

become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, November 4, 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23524; File No. 812-11282]

Provident Mutual Life Insurance Co. et al.

November 4, 1998.

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

ACTION: Notice of application for order pursuant to Section 26(b) and Section 17(b) of the Investment Company Act of 1940 (the "Act" or the "1940 Act").

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of securities issued by certain management investment companies (each a "Management Company") and held by either Provident Mutual Variable Managed Separate Account (the "Managed Account"), Provident Mutual Variable Separate Account (the "Separate Account"), Providentmutual Variable Annuity Separate Account (the "Variable Account"), or Providentmutual Variable Life Separate Account (the "Variable Life Account") (each, an "Account," together, "Accounts") to support variable life insurance contracts or variable annuity contracts (collectively, the "Contracts") issued by Provident Mutual Life Insurance Company ("PMLIC") or Providentmutual Life and Annuity Company of America ("PLACA"). Applicants also seek an order exempting them from Section 17(a) of the Act to the extent necessary to permit PMLIC to consolidate the Managed Account with the Separate Account to permit PLACA to consolidate two subaccounts to the Variable Account and to consolidate two subaccounts of the Variable Life Account.

APPLICANTS: PMLIC, PLACA, the Managed Account, the Separate Account, the Variable Account, and the Variable Life Account.

FILING DATE: August 27, 1998.

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 SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on November 30, 1998, and must be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Adams Scaramell, Esq., Provident Mutual Life Insurance Company, 1050 Westlakes Drive, Berwyn, Pennsylvania 19312. Copies to Stephen E. Roth, Esq. and David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, N.W., Washington, D.C. 20004-2415.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, or Kevin M. Kirchoff, 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, N.W., Washington, D.C. 20549 (tel. (202) 942-8090).

Applicants' Representations

1. PMLIC, a mutual life insurance company chartered by the Commonwealth of Pennsylvania, is authorized to transact life insurance and annuity business in Pennsylvania and in 50 other jurisdictions. PLMIC is the depositor and sponsor of the Separate Account and the Managed Account.

2. PLACA is a stock life insurance company originally incorporated under the laws of the Commonwealth of Pennsylvania in 1958, and redomiciled as a Delaware insurance company in 1992. It is a wholly owned subsidiary of PMLIC. PLACA is licensed to do business in 48 states and the District of Columbia. PLACA is a depositor and sponsor of the Variable Account and the Variable Life Account.

3. PMLIC established the Managed Account on October 21, 1985, and the Separate Account on June 3, 1993, as segregated investment accounts under Pennsylvania law. PLACA established

the Variable Account on May 9, 1991, as a segregated investment account under Pennsylvania law, and established the Variable Life Account on June 30, 1994, as a segregated investment account under Delaware law. Each Account is a "separate account" as defined by Rule 0-1(e) under the Act, and is registered with the Commission as a unit investment trust.

4. The Separate Account is divided into sixteen subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding investment portfolio (each, a "Portfolio") of one of six series-type Management Companies. The Managed Account is not divided into subaccounts and invests in shares of the Market Street Fund, Inc. The assets of the Separate Account and the Managed Account support variable life insurance Contracts, and interests in these Accounts offered through such Contracts have been registered under the Securities Act of 1933 (the "1933 Act") on Form S-6.

5. The Variable Account is divided into thirty-three subaccounts. Each subaccount invests exclusively in a Portfolio of one of ten series-type Management Companies. The assets of Variable Account support annuity Contracts, and interests in the Account offered through such Contracts have been registered under the 1933 Act on Form N-4.

6. The Variable Life Account is divided into twenty-two subaccounts. Each subaccount invests in a Portfolio of one of seven series-type Management Companies. The assets of the Variable Life Account support variable life Contracts, and interests in the Account offered through such Contracts have been registered under the 1933 Act on Form S-6.

7. The Separate Account, the Variable Account, and the Variable Life Account each invest in two Management Companies that are involved in the substitutions discussed in the application: the Neuberger & Berman Advisers Management Trust and the American Century Portfolios, Inc.

8. American Century Variables Portfolios, Inc. ("ACVP") was organized as a Maryland corporation on June 4, 1987. It is registered under the Act as an open-end management investment company. ACVP is a series investment company as defined by Rule 18f-2 under the Act, and currently comprises six Portfolios, one of which, American Century V.P. Capital Appreciation Portfolio, is involved in the proposed substitutions. Investors Research Corporation serves as the investment adviser to ACVP.

