UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
INVESTMENT MANAGEMENT

ICA OF 1940
Section 3(a)
Rule —
Public
Availability DECEMBER 22, 1995

December 22, 1995

Thomas C. Lauerman, Esq.
Freedman, Levy, Kroll & Simonds
Washington Square-1050 Connecticut Ave., N.W.
Washington, D.C. 20036-5366

Re: The Equitable Life Assurance Society of the United States

Dear Mr. Lauerman:

Enclosed is our response to your letter of December 20, 1995. In any future correspondence on this matter, please refer to our Reference No. IP-7-95.

Sincerely,

Susan Nash

Susan Nash
Senior Adviser to the Director

Enclosure

PUBLIC

DEC 22 1995

RESPONSE OF THE OFFICE OF
INSURANCE PRODUCTS
DIVISION OF INVESTMENT MANAGEMENT

Our Reference No. IP-7-95
The Equitable Life Assurance
Society of the United States

By letter dated December 20, 1995 ("Request Letter"), you request assurance that the staff would not recommend enforcement action against The Equitable Life Assurance Society of the United States ("Equitable Life") if certain annuity contracts that contain a "market value adjustment" feature ("MVA Contracts") are amended. The amendment would provide for legal insulation of the non-unitized separate accounts ("Accounts") that support Equitable Life's liabilities under the MVA Contracts, and Equitable Life does not intend to register the Accounts pursuant to the Investment Company Act of 1940 (the "Investment Company Act"). Based on the representations in the Request Letter, which are summarized below, we would not recommend enforcement action if Equitable Life takes the proposed actions. The staff also withdraws its positions as set forth in The Travelers T-Mark Annuity (pub. avail. May 13, 1993) ("Travelers") and Fortis Benefits Insurance Company (pub. avail. June 8, 1993) ("Fortis").

I. Operation of the MVA Contracts

A. MVA Contract Guarantees

The holder of an MVA Contract may elect one or more of several "Guarantee Periods" offered by Equitable Life. A Guarantee Period is a period of time with a specified expiration date ("Expiration Date") during which Equitable Life will credit a guaranteed rate ("Guaranteed Rate") of interest to amounts allocated by the holder to that Guarantee Period. For each business day, Equitable Life establishes a Guaranteed Rate of interest for each Guarantee Period. The Guaranteed Rate established for a specified Guarantee Period and business day applies to all amounts newly allocated to that Guarantee Period on that day and continues in effect as to such amounts so long as they remain allocated to that Guarantee Period. This results in an amount credited to the holder at the Expiration Date ("Maturity Value") that is guaranteed by Equitable Life and is mathematically determinable in advance.

The Guaranteed Rate established for a Guarantee Period each business day is in large part based on then-current yields for zero coupon corporate securities with approximately the same maturity as that Guarantee Period, less a "spread" established by Equitable Life. Neither the return earned by assets in the Accounts nor any realized or unrealized gains or losses in the Accounts' assets are considered by Equitable Life in setting Guaranteed Rates. Rather, such rates are based on considerations that are solely prospective in nature.

B. MVA Contract "Market Value Adjustment" 1/

Subject to certain restrictions, the holder of an MVA Contract may withdraw or transfer his or her interest allocated to a Guarantee Period prior to the Expiration Date. In the event of such a premature withdrawal or transfer, the value of the holder's interest on the withdrawal or transfer date ("Annuity Account Value") is the then present value of the Maturity Value. The discount rate used to compute the Annuity Account Value is generally the Guaranteed Rate applicable on the withdrawal or transfer date to new allocations made to

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1/ Because of the "market value adjustment" feature, the MVA Contracts are registered under the Securities Act of 1933.

that same Guarantee Period (i.e., the Guarantee Period having the same Expiration Date). 2/ As a result, on any business day prior to the Expiration Date, the amount that a holder may withdraw or transfer from a Guarantee Period having a given Maturity Value is generally the same as the amount that would need to be allocated to that Guarantee Period on that date to provide that same Maturity Value. This precludes holders from seeking to profit by withdrawing funds earning a particular Guaranteed Rate from a Guarantee Period and simultaneously reallocating those funds to the same Guarantee Period at a time when Equitable Life is offering a higher Guaranteed Rate.

If the Guaranteed Rates for a Guarantee Period are different at the time a holder allocates monies to the Guarantee Period and the time he or she makes a premature surrender or withdrawal, the holder's Annuity Account Value on surrender or withdrawal will be different from the "Guaranteed Period Amount," which is the amount the holder originally allocated to the Guarantee Period, plus interest accumulated to the surrender or withdrawal date at the Guaranteed Rate applicable at the time of the original allocation. The difference between the Annuity Account Value and the Guaranteed Period Amount is the "market value adjustment." The market value adjustment results from any difference between the Guaranteed Rates for a Guarantee Period at the time the holder of an MVA Contract allocates monies to the Guarantee Period and the time he or she makes a premature surrender or withdrawal. The amount of the market value adjustment is not determined by the market value of any assets or class of assets, including assets maintained in the Accounts, or any index, except to the extent that Equitable Life's daily establishment of

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2/ If Equitable Life is no longer offering a Guarantee Period with that same Expiration Date, it will use the Guaranteed Rate for the next closest Expiration Date. If Equitable Life is no longer offering new Guarantee Periods, it will use a rate determined in accordance with its procedures then in effect. Equitable Life also reserves the right, for purposes of computing the Annuity Account Value, to add to the current Guaranteed Rate that is used for discounting the Maturity Value an additional percentage up to specified limits. In the case of a withdrawal, a surrender charge also may apply.

