

Stickers informed affected contractowners that they will have one opportunity to reallocate accumulation value:

(a) Prior to the substitutions, from the Subaccounts investing in the Eliminated Portfolios; or

(b) For 30 days after the substitutions, from the Subaccounts investing in the Substitute Funds, to Subaccounts investing in other Portfolios available under the Contracts, without the imposition of any transfer charge or limitation.

19. A transfer out of the Subaccounts investing in the Eliminated Portfolios from the date of the notice through the date of the substitutions will not: (a) Be assessed a transfer fee; (b) count as a free transfer; or (c) be subject to any limitation relating to transfers that result in more than a reduction of an Underlying Fund's assets by 1% or more.

20. Similarly, for a period of 30 days after the substitutions, a transfer out of a Subaccount that invests in a Substitute Portfolio of accumulation value moved to that Subaccount as a result of the substitutions will not: (a) Be assessed a transfer fee; (b) count as a free transfer; or (c) be subject to any limitation relating to transfers that result in more than a reduction of an Underlying Fund's assets by 1% or more.

21. Applicants represent that the prospectuses for the Contracts reflect the substitutions. Each contractowner will have been provided prospectuses for the Substitute Portfolios before the substitutions. Within five days after the substitutions, Ohio National and ONLAC will send to contractowners written confirmation that the substitutions have occurred.

22. Applicants represent that Ohio National and ONLAC will pay all fees and expenses of the substitutions, including legal, accounting, brokerage commissions and other fees and expenses; none will be borne by contractowners. Affected contractowners will not incur any fees or charges as a result of the substitutions, nor will their rights or the obligations of Ohio National or ONLAC under the Contracts be altered in any way. The proposed substitutions will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the substitutions than before the substitutions.

23. Applicants state that their request satisfies the standards for relief of Section 26(b) because:

(a) The substitutions involve Portfolios with substantially similar investment objectives;

(b) After each substitution, affected contractowners will be invested in a Portfolio whose performance has been better on a historical basis; and

(c) After each substitution affected contractowners will be invested in a Portfolio whose expenses have been less on a historical basis.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 26(b) of the Act approving the substitutions. Section 26(b) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the purposes, terms and conditions of the substitutions are consistent with the principles and purposes of section 26(b) and do not entail any of the abuses that section 26(b) is designed to prevent. Applicants represent that substitution is an appropriate solution to the unfavorable relative performance and higher relative expenses of the Portfolios to be eliminated. Applicants believe that each Substitute Portfolio will better serve contractowner interests because its performance has been significantly better than the performance of, and its expenses have been lower than the expenses of, the corresponding Eliminated Portfolio. Moreover, Ohio National and ONLAC have each reserved this right in the Contracts and disclosed this reserved right in the prospectuses for the Contracts.

3. Applicants represent that the substitutions will not result in the type of costly forced redemption that section 26(b) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the Act:

(a) Each Substitute Portfolio has investment objectives, policies and restrictions substantially similar to those of the corresponding Eliminated Portfolio, and permits contractowners continuity of their investment objectives and expectations.

(b) The costs of the substitutions will be borne by Ohio National and ONLAC and will not be borne by contractowners. No charges will be assessed to effect the substitutions.

(c) The substitutions will, in all cases, be at net asset values of the respective

shares, without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's accumulation value.

(d) The substitutions will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the substitutions than before the substitutions.

(e) The contractowners will be given notice prior to the substitutions and will have an opportunity to reallocate accumulation value among other available Subaccounts without the imposition of any transfer charge or limitation. No transfer:

(i) From a Subaccount investing in an Eliminated Portfolio from the date of the notice through the date of the substitutions, or

(ii) For 30 days after the substitutions, of accumulation value that had been transferred to a Subaccount that invests in a Substitute Portfolio as a result of the substitutions, will count as one of the limited number of transfers permitted in a contract year free of charge.

(f) Within five days after the substitutions, Ohio National and ONLAC will send to contractowners written confirmation that the substitutions have occurred.

(g) The substitutions will in no way alter the insurance benefits to contractowners or the contractual obligations of Ohio National or ONLAC.

(h) The substitutions will in no way alter the tax benefits to contractowners.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-23888 Filed 9-13-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24003; No. 812-11688]

Select Ten Plus Fund, LLC

September 9, 1999.

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

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant seeks an order pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit Applicant's portfolios to invest up to 10% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

APPLICANT: Select Ten Plus Fund, LLC.

