because they share similar investment objectives. Accordingly, the Insurance Company Applicant has specifically determined that the Substituting Portfolios are appropriate investment vehicles for owners who have allocated values to the Replaced Portfolios and that the Substitution will be consistent with Owners' investment objectives.

4. As of December 31, 2000, each Substituting Portfolio had lower expense ratios than its corresponding Replaced Portfolio, and with the exception of American Century VP International Growth Fund, American Century VP Income and Growth Fund and American Century VP Ultra Fund, each Substituting Portfolio pays management fees that are equal to or less than the corresponding Replaced Portfolio. Applicants believe that the addition of assets resulting from the Substitution will likely result in lower expense ratios for the Owners that have allocated their Contract values to the Substituting Portfolios.

The expense structure of the American Century Fund is substantially different from that of the Trust. The Trust pays, in addition to a management fee, all of its own expenses, which may vary from year to year. In contrast, services provided by American Century under the American Century Management Agreement are offered under a unified fee arrangement. For the services it provides to the American Century Fund, American Century receives a unified management fee based on a percentage of the average net assets of the series of the Fund, including each of the American Century Substituting Portfolios. Out of that fee American Century pays all expenses of managing and operating the American Century Fund except brokerage expenses, taxes, interest, fees and expenses of the Fund's independent directors (including legal counsel fees), and extraordinary expenses. In each substution into the American Century Fund, the overall expense ratios of the Substituting Portfolios are lower and, in some cases, significantly so.

5. With respect to the First Variable separate accounts investing in the American Century Substituting Portfolios, Applicants represent that there will be no increase in the contract charges from their current levels for a period of at least two years from the date of the Commission order requested herein.

6. Applicants represent that First Variable does not currently receive (and will not receive for three years from the date of the Commission order requested herein) any direct or indirect benefit from the Substituting Portfolios (other than the American Century Substituting Portfolios), their advisers and/or their affiliates, that would exceed the amounts that First Variable or FVAS, the Trust's adviser, had received from the Replaced Portfolios, including without limitations, 12b-1, shareholder service, administrative or other service fees, revenue sharing or other arrangements, either with respect to specific reference to the Substituting Portfolios or as part of an overall business arrangement.

7. Applicants represent that the returns for most of the Substituting Portfolios have generally been higher than the returns of the corresponding Replaced Portfolios, and that while there is no guarantee that past performance will continue, the return data supports Applicants' view that the Substitution is not expected to give rise to diminution in performance or other adverse effects on Contract values.

8. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company. The proposed Substitution will be effected in part through in-kind redemptions and purchases and may be deemed to entail the indirect purchase of shares of a related Substituting Portfolio with portfolio securities of the Replaced Portfolio and the indirect sale of securities of the Replaced Portfolio for shares of the Substituting Portfolio.

9. Section 17(b) of the 1940 Act provides that the Commission may grant an Order exempting transactions prohibited by Section 17(a) of the 1940 Act upon application if evidence establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned;

(b) The proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and

(c) The proposed transaction is consistent with the general purposes of the 1940 Act.

The Applicants represent that the terms of the proposed transactions, as described in this Application are: reasonable and fair, including the consideration to be paid and received; do not involve over-reaching; are consistent with the policies of the Replaced Portfolios of the Trust; and are consistent with the general purposes of the 1940 Act.

10. Applicants represent that for all the reasons stated above, with regard to Section 26(c) of the 1940 Act, the Substitution is reasonable and fair. It is expected that existing and future Owners will benefit from the consolidation of assets in the Substituting Portfolios. The transactions effecting the Substitution will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. Moreover, the partial in-kind redemptions of portfolios' securities of the Replaced Portfolios will be effected in conformity with Rule 17a–7 under the 1940 Act and the procedures of the Trust established pursuant to Rule 17a–7. The Owners' interests after the Substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. In each case, the consideration to be received and paid is, therefore, reasonable and fair.

Conclusion

Applicants submit, for all of the reasons stated herein, that their requests meet the standards set out in Sections 6(c), 17(b) and 26(c) of the 1940 Act and that an Order should, therefore, be granted. Accordingly, Applicants request an Order pursuant to Sections 6(c), 17(b) and 26(c) of the 1940 Act approving the Substitution.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 01–30442 Filed 12–7–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8039, 34–45124, FR–59]

Cautionary Advice Regarding the Use of ''Pro Forma'' Financial Information in Earnings Releases

AGENCY: Securities and Exchange Commission.

SUMMARY: The Securities and Exchange Commission is issuing a statement regarding the use by public companies of ''pro forma'' financial information in earnings releases.

FOR FURTHER INFORMATION CONTACT: John M. Morrissey, Deputy Chief Accountant,

at 202–942–4400, or Paula Dubberly, Chief Counsel of the Division of Corporation Finance, at 202–942–2900.

