further note both sets of projections also show greater value to the bondholders under the Second Plan than they would receive in liquidation.

V. The Cogeneration Development Agreement

The Second Plan contemplates the development of a 165-megawatt gas fired cogeneration facility within the Industrial Complex (''Cogen Project''). Power produced by the Cogen Project would primarily be sold through the regional power transmission system to wholesale customers, providing the Debtors with additional income for the benefit of creditors. The development of the Cogen Project will occur under the MESC Cogeneration Development Agreement dated February 9, 2000, between Mobile Energy, Holdings, Mirant, and Mirant Services, as amended by Amendment No. 1 dated August 11, 2000 (''Cogeneration Development Agreement''). The Cogeneration Development Agreement provides, among other things, that: (1) None of Mirant, Mirant Services, or any affiliate will make any additional equity investment in Mobile Energy or the Cogen Project; (2) Southern's ownership of Holdings will terminate and the bondholders will acquire 100% of the ownership of Holdings under the terms of the plan; (3) Mirant Services will waive the $10 million Equity Option Fee (as defined in the Cogeneration Development Agreement); (4) Mobile Energy will terminate the operating agreement no later than March 31, 2001, and Mobile Energy will pay one-half the actual cost of a retention and severance program implemented by Mirant Services for its workers at Mobile Energy's facilities, up to a total of $2 million; (5) the Cogen Facility Mobile Energy Operating Agreement will terminate; (6) Mobile Energy will retain an option to purchase the GE combustion turbine provided by Mirant to the Debtors under the Cogeneration Development Agreement, including the rights in related agreements, upon Mobile Energy's satisfaction of the MESC Transfer Obligations (as defined in the Cogeneration Development Agreement) other than the payment of the $10 million Equity Option Fee,[9] (7) Mobile Energy will pay Mirant $2.9 million upon the earlier of the exercise of such option, the effective date of a plan, or July 31, 2001; (8) Mobile Energy will be allowed to use the $2.1 million held by Holdings in its tax sharing account; (9) Southern will pay to the collateral agent, and release any claims Southern may have to, the $2.7 million that is subject to dispute under the maintenance Plan Funding Subaccount Southern Guaranty Agreement; and (10) Mobile Energy will agree to indemnify Southern from Southern's obligations under the Mill Owner Maintenance Reserve Account Agreement, the Environmental Guaranty, and for certain income taxes on taxable income of Mobile Energy and Holdings in excess of Southern's excess loss account related to its investment in Holdings and payments under the Long Term Service Agreement for Combined Cycle Generating Plant at MESC Electric Generating Plant. Southern, Mirant Services and Mirant will continue to hold a first priority lien on the Debtors' assets and those of any affiliate set up to own the Cogen Project to secure performance of all obligations that may be owed to Southern, Mirant Services and Mirant under the Cogeneration Development Agreement.

VI. Treatment of Claims Under the Second Plan

Generally, the bondholders under the Second Plan will receive shares in reorganized Holdings (''New Common Stock'') in exchange for their claims, including their outstanding bonds. Otherwise, the treatment of claims under the Second Plan is comparable to the treatment of claims in the First Plan.

A. Unsecured Creditors; Others

Under the Second Plan, the claims of the general unsecured creditors and the claims of all other creditors, except Southern and its affiliates will be paid in full. The claims of unsecured creditors are approximately $431,000 without consideration of proof of claims (some of which claims have not been quantified by the claimants) from the mill owners against the Debtors. Debtors are contesting the mill owners' proof of claims.

B. First Mortgage Bonds

Mobile Energy issued the first mortgage bonds on August 1, 1995, in the principal amount of $255,210,000 due January 1, 2017 and bearing annual interest at 8.665%. Each holder of a First Mortgage Bondholder Claim shall receive in complete settlement satisfaction and discharge of their First Mortgage Bondholder Claims, a pro rata share of 72.594% of the New Common Stock.

C. Tax Exempt Bonds

In December 1983, the Industrial Development Board of Mobile, Alabama (''IDB'') issued tax-exempt bonds (''1983 Tax Exempt Bonds'') to finance the construction of the No. 7 Power Boiler and certain auxiliary systems. In December 1984 (''1984 Tax Exempt Bonds''), the IDB issued tax-exempt bonds to refund the 1983 Tax Exempt Bonds.