FILING DATE: The application was filed on July 12, 1999, and amended on September 9, 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 Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on September 29, 1999, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester'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. 20549-0609. Applicant, 515 West Market Street, Louisville, Kentucky 40202-3319.

FOR FURTHER INFORMATION CONTACT: Ann L. Vlcek, 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 Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549-0102, (202) 942-8090.

Applicant's Representations

1. Applicant is a registered, open-end management investment company (File No. 811-09179). It consists of four non-diversified investment portfolios, Select Ten Plus Portfolio—March, Select Ten Plus Portfolio—June, Select Ten Plus Portfolio—September, and Select Ten Plus Portfolio—December (the "Portfolios"). Applicant was organized under the laws of Delaware as a limited liability company on September 30, 1998. Under Delaware law, a limited liability company does not issue shares of stock. Instead, ownership rights are contained in membership interests. Each membership interest of Applicant

("Interest") represents an undivided interest in the stocks held in one of the Portfolios.

2. The Interests are not offered directly to the public. The only direct owner of the Interests is National Integrity Life Insurance Company ("National Integrity") through its separate accounts. Those of National Integrity's variable annuity owners who have contract values allocated to any of the Portfolios have indirect beneficial rights in the Interests and have the right to instruct National Integrity with regard to how it votes the Interests that it holds in its separate accounts.

3. Integrity Capital Advisors, Inc. (the "Adviser"), a wholly owned subsidiary of ARM Financial Group, Inc., is Applicant's investment adviser. National Asset Management Corporation ("National Asset") serves as sub-adviser to each Portfolio.

4. Applicant states that each of the Portfolios invests contributions on the last business day of the month for which the Portfolio is named (the "Investment Date"). Applicant states that each Portfolio invests approximately 10% of its assets in the common stock of each of the ten companies in the Dow Jones Industrial Average (the "DJIA") having the highest dividend yield as of the close of business on the business day prior to the Investment Date. These ten companies are popularly known as the "Dogs of the Dow."

5. The DJIA consists of 30 stocks selected by Dow Jones & Company, Inc. as representative of the New York Stock Exchange and of American industry. Applicant states that Dow Jones & Company Inc. is not affiliated with Applicant and has not participated, and will not participate, in any way in the creation or management of the Portfolios or the selection of the stocks included in the Portfolios.

6. Applicant states that the Portfolios seek total return by investing in shares of the ten highest dividend yielding common stocks in the DJIA in equal weights and holding them for twelve months. The Portfolios may or may not achieve that objective. At the end of a Portfolio's twelve-month period, the Portfolio will restructure its investment portfolio to invest in the ten stocks with the highest current dividend yield in the DJIA for another twelve months. The dividend yield for each stock is calculated by annualizing the last quarterly or semi-annual ordinary dividend distributed on that stock and dividing the result by the market value of that stock as of the close of the New York Stock Exchange on the business day prior to the Investment Date. This yield is historical and there is no

assurance that any dividends will be declared or paid in the future on the stocks in the Portfolios.

7. Applicant states that Interests may be purchased by separate accounts of National Integrity on the Investment Date. Applicant states that the weights of the individual stock positions are not rebalanced during a Portfolio's twelve-month holding period nor are additional contributions accepted. On the day a dividend from a stock in a Portfolio's investment portfolio is received it is reinvested in the form of additional shares of the stock. Interests may be redeemed at any time. Upon receipt of a redemption request, approximately equal dollar amounts of shares of each of the ten stocks are sold, such that the total dollar amount sold equals the amount of the redemption. Applicant states that the ten stocks held in a Portfolio are not expected to reflect the entire index nor are the prices of Interests intended to parallel or correlate with movements in the DJIA.

8. Applicant states that the Adviser and National Asset will try, to the extent practicable, to maintain a minimum cash position at all times. Applicant represents that normally the only cash items held will represent amounts expected to be deducted as charges and amounts too small to purchase additional proportionate round lots of the ten stocks.

9. Applicant states that it is not a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"). However, as a limited liability company whose interests are sold only to National Integrity, Applicant states that it is disregarded as an entity for purposes of federal income taxation. Applicant states that it does not pay federal income tax on its interest income, dividend income or capital gains. Applicant represents that instead, National Integrity, through its separate accounts, is treated as owning the assets of Applicant directly and its tax obligations thereon are computed pursuant to Subchapter L of the Code (which governs the taxation of insurance companies). Applicant states that, under current tax law, interest income, dividend income and capital gains of Applicant are not currently taxable to National Integrity or to contract owners when left to accumulate within a variable annuity contract.

