

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 38-115, Representative Payee Survey, is used to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

Approximately 4,067 RI 38-115 forms will be completed annually. The form takes approximately 20 minutes to complete. The annual burden is 1,356 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before June 2, 2001.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING

ADMINISTRATIVE COORDINATION CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606-0623.

Office of Personnel Management.

Steven R. Cohen,

Acting Director.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24963; File No. 812-12392]

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

April 26, 2001.

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

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940, as amended ("Act") granting exemptions

from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

Summary of Application: Applicants seek an order to amend an Existing Order (describing below) to permit, under specified circumstances, the recapture of certain Credits applied to contributions made under "Contracts" and "Future Contracts" as defined in the applications for the Existing Order ("Prior Applications").¹ Applicants also request that the order being sought extend to "Equitable Broker-Dealers," defined in the Prior Applications.

Applicants: The Equitable Life Assurance Society of the United States ("Equitable Life"), The Equitable of Colorado, Inc. ("EOC," and together with Equitable Life, "Equitable"), Separate Account No. 45 of Equitable Life ("SA 45"), Separate Account No. 49 of Equitable Life ("SA 49"), Separate Account VA of EOC ("SA VA" and together with SA 45 and SA 49, the "Accounts"), any other separate accounts of Equitable Life or EOC (collectively, "Future Accounts") that support in the future variable annuity contracts and certificates that are substantially similar in all material respects to the contracts described herein, AXA Advisors, LLC, and Equitable Distributors, Inc. ("EDI") (collectively, "Applicants").

Filing Date: The application was filed on January 2, 2001 and amended on April 24, 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 18, 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 request 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 Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549-0609. Applicants, c/o The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New

York, New York 10104, Attn: Dodi Kent, Esq.

FOR FURTHER INFORMATION CONTACT:

Mark Cowan, Senior Counsel, or Keith Carpenter, 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 may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

Applicant's Representations

1. On May 3, 1999, the Commission issued an order ("Prior Order")² exempting certain transactions of Applicants from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder. The Prior Order specifically permits the recapture, under specified circumstances, of certain 3% Credits applied to contributions made under Contracts or Future Contracts. On July 28, 1999, the Commission issued an order of exemption amending the Prior Order³ (together with the Prior Order, the "Existing Order") to permit the recapture of Credits of up to 5% ("5% Credits"), under the same specified circumstances.⁴

2. Equitable now desires to offer and recapture Credits of up to 6% of contributions ("6% Credits") under the Contracts or Future Contracts, under the same and certain additional circumstances described below. Equitable will apply a Credit to the account of a Contract owner whenever the owner makes a contribution. The amount of the Credit will equal a percentage ("Credit Rate") of the contribution. For contributions received during the first Contract Year (as defined in the Contract prospectus), the applicable Credit Rate will be based on the Credit schedule then in effect and the total net amount of contributions received to date under a Contract. The Credit Rate applicable to contributions made after the first Contract Year will be

² *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23822 (File No. 812-11388).

³ *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23924 (File No. 812-11662).

⁴ Pursuant to Rule 0-4 under the Act, Applicants incorporate by reference the statement of facts set out in the Prior Applications to the extent necessary to support the Application. Applicants represent that except as described herein all of the facts asserted in the Prior Applications remain true and accurate in all material aspects to the extent that such facts are relevant to any relief on which Applicants continue to rely.

¹ *The Equitable Life Assurance Society of the United States*, Investment Company Act Release Nos. 23774 (Apr. 7, 1999) (File No. 812-11388) and 23889 (July 2, 1999) (File No. 812-11662).

the Credit Rate applicable to "Net First Year Contributions" received during the first Contract Year. "Net Year Contributions" equal total first contributions ("Total First Year Contributions") less any withdrawals of contributions (including withdrawal charges) made during the first Contract Year.

3. Equitable currently proposes to use the following Credit schedule for contributions made under the Contract:

Contributions*		Credit rate (as a percentage of contribution)
At least	But less than	
Minimum	\$250,000	4.0
\$250,000	\$1,000,000	5.0
\$1,000,000	unlimited** ..	6.0

* The Credit Rate applicable depend on total net contributions received to date, Expected First Year Contributions, or Net First Year Contributions, as described below.

