

applications, thereby reducing the administrative expenses of Applicants and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair their ability effectively to take advantage of business opportunities as they arise. Further, if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection.

#### Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and 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.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-12387 Filed 5-16-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21953; File No. 812-9796]

#### **SAFECO Life Insurance Company, et al.**

May 13, 1996.

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

**ACTION:** Notice of application for approval under the Investment Company Act of 1940 ("1940 Act").

**APPLICANTS:** SAFECO Life Insurance Company ("SAFECO"), SAFECO Separate Account C ("Account C"), SAFECO Securities, Inc. ("SSI"), Princor Financial Services Corporation ("Princor"), and Principal Marketing Services, Inc. ("Principal Marketing").

**RELEVANT 1940 ACT SECTION:** Section 11(a) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order pursuant to Section 11(a) of the 1940 Act approving the terms of an offer to exchange interests in certain variable annuity contracts issued by Principal Mutual Life Insurance Company ("Principal Mutual Contracts") for variable annuity contracts issued by SAFECO ("SAFECO Contracts").

**FILING DATE:** The application was filed on October 3, 1995 and amended and restated on May 6, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order will be issued unless the SEC

orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC 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 June 7, 1996, 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 SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants: SAFECO, Account C and SSI, 15411 N.E. 51st Street, Redmond, Washington 98052; Princor and Principal Marketing, The Principal Financial Group, Des Moines, Iowa 50392-0200.

**FOR FURTHER INFORMATION CONTACT:** Edward P. Macdonald, Staff Attorney, or Wendy Friedlander, Deputy Chief (Office of Insurance Products), Division of Investment Management at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

#### Applicants' Representations

1. SAFECO is a stock life insurance company organized under the laws of the state of Washington. SAFECO is licensed to sell individual and group life, accident and health insurance and annuities in the District of Columbia and all states except New York. SAFECO is a wholly-owned subsidiary of SAFECO Corporation, a holding company whose subsidiaries are engaged primarily in insurance and financial service businesses.

2. Account C is a separate account of SAFECO established pursuant to Washington State insurance law and registered with the SEC as a unit investment trust. Account C is divided into sub-accounts, each of which invests exclusively in one of the available portfolios of SAFECO Resource Series Trust or Scudder variable Life Investment Fund.

3. SSI is a wholly-owned subsidiary of SAFECO that is registered with the SEC as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. ("NASD"). SSI is the principal underwriter for the SAFECO Contracts.

4. Princor, an indirect wholly-owned subsidiary of Principal Mutual Life

Insurance Company, is registered with the SEC as a broker-dealer. Princor is a member of the NASD and is the principal underwriter of the Principal Mutual Contracts. In connection with the proposed exchange offer and pursuant to a selling agreement with SSI, Princor will act as a selling broker in the sale of the SAFECO Contracts.

5. Principal Marketing, a wholly-owned subsidiary of Principal Mutual, is a licensed general insurance agent in approximately 34 states. Principal Marketing is unaffiliated with SAFECO. Principal Marketing sells variable annuity and variable life insurance contracts of insurance companies unaffiliated with Principal Mutual, but is not registered as a broker-dealer with the SEC.<sup>1</sup>

#### *The SAFECO Contracts*

6. The SAFECO Contracts are individual, flexible purchase payment, deferred variable annuity contracts that provide for accumulation of contract values and payment of monthly annuity amounts on a fixed and variable basis. They are designed to be used in retirement plans qualifying under Section 403(b) of the Internal Revenue Code of 1986, as amended, ("Code") and individual retirement programs, such as individual retirement accounts pursuant to Section 408 of the code.

7. Under the SAFECO Contracts a contract holder may withdraw up to 10% of contract value per year without penalty. The SAFECO Contracts have a contingent deferred sales load ("CDSL") that declines over an eight year period from 8% to 0% of the amount withdrawn, in excess of the 10% free withdrawal amount. The CDSL deducted will never exceed 8.5% of the purchase payments made under that particular SAFECO Contract. A withdrawal charge of the lesser of \$25 or 2% of the amount withdrawn will apply to each partial withdrawal after the first in any contract year.