10. Section 817(h) of the Code provides that in order for a variable contract that is based on a segregated asset account to qualify as an annuity contract under the Code, the investments made by that account must

be "adequately diversified" in accordance with Treasury regulations.

11. Applicant states that each Portfolio must comply with the Section 817(h) diversification requirements. Therefore, Applicant states that the Adviser and National Asset may depart from the Portfolios' investment strategy, if necessary, in order to satisfy these Section 817(h) diversification requirements. Applicant represents that, under all circumstances, except in order to meet Section 817(h) diversification requirements, the common stocks purchased for each Portfolio are chosen solely according to the formula described above and are not based on the research opinions or buy or sell recommendations of the Adviser or National Asset. Applicant asserts that neither the Adviser nor National Asset has any discretion as to which common stocks are purchased. Applicant states that securities purchased for each Portfolio may include securities of issuers in the DJIA that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter or investment adviser, with exceptions not relevant here. Rule 12d3-1 under the Act exempts from Section 12(d)(3) purchases by an investment company of securities of an issuer, except its own investment adviser, promoter or principal underwriter or their affiliates, that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after any such acquisition the acquiring company has invested not more than 5% of the value of its total assets in the securities of the issuer. Applicant represents that each of the Portfolios undertakes to comply with all of the requirements of Rule 12d3-1, except the condition in subparagraph (b)(3) prohibiting an investment company from investing more than 5% of the value of its total assets in securities of a securities related issuer.

2. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act or any rule or regulation thereunder, if and to the extent that the 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.

3. Applicant states that Section 12(d)(3) was intended (i) to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, (ii) to prevent potential conflicts of interest, (iii) to eliminate certain reciprocal practices between investment companies and securities related businesses, and (iv) to ensure that investment companies maintain adequate liquidity in their portfolios.

4. Applicant states that a potential conflict could occur, for example, if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant argues that this concern does not arise in this situation. Applicant represents that, generally, none of Applicant, the Adviser or National Asset has discretion in choosing the common stock or amount purchased. Applicant states that the stock must first be included in the DJIA (which is unaffiliated with Applicant, the Adviser or National Asset), and must also qualify as that of one of the ten companies in the DJIA that have the highest dividend yield as of the close of business on the business day prior to the Investment Date.

5. Applicant states that identical exemptive relief from Section 12(d)(3) has been granted to open-end management investment companies with the same limited liability company structure as Applicant. Applicant also asserts that identical exemptive relief from Section 12(d)(3) has been granted to management investment companies with a different structure that also involves investment options underlying variable annuities. In addition, Applicant states that Section 12(d)(3) relief has been granted to unit investment trusts with no discretion to choose the portfolio securities or the amount purchased, but with discretion to sell portfolio securities to the extent necessary to meet redemptions.

6. Applicant states that the Adviser and National Asset are obligated to follow the investment formula described above as nearly as practicable. Applicant represents that, like prior applicants for Section 12(d)(3) relief, securities purchased for each Portfolio are chosen with respect to the specified formula. Applicant states that the only time any deviation from the formula would be permitted would be where circumstances were such that the investments of a particular Portfolio would fail to be "adequately diversified" under the Section 817(h)

diversification requirements, and would thus cause the annuity contracts to fail to qualify as an annuity contract under the Code. Applicant argues that the likelihood of this exception arising is extremely remote. In such a situation, Applicant states that it must be permitted to deviate from the investment strategy in order to meet the Section 817(h) diversification requirements and then only to the extent necessary to do so. Applicant asserts that this limited discretion does not raise the concerns that Section 12(d)(3) is aimed at since it does not give rise to the potential conflicts of interest or to the possible reciprocal practices between investment companies and securities related businesses that Section 12(d)(3) is designed to prevent.

7. Applicant states that the liquidity of a Portfolio is not a concern here since each common stock selected is a component of the DJIA, listed on the New York Stock Exchange, and among the most actively traded securities in the United States.

8. In addition, Applicant asserts that the effect of a Portfolio's purchase of the stock of parents of broker-dealers would be de minimis. Applicant states that the common stocks of securities related issuers represented in the DJIA are widely held and have active markets. Applicant states that potential purchases by a Portfolio represent an insignificant amount of the outstanding common stock and trading volume of any of these issuers. Therefore, Applicant argues that it is almost inconceivable that these purchases would have any significant effect on the market value of any of these securities related issuers.

