision to make with respect to the Merger.

### III. Discussion

As discussed more fully below, it is our view that with regard to the change in the depositor's identity pursuant to the Merger:

(a) Section 5 of the Securities Act and Rule 145 thereunder would be inapplicable and no registration statements on Form N-14 would be required;

(b) Sections 8, 11, 17(a) and 17(d) of the 1940 Act would be inapplicable; and

(c) any and all exemptive relief obtained before the Merger by Equitable Variable and/or the Separate Accounts under the 1940 Act with respect to the Separate Accounts could continue to be relied upon by Equitable and the Separate Accounts, and the other parties thereto, without any need for the filing of an amended or duplicative exemptive application with the Commission.

A. Section 5 of the Securities Act and Rule 145 Thereunder Would be Inapplicable to the Change of the Separate Accounts' Depositor Pursuant to the Merger.

It is our view that the succession of Equitable to the position of depositor of the Separate Accounts and issuer of the Policies would not result in the offer or sale of any new or different security or in the creation of a new or different investment company issuer for purposes of Section 5 of the Securities Act or Rule 145 thereunder. The Separate Accounts would remain intact after the Merger, and their assets would be legally segregated from all other assets, including any other separate accounts of Equitable.

No change would be made to the Policies, except that, by operation of law, Equitable would succeed Equitable Variable as the issuer of the Policies and would, accordingly, guarantee the rights and benefits provided by the Policies to Policyowners.<sup>9</sup> These rights and benefits (e.g., surrender rights, death benefits, etc.) would remain the same but would be guaranteed by

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<sup>9</sup> Some state insurance departments will require an endorsement to outstanding policies to reflect the change of issuer.

Equitable's larger pool of assets. The portion of the Policies' cash values that are allocated to the Separate Accounts would remain funded by the same pool of assets that presently constitutes the Separate Accounts, and each division of the Separate Accounts would continue to invest in shares of the same portfolio of the Trust.

Indeed, the Merger would only change the insurance company guaranteeing the death benefit and certain other contractual rights, and would not affect those aspects that cause the Separate Account interests under the Policies to be treated as securities, *e.g.*, the investment options available through the Separate Accounts. Moreover, as discussed above, owners of the Policies would not be asked to make a new investment decision, since their vote or consent would not be required in connection with Equitable's succession to Equitable Variable as issuer of their Policies as a result of the Merger. Based on this analysis, we believe that Section 5 and Rule 145 would be inapplicable to the change of the Separate Accounts' depositor. Accordingly, we believe that registration statements on Form N-14 would not be required.

B. Section 8 of the 1940 Act Would be Inapplicable to the Change of Depositor Pursuant to the Merger.

It is our view that the succession of Equitable to the position of depositor of the Separate Accounts as a result of the Merger could, and should, be effected through the amendment of the Separate Accounts' existing registration statements under the 1940 Act rather than through the filing of new notifications of registration and registration statements for the Separate Accounts pursuant to Section 8 of the 1940 Act. The change in the depositor would not change the structure or operation of the Separate Accounts or their relationship to the insurance company issuing the Policies or to the owners of the Policies. The Separate Accounts would continue to be treated as separate entities for all relevant purposes, including financial reporting.

Equitable and the Separate Accounts would file amendments to the Separate Accounts' existing registration statements on Form N-8B-2 under the 1940 Act to reflect the change in legal ownership of the Separate Accounts' assets as a result of the Merger. Equitable and the Separate Accounts also would file new registration statements on Form S-6, or any successor form, under the Securities Act so that registration statements would be effective for any securities transactions effected under the Policies after the Merger. Equitable would file these registration statements in order to ensure that they would become effective on or about the effective date of the Merger.<sup>10</sup>

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<sup>10</sup> These registration statements would contain new prospectuses (or previously issued prospectuses and supplements thereto) describing the Merger, among other things. Appropriate copies of these prospectuses or supplements would be used for new sales or sent to existing owners of outstanding Policies, as the case may be, after the Merger.

