

Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on May 22, 1995, 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 may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Equitable Variable and the Account, 787 Seventh Avenue, New York, NY 10019. Equico, 1755 Broadway, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Patrice M. Pitts, Special Counsel, or Wendy Finck Friedlander, Deputy 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 Public Reference Branch of the Commission.

**Applicants' Representations**

1. Equitable Variable is a stock life insurance company organized in 1972 under the laws of the State of New York.

2. Equitable Variable established the Account as a segregated investment account in 1985, pursuant to the insurance laws of New York, for the purpose of funding variable life insurance policies, including the Policies.<sup>1</sup> The Account is registered with the Commission as a unit investment trust under the 1940 Act. Equitable Variable is the depositor of the Account.

3. Equico is registered as a broker-dealer under the Securities Exchange Act of 1934. Equico distributes the variable life insurance policies funded by the Account, including the Policies.

4. Equitable Variable deducts a monthly administrative expense charge and cost of insurance charges from the Policy account value, and reserves the right to assess a charge for transfers among the various investment options available under the Policies. In addition to deductions made from premiums and Policy account value, Equitable Variable assesses a charge against the assets of the Account for mortality and expense risks borne by it under the Policies. All

administrative and other charges in connection with the Policies will comply with all applicable requirements of Rule 6e-3(T) under the 1940 Act, subject only to the relief requested in this application.

5. Among the charges assessed under the Policies are: (a) A premium sales charge deducted either on a front-end or a deferred basis (the "Premium Sales Charge"); and (b) a contingent deferred sales charge (the "Surrender Charge"). The guaranteed maximum Premium Sales Charge is 6% of each premium payment (some Policies have lower guaranteed maximums). On a current basis, Equitable Variable intends to limit the cumulative Premium Sales Charge on the IL 2000 and IL Plus Series to less than the guaranteed maximum.<sup>2</sup>

6. The Rider provides that, upon surrender of a Policy: (a) All or a portion of the deductions from premiums (charge for premium taxes and Premium Sales Charge) will be refunded if the Policy deducts the Premium Sales Charge;<sup>3</sup> and (b) all or a portion of the Surrender Charge (and, in the case of the IL Plus Series, the administrative surrender charge) will be waived if the Policy is surrendered during the early policy years. The amount refunded or waived decreases proportionately in each of the second through sixth policy years as follows:

Surrender in policy year	Percent of premium deductions refunded	Percent of surrender charges waived
1 .....	100	100
2 .....	67	80
3 .....	33	60
4 .....	0	40
5 .....	0	20
6 and later .....	0	0

7. Applicants represent that the net effect of implementation of the Rider is to reduce the amount of sales charges that would otherwise be applicable during the early policy years. Applicants further represent that, because the waiver percentages under the Rider decrease in each of the second through the sixth policy years, implementation of the Rider could cause a policyowner to pay proportionately more Surrender Charge than would have been paid had the Policy been surrendered in a preceding policy year.

8. There is no specific fee or charge related to the Rider.<sup>4</sup> Equitable Variable intends to make the Rider available with Policies purchased through corporations or partnerships under the following circumstances:<sup>5</sup> (a) A minimum of five lives are insured; (b) proposed insureds are highly compensated; (c) the Policies have an average Face Amount of at least \$500,000;<sup>6</sup> (d) the initial premium payment is made with corporate or partnership funds; and (e) the aggregate annualized first year premium for all Policies is at least \$150,000.

9. In Equitable Variable's experience, policyowners of the type to which the Rider will be available are unlikely to surrender their Policies within the five-year period during which the Rider is operative. Applicants represent that the amount of the Surrender Charge has not been increased to compensate for the fact that, because of the Rider, not all Policies will be subject to the full Surrender Charges that otherwise would apply.

**Applicants' Legal Analysis**

1. Section 27(a)(3) of the 1940 Act provides, in effect, that the amount of sales charge deducted from any of the first twelve monthly payments of a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment, and that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment. This prohibition is referred to commonly as the "stair-step" rule.

2. Applicants request an exemption from the stair step requirements of Section 27(a)(3) and Rule 6e-3(T)(b)(13)(ii) and (d)(1)(ii)(A) to the extent necessary because, until the seventh policy year, the Rider could cause a policyowner to pay proportionately more Surrender Charge than would have been paid had the Policy been surrendered in a preceding policy year. Applicants submit that the requested relief is necessary only because they have reduced the amount of the Surrender Charge otherwise payable under the Policy during the early policy years, a procedure they contend is favorable to policyowners.

3. Subsection (b)(13)(ii) of Rule 6e-3(T) under the 1940 Act, in pertinent part, provides an exemption from Section 27(a)(3), provided that the proportionate amount of sales charge

<sup>1</sup> The Policies shall be referred to more specifically herein as the "IL 2000 Series," The "IL Plus Series," and the "COLI Series." The relevant file numbers are 33-40590 (IL 2000 Series) and 33-83948 (IL Plus and COLI Series).

<sup>2</sup> Under the COLI Series, the Premium Sales Charge is deducted on a deferred basis from Policy account value rather than from gross premium.

<sup>3</sup> No deductions from premium are refunded under a Policy that provides for deferred deduction of the Premium Sales Charge.

<sup>4</sup> The provisions of the Rider are incorporated into the contract form for the COLI Series. The term "Rider" as used herein, includes the provisions of the COLI Series contract.

<sup>5</sup> These requirements may vary in certain states.

<sup>6</sup> This criterion does not apply to the COLI Series.