Guaranteed Rates takes account of certain then-current market rates of interest. 3/

II. Background and Business Purposes of Non-Unitized Separate Accounts

The Request Letter represents that insurers generally have maintained assets supporting market value adjustment contracts in non-unitized separate accounts 4/ primarily to permit such assets to be valued on a market value basis, rather than an amortized cost basis, for purposes of state insurance law requirements. Equitable Life believes that valuation of assets and liabilities associated with MVA Contracts on a market value basis, rather than an amortized cost basis, results in a more timely and direct reflection of market value adjustment contract operations in statutory financial statements. Equitable Life also believes that use of a non-unitized separate account facilitates the establishment and monitoring of specific investment policies appropriate to the assets supporting the MVA Contracts.

In establishing the Accounts, Equitable Life was motivated primarily by the foregoing considerations. If the MVA Contracts are amended to provide for legal insulation of the Accounts, the holders of MVA Contracts will, in the event of Equitable Life's liquidation under circumstances where it could not pay all of its insurance obligations, have a priority

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3/ The Request Letter provided the following example of the operation of the "market value adjustment." Assume that $100,000 is allocated on February 15, 1996, to a Guarantee Period with an Expiration Date of February 15, 2005, at a Guaranteed Rate of 7%, resulting in a Maturity Value at the Expiration Date of $183,845. If a full surrender was made on February 15, 2000, the holder of the contract would receive the following Annuity Account Values and be subject to the following market value adjustments.

	Guaranteed Rate Offered on February 15, 2000, for Guarantee Period with February 15, 2005 Expiration Date		
	5%	7%	9%
(1) Annuity Account Value	$144,048	$131,080	$119,487
(2) Guaranteed Period Amount	$131,080	$131,080	$131,080
(3) Market Value Adjustment [(1) - (2)]	$12,968	$0	($11,593)

Thus, the contractholder is subject to a positive market value adjustment when rates have fallen from 7% to 5%, no market value adjustment when rates remain at 7%, and a negative market value adjustment when rates have risen from 7% to 9%.

4/ "Non-unitized separate account" refers to a separate account that is not structured as a single unit operating independently of the investment experience of the insurer's general account. See Definition of Annuity Contract or Optional Annuity Contract, Securities Act Rel. No. 33-6645, at n.13 (May 29, 1986).

claim to the portion of the related Account's assets covered by the insulation provision, 5/ while retaining the right to share in the general assets of Equitable Life to the extent of any deficiency in amounts available from the Account. Legal insulation for the Accounts would therefore serve the additional purpose of providing the holders of MVA Contracts with enhanced assurance that, in the event of Equitable Life's liquidation under circumstances where it could not pay all of its insurance obligations, sufficient assets will be available to satisfy Equitable Life's obligations with respect to the MVA Contracts. Equitable Life believes that this additional protection may enhance its competitive position with respect to the sale of MVA Contracts.

III. Account Investment Experience is Not Passed Through to the Holders of MVA Contracts

Amounts received by the holders of MVA Contracts upon maturity do not depend upon the investment experience of the Accounts. As described above, upon the Expiration Date of a Guarantee Period, the holder of an MVA Contract receives the amount originally allocated to the Guarantee Period, plus interest accumulated to the Expiration Date at the Guaranteed Rate. This amount, which is guaranteed by Equitable Life and is mathematically determinable in advance, is not affected by the investment experience of the related Account.

Nor do amounts received by the holders of MVA Contracts upon premature withdrawal or surrender depend upon the investment experience of the Accounts. The amount of any market value adjustment results from and depends on the difference between the Guaranteed Rates for a Guarantee Period at the time the holder of an MVA Contract allocates monies to the Guarantee Period and the time he or she makes a premature surrender or withdrawal. In setting Guaranteed Rates, Equitable Life does not consider the investment performance of the related Account.

The assets maintained in the Accounts are the property of Equitable Life and are managed as a part of its business. Like assets supporting traditional insurance products other than the MVA Contracts, Account assets are managed with the ultimate objective of generating a return to Equitable Life that, after payment of all obligations to holders of MVA Contracts, covers expenses and provides a profit to Equitable Life. To the extent these efforts are successful, Equitable Life retains the resulting profit. To the extent they are unsuccessful, Equitable Life bears the resulting loss.

IV. Obligations of Equitable Life

When the holder of an MVA Contract holds his or her interest to the Expiration Date, Equitable Life is obligated, without regard to the value of Account assets, to pay the full amount allocated to the Guarantee Period, plus accumulated interest at the Guaranteed Rate, as in the case of fixed insurance products. Equitable Life is also obligated, without regard to the value of Account assets, to pay the Annuity Account Value to a holder who makes a premature withdrawal or surrender. So long as Equitable Life is not liquidated under circumstances where it could not pay all of its insurance obligations, holders of MVA Contracts have no claim against the Accounts. Moreover, even in the event of Equitable Life's liquidation under circumstances where it could not pay all of its insurance obligations,

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5/ That is, the portion of the Account's assets equal to the reserves and other contract liabilities.

the holder of an MVA Contract has a claim against the related Account's assets and against Equitable Life that is measured not by the value of the Account's assets or the Account's investment performance over any period of time, but by a mathematical formula based on Guaranteed Rates.