C. Section 11 of the 1940 Act Would be Inapplicable to the Change of Depositor Pursuant to the Merger.

Based on the same analysis, we also believe that the change of depositor pursuant to the Merger would not involve an exchange of securities issued by an investment company, namely the interests in Equitable Variable's Separate Accounts, for another security of an investment company for purposes of Section 11 of the 1940 Act. However, should this transaction be viewed as an offer of exchange of investment company securities within the meaning of Section 11 of the 1940 Act, we believe that the proposed transaction would comply with the requirements of Rule 11a-2 thereunder, because any such deemed exchange would be made pursuant to an offer by an affiliated insurance company and would be effected at relative net asset values. Thus, Commission approval of this transaction should not be required under Section 11 of the 1940 Act.

D. Section 17(a) of the 1940 Act Would be Inapplicable to the Change of Depositor Pursuant to the Merger.

It does not appear to us that the change of depositor pursuant to the Merger would involve the purchase or sale of any security or other property to or from the Separate Accounts requiring an exemption from Section 17(a). The Separate Accounts would not sell any assets to Equitable in connection with the Merger and would not be parties to the Merger Agreement. The assets of the Separate Accounts would not be combined with those of any other separate account or entity as a result of the Merger.<sup>11</sup> As explained above, the Separate Accounts would remain intact as segregated pools of assets.

E. Section 17(d) of the 1940 Act Would be Inapplicable to the Change of Depositor Pursuant to the Merger.

It is also our view that the change of depositor pursuant to the Merger would not involve a "joint" transaction requiring an exemption from Section 17(d) of the 1940 Act and Rule 17d-1 thereunder in order for the Merger to be effected. As explained above, the Separate Accounts would not participate in the transactions related to the Merger, except to the extent that, through their depositor, they would make appropriate filings with the Commission to reflect the change of such depositors. Equitable and Equitable Variable would bear the expense of these filings and all other expenses relating, directly or indirectly, to the Merger. Accordingly, the Merger would not

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<sup>11</sup> In this regard, the present request can be distinguished from prior no-action requests where additional exemptive relief under Section 17(a) of the 1940 Act was obtained. See, e.g., *Merrill Lynch Life Insurance Company* (pub. avail. Sept. 25, 1991) (assets of pre-existing annuity separate accounts of merged and surviving insurance companies to be combined upon consummation of merger); *Hariford Life Insurance Company* (pub. avail. Feb. 16, 1988) (assets of pre-existing separate accounts of merged and surviving insurance companies to be combined upon consummation of merger).

result in any expenditure or receipt of funds by the Separate Accounts or in any sharing by the Separate Accounts in the profits or losses of any venture with any other person.

6. Continuation of Exemptive Relief Previously Granted.

We believe that the several exemptions under the 1940 Act that Equitable Variable and the Separate Accounts have received<sup>12</sup> should continue to be applicable to Equitable and the Separate Accounts, and the other parties thereto, after the Merger is consummated, without filing amended or duplicative applications for the same exemptions with the Commission. Their continued applicability is appropriate because the Merger would not change either the structure or operations of the Separate Accounts, nor their relationship to the depositor or the owners of the Policies. The only resulting change would be the succession of Equitable to Equitable Variable as issuer of the Policies and depositor for the Separate Accounts. It is our view that such a change would have no impact upon, and would not be relevant to, the exemptions that were previously granted or the justifications offered for those exemptions. In further support of our position, we note that the staff has taken a favorable position on this issue in a series of no-action letters addressing comparable transactions.<sup>13</sup>