Refunding of the 1984 Tax Exempt Bonds occurred in 1995 by means of tax-exempt bonds in the original principal amount of $85,000,000 scheduled to mature January 1, 2020 (''Tax-Exempt Bonds''). Under the Second Plan, each holder of a Tax-Exempt Bondholder Claim shall receive in complete settlement, satisfaction and discharge of their Tax-Exempt Bondholder Claims, a pro rata share of 27.406% of the New Common Stock.

D. Southern's and Its Affiliates' Claims

Under the Second Plan, Southern and its affiliates will receive the treatment provided in the Cogeneration Development Agreement, described above, in full satisfaction of their claims. Generally, Southern's claims receive one of two different types of treatment in the Second Plan. The estimated recovery for Southern's pre-petition claims is approximately 0.3%. As a reflection of that level of recovery, Southern recorded an expense of approximately $69 million in the third quarter of 1999 to write down its equity investment in Holdings to zero. An additional expense of approximately $10 million was recorded in the third quarter of 2000 to reflect additional liabilities under the Cogeneration Development Agreement. Applicants state no further material impact on the consolidated capitalization is expected as a result of the implementation of the Second Plan. Southern's post-petition claims will receive 100% payment under the Second Plan.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 01–9503 Filed 4–16–01; 8:45 am]

BILLING CODE 8010–01–M

[9] On Dec. 29, 2000, Mobile Energy exercised the option and notified Mirant that it intended to purchase the CT.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24936; File No. 812–12314]

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

April 10, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to section 26(b) of the

Investment Company Act of 1940 (''1940 Act'') approving certain substitutions of securities, and pursuant to section 17(b) of the 1940 Act exempting related transactions from section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered unit investment trusts to substitute securities issued by EQ Advisors Trust's (''EQ Trust'') EQ/Balanced Portfolio (''Substituted Portfolio'') for securities issued by four other portfolios of EQ Trust: the Alliance Conservative Investors Portfolio; the Mercury World Strategy Portfolio; the EQ/Evergreen Foundation Portfolio; and the EQ/Putnam Balanced Portfolio (collectively, ''Removed Portfolios'') currently held by those unit investment trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the substitution (''In-Kind Transaction'').

APPLICANTS: For purposes of the order requested pursuant to section 26(b), The Equitable Life Assurance Society of the United States (''Equitable''), Separate Account A of Equitable (''SA A''), Separate Account No. 301 of Equitable (''SA 301''), Separate Account No. 45 of Equitable (''SA 45''), Separate Account No. 49 of Equitable (''SA 49''), and Separate Account FP of Equitable (''SA FP,'' and together with SA A, SA 301, SA 45, and SA 49, the ''Equitable Accounts'') (collectively, ''Section 26 Applicants''). For purposes of the order pursuant to section 17(b), Equitable, the Equitable Accounts, and Separate Account No. 65 of Equitable (''SA 65'' and together with Equitable and the Equitable Accounts, ''Section 17 Applicants'').

FILING DATE: The application was filed on October 31, 2000, and was amended and restated on January 31, 2001 and April 9, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 7, 2001, 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 may request notification of a hearing by writing to the Secretary of the Commission.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, at (202) 942–0675, or Keith Carpenter, Branch Chief, at (202) 942–0679, Office of Insurance Products, Division of Investment Management.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: c/o Peter D. Noris, Executive Vice President and Chief Investment Officer, The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104. Copies to: Jane A. Kanter, Esq., Dechert, 1775 Eye Street, NW., Washington, DC 20006–2401.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549, tel. (202) 942–8090.

Applicants' Represenatations

1. Equitable is a New York stock life insurance company. Equitable is the depositor and sponsor of SA A, SA 301, SA 45, SA 49, SA FP, and SA 65, each a separate investment account established under New York law.

2. Equitable is a wholly owned subsidiary of AXA Financial, Inc., a member of the global AXA Group, which is a holding company for an international group of insurance and related financial services companies.