9. AMT was organized as a Delaware business trust on May 23, 1994. AMT is registered under the Act as a diversified, open-end management investment company. AMT is a series investment company as defined by Rule 18f-2 under the Act, and is a "feeder" fund in a "master-feeder" structure. Each series of AMT currently invests all of its net investible assets in a corresponding series of Advisers Master Trust, the "master" fund. AMT currently comprises eight Portfolios. Neuberger & Berman Management Incorporated serves as investment adviser to AMT. The following AMT Portfolios are involved in the proposed substitutions discussed in the application: AMT's Balance Portfolio, AMT's Growth Portfolio and AMT's Partners Portfolio.

10. MSF was incorporated in Maryland on March 21, 1985. MSF is registered under the Act as an open-end diversified management investment company. MSF is a series investment company as defined by Rule 18f-2 under the Act and currently comprises eleven Portfolios. Providentmutual Investment Management Company serves as investment adviser to the MSF All Pro Large Cap Growth Portfolio. Sentinel Advisers Company serves as investment adviser to the Managed Portfolio.

11. The Contracts are flexible premium variable life insurance contracts and individual flexible premium deferred variable annuity contracts. PMLIC issues four of the variable life insurance Contracts that are participating in the proposed substitution. PLACA issues one of the variable life insurance Contracts and the only variable annuity Contract that are participating in the proposed substitution. The Contracts provide for the accumulation of values on a variable

basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a fixed basis. PMLIC or PLACA, under each of the Contracts, reserves the right to substitute shares of one Portfolio for shares of another, including a Portfolio of a different Management Company.

12. Under all of the variable life insurance Contracts except the "Options Contract," a Contract owner may make unlimited transfers (in minimum amounts of at least \$1000) of contract value in a Contract year between and among the subaccounts of the relevant Account, the other separate accounts available under the Contract, and either PMLIC's or PLACA's general account. However, after the fourth transfer in a Contract year, each insurer assesses a \$25 charge for each transfer. Under the Options Contract, a Contract owner may make four transfers (of at least \$100) of account value in a contract year between and among the subaccounts of the Separate Account and the other separate accounts available under this Contract. Under the PLACA variable annuity contract, a Contract owner may make unlimited transfers (of at least \$500) of account value between and among the subaccounts of the Variable Annuity Account and PLACA's general account. There is no charge for transfers.

13. PMLIC, on its behalf and on behalf of the Separate Account; and PLACA, on its behalf and on behalf of the Variable Account and the Variable Life Separate Account; propose to make certain substitutions of shares held in those Accounts. PMLIC and PLACA propose to substitute shares of MSF Managed Portfolio for shares of AMT Balanced Portfolio, shares of MSF All-Pro Large Cap Growth Portfolio for

shares of ACVP Capital Appreciation Portfolio, and shares of AMT Partners Portfolio for shares of AMT Growth Portfolio. PMLIC and PLACA believe that by making the proposed substitutions in each of their Accounts, they can better serve the interests of owners of their Contracts.

14. MSF Managed Portfolio and AMT Balanced Portfolio have substantially the same investment objectives and achieve these objectives by investing in equity and debt securities. Applicants, however, believe that the proposed substitutions will benefit Contract owners by offering MSF Managed Portfolio, which in recent years has had lower expenses and better performance than AMT Balanced Portfolio. MSF Managed Portfolio also is a more popular investment option than the AMT Balanced Portfolio. The expense ratios for MSF Managed Portfolio have been significantly lower over each of the past three years (by approximately 33% in 1995, by approximately 49% in 1996, and by approximately 46% in 1997) than the expense ratios for AMT Balanced Portfolio for the same periods. Applicants believe that MSF Managed Portfolio will continue to have low expense ratios, and have no reason to believe that AMT Balanced Portfolio will match the low expense ratios of the Balanced Portfolio in the near future. Likewise, for each of the past three years, MSF Managed Portfolio has had somewhat higher total returns than AMT Balanced Portfolio. Similarly, as shown below, the average annual total returns for the Portfolios for 1, 3, and 5 years show MSF Managed Portfolio with somewhat better performance results than AMT Balanced Portfolio.