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<sup>12</sup> *Equitable Variable Life Insurance Company, et.al.*, File No. 812-9270, Rel. No. IC-21032 (Apr. 26, 1995) (notice) and Rel. No. IC-21094 (May 24, 1995) (order); File No. 812-9086, Rel. No. IC-20762 (Dec. 9, 1994) (notice) and Rel. No. IC-20822 (Jan. 6, 1995) (order); File No. 812-8650, Rel. No. IC-20025 (Jan. 19, 1994) (notice) and Rel. No. IC-20109 (Mar. 3, 1994) (order); File No. 812-7921, Rel. No. IC-18867 (Jul. 27, 1992) (notice) and Rel. No. IC-18906 (Aug. 24, 1992) (order); File No. 812-6159, Rel. No. 14860 (Dec. 18, 1985) (notice) and Rel. No. IC-14899 (Jan. 14, 1986) (order); File No. 812-6009, Rel. No. IC-14338 (Jan. 23, 1985) (notice) and Rel. No. IC-14391 (Feb. 22, 1985) (order); File No. 812-5739, Rel. No. IC-13868 (Apr. 5, 1984) (notice) and Rel. No. IC-13931 (May 8, 1984) (order); File No. 812-5475, Rel. No. IC-13402 (Jul. 26, 1983) (notice) and Rel. No. IC-13443 (Aug. 18, 1983) (order); File No. 812-4113, Rel. No. IC-9707 (Apr. 4, 1977) (notice) and Rel. No. IC-9745 (Apr. 29, 1977) (order); File No. 812-3994, Rel. No. IC-9396 (Aug. 12, 1976) (notice) and Rel. No. IC-9432 (Sep. 8, 1976) (order); File No. 812-3824, Rel. No. IC-8931 (Sep. 11, 1975) (notice) and Rel. No. IC-8992 (Oct. 16, 1975) (order).

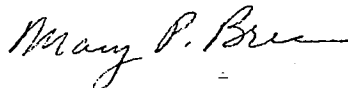
<sup>13</sup> See, e.g., *Security First Life Insurance Company* (pub. avail. Jan. 17, 1992); *UNUM Life Insurance Company* (pub. avail. Oct. 24, 1991); *California - Western States Life Insurance Company* (pub. avail. Dec. 9, 1991); *Merrill Lynch Life Insurance Company* (pub. avail. Sept. 26, 1991); *Mass Life Insurance Company* (pub. avail. Nov. 14, 1989); *Anchor National Life Insurance Company* (pub. avail. Nov. 8, 1989); *Lincoln National Pension Insurance Company* (pub. avail. Dec. 29, 1988); *Hartford Life Insurance Company* (pub. avail. Feb. 16, 1988); *Provident Mutual Variable Life Insurance Company* (pub. avail. Feb. 2, 1987); and *Voyager Life Insurance Company* (pub. avail. Jan. 10, 1986).

#### IV. No-Action Request

In view of these circumstances, we respectfully request that the staff issue a letter indicating that it would not recommend that the Commission take any enforcement action in connection with the transactions described herein with respect to Section 5 of the Securities Act and Rule 145 thereunder, and Sections 8, 11 and 17 of the 1940 Act. In addition, we request that the staff advise us that it would not recommend any action if: (i) change in the depositor for the Separate Accounts as a result of the Merger is effected through the filing of an amendment to the registration statement on Form N-8B-2 for the Separate Accounts under the 1940 Act; and (ii) new registration statements on Form S-6, or any successor form, for the Policies are filed by Equitable and the Separate Accounts to cover any securities transactions effected under the Policies after the Merger. Finally, we request the staff's concurrence in our view that the exemptive orders cited herein, to the extent they continue to be relied upon, will continue to be applicable to the Separate Accounts, and to their new depositor, Equitable, without filing amended or duplicative applications for the same exemptions with the Commission.

If you have any questions or require further information with respect to this matter, please call the undersigned at (212) 554-3841 or Tom Lauerman at Freedman, Levy, Kroll & Simonds at (202) 457-5106.

Very truly yours,



Mary P. Breen

cc: Thomas C. Lauerman