3. Each of the Equitable Accounts is registered with the Commission under the 1940 Act as a unit investment trust. The assets of the Equitable Accounts support certain variable annuity contracts and variable life insurance policies (collectively, ''Contracts''). The variable annuity Contracts issued by the section 26 Applicants include flexible premium deferred variable annuity contracts and single premium immediately variable annuity contracts. The variable life insurance contracts issued by the section 26 Applicants include individual flexible premium, individual modified single premium and second to die variable life insurance contracts. Each sub-account invests exclusively in shares representing an interest in a separate corresponding portfolio (each, a ''Portfolio'') of EQ Trust. The Removed Portfolios and the Substituted Portfolio (collectively, ''Balanced Portfolios'') currently are used as underlying investment options for the Contracts, as more fully described below.

4. EQ Trust has received an exemptive order from the Commission (''Multi-Manager Order'') that permits the Manager, or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the 1940 Act) with the Manager, subject to certain conditions, including approval of the Board of Trustees of EQ Trust, and within the approval of shareholders to: (a) Select a new or additional investment advisers (''Advisers'') for each Portfolio; (b) enter into new Advisory Agreements and/or materially modify the terms of any existing Advisory Agreement;[1] 9c) terminate any existing Adviser and replace the Adviser; and (d) continue the employment of the an existing Adviser on the same contract terms where the Advisory Agreement has been assigned because of a change of control of the Adviser.[2] In such circumstances, Contract owners would receive notice of any such action, including all information concerning any new Adviser or Advisory Agreement that would be included in an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934, as amended.

5. All of the Contracts expressly reserve Equitable's right, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a sub-account.

6. The Section 26 Applicants propose to substitute: (a) Class IA Shares of the Substituted Portfolio for Class IA Shares of the Alliance Conservative Investors Portfolio, as well as for Class IB Shares of each Removed Portfolio offered through a Contract also offering Class IA Shares of the Substituted Portfolio or the Alliance Conservative Investors Portfolio; and (b) Class IB Shares of the Substituted Portfolio for Class IB Shares of each Removed Portfolio offered through a Contract not also offering

[1] The Manager will not enter into an Advisory Agreement with an Adviser that is an ''affiliated pers'' (as defined in section 2(a)(3) of the 1940 Act) of the Portfolio or the Manager, other than by reason of serving as an Adviser to a Portfolio, without the Advisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio (of, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, then pursuant to voting instructions by the unitholders of the sub-account).

[2] *See EQ Advisers and EQ Financial Consultants, Inc.,* Investment Company Act Rel. Nos. 23128 (April 24, 1998) (order) and 23093 (March 30, 1998) (notice). An investment company that has received such an order is commonly referred to as a ''multi-manger''

Class IA Shares of the Substituted Portfolio or the Alliance Conservative Investors Portfolio (''Substitution'' or ''Substitution Transactions''). The Section 26 Applicants assert that the Substitution will benefit Contract owners by: (a) Facilitating Contract owner understanding of the underlying investment options for the Contracts and reducing the potential for Contract owners to be confused by multiple Balanced Portfolio options currently available under the Contracts; (b) consolidating the assets attributable to the Balanced Portfolios in a single Portfolio, thereby eliminating duplicative Portfolios, which may make the Contracts more efficient to administer and may provide economics of scale that could benefit Contract owners; and (c) providing Contract owners who have their Contract values currently allocated to any Removed Portfolio with a Portfolio that has the same or lower investment management fees and lower total expense ratios than those of the relevant Removed Portfolio.