** Maximum contribution limitations may apply.

4. If Equitable receives more than one contribution during the first Contract Year and a higher Credit Rate applies to the later contribution(s) based on the total amount of net contributions to date (i.e., the total net contributions surpass a breakpoint), Equitable will apply the higher Credit Rate to that contribution, as well as any prior or subsequent contributions made in the first Contract Year. Equitable will apply any additional Credit amounts resulting from such adjustments as of the date it receives the later contribution(s).

5. If a Contract owner executes a letter of intent ("Letter of Intent") pursuant to which the owner agrees to make a certain amount of contributions in the first Contract Year ("Expected First Year Contributions"),⁵ Equitable will apply a Credit amount to each contribution made during the first Contract Year using the Credit Rate applicable to the Expected First Year Contributions ("Letter of Intent Credit Rate"). Equitable will apply Credits at the Letter of Intent Credit Rate when it receives each contribution. For any contribution(s) that results in the total net contributions to date exceeding the Expected First Year Contributions, such that a higher Credit Rate would apply, Equitable will apply the higher Credit Rate to that contribution, as well as any prior or subsequent contribution(s) made in the first Contract Year.

⁵ The Letter of Intent will be in the form of an acknowledgment in a delineated section of the application for the Contracts. The initial contribution must be at least 50% of the Expected First Year Contributions for the Letter of Intent Credit Rate to apply.

6. In the future, Equitable may apply Credits for contributions under the Contracts using the same Credit schedule or a different Credit schedule containing higher breakpoints.

7. Equitable will recapture Credits applied to contributions made under Contracts and Future Contracts under the same circumstances permitted by the Existing Order. In addition, on the first anniversary of the Contract ("Contract Anniversary"), Equitable will recapture any "Excess Credits" applied during the first Contract Year, as discussed below.

8. Excess Credits will exist when a Contract owner's Net First Year Contributions are lower than Total First Year Contributions. In such cases, Equitable will recapture an Excess Credit amount equal to the difference between the Credits that were actually applied and the Credits that would have been applied based on Net First Year Contributions.

Example.

• Assume an initial contribution of \$250,000. A Credit of \$12,500 (5% of \$250,000) would be applied to the Contract. If the Contract owner withdraws \$100,000 during the first Contract Year, his or her Net First Year Contributions would be \$145,000 (\$250,000-\$100,000=\$150,000 withdrawal charge (\$100,000-15% free withdrawal × 8%)). The applicable Credit Rate based on Net First Year Contributions is 4%. At the end of the first Contract Year, Equitable would recapture \$6,700 (5% of \$105,000 plus 1% of \$145,000).

9. Excess Credits also will exist when a Contract owner fails to fulfill the conditions of a Letter of Intent, and as a result the Credits applied to the Contract exceed the Credits that would have applied to actual contributions made had the Contract owner not executed a Letter of Intent. For Contract owners who fail to fulfill a Letter of Intent, Equitable will recapture an amount equal to the difference between the Credits that were actually applied and the Credits that would have been applied based on Net First Year Contributions.

Example.

• Assume an initial contribution of \$150,000 pursuant to a Letter of Intent under which the Contract owner has agreed to make contributions totaling \$250,000 during the first Contract Year. A Credit of \$7,500 (5% of \$150,000) would apply to the Contract. If the Contract owner makes no more contributions during the first Contract Year (and thus does not fulfill the terms of the Letter of Intent), then at the end of the first Contract Year, Equitable

would recapture \$1,500 (1% of \$150,000).

10. The Contracts and Future Contracts will be substantially similar in all material respects to the Contracts covered by the Existing Order except that: (a) Equitable will apply and recapture Credits as described above, and (b) a sorter withdrawal charge schedule will apply. Specifically, the Contracts and Future Contracts will have a withdrawal charge schedule that declines from 8% in years one and two, to 0% in year nine and thereafter (rather than year 10 and thereafter, as it currently does).

11. Applicants submit that their request for an order that applies to the Accounts or any Future Account, in connection with the issuance of Contracts and Future Contracts that are substantially similar in all material respects to the Contracts described herein and underwritten or distributed by AXA Advisors, LLC, Equitable Distributors, Inc., or Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order.