AVERAGE ANNUAL TOTAL RETURNS
[As of 12/31/97]

	1 year	3 years	5 years
AMT Balanced	18.6%	15.6%	9.4%
MSF Managed	20.3%	18.2%	12.2%

Applicants have no reason to believe that, in the near term, the performance of AMT Balanced Portfolio will match or exceed that of MSF Managed Portfolio. Finally, Applicants assert that the AMT Balanced Portfolio has proved to be an unpopular investment choice with Contract owners and does not exhibit signs of becoming more popular in the future. During each of the past three fiscal years, far more Contract owners allocated Contract values to

MSF Managed Portfolio than to AMT Balanced Portfolio.

NUMBER OF OWNERS OF ALL PMLIC/
PLACA CONTRACTS WITH VALUE
ALLOCATED TO EACH PORTFOLIO

	MSF managed portfolio	AMT balanced portfolio
12/31/97	13,062	3,320
12/30/96	12,767	2,802

NUMBER OF OWNERS OF ALL PMLIC/
PLACA CONTRACTS WITH VALUE
ALLOCATED TO EACH PORTFOLIO—
Continued

	MSF managed portfolio	AMT balanced portfolio
12/31/95	12,495	2,058

For the foregoing reasons, Applicants submit that the proposed substitution of

the MSF Managed Portfolio for shares of the AMT Balanced Portfolio is in the best interests of Contract owners.

15. MSF All Pro Large Cap Growth Portfolio and ACVP Capital Appreciation Portfolio have substantially the same investment objective: to achieve capital appreciation or growth by investing in equity securities. In addition, ACVP Capital Appreciation Portfolio was managed with an essentially large capitalization growth stock investment style. Applicants' however, believe that Contract owners will be better served by replacing ACVP Capital Appreciation Portfolio with MSF All Pro Large Cap Growth Portfolio for three basic reasons: (a) ACVP Capital Appreciation's poor performance and shrinking asset base over each of the past three years, (b) the shift in investment strategy made by the adviser of ACVP Capital Appreciation Portfolio, and (c) the unpopularity of ACVP Capital Appreciation Portfolios as an investment option under the Contracts. For each of the past three fiscal years the total returns for ACVP capital Appreciation Portfolio have been poor. In 1996 and 1997 the Portfolio had negative total returns (-4.32% and -3.26%, respectively). The Portfolio had these poor returns despite the record highs achieved in the U.S. equity markets during 1996 and 1997. Further, ACVP Capital Appreciation Portfolio is the worst performing domestic equity Portfolio available under the Contracts for each of the past two fiscal years. In addition, the net assets of ACVP Capital Appreciation Portfolio have declined in each of the past three fiscal years. Significantly, the Portfolio's net assets declined by more than 50% during 1997. Should the decline in net assets of ACVP Capital Appreciation Portfolio continue, Applicants believe that the expenses of the Fund would eventually increase. Applicants have no reason to believe that the performance of the Portfolio or the rate of decline of its asset base will be reversed in the foreseeable future.

16. In addition to poor performance and a shrinking asset base, ACVP Capital appreciation Portfolio has recently changed its investment style. When PMLIC and PLACA selected the

Portfolio as an investment option under the Contracts, it was managed primarily as a large capitalization growth stock portfolio. However, the investment adviser now emphasizes primarily smaller capital stocks. MSF All Pro Large Cap Growth Portfolio is a large capitalization growth stock portfolio that invests in the equity securities of the 750 largest companies by market capitalization. Substituting MSF All Pro Large Cap Growth Portfolio for ACVP Capital Appreciation Portfolio will ensure that the Contracts continue to offer a growth portfolio with a large capitalization stock orientation.

17. Finally, Applicants submit that ACVP Capital Appreciation Portfolio has been among the least (if not the least) popular investment option for Contract owners for each of the past three fiscal years, and does not exhibit signs of becoming more popular in the future. Applicants believe that MSF All Pro Large Cap Growth Portfolio would be a more popular investment option for Contract owners. For the foregoing reasons, Applicants submit that the substitution of MSF All Pro Large Cap Growth Portfolio shares for shares of ACVP Capital Appreciation Portfolio will better serve the interests of Contract owners.