7. The Substituted Portfolio has similar investment objectives, investment strategies and anticipated risks to those of Removed Portfolios. The prospectus for EQ Trust currently classifies all of the Removed Portfolios as ''Balanced/Hybrid Portfolios.'' The investment objectives and principal investment strategies of the Substituted Portfolio and the Removed Portfolios are shown below:

	Substituted portfolio	Removed portfolio			
	EQ/Balanced	Mercury world strategy	EQ/Evergreen foundation	EQ/Putnam balanced	Alliance Conservative Investors
Investment Objective ..	Seeks to achieve a high return through both appreciation of capital and current income.	Seeks high total investment return by investing primarily in a portfolio of equity and fixed income securities, including convertible securities, of U.S. and foreign issuers.	Seeks to provide, in order of priority, reasonable income, conservation of capital and capital appreciation.	Seeks to provide a balance investment composed of a well-diversified portfolio of stocks and bonds that will produce both capital growth and current income.	Seeks to achieve a high total return without, in the opinion of the Adviser, undue risk of principal.
Principal Investment Strategies.	Debt and equity securities, money market instruments, foreign securities and derivatives.	Equity and fixed income securities of U.S. and foreign companies.	Common stocks, preferred stocks, securities convertible into or exchangeable for common stock, corporate debt obligations, U.S. Government securities and short-term debt instruments.	Well-diversified portfolio of stocks and bonds, and negotiable instruments.	Investment grade debt securities and equity securities of U.S. and foreign issuers, and derivatives.

8. As demonstrated in the charts below: (a) The effective investment management fees (*i.e.,* the total investment management fees paid to the Manager as a percentage of average daily net assets, after giving effect to breakpoints in each investment management fee rate) [3] with respect to the Substituted Portfolio are lower than the effective investment management fees with respect to each of the Removed Portfolios; and (b) the total expense ratio of the Substituted Portfolio is less than the total expense ratio of each of the Removed portfolios. The chart below shows the investment management fees and total expenses for Class IA shares of the Substituted Portfolio and the Alliance Conservative Investors Portfolio and investment management fees, Rule 12b–1 fees and total expenses for Class IB shares of the Mercury World Strategy Portfolio, EQ/Evergreen Foundation Portfolio and EQ/Putnam Balanced Portfolio for the year ended December 31, 2000.

	Substituted portfolio	Removed portfolios			
	EQ/Balanced (Class IA)	Mercury world strategy (Class IB)	EQ/Evergreen foundation (Class IB)	EQ/Putnam balanced (Class IB)	Alliance Conservative Investors (Class IA)
Management Fee (in percent)	0.52	0.70	0.61	0.55[4]	0.56
12b–1 Fee (in percent)	N/A	0.25	0.25	0.25	N/A
Other Expenses (in percent)	0.07	0.33	0.48	0.18	0.08
Total Expenses (in percent)	0.59	1.28	1.34	0.98	0.64
Fee Waiver and/or Expense Reimbursement (in percent)	N/A	0.08	0.39	0.08	N/A

[3] The investment advisory fees are paid to each Adviser by the Manager from its investment management fees.

	Substituted portfolio	Removed portfolios			
	EQ/Balanced (Class IA)	Mercury world strategy (Class IB)	EQ/Evergreen foundation (Class IB)	EQ/Putnam balanced (Class IB)	Alliance Conservative Investors (Class IA)
Net Expenses (in percent)	0.59	1.20	0.95	0.90	0.64

[4] The annual contractual management fee rate of the EQ/Putnam Balanced Portfolio currently equals 0.60% of the Portfolio's average daily net assets. The Manager has voluntarily agreed not to collect a portion of its fee equal to 0.05% of the Portfolio's average daily net assets until July 31, 2001.

The chart immediately below shows the investment management fees, Rule 12b–1 fees and total expenses for Class IB shares of the Substituted Portfolio and each of the Removed Portfolios for the year ended December 31, 2000.

	Substituted portfolio	Removed portfolios			
	EQ/Balanced (Class 1B)	Mercury world strategy (Class 1B)	EQ/Evergreen foundation (Class IB)	EQ/Putnam balanced (Class 1B)	Alliance Conservative Investors (Class 1B)
Management Fee (in percent)	0.52	0.70	0.61	0.55	0.56
12b–1 Fee (in percent)	0.25	0.25	0.25	0.25	0.25
Other Expenses (in percent)	0.07	0.33	0.48	0.18	0.09
Total Expenses (in percent)	0.84	1.28	1.34	0.98	0.90
Fee Waiver and/or Expense Reimbursement (in percent)	N/A	0.08	0.39	0.08	N/A
Net Expenses (in percent)	0.84	1.20	0.95	0.90	0.90