State insurance laws require life insurance companies periodically to value their assets and liabilities according to prescribed accounting principles. These laws require that the insurer maintain an excess of such "statutory assets" over "statutory liabilities" of at least a prescribed amount -- i.e., a minimum amount of statutory capital and surplus. The minimum capital and surplus required of Equitable Life in its domiciliary state of New York is $2 million. As a practical matter, Equitable Life has statutory capital and surplus far in excess of that amount -- approximately $2 billion at September 30, 1995. Under New York law, providing legal insulation for a separate account does not affect the computation of (or the required minimum amount of) an insurer's statutory capital and surplus.

New York state has adopted regulations applicable to market value adjustment contracts and the non-unitized separate accounts that fund them. Under New York law, Equitable Life is required to value the assets and contract liabilities of the Accounts at least annually. In addition, the law imposes on Equitable Life an ongoing requirement to maintain Account assets at least equal to the Account's contract liabilities, and procedures must be maintained to assure that this requirement is satisfied. If the liabilities exceed the assets, Equitable Life is required immediately to transfer sufficient assets into the Account to remedy the shortfall. On the other hand, whenever the value of an Account's assets exceeds the value of the Account's contract liabilities, state law permits Equitable Life to transfer the surplus to its general account. Holders of MVA Contracts have no claim upon or interest in such transferred assets, except that such assets are part of Equitable Life's general account. Equitable Life represents that the value of the assets maintained in each Account will at all times at least equal the amount of that Account's contract liabilities, both determined as required by New York law.

Providing legal insulation for the Accounts will not change the New York insurance law requirements as to contributing, withdrawing, and maintaining Account assets; nor will it change Equitable Life's practices in these regards.

V. Marketing the MVA Contracts

Equitable Life will take steps to ensure that its marketing program and materials refer to the Accounts as pools of assets that provide an additional measure of assurance that the holders of MVA Contracts will receive full payment and not as investment vehicles in whose performance the holders of MVA Contracts will have any interest.

VI. Conclusion

In Hartford Life Insurance Company (pub. avail. Oct. 29, 1984) ("Hartford"), we indicated that we would not recommend enforcement action against an insurance company that established a non-unitized separate account to support its liabilities under annuity contracts that contain a "market value adjustment" feature without registration of the account under the Investment Company Act. We believe that legal insulation of the account alone should not alter the Hartford conclusion. We have therefore reconsidered the Travelers and Fortis letters and have determined that the position taken in those letters regarding legally insulated non-unitized separate accounts supporting annuity contracts that contain a "market value adjustment" feature no longer represents the views of the Division. A non-unitized separate account that supports an annuity contract that contains a "market value adjustment" feature is not an issuer for purposes of section 3(a) of the Investment Company Act solely because the separate account is legally insulated. Legal insulation provides an additional protection for the holder of such a contract, which does not change the fact that the insurance company is obligated to pay the holder an amount that is mathematically determinable and not dependent on the investment experience of the account. 6/

Based on the representations in the Request Letter, and without necessarily agreeing with your legal analysis, the staff would not recommend enforcement action against Equitable Life if the MVA Contracts are amended to provide for legal insulation of the Accounts without registration of the Accounts pursuant to the Investment Company Act. Our conclusion is based in particular on the representations that:

(1) a holder of an MVA Contract receives an amount upon maturity that is mathematically determinable in advance and is not affected by the investment experience of the related Account;

(2) a holder of an MVA Contract who makes a premature withdrawal or surrender receives an amount adjusted by a mathematical formula based on changes in guaranteed interest rates and not based on the investment experience of the related Account;

(3) Equitable Life is obligated to pay all amounts due to the holder of an MVA Contract without regard to the value of the related Account's assets, and Equitable Life retains the profits and bears the losses from Account operations;

(4) Equitable Life is obligated under state law to maintain Account assets at least equal to the related contract liabilities and immediately to transfer to an Account sufficient assets to remedy any shortfall, and Equitable Life represents that the value of the assets in each Account will at all times at least equal the amount of that Account's contract liabilities;

(5) whenever the value of an Account's assets exceeds the value of the Account's contract liabilities, state law permits Equitable life to transfer the surplus to its general account, and the holders of MVA Contracts have no claim upon or interest in such transferred assets, except that such assets are part of Equitable Life's general account;

(6) Equitable Life established, and proposes to provide for legal insulation of, the Accounts for business purposes unrelated to any attempt to pass through investment experience of the Accounts; and

(7) Equitable Life will take steps to ensure that its marketing program and materials refer to the Accounts as pools of assets that provide an additional measure of assurance that the holders of MVA Contracts will receive full

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6/ Cf. Prudential Insurance Company of America v. Securities and Exchange Commission, 326 F.2d 383 (3d Cir. 1964), cert. denied, 377 U.S. 953 (1964) (separate account funding variable annuity subject to Investment Company Act where amounts received by annuitant depend on account performance).

payment and not as investment vehicles in whose performance the holders of MVA Contracts will have any interest.

Because our position is based on the facts and representations set forth in the Request Letter, you should note that different facts or representations may require a different conclusion.