9. Applicant states that another possible conflict of interest is where broker-dealers may be influenced to recommend certain investment company funds which invest in the stock of the broker-dealer or any of its affiliates. Applicant represents that, because of the large market capitalization of the DJIA issuers and the small portion of these issuers' common stock and trading volume that are purchased by a Portfolio, it is extremely unlikely that any advice offered by a broker-dealer to a customer as to which investment company to invest in would be influenced by the possibility that a Portfolio is invested in the broker-dealer or a parent thereof.

10. Finally, Applicant states that another potential conflict of interest could occur if an investment company directed brokerage to an affiliated broker-dealer in which the company has invested to enhance the broker-dealer's

profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, Applicant agrees, as a condition of this application, that no company whose stock is held in any Portfolio, nor any affiliate of such a company, will act as broker or dealer for any Portfolio in the purchase or sale of any security.

11. Applicant represents that the relief requested is substantially the same as that previously granted in other applications. Applicant represents that the relief requested is consistent with the standards set forth in Section 6(c) of the Act.

Applicant's Conditions

Applicant agrees that any order granting the requested relief from Section 12(d)(3) of the Act shall be subject to the following conditions:

1. The common stock is included in the DJIA as of the business day prior to the investment Date;

2. The common stock represents one of the ten companies in the DJIA that have the highest dividend yield as of the close of business on the business day prior to the Investment Date;

3. As of the Investment Date, the value of the common stock of each securities related issuer represents approximately 10% of the value of any Portfolio's total assets, but in no event more than 10.5% of the value of the Portfolio's total assets; and

4. No company whose stock is held in any Portfolio, nor any affiliate thereof, will act as broker or dealer for any Portfolio in the purchase or sale of any security for that Portfolio.

Conclusion

For the reasons summarized above, Applicant asserts that granting the requested relief is 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 SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-23953 Filed 9-13-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the

Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of September 13, 1999.

A closed meeting will be held on Thursday, September 16, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 16, 1999, at 11:00 a.m. will be:

Institution and settlement of injunctive actions

Institution and settlement of administrative proceedings of an enforcement nature

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: September 9, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99-24016 Filed 9-10-99; 12:30 pm]

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SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegation of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S2 covers the Deputy Commissioner, Operations (DCO). Notice is hereby given that Chapter S2, The Office of the Deputy Commissioner, Operations and Subchapter S2D, the Office of the Regional Commissioner, and Subchapter S2R, Office of Central Operations are being amended to reflect responsibility for assisting the Office of Hearings and

Appeals in providing support in processing backlogged cases. This revision also reflects responsibility for assisting State Disability Determination Services in providing support regarding disability claims backlogs. The changes are as follows:

Section S2.00 The Office of the Deputy Commissioner, Operations—(Mission)

Amend as follows:

The Office of the Deputy Commissioner, Operations (ODCO) directs and manages central office and geographically dispersed operations installations. It oversees regional operating program, technical, assessment and program management activities. It directs studies and actions to improve the operational effectiveness and efficiency of its components. It promotes systems and operational integration and defines user needs in the strategic planning process. It determines automation support needs for Operations components. This Office defines user concerns in the development of operational and programmatic specifications for new and modified systems, including the evaluation and implementation phases. When mutually agreed, provides support to the Office of Hearings and Appeals and/or specific State Disability Determination Services.

Section S2.20 The Office of the Deputy Commissioner, Operations—(Functions)

Amend as follows:

D. The Office of Central Operations (OCO) (S2R) provides executive direction and leadership for the nationwide establishment and maintenance of basic records supporting Social Security programs, foreign claims operations and OCO disability operations. It manages centralized records operations and a stand alone data operations center (DOC). The Office receives and processes Social Security earnings reports from private and governmental employers and adjustments or corrections to posted earnings. The Office maintains Social Security enumeration and earnings records in various media and conducts an ongoing data exchange with the Treasury Department to compile and verify individual earnings data. It directs the OCO processing of claims under disability benefits programs and maintains beneficiary rolls. It directs the OCO initial adjudication and reconsideration of disability claims excluded from State agency jurisdiction and directs the OCO authorization of disability and auxiliary claims not authorized by Field Offices (FOs) at the initial, reconsideration and appeal