9. The section 26 Applicants will provide their respective Contract owners and participants with disclosure of the Substitution through prospectuses, prospectus supplements (or other notice, in the case of Contracts no longer actively marketed and for which there are a relatively small number of existing Contract owners (''Inactive Contracts'')), as appropriate. Such disclosure will describe the Substituted Portfolio and the Removed Portfolios and disclose the impact of the Substitution on fees and expenses at the underlying fund level. At or after the time the Commission approves the Application, the section 26 Applicants will send to existing Contract owners and participants a supplement to the relevant Contract prospectus (or other notice in the case of Inactive Contracts) that discloses to such Contract owners and participants that the Application has been approved. Together with this disclosure, the Section 26 Applicants will send to any of those existing Contract owners and participants who have not previously received a prospectus for the Substituted Portfolio a prospectus and/or prospectus supplement for the Substituted Portfolio. New purchasers of Contracts will be provided with a Contract prospectus and/or supplement containing disclosure that the Commission has issued an order approving the Substitution, as well as a prospectus for the Substituted Portfolio. The Contract prospectus and/or supplement and the prospectus and/or prospectus supplement for EQ Trust, including the Substituted Portfolio, will be delivered to purchasers of new Contracts in accordance with all applicable legal requirements.

10. Contract owners and participants will be sent a notice of the Substitution. All such notices will be mailed to affected Contract owners and participants before the date the Substitution is effected (''Substitution Date''). The notice will inform contract owners and participants that the Substitution will be effected on the Substitution Date and that they may transfer assets from the Removed Portfolios (or from the Substituted Portfolio following the Substitution Date) to another investment option available under their Contract without the imposition of any fee, charge, or other penalty that might otherwise be imposed through a date at least thirty (3) days following the Substitution Date. Confirmation of the Substitution will be mailed to affected Contract owners and participants within five (5) days after the Substitution Date.

11. The significant terms of the Substitution described above include:

a. The Substituted Portfolio will have investment objectives, investment strategies and anticipated risks that are similar to those of the Removed Portfolios.

b. The fees and expenses of the Substituted portfolio will be less than those of the Removed Portfolios, assuming that the assets of the Substituted Portfolio do not decrease significantly from its present asset levels.

c. Contract owners and participants may transfer assets from the Removed Portfolios (or from the Substituted Portfolio following the Substitution Date) to another investment option available under their Contract without the imposition of any fee, charge, or other penalty that might otherwise be imposed from the date of the initial notice through a date at least thirty (30) days following the Substitution Date.

d. The Substitution will be effected at the net asset value of the respective shares of the Removed Portfolios and the Substituted Portfolio in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge by the Section 26 Applicants, and with no change in the amount of any Contract owner's or participant's Contract value or in the dollar value of his or her investment in such Contract.

e. Contract owners and participants will not incur any fees or charges as a result of the Substitution, nor will their rights or Equitable's obligations under the Contracts be altered in any way.

Equitable will bear all expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting and other fees and expenses. The Substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitution than before the Substitution.

f. Redemptions-in-kind and contributions in-kind will be done in a manner consistent with the investment objectives, policies and diversification requirements of the Removed Portfolios and the Substituted Portfolio, and the Manager will review the In-Kind Transaction to assure that the assets are suitable for the Substituted Portfolio. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid in connection with the In-Kind Transaction.

g. The Substitution will not be counted as a new investment selection in determining the limit, if any, on the total number of Portfolios that Contract owners and participants can select during the life of a Contract.

h. The Substitution will not alter in any way the annuity or life benefits, tax benefits or any contractual obligations of the Section 26 Applicants under the Contracts.

i. Contract owners and participants may withdraw amounts under the Contracts or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

j. Contract owners and participants affected by the Substitution will be sent written confirmation of the Substitution that identify the Substitution Transactions made on behalf of that Contract owner or participant within five (5) days following the Substitution Date.