SUPPLEMENTARY INFORMATION: As we approach year end, we believe it is appropriate to sound a warning to public companies and other registrants who present to the public their earnings and results of operations on the basis of methodologies other than Generally Accepted Accounting Principles (''GAAP''). This presentation in an earnings release is often referred to as ''pro forma'' financial information. In this context, that term has no defined meaning and no uniform characteristics. We wish to caution public companies on their use of this ''pro forma'' financial information and to alert investors to the potential dangers of such information.

''Pro forma'' financial information can serve useful purposes. Public companies may quite appropriately wish to focus investors' attention on critical components of quarterly or annual financial results in order to provide a meaningful comparison to results for the same period of prior years or to emphasize the results of core operations. To a large extent, this has been the intended function of disclosures in a company's Management's Discussion and Analysis section of its reports. There is no prohibition preventing public companies from publishing interpretations of their results, or publishing summaries of GAAP financial statements.

Moreover, as part of our commitment to improve the quality, timeliness, and accessibility of publicly available financial information, we believe that—with appropriate disclosures about their limitations—accurate interpretations of results and summaries of GAAP financial statements taken as a whole can be quite useful to investors.

Nonetheless, we are concerned that ''pro forma'' financial information, under certain circumstances, can mislead investors if it obscures GAAP results. Because this ''pro forma'' financial information by its very nature departs from traditional accounting conventions, its use can make it hard for investors to compare an issuer's financial information with other reporting periods and with other companies.

For these reasons, we believe it is appropriate to alert public companies and their advisors of the following propositions:

First, the antifraud provisions of the federal securities laws apply to a company issuing ''pro forma'' financial information. Because ''pro forma'' information is information derived by selective editing of financial information compiled in accordance with GAAP, companies should be particularly mindful of their obligation not to mislead investors when using this information.

Second, a presentation of financial results that is addressed to a limited feature of a company's overall financial results (for example, earnings before interest, taxes, depreciation, and amortization), or that sets forth calculations of financial results on a basis other than GAAP, raises particular concerns. Such a statement misleads investors when the company does not clearly disclose the basis of its presentation. Investors cannot understand, much less compare, this ''pro forma'' financial information without any indication of the principles that underlie its presentation. To inform investors fully, companies need to describe accurately the controlling principles. For example, when a company purports to announce earnings before ''unusual or nonrecurring transactions,'' it should describe the particular transactions and the kind of transactions that are omitted and apply the methodology described when presenting purportedly comparable information about other periods.

Third, companies must pay attention to the materiality of the information that is omitted from a ''pro forma'' presentation. Statements about a company's financial results that are literally true nonetheless may be misleading if they omit material information. For example, investors are likely to be deceived if a company uses a ''pro forma'' presentation to recast a loss as if it were a profit, or to obscure a material result of GAAP financial statements, without clear and comprehensible explanations of the nature and size of the omissions.

Fourth, we commend the earnings press release guidelines jointly developed by the Financial Executives International and the National Investors Relations Institute and we encourage public companies to consider and follow those recommendations before determining whether to issue ''pro forma'' results, and before deciding how to structure a proposed ''pro forma'' statement. A presentation of financial results that is addressed to a limited feature of financial results or that sets forth calculations of financial results on a basis other than GAAP generally will not be deemed to be misleading merely due to its deviation from GAAP if the company in the same public statement discloses in plain English how it has deviated from GAAP and the amounts of each of those deviations.

Fifth, as always, and especially in light of the disclosure that we expect to see accompanying these presentations, we encourage investors to compare any summary or ''pro forma'' financial presentation with the results reported on GAAP-based financials by the same company. Read before you invest; understand before you commit.

Companies with questions about the use of ''pro forma'' financial presentations in earnings releases are encouraged to call John M. Morrissey, Deputy Chief Accountant, at 202–942–4400, or Paula Dubberly, Chief Counsel of the Division of Corporation Finance, at 202–942–2900. Investors are encouraged to read our investor alert on ''pro forma'' financial statements (available at *http://www.sec.gov/investor.shtml).*

By the Commission.

Dated: December 4, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–30414 Filed 12–7–01; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3378]

State of Texas; Disaster Loan Areas

Medina County and the contiguous counties of Atascosa, Bandera, Bexar, Frio, Uvalde and Zavala in the State of Texas constitute a disaster area as a result of severe storms and tornadoes that occurred on October 12, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 1, 2002 and for economic injury may be filed until the close of business on September 3, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	(Percent)
For Physical Damage:	
Homeowners with Credit Available Elsewhere	6.500
Homeowners without Credit Available Elsewhere	3.250
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000