Kevin M. Kirchoff
Senior Counsel

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December 20, 1995

Investment Company Act
of 1940/Sections 3(a) and
(2)(a)(22)

BY HAND DELIVERY

Brenda D. Sneed, Esquire
Assistant Director
Office of Insurance Products
Room 10162, Stop 10-6
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: The Equitable Life Assurance Society of the United States

Dear Ms. Sneed:

INTRODUCTION AND BACKGROUND

We are writing on behalf of our client, The Equitable Life Assurance Society of the United States ("Equitable Life"), a stock life insurance company, domiciled in and organized under the laws of the state of New York. This letter concerns the status under the Investment Company Act of 1940 (the "1940 Act") of separate accounts (the "Accounts") established by Equitable Life to fund certain annuity contracts[1] that incorporate what is

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[1] For convenience, annuity contracts are generally hereinafter referred to as "contracts." When contracts are issued in group form, holders receive certificates under the group contracts that represent interests substantially equivalent to the interests of holders of contracts issued in individual form. When used herein, the term "contracts" also includes any certificates under contracts issued in group form.

commonly referred to as a market value adjustment ("MVA") feature.[2] This MVA feature[3] applies to certain "MVA Interests," described further below, that are supported by the Accounts. The Accounts are a type of separate account that is commonly described as "non-unitized."

Equitable Life intends to amend the contracts to provide that the portion of the Accounts' assets equal to the reserves and other contract liabilities under the MVA contracts will not be chargeable with liabilities arising from any other business of Equitable Life. By virtue of this amendment, as discussed further in I. below, the Accounts' assets will be "legally insulated" from the claims of certain other creditors of Equitable Life.[4] We are writing this letter to seek assurance that, following such amendment to the contracts, the staff of the Securities and Exchange Commission (the "Commission") will not recommend enforcement action to the Commission if the Accounts are not registered under the 1940 Act.[5]

For the reasons set forth in I. through IV. under "DISCUSSION" below, the legally-insulated Accounts will not be "issuers" of securities within the meaning of 1940 Act Section 2(a)(22) and, therefore, will not be "investment companies" within the meaning of 1940 Act Section 3(a). On the contrary, contract holders will not have interests in the Account with the investment characteristics that other precedents (discussed in IV. below) have held to

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[2] Certain of the contracts that are the subject of this no-action request also include traditional variable separate account options. Equitable Life currently has effective under the Securities Act of 1933 (the "1933 Act") two Form S-3 registration statements with respect to the "MVA Interests" issued pursuant to the contracts (File Nos. 33-88456 and 33-89510) and two Form N-4 registration statements with respect to the traditional variable component of such combination contracts (File Nos. 33-83750 and 2-30070). These registration statements are maintained for Equitable Life's "Income Manager" and "Equi-Vest" series of contracts, respectively, the MVA Interests under each of which are funded by a different Account. For convenience, our discussion of particular provisions of the MVA contracts is in terms of the Income Manager contracts covered by File No. 33-88456. Except for the maturity dates involved, which in any case will change from time-to-time, the interests covered by File No. 33-88456 are the same as those covered by File No. 33-89510. For marketing purposes, the term "Fixed Maturity Period," instead of "Guarantee Period," is used in the prospectus contained in File No. 33-89510.

[3] Although industry usage would term the MVA feature a "market value adjustment," this is something of a misnomer, as discussed at page 5 below.

[4] Section 4240(a)(12) of the New York Insurance Law [hereinafter Insurance Law] provides that, to the extent provided in the contracts, "the assets in a separate account shall not be chargeable with liabilities arising out of any other business of the insurer."

[5] The staff of the Commission has previously considered similar requests of The Travelers Insurance Company ("Travelers") and Fortis Benefits Insurance Company ("Fortis"). SEC staff letters, dated May 13, 1993 and June 8, 1993, respectively. The related request letters from Travelers and Fortis are referred to hereinafter as the "Request Letters."

be a sine qua non for applying the federal securities laws in the context of annuity contracts. Our opinion that the Accounts will not be investment companies is strongly supported by the precedents and principles applied to pools of securities that serve as collateral (discussed in III. below) in the context of retail repurchase agreements and so-called "defeasance" trusts.

Moreover, as explained in I. below, Congress has recognized that holders of traditional annuity contracts generally do not require the protections of the 1940 Act. Legal insulation of the Accounts will provide additional protection for contract holders and will have no adverse consequences for such holders. Accordingly, such legal insulation will render 1940 Act regulation even more unnecessary.

As a predicate for the more detailed analysis that is set forth below under "DISCUSSION," the following paragraphs provide a brief description of the MVA Interests and the Accounts.[6]

Contract holders acquire MVA Interests when they elect one or more of several "Guarantee Periods" offered by Equitable Life. A Guarantee Period is the name for a period of time during which Equitable Life will credit a "Guaranteed Rate" of interest to amounts allocated by the holder to that Guarantee Period. Currently, depending on the series of contract, Equitable Life offers up to fifteen different Guarantee Periods, with one such period expiring on February 15 of each of the fifteen years commencing with 1996 (each such date being an "Expiration Date"). Other Guarantee Periods, of course, are expected to be offered in the future. While Equitable Life may not terminate Guarantee Periods to which allocations already have been made, Equitable Life is not obligated to maintain any particular numbers or maturities of Guarantee Periods for future allocations.