18. AMT Partners Portfolio has substantially the same investment objective as the AMT Growth Portfolio. Applicants, however, believe that it is in the best interests of Contract owners to substitute shares of the AMT Partners Portfolio for shares of the AMT Growth Portfolio because of the change in investment strategy of the AMT Growth Portfolio, and the good performance, declining expenses, and growth potential of the AMT Partners Portfolio. Although AMT Growth Portfolio has not changed its investment objective recently, its style of investing has changed dramatically. In July 1997, the Fund's adviser appointed a new portfolio manager. As a result of this management change, AMT Growth Portfolio no longer follows a strategy which emphasizes the selection of large capitalization stocks with value characteristics and instead employs a strategy which emphasizes the selection of mid-capitalization stocks with strong

earnings growth momentum. AMT Partners Portfolio is essentially the portfolio that the AMT Growth Portfolio once was. In addition, AMT Partners Portfolio follows what used to be AMT Growth Portfolio's investment strategy of investing significantly in large capitalization stocks with value characteristics such as low price/earnings ratios. As such, the AMT Partners Portfolio is a suitable replacement to fill the void left by the AMT Growth Portfolio in the large capitalization value category of investment options available under the Contracts.

19. Moreover, the AMT Partners Portfolio has exhibited stronger performance and greater growth over each of the past three fiscal years than has AMT Growth Portfolio. For example, during 1997, net assets increased by approximately 57%, the expense ratio declined .09% from 1996 to .86%, and total return increased from 29.57% in 1996 to 31.25% in 1997. In contrast, net assets of AMT Growth Portfolio increased approximately 3% over 1997, the expense ratio declined only .02% from 1996 to .90%, and total return increased from 9.14% in 1996 to 29.01%. In addition, for each of the past three years, the expense ratios for the AMT Partners Portfolio have declined, while the expense ratios for the AMT Growth Portfolio have stayed roughly the same. Applicants have no reason to believe that strong performance, declining expenses, and growth potential of the AMT Partners Portfolio will not continue. For the foregoing reasons, Applicants believe that Contract owners would be better served by substituting shares of the AMT Partners Portfolio for shares of the AMT Growth Portfolio.

20. The following charts show the approximate year-end size (in net assets), expense ratio (ratio of operating expenses as a percentage of average net assets), and annual total returns for each of the past three years for five of the six Portfolios involved in the proposed substitutions. (The MSF All Pro Large Cap Growth Portfolio is not included in the charts below because it is new.)

	Net assets at year-end (in mil- lions)	Expense ratio (percent)	Total return (per- cent)
AMT Balanced Portfolio:			
1995	\$144.4	.99	23.76
1996	173.2	1.09	6.89
1997	161.9	1.04	19.45
MSF Managed Portfolio:			
1995	36.0	.66	24.43
1996	43.4	.60	11.88

	Net assets at year-end (in mil- lions)	Expense ratio (percent)	Total return (per- cent)
1997	56.1	.58	21.23
American Century V.P. Capital Appreciation Portfolio:			
1995	1,461.0	.99	31.10
1996	1,314.0	1.00	(4.32)
1997	594.0	1.00	(3.26)
AMT Growth Portfolio:			
1995	537.8	.90	31.73
1996	566.4	.92	9.14
1997	583.7	.90	29.01
AMT Partners Portfolio:			
1995	207.5	1.09	36.47
1996	705.4	.95	29.57
1997	1,632.8	.86	31.25

21. By supplements to the various prospectuses for the Contracts and the Accounts, all owners of the Contracts will be notified of PMLIC's and PLACA's intention to take the necessary actions to substitute shares of the Portfolios. The supplements for the Accounts advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the affected subaccounts or the Managed Account on the date of the supplement to another subaccount or separate account available under a Contract other than one of the other affected investment subaccounts or the Managed Account, without that transfer counting as a "free" transfer permitted under a Contract. The supplements also inform Contract owners that PMLIC and PLACA will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the Proposed substitution.

22. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's account value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights to PMLIC's nor PLACA's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by PMLIC or PLACA. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed

substitutions. The proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. PMLIC and PLACA will not exercise any right either may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the substitutions.

23. In addition to the prospectus supplements distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all account value under a Contract invested in any one of the affected subaccounts or the Managed Account on the date of the notice to another subaccount or separate account available under their Contract without that transfer counting as one of any limited number of transfers permitted in a Contract year or as one of a limited number transfers permitted in a Contract year free of charge. The notice will also reiterate the fact that PMLIC and PLACA will not exercise any rights reserved by either under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states. Contract owners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by PMLIC (or one of its affiliates) or PLACA (or one of its affiliates) during the 60 days following the proposed substitutions. The notices will be accompanied by current prospectuses for MSF Managed Portfolio, the MSF All Pro Large Cap

Growth Portfolio, and the AMT Partners Portfolio.