Applicant's Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provision of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants request that the Commission, pursuant to Section 6(c) of the Act, amend the Existing Order to grant exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit: (a) the recapture of 6% Credits under the same circumstances covered by the Existing Order, and (b) the recapture of Excess Credits in the manner described above.

3. Applicants submit that the recapture of Credits will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder the same reasons given in support of the Existing Order. First, the 6% Credits will be recapturable under the same circumstances and on the same basis as the 5% Credits described in the Prior Applications, the only difference being the higher percentage amount. In addition, Applicants submit that when Equitable recaptures any Excess Credit, it is also simply retrieving its own assets, because a Contract owner's

interest in any Excess Credit allocated to a Contract within the first Contract Year is not vested. Rather, Equitable retains the right to, and interest in, the Excess Credit, although not any earnings attributable to the Excess Credit.

4. Applicants state that because a Contract owner's interest in any recapturable Excess Credit is not vested, the owner will not be deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the Contract owner's annuity account value (taking into account the investment experience attributable to any Excess Credit). The amounts recaptured will never exceed the Credits (or any Excess Credit) provided by Equitable from its own general account assets, and Equitable will not recapture any gain attributable to the Credit (or any Excess Credit).

5. Furthermore, Applicants submit that permitting a Contract owner who withdraws contributions, or who fails to fulfill his or her Letter of Intent obligations to retain any Excess Credit, would be patently unfair and would deny the Applicants a reasonable measure of protection against "anti-selection." The risk here is that rather than investing contributions over a number of years, a Contract owner could make an initial contribution, receive Credits, then later, during the first Contract Year, withdraw monies (perhaps by taking advantage of the 15% free withdrawal feature), thereby enabling the Contract owner to retain Credit amounts that otherwise would not have been applied. Similarly, a Contract owner could execute a Letter of Intent with no intention of fulfilling it, in order to obtain higher Credit amounts. Like the recapture of Credits permitted by the Existing Order, the amounts recaptured will equal the Excess Credits provided by Equitable from its own general account assets, and any gain associated with the Credit will remain part of the Contract owner's Contract value.

6. For the foregoing reasons, Applicants submit that the provisions for recapture of any Credit or Excess Credit under the Contracts does not violate Section 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder, and that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

7. Applicants submit that their request for an order that applies to the Accounts or any Future Account, in connection with the issuance of Contracts and Future Contracts that are substantially similar in all material

respects to the Contracts described herein and underwritten or distributed by AXA Advisors, LLC, Equitable Distributors, Inc., or Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order.

Conclusion

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

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-11048 Filed 5-2-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24964]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 27, 2001.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April, 2001. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifty St., NW., Washington, DC 20549-0102 (tel. 202-942-8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 22, 2001, and should be accompanied by proof of service on the applicant, 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, SEC, 450 Fifth Street, NW., Washington, DC 20549-

0609. For Further Information Contact: Diane L. Titus, at (202) 942-0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549-0506.

Firstmark Partners Contrarian Value Fund [File No. 811-9109]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 21, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately \$3,800 incurred in connection with the liquidation were paid by applicant's investment adviser, Firststock Financial Services, Inc.

Filing Dates: The application was filed on March 7, 2001, and amended on April 18, 2001.

Applicant's Address: 5212 Underwood Ave., Omaha, NE 68132.

Circle Income Shares, Inc. [File No. 811-2378]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 22, 2001, applicant transferred its assets to One Group Mutual Funds based on net asset value. Expenses of \$123,169 were incurred in connection with the reorganization. Applicant and the acquiring fund each were responsible for their own reorganizational expenses. Bank One Investment Advisors Corporation, the acquiring fund's investment adviser, assumed the costs of certain expenses, including proxy solicitation and legal expenses.

Filing Date: The application was filed on April 6, 2001.

Applicant's Address: PO Box 77004, Indianapolis, IN 46277-7004.

Imperial Special Investments, Inc. [File No. 811-9919]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 26, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of \$16,600 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on April 4, 2001.

Applicant's Address: 9920 S. La Cienega Blvd., Suite 636, Inglewood, CA 90301.

Bearguard Funds, Inc. [File No. 811-9291]

Summary: Applicant seeks an order declaring that it has ceased to be an