

underwriting syndicate a principal underwriter of which is an Affiliated Underwriter would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Portfolio. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Subadviser) is an affiliated person or a second-tier affiliate of the Adviser the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion of the Portfolio, or any officer, director, or employee of the Multimanaged Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f-3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the "dumping" of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Portfolios because a decision by an Unaffiliated Subadviser to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for "dumping." In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Portfolio relying on the requested order will be advised by an

Affiliated Subadviser and at least one Unaffiliated Subadviser and will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, or Affiliated Underwriter (except by virtue of serving as Subadviser to a discrete portion of a Portfolio) will be an affiliated person or a second-tier affiliate of the Adviser, any Unaffiliated Subadviser, or any officer, director, or employee of a Multi-managed Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadvisers concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f-3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-9245 Filed 4-13-99; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23774; File No. 812-11388]

### The Equitable Life Assurance Society of the United States, et al.

April 7, 1999.

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

**ACTION:** Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to permit the recapture of credits applied to contributions made under certain deferred variable annuity contracts.

**SUMMARY OF APPLICATION:** Applicants seek an order under Section 6(c) of the

Act to the extent necessary to permit, under specified circumstances, the recapture of credits applied to contributions made under deferred variable annuity contracts and certificates (the "Contracts") that Equitable will issue through the Separate Accounts, as well as other contracts that Equitable may issue in the future through Future Accounts that are substantially similar in all material respects to the Contracts (the "Future Contracts"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, Equitable, whether existing or created in the future, that serves as a distributor or principal underwriter for the Contracts or Future Contracts offered through the Separate Accounts or any Future Account ("Equitable Broker-Dealer(s)").

**APPLICANTS:** The Equitable Life Assurance Society of the United States ("Equitable Life"), The Equitable of Colorado, Inc. ("EOC," and together with Equitable Life, "Equitable"), Separate Account No. 45 of Equitable Life ("SA 45"), Separate Account No. 49 of Equitable Life ("SA 49"), Separate Account VA of EOC ("SA VA," and together with SA 45 and SA 49, the "Separate Accounts"), any other separate account established by Equitable in the future to support certain deferred variable annuity contracts and certificates issued by Equitable ("Future Account"), EQ Financial Consultants, Inc. ("EQFC"), and Equitable Distributors, Inc. ("EDI") (collectively, "Applicants").

**FILING DATE:** The application was filed on October 30, 1998, and amended and restated on March 29, 1999.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 30, 1999, 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 SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

Applicants, c/o The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, Attn: Mary P. Breen, 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 St., NW, Washington, DC 20549-0102 (tel. (202) 942-8090).

### Applicants' Representations

1. Equitable Life is a stock life insurance company organized under the laws of the State of New York. SA 45 and SA 49 were established in August 1994 and June 1996. Equitable Life serves as depositor of SA 45 and SA 49. Equitable Life may in the future establish one or more Future Accounts for which it will serve as depositor.

2. EOC is a stock life insurance company organized under the laws of the State of Colorado. SA VA was established in December 1996, pursuant to authority granted under a resolution of EOC's Board of Directors. EOC serves as depositor of SA VA. EOC may in the future establish one or more Future Accounts for which it will serve as depositor.

3. SA 45 and SA 49 are each a segregated asset account of Equitable Life, and SA VA is a segregated asset account of EOC. Each of the Separate Accounts is registered with the Commission as a unit investment trust series investment company under the Act. SA 45 filed a Form N-8A Notification of Registration under the 1940 Act on September 6, 1994, and SA 49 filed a Form N-8A under the Act on June 7, 1996. SA VA filed a Form N-8A on February 16, 1999. Each of the Separate Accounts will fund the variable benefits available under the Contracts funded through it. Units of interest in the Separate Accounts under the Contracts they fund will be registered under the Securities Act of 1933 (the "1933 Act"). In that regard, SA 45 and SA 49 filed Form N-4 Registration Statements on September 30, 1998, under the 1933 Act relating to the Contracts. SA VA filed a Form N-4 Registration Statement on February 16, 1999, under the 1933 Act relating to the Contracts. Equitable may in the future issue Future Contracts through the Separate Accounts or through

Future Accounts. That portion of the respective assets of the Separate Accounts that is equal to the reserves and other Contract liabilities with respect to SA 45, SA 49 or SA VA is not chargeable with liabilities arising out of any other business of Equitable Life or EOC, as the case may be. Any income, gains or losses, realized or unrealized, from assets allocated to the Separate Accounts are, in accordance with the respective Separate Accounts' Contracts, credited to or charged against the Separate Accounts, without regard to other income, gains or losses of Equitable Life or EOC, as the case may be.