24. PMLIC and PLACA also are seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

Section 26(b)

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Section 26(b) was added to the Act by the Investment Company Amendments of 1970. Prior to the enactment of the 1970 amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval. Congress responded to the Commission's concerns by enacting Section 26(b) to require that the Commission approve all substitutions by the depositor of investments held by unit investment trusts.

2. The proposed substitutions appear to involve substitutions of securities within the meaning of Section 26(b) of the Act. Applicants therefore request an order from the Commission pursuant to Section 26(b) approving the proposed substitutions.

3. The Contracts expressly reserve for PMLIC or PLACA the right, subject to

compliance with applicable law, to substitute shares of another Management Company for shares of a Management Company held by an Account or a subaccount of an Account. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right. PMLIC and PLACA each reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners.

4. In the case of the proposed substitution of shares of MSF Managed Portfolio for shares of AMT Balanced Portfolio, AMT Balanced Portfolio would be replaced by a Portfolio with substantially the same investment objectives but which has lower expenses and better performance. Moreover, MSF Managed Portfolio is already available under the Contracts and is a more popular investment option than AMT Balanced Portfolio.

5. In the case of the proposed substitution of shares of MSF All Pro Large Cap Growth Portfolio for shares of ACVP Capital Appreciation Portfolio, the interests of Contract owners will be better served primarily because the worst performing domestic equity Portfolio and one of the least attractive investment options under the Contracts would be replaced by a Portfolio with substantially the same investment objective and hopefully better performance. In addition, ACVP Capital Appreciation Portfolio has shifted its investment strategy since it was first made available as an investment option to Contract owners. Its investment adviser no longer primarily invests in large capitalization stocks and instead primarily invests in smaller capitalization stocks. MSF All Pro Large Cap Growth Portfolio, in contrast, will invest primarily in large capitalization stocks.

6. Finally, in the case of the proposed substitution of shares of AMT Partners Portfolio for shares of AMT Growth Portfolio, Contract owners will be better served because AMT Partners Portfolio has an investment strategy comparable to that of AMT Growth Portfolio before it changes its strategy. However, AMT Partners Portfolio has lower fees, better performance, and better growth potential than AMT Growth Portfolio. AMT Partners Portfolio uses the value style of investing (as opposed to the growth style of investing currently used by AMT Growth Portfolio) and has

substantially the same investment objective as AMT Growth Portfolio.

7. In addition to the foregoing, Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

8. Applicants anticipate that Contract owners will be in at least as favorable a position with the proposed array of separate accounts and subaccounts offered after the proposed substitutions as they have been with the array of separate accounts and subaccounts offered prior to the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer account values between and among the same number of separate accounts or subaccounts as they could before the proposed substitutions.

9. Applicants assert that each of the proposed substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer account values into other separate accounts or subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

10. The proposed substitutions also are unlike the type of substitution which Section 26(b) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by PMLIC or PLACA under their Contract as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered PMLIC's or PLACA's size, financial condition, type and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed substitutions.

11. Applicants submit that, for all the reasons summarized above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 17(b)

12. Applicants also request an order under Section 17(b) exempting them from the provisions of Section 17(a) to the extent necessary to consolidate: (a) the Managed Account with the subaccount of the Separate Account that will invest in MSF Managed Portfolio, (b) the subaccount of the Variable Account that currently invests in MSF Managed Portfolio with the subaccount that currently invests in AMT Balanced Portfolio, and (c) the subaccount of the Variable Life Account that currently invests in MSF Managed Portfolio with the subaccount that currently invests in AMT Balanced Portfolio.

13. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company. Because the Managed Account and the Separate Account (as well as several other PMLIC separate accounts) are registered collectively with the Commission as a single unit investment trust of which PMLIC is the depositor, the Managed Account and the Separate Account are affiliated persons of each other. Because PLACA is the depositor of the Variable Account and the Variable Life Account, these Accounts are affiliated persons of each other. Further, because all of the Accounts are under the common control of PMLIC, they are all affiliated persons of each other.

14. The combining of the Managed Account with a subaccount of the Separate Account, and possibly the consolidation of subaccounts of the Variable Account and the Variable Life Account, because it could be deemed to involve the transfer of assets from one entity to another, may involve these entities, acting as principal, in buying and selling securities or other property from one to another in contravention of Section 17(a).

15. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the 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 overreaching on the part of any person concerned;

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

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

16. Applicants submit that the terms of the proposed substitutions, as described in this Application, including the consideration to be paid and received, are fair and reasonable and do not involve overreaching on the part of any person concerned. Applicants also submit that the proposed substitutions are consistent with the policies of each of the Accounts and with the general purposes of the Act. The Commission has previously granted exemptions from Section 17(a) to permit the combination or consolidation of separate accounts registered as unit investment trusts. The Commission also has granted numerous exemptions from Section 17(a) to permit the consolidation of subaccounts of a separate account registered as a unit investment trust in connection with a substitution.

17. Rule 17a-8 under the Act provides an exemption from Section 17(a) of the Act for mergers of affiliated mutual funds (or acquisitions of one fund by an affiliated fund) as long as the directors of the funds determine that the merger (or acquisition) is in the best interests of the fund and that the interests of each fund's shareholders will not be diluted. In proposing Rule 17a-8, the Commission offered several factors for directors to consider in reaching this determination. Although the Accounts (and relevant subaccounts) do not have directors and the proposed substitutions do not come within the parameters of Rule 17a-8, Applicants submit that the Commission may look to these factors as a standard for judging the reasonableness and fairness of the proposed substitutions and related consolidations.

(a) Immediately after the proposed substitutions, the Managed Account and each affected subaccount of the other Accounts would invest exclusively in shares of the same Portfolio as does the subaccount with which it would be consolidated. Therefore, to the extent that the investment objectives of these Portfolios can be attributed to the Managed Account or a subaccount, each surviving subaccount will, by

definition, have the same "investment objectives, policies, restrictions and portfolios" after the proposed substitutions and related consolidations as it and its consolidation partner had before the transactions.

(b) The proposed substitutions and related consolidations will be effected by "combining" the Managed Account and certain subaccounts with other subaccounts and transferring shares of Portfolios held by the Managed Account or a subaccount to a surviving subaccount. The transfer will be carried out in conformity with Section 22(c) of the Act and Rule 22c-1 thereunder in that the aggregate net asset value of the transferred shares will not change and each Contract owner holding units of interest in the Managed Account or a subaccount will have those units exchanged for units of equal value in the surviving subaccount. The "prices" or values of the exchanged interests under the Contracts will thus be equivalent. In addition, the proposed substitutions and related consolidations will impose no tax liability upon Contract owners or alter the tax status of the Contracts. The proposed substitutions and related consolidations will not in any way dilute the interests of Contract owners.

(c) PMLIC or PLACA will bear all of the costs and expenses of the proposed substitutions and related consolidations. None of the Accounts, affected subaccounts or Contract owners will incur any costs or expenses and will not pay any fees or charges as a result of the proposed substitutions and related consolidations. Therefore, no direct or indirect costs to Contract owners or dilution of Contract owner interests will occur.

18. The proposed substitutions and related consolidations will benefit Contract owners by consolidating an unneeded Account and several duplicative subaccounts of other Accounts. The consolidations are motivated by efficiencies of administration that will result from the elimination of the Managed Account and two subaccounts of each of the other Accounts, the continued existence of which serves no useful purpose. PMLIC and PLACA expect and intend that Contract owners will benefit from the consolidation to the extent that it streamlines record keeping and other administrative operations.

19. As explained above, each surviving subaccount will have the same investment policy as its consolidation partner as recited in the registration statements and reports for both filed under the Act.

20. The proposed substitutions and related consolidations are consistent with the general purposes of the Act, as enunciated in the Findings and Declaration of Policy of the Act, particularly, Section 1(b)(2). The proposed substitutions and related consolidations do not present any of the abuses that the Act was designed to prevent or raise issues it was designed to address. Applicants will carry out the proposed substitutions and related consolidations in a manner appropriate in the public interest and consistent with the protection of investors.

21. Applicants submit that, for all of the reasons summarized above, the terms of the proposed substitutions and related consolidations, including the consideration to be paid or received, are reasonable and fair to each Account (and subaccounts) and to Contract owners invested in each and do not involve overreaching on the part of any person; furthermore, the proposed substitutions and related consolidations are consistent with the policy of each Account (and subaccount) and the general purposes of the Act.

Conclusion

For the reasons summarized above, Applicants assert that the requested order meets the standards set forth in 26(b) and 17(b), respectively, and should, therefore, be granted.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40631; File No. SR-NYSE-98-33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to NYSE Rule 64

November 3, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 16, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.