For each business day, Equitable Life establishes a Guaranteed Rate of interest for each Guarantee Period that will apply to all amounts newly allocated to that Guarantee Period on that day.[7] For example, contract holders may allocate new premium payments made by them to a Guarantee Period or may, subject to certain restrictions, make transfers to one Guarantee Period from another or from any other investment options under the contract. Similarly, the amount credited to the holder in a Guarantee Period at its Expiration Date, which is referred to as the "Maturity Value," may, among other alternatives,

[6]With respect to the characteristics of the MVA Interests, manner of the Accounts' operation, and matters of state insurance law and regulation, we have relied upon information supplied to us by Equitable Life for purposes of this letter.

[7]The frequency with which Equitable Life adjusts the Guaranteed Rates will vary depending on the series of contracts and other factors.

be "rolled over" to one or more other Guarantee Periods from among those then being offered, subject to certain restrictions.

Each day's Guaranteed Rate offered for a given Guarantee Period is applicable to new premiums, "rollovers," and transfers allocated to that Guarantee Period on that day. That day's Guaranteed Rate (which, under New York law, must be at least 3% per annum)[8] will be applied to all such amounts allocated to the related Guarantee Period on that day and will continue in effect as to such amounts so long as they remain allocated to that Guarantee Period. This results in a Maturity Value at the Expiration Date that is guaranteed by Equitable Life and is mathematically determinable in advance.

Subject to certain restrictions, an MVA Interest holder may withdraw or transfer his or her interest allocated to a Guarantee Period prior to the Expiration Date. For purposes of such premature withdrawals or transfers, the value of the holder's interest on any date is calculated as the then present discounted value of the Maturity Value of that Guarantee Period. Equitable Life refers to the resulting amount as the "Annuity Account Value."[9] For purposes of computing this amount, the Guarantee Period's Maturity Value is discounted to present value using the Guaranteed Rate then being offered[10] on new allocations to that same Guarantee Period (*i.e.*, the Guarantee Period having the same Expiration Date).[11] The effect of this is that, on any business day prior to the Expiration Date, the amount that a holder can withdraw or transfer from a Guarantee Period having a given Maturity Value is the same as the amount that would need to be allocated to that Guarantee Period on that date to provide that same Maturity Value.[12] Thus, all MVA Interests having the same Expiration Dates are, in economic substance, "zero coupon" obligations that Equitable Life "issues" and "repurchases" at the same "price" (*i.e.*, the same

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[8] Section 44.3(a)(3) of Title 11 of the *Compilation of Codes, Rules and Regulations of the State of New York* [hereinafter NYCRR].

[9] The Annuity Account Value is also the amount that will be applied to an annuity payment option under a contract if the annuity commencement date is prior to the Guarantee Period's Expiration Date.

[10] If Equitable Life is no longer offering a Guarantee Period with that same Expiration Date, it will use the Guaranteed Rate for the next closest Expiration Date. If Equitable Life is no longer offering new Guarantee Periods, it will use a rate determined in accordance with its procedures then in effect. Equitable Life reserves the right, for purposes of computing the Annuity Account Value, to add to the current Guaranteed Rate that is used for discounting the Maturity Value an additional percentage of up to .25% under the Income Manager contracts and up to .50% under the Equi-Vest contracts.

[11] In the case of a withdrawal, a surrender charge may also apply. This surrender charge is subject to certain exceptions and currently is a maximum of 7% of each premium paid.

[12] The only exceptions would result from the factors discussed in footnotes 10 and 11 above.

interest rate to maturity) on any given business day prior to the Expiration Date. This precludes holders from seeking to profit by withdrawing funds from one Guarantee Period and simultaneously allocating funds to another Guarantee Period with the same Expiration Date.

Because, as described above, transactions in MVA Interests on each date are "priced" based on *current* Guaranteed Rates, if such current rates have changed since the time a holder allocated an amount to a Guarantee Period, the holder's Annuity Account Value in that Guarantee Period will be different (higher or lower) from what Equitable Life refers to as the holder's "Guaranteed Period Amount." The Guaranteed Period Amount is the amount the holder originally allocated to a Guarantee Period, with interest accumulated to date at the actual Guaranteed Rate applicable thereto. Although, consistent with common parlance, Equitable Life refers to the difference between an MVA Interest's Annuity Account Value and its Guaranteed Period Amount as a "market value adjustment," this terminology should not be misinterpreted. The amount of the adjustment is not determined by the "market value" of any assets or class of assets (in the Accounts or otherwise) or any index, except to the extent that Equitable Life's daily setting of Guaranteed Rates for the "issuance" and "repurchase" of MVA Interests on that day takes account of certain then-current market rates of interest, as discussed in II.B. below. Examples of MVA computations are enclosed as Exhibit A to this letter.