8. The SAFECO Contracts have a mortality and expense risk charge of 1.25% of the average daily net asset value of Account C, an asset-based administration charge of 0.15% of the average daily net asset value of Account

<sup>1</sup> Principal Marketing obtained a letter from the SEC's Division of Market Regulation agreeing not to seek enforcement action if Principal Marketing did not register as a broker-dealer based on certain representations including, e.g., that all such sales will be made by insurance agents and brokers of Principal Mutual who are also registered representatives of Princor and that Princor will be responsible for monitoring and controlling the activities of those registered representatives with respect to their sales of variable annuity and variable life insurance contracts. Principal Marketing Services, Inc. (pub. avail. June 2, 1988).

C, and an annual administration fee, currently \$30, which is deducted only if contract value is less than \$50,000. The SAFECO Contracts reserve the right to increase the \$30 administration fee to \$35.

9. A transfer charge of the lesser of \$10 or 2% of the amount transferred applies to each transfer exceeding 12 in any contract year (not counting automatic transfers that take place over a period of six months or more).

10. Portfolio expenses for the portfolios available under the SAFECO Contracts range from approximately 0.65% to approximately 1.08% on an annual basis. State premium taxes are deducted at annuitization of from purchase payments, as required by state law.

#### *The Principal Mutual Contract*

11. The Principal Mutual Contracts are group variable annuity contracts issued by Separate Account B of Principal Mutual, a mutual life insurance company unaffiliated with SAFECO. Although the Principal Mutual Contracts have no fixed account investment option, they permit a participant to exchange the participation certificate for an associated fixed-dollar annuity contract issued by Principal Mutual.

12. The Principal Mutual Contracts have a CDSL that declines over a ten year period from 7% to 0% of the amount withdrawn. The CDSL will never exceed 9% of purchase payments relating to the amounts withdrawn.

13. The Principal Mutual contracts have an administration charge of \$25 per year for each participant plus an asset-based administrative charge which is 0.50% of the first \$50,000 of contract value of any participant, divided by the total contract value of the participant. If purchase payments for a participant under a Principal Mutual Contract are made as part of a retirement plan sponsored by, or program of, a participant's employer and Principal Mutual receives all of that portion of the purchase payments under such a plan or program directed to annuity contracts for all employees participating in the plan or program, then the percentage of the asset-based administration charge will be computed by dividing 0.50% of the first \$50,000 of contract value of a participant by the total contract value of all that employer's participants. In some cases, employers pay all or a portion of the administration charges for their participants.

14. A mortality and expense risk charge of up to 2% of the assets of Account B may be deducted under the Principal Mutual Contracts. Currently

the charge is 1.4965% (1.0001% for rollover individual retirement annuities).

15. Although there is no transfer charge under the Principal Mutual Contracts, transfers are limited to two per twelve-month period, absent Principal Mutual's consent. State premium taxes are deducted at annuitization or from purchase payments, in accordance with applicable state law. The respective total expenses of the three investment companies in which Separate Account B assets are invested are .51%, .55%, and .60% on an annual basis.

#### *The Proposed Exchange Offer*

16. Applicants state that Principal Mutual supports this application because it no longer intends to offer the Principal Mutual contracts. SAFECO Contracts will be offered to holders of participation certificates issued under Principal Mutual Contracts in connection with a 403(b) Plan. Any exchange pursuant to the offer will be at relative net asset values, *i.e.*, immediately after the exchange, the cash value of a SAFECO Contract acquired will be identical to the participant's cash value under the Principal Mutual Contract immediately prior to the exchange. No administrative fee, sales charge or any other charge will be imposed at the time of the exchange.

17. Surrenders of, or partial withdrawals from, a SAFECO Contract acquired in exchange for a Principal Mutual Contract will be subject to the SAFECO Contract's CDSL. In calculating the amount of the CDSL actually imposed in such a situation, each purchase payment made under the Principal Mutual Contract exchanged will be treated as if it had been made under the SAFECO Contract at the same time and in the same amount as actually made under the Principal Mutual Contract. Aggregate CDSL deductions upon surrender of or partial withdrawals from a SAFECO Contract acquired by exchange will not exceed 8.5% of the sum of the purchase payments made for the Principal Mutual Contract exchanged and the SAFECO Contract acquired.