4. EQFC is an indirect, wholly-owned subsidiary of Equitable Life and will be the principal underwriter of SA 45 and SA VA and distributor of the Contracts funded through SA 45 (the "SA 45 Contracts") and through SA VA (the "SA VA Contracts"). EQFC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the NASD. The SA 45 Contracts and the SA VA Contracts will be offered through registered representatives of EQFC and its affiliate who are registered broker-dealers under the 1934 Act and NASD members. EQFC, or any successor entity, may act as principal underwriter for any Future Account and distributor for any Future Contracts issued by Equitable in the future. A successor entity also may act as principal underwriter for SA 45 and/or SA VA. During May 1999, EQFC will change its name to AXA Advisors, Inc.

5. EDI is an indirect, wholly-owned subsidiary of Equitable Life and will be the principal underwriter of SA 49 and SA VA and distributor of the Contracts funded through SA 49 (the "SA 49 Contracts") and the SA VA Contracts. EDI is registered with the Commission as a broker-dealer under the 1934 Act and is a member of the NASD. The SA 49 and SA VA Contracts will be offered through registered representative of EDI and its affiliates, as well as through unaffiliated broker-dealers who have entered into agreements with EDI. All of such affiliates and unaffiliated broker-dealers will be registered broker-dealers under the 1934 Act and NASD members. EDI, or any successor entity, may act as principal underwriter for any Future Account and distributor for any Future Contracts issued by Equitable in the future. A successor entity also may act as principal underwriter for SA 49 or SA VA.

6. The SA 45 Contracts and the SA 49 Contracts are part of Equitable Life's "Accumulator" line of annuity products and they are substantially similar in all

material respects. They differ principally in the mix of mutual funds underlying each of the Separate Accounts and in the distribution channels used in the offering of the Contracts; otherwise, they are essentially identical. The SA VA Contracts are part of EOC's "Accumulator" line of annuity products. They are substantially similar in all material respects of the SA 45 and SA 49 Contracts, except that they: (i) Only offer variable investment options during the accumulation period of the Contracts, (ii) do not offer a "guaranteed period account" feature that involves a market value adjustment; and (iii) do not offer a combined guaranteed minimum income benefit and guaranteed minimum death benefit or "baseBUILDER" feature. EOC may, in the future, add these features to the SA VA Contracts. Contracts may be issued as individual retirement annuities ("IRAs," either "Traditional IRAs" or "Roth IRAs"), or as non-qualified annuities ("NQ") for after-tax contributions only. NQ Contracts also may be used for certain types of qualified plans ("QP"). Each of the Contracts consists of (i) a basic form of group annuity contract (the "Group Contract") issued to a bank or trust company whose sole responsibility will be to serve as party to the Group Contract, (ii) a basic form of certificate issued under and reflecting the terms of the Group Contract, and (iii) forms of certificate endorsements to be used for specific forms of benefits under the certificates. In some states, the certificates will be issued in the form of individual contracts, rather than under a Group Contract.

7. An IRA Contract may be purchased by rolling over or transferring a contribution of at least \$25,000 or more from one or more individual retirement arrangements. Under a Traditional IRA Contract additional contributions of \$1,000 or more may be added at any time subject to certain restrictions. Additional contributions under a Traditional IRA Contract are limited to \$2,000 per year, but additional rollover or IRA transfer amounts are unlimited. In certain cases, additional amounts may not be added to a Roth IRA Contract. An NQ or QP Contract can be purchased with a contribution of \$25,000 or more. Additional contributions of \$1,000 or more can be made at any time, subject to certain restrictions. Certain restrictions also apply to the type of contribution Equitable will accept under QP Contracts. Different minimum contribution amounts may be established for other retirement plan

markets, including IRAs, or particular NQ markets, or for automatic investment programs.