The Accounts have been duly established under New York insurance law as separate accounts of Equitable Life that do not have unit values and which thus fall within the category of "non-unitized" separate accounts.[13] Income realized by each Account, and other realized and unrealized gains and losses with respect to assets in the Account are, pursuant to the requirements of New York law, credited to the Account without regard to any other business conducted by Equitable Life.[14] Nevertheless, the MVA Interests are part of Equitable Life's insurance business. Accordingly, the assets in the Accounts are the property of Equitable Life and will be managed as a part of Equitable Life's insurance business. That is, like the assets supporting traditional insurance products other than the MVA Interests, the Accounts' assets will be managed with the ultimate objective of generating a return to Equitable Life that, after payment of all of its obligations to holders of MVA Interests, covers expenses and provides a profit to Equitable Life. To the extent these efforts are successful, the benefit will be Equitable Life's. To the extent unsuccessful, the risk will be Equitable Life's.

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[13] Insurance Law § 4240(a).

[14] Insurance Law § 4240(a)(1). This requirement, however, in no way restricts Equitable's right to or access to any assets in an Account that are in excess of the contract liabilities. *See* footnote 23 below.

DISCUSSION

I. CONTRACT HOLDERS WILL NOT REQUIRE THE PROTECTIONS OF THE 1940 ACT WITH RESPECT TO THE LEGALLY-INSULATED ACCOUNTS.

By excluding insurance companies from the 1940 Act definition of an investment company,[15] Congress recognized that, as a general matter, the guarantees of an insurance company, together with the protections afforded by state insurance regulation, make the protection of the 1940 Act unnecessary for purchasers of insurance products. Solely because, prior to Expiration Dates, the MVA feature imposes on contract holders certain investment risks associated with changing interest rates, the MVA Interests are registered under the 1933 Act. This 1933 Act registration provides still further protections to holders.

At the same time, when a contact holder holds an MVA Interest to its Expiration Date, the contracts specifically obligate Equitable Life to pay the full amount of the holder's contribution and accumulated interest, as in the case of fixed insurance products that are excluded from 1933 Act requirements by Section 3(a)(8) thereof. The contracts also specifically obligate Equitable Life, without regard to the value of Account assets, to pay the Annuity Account Value to a holder who terminates an MVA Interest at a time when an MVA adjustment, either upward or downward, is made.[16]

Legal insulation of the Accounts would have relevance for MVA Interests holders only in the event of Equitable Life's liquidation under circumstances where it could not pay all of its insurance obligations. (For simplicity, this letter refers to such a state of affairs as "insolvency.") Providing legal insulation for the Accounts, moreover, will not relieve Equitable Life of its obligations referred to in the preceding paragraph, even in the event of Equitable Life's insolvency.

Section 7435 of the Insurance Law controls the distribution of the "estate" of an insolvent life insurer, setting forth the priorities of each class of creditor. Subsection (c) thereof deducts from the estate "any assets held in separate accounts that, pursuant to section . . . [4240 of the Insurance Law], are not chargeable with liabilities arising out of any

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[15] *See* 1940 Act §3(c)(3).

[16] The terms of the contracts do not provide for any "pass through" to holders of any Account investment results in the determination of the amounts owed to such holders upon termination of their MVA Interests, either at the Expiration Dates or prior thereto. Nor will Equitable Life's operation of the Account or administration of the MVA Interests effect any such pass through, as explained in II.B. below.

other business of the insurer."[17] Subsection (b) of Section 7435 provides that claims under an "agreement" (such as the contracts) providing for such legal insulation "shall be satisfied out of the assets in the separate account equal to the reserves maintained in such account[18] for such agreement and, to the extent, if any, not fully discharged thereby, shall be treated as a class four [policyholder] claim against the estate of the life insurance company." The effect of these provisions is that, once the contracts are amended to add a legal insulation provision as contemplated by this letter, MVA Interest holders will have a priority claim in the event of Equitable Life's insolvency to that portion of the Account's assets covered by such provision, while retaining the right to share with other insurance policy holders in the general assets of Equitable Life to the extent of any deficiency. On the other hand, to the extent an Account held more assets than sufficient to discharge the contract obligations to MVA Interest holders, such excess would revert to Equitable Life's estate and not to such holders.

The insurance laws of all states, of course, require life insurance companies periodically to value their assets and liabilities according to accounting principles that are prescribed for these regulatory purposes. These laws uniformly require that the insurer maintain an excess of such statutory assets over statutory liabilities of at least a prescribed amount -- *i.e.*, a minimum amount of statutory capital and surplus. These requirements vary from state to state, but the minimum capital and surplus required of Equitable Life in its domiciliary state of New York is $2 million.[19] As a practical matter, however, this requirement has little relevance to Equitable Life, which has statutory capital and surplus far in excess of that amount -- approximately $2 billion at September 30, 1995. Under New York law (and, so far as Equitable Life is aware, in all other states) providing legal insulation for a separate account does not affect the computation of (or the required minimum amount of) the insurer's statutory capital and surplus.

New York state, moreover, has adopted an extensive regulation that specifically regulates MVA contracts and the separate accounts that fund them, including the Accounts.[20] Among other things, this regulation prescribes requirements for the terms of the MVA formula, valuation of contract liabilities, minimum reserving requirements, and duration matching of separate account assets and related contract liabilities.

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[17] *See* footnote 4 above and accompanying text.

[18] For this purpose, the reserves maintained in the Accounts include all liabilities to contract holders.

[19] Insurance Law §4202(a)(2).

[20] 11 NYCRR 44.