k. The Manager will waive its management fee with respect to the Substituted Portfolio and/or reimburse expenses incurred by the Substituted Portfolio during the twenty-four (24) months following the Substitution Date to the extent necessary to ensure that the total operating expenses for any period (not to exceed a fiscal quarter) of: (i) Class IA Shares of the Substituted Portfolio do not exceed 0.64% of the Substituted Portfolio's average daily net assets (on an annualized basis); and (ii) Class IB Shares of the Substituted Portfolio do not exceed 0.90% of the Substituted Portfolio's average daily net assets (on an annualized basis).

l. In addition, for those Contract owners who were Contract owners on the date of the substitutions, Equitable will not increase subaccount of Contract expenses for a period of twenty-four (24) months following the Substitution Date.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides that it shall be 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 shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(b) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs or other charges will not be incurred due to unapproved substitutions of securities.

2. The Section 26 Applicants request an order pursuant to section 26(b) of the 1940 Act approving the Substitution. The section 26 Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with the protections for which section 26(b) was designed. The section 26 Applicants believe the Substitution will benefit Contract owners by: (a) Facilitating Contract owner understanding of the underlying investment options for the Contracts and reducing the potential for Contract owners to be confused by multiple Balanced Portfolio options currently available under the Contracts; (b) consolidating the assets attributable to the Balanced Portfolios in a single Portfolio, thereby eliminating duplicative Portfolios, which may make the Contracts more efficient to administer and may provide economies of scale that could benefit Contract owners; and (c) providing Contract owners who have their Contract values currently allocated to any Removed Portfolio with a Portfolio that has the same or lower investment management fees and lower total expense ratios than those of the relevant Removed Portfolio.

3. Contract owners who do not want their assets allocated to the Substituted Portfolio would be able to transfer assets to any one of the other sub-accounts available under their Contract without charge until thirty days after the Substitution have elapsed.

4. Equitable, on behalf of itself and on behalf of the Equitable Accounts, represents that the Substitution and related redemptions in kind and purchases by Equitable will not result in any change in the amount of any Contract owner's or participant's Contract value or in the dollar value of his or her investment in such Contract, or the annuity or life benefits, tax benefits or any contractual obligation of the section 26 Applicants under the Contracts. Contract owners will not incur any fees, expenses or charges as a result of the proposed transactions. Furthermore, the proposed transactions will not result in any change to the Contract fees and charges currently being paid by existing Contract owners.

5. The section 26 Applicants will not complete the Substitution as described in the application unless all of the following conditions are met:

a. The Commission will have issued an order approving the Substitution under Section 26(b) of the 1940 Act.

b. The Commission will have issued an order exempting the In-Kind Transaction from the provisions of section 17(a) of the 1940 Act, to the extent necessary to carry out the Substitution as described herein.

c. The amendments to the registration statements for the Contracts describing the Substitution shall have become effective.

d. Each Contract owner or participant will have been mailed initial disclosure of the Substitution following the initial filing of the Application and will have been mailed a prospectus and/or prospectus supplement with respect to the Substituted Portfolio and an amendment and/or supplemented prospectus for the applicable Contracts (or other notice in the case of Inactive Contracts) before the Substitution Date. In conjunction with this mailing, each Contract owner or participant will have been sent a notice that describes the terms of the Substitution and Contract owners' and participants' rights in connection with them.

e. The section 26 Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Contracts allow the substitution of Portfolios as described in the Application, and that the transactions can be consummated as described in the Application under applicable insurance laws and under the various Contracts.

f. The section 26 Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

6. Section 17(a)(1) of the 1940 Act prohibits any affiliated person or an affiliate of an affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

7. Section 17(b) of the 1940 Act authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

8. The section 17 Applicants submit that the Removed Portfolios and the Substituted Portfolio may be deemed to be affiliated persons of one another, or affiliated persons of an affiliated person (Equitable or the Equitable Separate Accounts). If viewed as such, the proposed In-Kind Transaction may be deemed to contravene section 17(a) due to the affiliated status of these participants.

9. The section 17 Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) to the extent necessary to permit them to carry out the In-Kind Transaction.