18. The proposed exchange offer will be conveyed to offerees by written materials and by telephone contact by registered representatives of Princor. Each offeree who expresses interest in the exchange offer will be mailed a prospectus for the SAFECO Contracts. Accompanying that prospectus will be a cover letter and sales literature that has been filed with the NASD. The sales literature and cover letter will highlight the differences between the Principal

Mutual Contracts and the SAFECO Contracts and the terms of the exchange offer. Interested offerees will then be contacted again by telephone by registered representatives of Princor. Administrative details of effecting exchanges will be handled by Princor.

19. Pursuant to the terms of a selling agreement authorizing Principal Marketing to solicit sales of SAFECO Contracts in connection with the proposed exchanges, SSI will pay Principal Marketing 3% of amounts exchanged (the SSI Commissions). Principal Marketing will then pay 1% of the amounts exchanged to the registered representatives of Princor responsible for the exchanges.<sup>2</sup>

20. Applicants represent that the exchanges will not have adverse tax consequences for offerees who accept the exchange offer.

#### *Applicants' Legal Analysis*

1. Section 11(a) of the 1940 Act makes it unlawful for any registered open-end company, or principal underwriter for such a company, to make or cause to be made an offer to the holder of a security of such company, to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the SEC or are in accordance with SEC rules adopted under Section 11 of the 1940 Act.

2. Section 11(c) of the 1940 Act requires that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company must be approved by the Commission or satisfy applicable rules adopted under Section 11 of the 1940 Act, regardless of the basis of the exchange.

3. Applicants state that because the legislative history of Section 11 indicates a concern with "switching,"<sup>3</sup> applications for orders under Section 11(a) have focused on sales loads or sales load differentials and administrative fees to be imposed as a result of a proposed exchange.

4. Rule 11a-2 permits certain types of exchange offers of one variable annuity

<sup>2</sup> In connection with other sales of SAFECO Contracts not included in the proposed exchange offer, Applicants state that SSI may pay its registered representatives or other distributors up to 5.8% of purchase payments, excluding bonuses and overrides, in commissions.

<sup>3</sup> "Switching" is the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company "solely for the purpose of exacting additional selling charges." H. Rep. 2639, 76th Cong., 3d Sess., 8 (1940).

contract for another. Exchanges are permitted by Rule 11a-2 provided the only variance from relative net asset value is an administrative fee disclosed in the offering account's registration statement, and a sales load or sales load differential calculated according to methods prescribed in the rule.

5. Applicants assert that the terms of the proposed exchange offer would satisfy all of the requirements of Rule 11a-2, except that SAFECO and Principal Mutual are not affiliated and Rule 11a-2 is limited by paragraph (b) to affiliated offerors. The proposed exchange would be made on the basis of relative net asset values, *i.e.*, immediately after the exchange the cash value of a SAFECO Contract acquired will be identical to the participant's cash value under the Principal Mutual Contract immediately prior to the exchange. No administrative fees or sales load would be deducted at the time of the exchange; and any CDSL subsequently deducted upon surrender of, or partial withdrawal from, a SAFECO Contract acquired in an exchange would be calculated as if: (i) the contract holder of that SAFECO Contract had been a contract holder from the date on which he became a participant under the Principal Mutual Contract exchanged; and (ii) each purchase payment for the Principal Mutual Contract exchanged had been made under the Principal Mutual Contract. The total CDSL deducted under a SAFECO Contract acquired by exchange would not exceed 8.5% of the sum of the purchase payments made for the Principal Mutual Contract exchanged and the SAFECO Contract acquired.

6. Applicants assert that the proposed exchange offer would be permitted under Rule 11a-2 if SAFECO and Principal Mutual were affiliated with one another. Applicants also assert that the staff of the SEC in a no-action letter granted to Alexander Hamilton Funds (pub. avail. July 20, 1994) has, in interpreting Section 11(a), stated that the lack of affiliation between two investment companies and their depositors creates fewer Section 11 concerns than the presence of affiliation between two investment companies and their depositors. Therefore, Applicants argue that the lack of affiliation between SAFECO and Principal Mutual does not create any additional concerns under Section 11 and the exchange offer would be permitted under Rule 11a-2 were it not for their lack of affiliation.