The New York Insurance Law specifically requires Equitable Life to value the assets and contract liabilities of a separate account at least annually.[21] However, the law also imposes on Equitable Life an ongoing requirement to maintain separate account assets at least equal to the account's contract liabilities,[22] and procedures must be maintained to assure that this requirement is satisfied.[23] If the liabilities exceed the assets, Equitable Life is required immediately to transfer sufficient assets into the separate account from its general account to remedy the shortfall.[24] On the other hand, whenever the value of a separate account's assets exceeds the value of the account's contract liabilities, state law permits Equitable Life to transfer the surplus to its general account. Contract holders will have no claim upon or interest in such transferred assets, except that such assets will become part of Equitable Life's general account.

Equitable Life represents that the value of the assets in each Account (determined as set forth in footnote 23 above) will at all times at least equal the amount of that Account's contract liabilities (also determined as set forth in footnote 23).

Providing legal insulation for the Accounts will not in any way change the above-described New York insurance law requirements as to contributing, withdrawing and maintaining Account assets; nor will it change Equitable Life's practices in these regards.

Under the circumstances, therefore, we respectfully submit that the additional protections afforded by legal insulation will, if anything, make the protections of 1940 Act regulation even less necessary than if the Accounts were not legally insulated.

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[21] Insurance Law §§307, 1304 and 4240(a). The discussion in this paragraph, although phrased in terms of separate accounts generally, is fully applicable to the Accounts, specifically.

[22] Insurance Law §4240(a)(8); 11 NYCRR 44.11(b)(5).

[23] For these purposes, an Account's assets are required to be valued at current market value or at fair value. The Account's liabilities are deemed to be the greater of (a) the aggregate Annuity Account Values, less surrender charges, under all outstanding MVA Interests or (b) the present value of the Maturity Values under such outstanding interests using a discount rate equal to the weighted average market yield to maturity of the related Account's assets, which discount rate is reduced by a provision for reasonably anticipated expenses, a margin for adverse deviation, and an adjustment for any Account securities that are below investment grade. 11 NYCRR 44.11(b)(4).

[24] Insurance Law §4240(a)(8); 11 NYCRR 44.11(b)(5).

II. THE LEGALLY-INSULATED ACCOUNTS WILL NOT CLOSELY RESEMBLE THE TYPES OF ENTITIES THAT HISTORICALLY HAVE BEEN SUBJECT TO 1940 ACT REGULATION.

A. The principal purposes of the Accounts are different from the investment purposes historically associated with investment companies.

Historically, insurers have used non-unitized separate accounts to hold the assets supporting MVA contracts primarily to permit such assets to be valued on a market value basis for purposes of state insurance law requirements that would otherwise require amortized cost valuation.[25] To the extent that an insurer's assets and liabilities associated with MVA contracts are valued on a market value basis, rather than an amortized cost basis, Equitable believes that the insurer's statutory financial statements will reflect the insurer's MVA operations in a more direct and timely way. Under the insurance laws of many states, including New York, the assets can be valued on a market value basis only if they are held in a separate account.[26] Use of a non-unitized separate account facilitates the establishment and monitoring of specific investment policies appropriate to the assets supporting the MVA Interests. By segregating such assets in a separate account, Equitable Life is better able to make direct, rather than approximate, duration matching calculations[27] and asset risk profile analyses.

Accordingly, in establishing the Accounts, Equitable Life was motivated primarily by the above-mentioned accounting, legal and administrative considerations. Legal insulation for the Accounts will serve the additional purpose of providing holders with enhanced assurance that, in the unlikely event of Equitable Life's insolvency, sufficient assets will be available to satisfy Equitable Life's obligations with respect to the MVA Interests.[28] Equitable Life believes that this additional protection for holders may enhance its competitive position with respect to the offer and sale of the MVA Interests. For example, because of the credit enhancement inherent in legal insulation, plan fiduciaries may be more likely to make MVA Interests available as an investment option under annuity contracts offered pursuant to certain defined contribution employee benefit plans.

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[25] *See* Jan. 17, 1992 Fortis Request Letter at 3-4; March 27, 1992 Travelers Request Letter at 2-3.

[26] Insurance Law §§1414, 4240(a)(5)(iii), and 4240(a)(10).

[27] *See* footnotes 29-31 below and accompanying text.

[28] Other insurers that have proposed legally-insulated non-unitized separate accounts in connection with MVA interests have been similarly motivated. *See* Dec. 2, 1991 Travelers Request Letter at 4; Jan. 17, 1992 Fortis Request Letter at 3.

In contrast to the above purposes, investment companies customarily are established for the primary purpose of providing investment returns to their security holders.

B. Income, gains and losses of the Accounts are not passed through to MVA Interest holders.

The Guaranteed Rate applicable to any amount allocated to a Guarantee Period is established at the time of such allocation and does not change for the remainder of the Guarantee Period. As noted previously, Equitable Life establishes for each business day a Guaranteed Rate for new allocations to each currently available Guarantee Period.

The rate so established for any Guarantee Period is in large part based on then-current yields for zero coupon corporate securities with approximately the same maturity as that Guarantee Period, less a "spread" established by Equitable Life from time to time. This technique provides assurance that Equitable Life will be able to find investments for the Accounts that meet its funding requirements. It also reflects the fact that MVA Interests "compete" for sales with other debt instruments having characteristics more or less similar to such interests.

Neither the return earned by assets in the Accounts nor any realized or unrealized gains or losses in the Accounts' assets are considered by Equitable Life in setting Guaranteed Rates. Rather, such rates are based on considerations that are solely *prospective* in nature.