10. The section 17 Applicants assert that the In-Kind Transaction, including the consideration to be paid and received, is reasonable and fair and does not involve overreaching on the part of any person concerned. The In-Kind Transaction will be effected at the respective net asset values of the Removed Portfolios and the Substituted Portfolio, as determined in accordance with the procedures disclosed in the registration statement of EQ Trust and as required by Rule 22c–1 under the 1940 Act. The In-Kind Transaction will not change the dollar value of any participant's or Contract owner's investment in any of the Equitable Accounts or SA 65 (collectively, ''Equitable Separate Accounts''), the value of any Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transaction, the value of the Equitable Separate Account's investment in the Substituted Portfolio will equal the value of its investment in the Removed Portfolios before the In-Kind Transaction. The section 17 Applicants also state that the transactions will conform substantially with the conditions of Rule 17a–7. To the extent that the In-Kind Transaction does not comply fully with the provisions of paragraphs (a) and (b) of Rule 17a–7, the section 17 Applicants assert that the terms of the In-Kind Transaction provide the same degree of protection to the participating companies and their shareholders as if the In-Kind Transaction satisfied all of the conditions enumerated in Rule 17a–7. The section 17 Applicants also assert that the proposed In-Kind Transaction by the Section 17 Applicants does not involve overreaching on the part of any person concerned. Furthermore, the section 17 Applicants represent that the proposed substitutions will be consistent with the policies of the Removed Portfolios and Substituted Portfolio, as recited in EQ Trust's current registration statement.

11. The section 17 Applicants assert that the In-Kind Transaction is consistent with the general purposes of the 1940 Act and that the In-Kind Transaction does not present any of the conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and exempting the In-Kind Transaction should be granted.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–9428 Filed 4–16–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44177; File No. 4–208]

Joint Industry Plan; Order Approving Plan Establishing Procedures Under Rule 11Ac1–5 by the American Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, Cincinnati Stock Exchange, National Association of Securities Dealers, New York Stock Exchange, Pacific Exchange, and Philadelphia Stock Exchange

April 12, 2001.

I. Introduction

On February 20, 2001, pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Exchange Act''),[1] the American Stock Exchange LLC (''Amex''), Boston Stock Exchange, Inc. (''BSE''), Chicago Stock Exchange, Inc. (''CHX''), Cincinnati Stock Exchange, Inc. (''CSE''), National Association of Securities Dealers, Inc. (''NASD''), New York Stock Exchange, Inc. (''NYSE''), Pacific Exchange, Inc. (''PCX'') and Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed plan (''Plan'') for the purpose of establishing procedures for market centers to follow in making their monthly reports available to the public under Exchange Act Rule 11Ac1–5.[2] On February 27, 2001, the Plan was published for comment in the **Federal Register**.[3] The Commission received one comment on the Plan.[4] Pursuant to Section 11A of the Exchange Act[5] and Rule 11Aa3–2 thereunder,[6] this Order approves the Plan as proposed.

II. Background

On November 17, 2000, the Commission adopted Rule 11Ac1–5, which requires public disclosure of order execution information.[7] Under the Rule, all ''market centers''[8] that trade national market system securities are required to make available to the public monthly electronic reports that include uniform statistical measures of execution quality. On March 9, 2001, the Commission extended the initial compliance date of Rule 11Ac1–5 from April 2, 2001 to May 1, 2001.[9] Paragraph (b)(2) of the Rule directs the self-regulatory organizations (''SROs'') that trade national market system securities to act jointly in establishing procedures for market centers to follow in making their monthly reports available to the public in a uniform, readily accessible, and usable electronic format. The Plan sets forth these procedures.

III. Summary of Plan

The full text of the Plan is set forth in the Appendix and should be referred

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[1] 17 CFR 240.11Aa3–2.

[2] 17 CFR 240.11Ac1–5.

[3] Securities Exchange Act Release No. 43992 (February 21, 2001), 66 FR 12571.

[4] Letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel, Amex, to Jonathan G. Katz, Secretary, SEC, dated March 27, 2001.

[5] 15 U.S.C. 78k-1.

[6] 17 CFR 240.11Aa3–2.

[7] Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414.

[8] The term ''market center'' is defined in Rule 11Ac1–5(a)(14) as ''any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association.''

[9] Securities Exchange Act Release No. 44060 (March 9, 2001), 66 FR 15028.