8. The Contracts offered by Equitable Life permit, and in the future the Contracts offered by EOC may permit, contributions to be allocated to guarantee periods ("Guarantee Periods") expiring on specified dates. The Guarantee Periods will be funded through an Equitable Life "non-unitized" separate account (the "Guaranteed Period Account"). The assets in the Guaranteed Period Account will not be subject to claims of Equitable Life's general creditors. Each Guarantee Period will provide a guarantee of the contribution allocated thereto and interest. The guarantee is supported by Equitable Life's general account assets, including those allocated to the Guaranteed Period Account. An upward and downward adjustment, or "market value adjustment" ("MVA"), will be made to the annuity account value in a Guarantee Period upon a withdrawal, surrender or transfer from a Guarantee Period prior to its expiration. Death benefit amounts based on annuity account value in a Guarantee Period will reflect only any upward MVA. Guarantee Period interests are registered under the 1933 Act pursuant to a Form S-3 Registration Statement.

9. SA45 currently is subdivided into 27 sub-accounts, each of which will be available under the SA45 Contracts. SA 49 currently is subdivided into 22 sub-accounts, each of which will be available under the SA 49 Contracts. SA VA currently consists of 22 sub-accounts, each of which will be available under the SA VA Contracts. The respective sub-accounts are referred to as "Investment Funds." Each Investment Fund will invest in shares of a corresponding portfolio ("Portfolio") of The Hudson River Trust ("HRT") or EQ Advisors Trust ("EQAT," and together with HRT, the "Trusts"). The Investment Funds, and in the case of the SA 45 and 49 Contracts the Guarantee Periods, will comprise the initial "Investment Options" under the Contracts. Each Trust is an open-end, diversified series management investment company registered under the Act, whose shares are registered under the 1933 Act. Both Trusts are available under the Separate Accounts.

10. HRT is managed and its Portfolios are advised by Alliance Capital Management L.P. ("Alliance"), a publicly traded limited partnership. Alliance is an indirect, majority-owned subsidiary of Equitable Life. EQFC has overall responsibility for the general management and administration of each EQAT Portfolio. Various entities serve

as the investment advisers to one or more of the EQAT Portfolios. Equitable, at a later date, may determine to create an additional Investment Fund or Investment Funds of the Separate Accounts to invest in any additional Portfolio or Portfolios, or other such underlying portfolios or other investments as may now or in the future be available. Similarly, Investment Funds of the Separate Accounts may be combined or eliminated from time to time.

11. The Contracts provide for various withdrawal options, annuity benefits and payout annuity options, as well as transfer privileges among Investment Options, dollar cost averaging, death benefit and other features. The SA 45, SA 49 and SA VA Contracts have identical charges at the separate account level consisting of (i) a withdrawal charge as a percentage of contributions declining from 8% in years one and two to 0% in year ten and thereafter, with a 15% "free corridor" amount, (ii) asset-based charges at the annual rates of 1.10% for mortality and expense risks, 0.25% for administration expenses, and 0.25% for distribution expenses, assessed against the net assets of each Investment Fund, and (iii) currently, for SA 45 and SA 49 Contracts only, an annual 0.30% charge for an optional "baseBUILDER" benefit feature. The underlying Trusts each impose investment management fees, Rule 12b-1 plan fees and charges for other expenses.

12. Each time Equitable receives a contribution from a Contract owner, it will allocate to the owner's annuity account value a credit (the "Credit") equal to 3% of the amount of the contribution. Equitable will allocate Credits among the Investment Options in the same proportion as the corresponding contributions are allocated by the owner. Equitable will fund the Credits from its general account assets. Equitable will recapture Credits from an owner only if: (i) the owner returns the Contract during a 10-day (or longer, if required) "free look" period, or (ii) the owner annuitizes within three years of making a subsequent contribution, in which case Equitable will recover the amount of any Credit applicable to such contribution. Under the terms of the Contracts, Contract owners may not annuitize, i.e., commence annuity payments, earlier than five years from the date of the Contract.

13. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent necessary to permit Equitable to issue

Contracts and Future Contracts that provide for the recapture of an amount equal to any Credits in the following two instances: (i) when an owner returns a Contract to Equitable for a refund during the "free look" period, and (ii) when an owner annuitizes within three years of making a subsequent contribution, in which case Equitable will recover the amount of any Credit applicable to such contribution.

#### Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions summarized above with respect to the Contracts and any Future Contracts funded by the Separate Accounts or Future Accounts, that are issued by Equitable and underwritten or distributed by EQFC, EDI or Equitable Broker-Dealers. Applicants state that Future Contracts funded by the Separate Accounts or any Future Account will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants represent that it is not administratively feasible to track the Credit amount in any of the Separate Accounts after the Credit is applied. Accordingly, the asset based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the respective Separate Accounts, including the Credit amount, during the "free look" period and the three year period prior to annuitization. As a result, during such periods, the aggregate asset based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's annuity account value did not include the Credit.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principle underwriting of such

account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Credit recapture provisions of the Contracts would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the amount of the Credit allocated to his or her annuity account value upon receipt of an initial contribution is not vested until the applicable free-look period has expired without return of the Contract. Similarly, Applicants state that an owner's interest in the amount of any Credits allocated upon receipt of subsequent contributions made during the three years before the owner annuitizes also is not vested. Until or unless the amount of any Credit is vested, Applicants submit that Equitable retains the right and interest in the Credit amount, although not in the earnings attributable to that amount. Thus, Applicants argue that when Equitable recaptures any Credit it is simply retrieving its own assets, and because an owner's interest in the Credit is not vested, the owner has not been deprived of a proportionate share of the applicable Separate Account assets, *i.e.*, a share of the applicable Separate Accounts assets proportionate to the owner's annuity account value (including the Credit).

5. In addition, with respect to Credit recapture upon the exercise of the free-look privilege, Applicants state that it would be patently unfair to allow an owner exercising that privilege to retain a Credit amount under a Contract that has been returned for a refund after a period of only a few days. Applicants state that if Equitable could not recapture the Credit, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

6. Furthermore, Applicants state that the recapture of Credits relating to subsequent contributions made within three years of annuitization is designed to provide Equitable with a measure of

protection against "anti-selection." Applicants state that the risk is that, rather than spreading contributions over a number of years, an owner will make very large contributions shortly before annuitizing, thereby leaving Equitable less time to recover the cost of the Credits applied, to its financial detriment. Again, the amounts recaptured equal the Credits provided by Equitable from its own general account assets, and any gain would remain as part of the Contract's value at annuitization.

7. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put 103% of their contributions to work for them in the selected Investment Options. Also, any earnings attributable to the Credit will be retained by the owner, and the principal amount of the Credit will be retained if the contingencies set forth in the application are satisfied.

8. Further, Applicants submit that the recapture of any Credit only applies in relation to the risk of anti-selection against Equitable. Applicants state that Equitable's right to recapture Credits applies to subsequent contributions made within three years of annuitization protects it against the risk that owners will contribute larger amounts as they approach an annuitization date to obtain the Credit, while avoiding Contract charges over the long term. With respect to refunds paid upon the return of Contracts within the "free-look" period, the amount payable by Equitable must be reduced by the allocated Credits. Otherwise, Applicants state that purchasers could apply for Contracts for the sole purpose of exercising the free-look fund provision and making a quick profit.

9. Applicants submit that the provisions for recapture of any applicable Credit under the Contracts do not, and any such Future Contract provisions will not, violate Section 2(a)(32) and 27(i)(2)(A) of the Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described herein with respect to the Contracts and any Future Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

10. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any

securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c-1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security of redemption or of an order to purchase or sell such security.

11. Arguably, Equitable's recapture of the Credit might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that recapture of the Credit is not violative of Section 22(c) and Rule 22c-1. Applicants argue that the recapture does not involve either of the evils that Rule 22c-1 was intended to eliminate or reduce, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies though their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. See Adoption of Rule 22c-1 under the 1940 Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of a Credit, Equitable will redeem interests in an owner's annuity account at a price determined on the basis of current net asset value of the respective Separate Accounts. The amount recaptured will equal the amount of the Credit that Equitable paid out of its general account assets. Although owners will be entitled to retain any investment gain attributable to the Credit, the amount of such gain will be determined on the basis of the current net asset value of the respective Separate Accounts. Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants

request an exemption from the provisions of Section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contacts.