7. Applicants argue that while the CDSL for the SAFECO Contracts is nominally higher than that of the Principal Mutual Contracts for the first

four contract years, the SAFECO Contracts permit up to 10% of contract value to be withdrawn without the imposition of a CDSL. Accordingly, the CDSL actually imposed upon a full surrender would be slightly greater for the SAFECO Contracts only during the first contract year, and even then it might be less for the SAFECO Contracts if investment performance were sufficient to affect the guaranteed maximum CDSLs of the two contracts. Moreover, the CDSL for the SAFECO Contracts endures for only eight years as opposed to ten years for the CDSL of the Principal Mutual Contracts.

8. Applicants also argue that the expenses of the underlying investment company portfolios to which Principal Mutual Contract assets may be allocated are somewhat lower than those to which SAFECO Contracts assets may be allocated, but the SAFECO Contracts offer seven investment alternatives as compared to only three for the Principal Mutual Contracts. Accordingly, individuals may differ in whether they prefer the lower expenses of the funds available under the Principal Mutual Contracts or the broader range of investment options of the funds available under the SAFECO Contracts.

9. Applicants state that permitting investors to evaluate the relative merits of the two contracts and to select the one that best suits their circumstances and preferences is consistent with the public interest and the protection of investors. Therefore, Applicants assert that the terms of the proposed offer of exchange do not offer any of the "switching" abuses that led to the adoption of Section 11 of the 1940 Act and that approving the exchange offer would be consistent with the precedent established by the SEC's adoption of Rule 11a-2 thereunder.

## Conclusion

For the reasons set forth above, Applicants represent that approval of the exchange offer 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 1940 Act.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-12466 Filed 5-16-96; 8:45 am]

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[Release No. 34-37195; File No. SR-Amex-96-12]

## Self-Regulatory Organizations; Order Granting Accelerated Approval To Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments Nos. 1 and 2 To Proposed Rule Change by the American Stock Exchange, Inc., Relating to Listing and Trading of Warrants Based on the Select Technology Stock Index

May 10, 1996.

### I. Introduction

On April 9, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade warrants based on the Select Technology Stock Index ("Index").<sup>3</sup>

The proposed rule change appeared in the Federal Register on April 23, 1996.<sup>4</sup> No comments were received on the proposed rule change. The Amex subsequently filed Amendment No. 1 to the proposed rule change on May 2, 1996<sup>5</sup> and Amendment No. 2 on May 8, 1996.<sup>6</sup> The Amex has requested

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Amex has clarified that the name of the index will be the Select Technology Stock Index. Telephone Conversation between Michael T. Bickford, Vice President, Capital Markets Group, Amex, and Matthew S. Morris, Attorney, Derivatives Regulation, Office of Self-Regulatory Oversight, Division of Market Regulation ("Division"), Commission, on May 3, 1996.

<sup>4</sup> See Securities Exchange Act Release No. 37122 (April 17, 1996), 61 FR 17931 (April 23, 1996).

<sup>5</sup> In Amendment No. 1, the Amex amended its rule filing to clarify that the Commission will be notified if: (1) the number of components in the Index decreases to less than nine; (2) the three highest weighted components represent more than 60 percent of the weight of the Index; or (3) the trading volume of any of the components falls below 500,000 shares for each of the last six months. In Amendment No. 1, the Amex also changed the manner in which the value of the Index will be calculated from a price-weighted to an equal-dollar weighted methodology. In addition, the Amex replaced component securities C-Cube Microsystems, Inc., Computer Sciences Corporation, and General Motors Corporation (Class E) with Adaptec Inc., Hewlett Packard Co., and Sun Microsystems. See letter from Michael T. Bickford, Vice President, Capital Markets Group, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Office of Self-Regulatory Oversight, Division, Commission, dated May 2, 1996 ("Amendment No. 1").

<sup>6</sup> In Amendment No. 2, the Amex removed Applied Materials, Inc. as a component security of the Index. See letter from Michael T. Bickford, Vice President, Capital Markets Group, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Office of Self-Regulatory Oversight, Division, Commission, dated May 8, 1996 ("Amendment No. 2").