### Conclusion

Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in their Application described herein. Applicants submit that having them file additional applications would impair their ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the Application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

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

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 99-9244 Filed 4-13-99; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23776, 812-11126]

**Merrill Lynch Life Insurance Company, et al.**

April 8, 1999.

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

**ACTION:** Notice of application for an order of approval pursuant to section

26(b) of the Investment Company Act of 1940, as amended (the "1940 Act" or the "Act"), and an order of exemption pursuant to section 17(b) of the 1940 Act from section 17(a) thereof.

**APPLICANTS:** Merrill Lynch Life Insurance Company ("Merrill Lynch Life"), Merrill Lynch Life Variable Annuity Separate Account A ("Annuity Account A"), ML Life Insurance Company of New York ("ML of New York"), and ML of New York Variable Annuity Separate Account A ("New York Annuity Account A") (collectively, the "Applicants").

**SUMMARY OF APPLICATION:** Applicants request an order pursuant to section 26(b) of the 1940 Act approving the substitution of units of beneficial interest ("Units") issued by the Select Ten Portfolios (as defined below) of the Equity Investor Fund, Defined Asset Funds (the "Trust") and held by Annuity Account A and New York Annuity Account A (each an "Account"; collectively, the "Accounts"), to support, as applicable, certain variable annuity contracts (collectively, the "Contracts") issued by Merrill Lynch Life or ML of New York (collectively, the "Companies"). Applicants also request an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the 1940 Act to the extent necessary to permit the substitution of Units of the 1999 ML Select Ten V.I. Trust (the "1999 Portfolio") for Units of the 1998 ML Select Ten V.I. Trust (the "1998 Portfolio") initially held by the Accounts by redeeming Units of the terminating 1998 Portfolio for portfolio securities and cash ("redemption proceeds") and using the redemption proceeds, after adjustment by the distribution agent (The Bank of New York or "BONY") acting on behalf of the Accounts, to purchase Units of the 1999 Portfolio.

**FILING DATES:** The application was filed on April 30, 1998. It was amended and restated on March 25, 1999 and April 7, 1999.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 29, 1999, 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 issues contested. Persons who wish to be notified of a hearing may request notification by writing the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, c/o Edward W. Diffin, Jr. Esq., Vice President and Senior Counsel, Merrill Lynch Insurance Group, Inc., 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

**FOR FURTHER INFORMATION CONTACT:** Lorna J. MacLeod, Attorney, at (202) 942-0684, or Susan M. Olson, Branch Chief, at (202) 942-0680, 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 SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 29549 ((202) 942-8090).

### Applicant's Representations

1. Merrill Lynch Life, a stock life insurance company organized under the laws of the State of Arkansas, is the depositor and sponsor of Annuity Account A. Annuity Account A is registered with the Commission under the Act as a unit investment trust (File No. 811-6459).

2. ML of New York, a stock life insurance company organized under the laws of the State of New York, is the depositor and sponsor of New York Annuity Account A. New York Annuity Account A is registered with the Commission under the Act as a unit investment trust (File No. 811-6466).

3. The Trust is registered with the Commission under the 1940 Act as a unit investment trust (File No. 811-3044). The Trust consists of a number of portfolios (each a "Portfolio"), which includes the 1998 Portfolio, and will include the 1999 Portfolio (each, a "Select Ten Portfolio"; collectively, the "Select Ten Portfolios"). Each Select Ten Portfolio is or will be a series of the Trust created under New York law by a Trust Indenture between Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), the Sponsor and depositor, and BONY acting as the Trustee. Each Select Ten Portfolio will pursue the strategy of buying approximately equal amounts of the ten highest dividend yielding common stocks of the 30 stocks on the Dow Jones Industrial Average ("DJIA") as of a specified date each year ("Strategy Stocks") and hold them for about one year until the Select Ten Portfolio is terminated.