Nor do the Guaranteed Rates "pass through" to holders any *future* returns, gains or losses of the Accounts. This follows inherently from the fact that Equitable Life, rather than the contract holders, retains the "spread," whether positive or negative, between what Equitable Life guarantees to holders and what it earns in the Accounts. Moreover, even if Equitable Life wished to establish Guaranteed Rates that would pass through to holders future returns, gains or losses of the related Account, it would not be practical to do so. This results not only from the inherent fallibility of predicting Account investment performance for periods of time that may extend many years into the future, but also from the investment discretion that the Accounts' portfolio manager is expected to exercise, as discussed below.

Each Account will be managed in such a way that the "duration"[29] of the assets in

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[29]"Duration" as used in connection with an Account refers to its dollar-weighted average time of cash flows. Because an MVA Interest is payable at a future date and has no interim cash flow, while most bonds pay periodic interest, an MVA Interest with a given maturity date will have a different duration than, for example, a coupon bond having the same maturity date.

the Account, taken as a whole, is expected at all times to approximate the duration of the outstanding Guarantee Period liabilities with respect to that Account.[30] This affords the portfolio manager greater flexibility to seek enhanced returns than would be the case if the Account's assets were segmented by Guarantee Period and the assets supporting each Guarantee Period were required to have the same duration as that Guarantee Period.[31] (Exercise of this flexibility, of course, could also affect the Account's investment results adversely.) Other techniques that the portfolio manager is expected to use will likewise cause each Account's investment results to be better (if successful) or worse (if unsuccessful) than could have been predicted at the time Guaranteed Rates are set: *e.g.*, options and futures transactions, interest rate swaps, variations in average quality of securities purchased, and other efforts by the portfolio manager to make investment decisions with respect to specific securities that will enhance Equitable Life's return.

Nor does the MVA operate to pass through any Account gains or losses to MVA Interest holders. The amount of any MVA depends on the amount of any change in the Guaranteed Rates Equitable Life offers for a Guarantee Period between the date that the holder's funds were allocated to that Guarantee Period and the date of a premature withdrawal or transfer. As discussed above, such Guaranteed Rates do *not* correspond to the yield (or any other form of investment performance) with respect to the related Account's assets for any period of time, whether before or after the date that any such rate is set. Accordingly, although holders that terminate their MVA interests prematurely are, pursuant to the MVA, charged with certain "losses" and credited with certain "gains" that are associated, respectively, with rising or falling interest rates, such losses or gains bear no precise relationship to losses or gains in the Accounts' investment portfolios due to changing interest rates.

Nor does the MVA make any adjustment to reflect any losses or gains that may occur in the related Accounts' portfolio of investments due to factors *other than* changing interest rates. Such other factors include changes in credit worthiness of the issuers in which the Accounts invest, defaults by such issuers, or the success of the portfolio manager (or lack thereof) in exercising the investment flexibility described above.

Moreover, the MVA Interests will be guaranteed by Equitable Life, including a full guarantee of principal and interest, subject only to the MVA that will apply prior to maturity.

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[30] This duration matching is a specific New York legal requirement. 11 NYCRR 44.11(b).

[31] This flexibility is further enhanced by the fact that New York law permits the duration of an Account's assets to differ by as much as one year from the duration of the Account's liabilities. *Id.*

In contrast to the foregoing characteristics of the Accounts, most types of investment companies customarily (1) are designed to permit their interest holders to participate directly in the investment results of the securities in which the investment company invests, and (2) do not provide such interest holders a repayment of principal and a specified rate of return that are guaranteed by the investment company's sponsor if the interest is held for a specified period or to a maturity date.

III. THE LEGALLY-INSULATED ACCOUNTS WILL MOST CLOSELY RESEMBLE POOLS OF COLLATERAL THAT HAVE NOT HISTORICALLY BEEN REGULATED AS INVESTMENT COMPANIES.

The legal insulation of the Accounts will enable them to function as pools of collateral from which MVA Interest holders may receive payment, in the unlikely event that Equitable Life at some future time becomes insolvent. In similar circumstances, other pools of collateral established to secure amounts owed by the primary obligor have not been deemed to be subject to 1940 Act regulation.

Such examples include pools of securities serving as collateral in connection with retail repurchase agreement transactions[32] and "defeasance" trusts established to satisfy the primary obligor's obligation to pay principal and interest on debt obligations.[33] As in traditional collateral arrangements, the amount of the primary obligation under the MVA Interests (*i.e.*, the amount of benefits owed by Equitable Life) does not depend on the value of the collateral (*i.e.*, the Accounts' assets).

IV. THE LEGALLY-INSULATED ACCOUNTS ARE NOT WITHIN THE 1940 ACT'S DEFINITION OF AN "ISSUER," BECAUSE THE CONTRACT HOLDERS' INTEREST IN THE ACCOUNTS DOES NOT CONSTITUTE A SECURITY.

1940 Act Section 3(a) includes within the definition of an investment company only "issuers." 1940 Act Section 2(a)(22), in turn, defines an "issuer" to include only persons or entities that issue securities. The only interest of which an Account could be deemed to be the issuer for this purpose would appear to be the contract holders' interest in that Account.

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[32] *See* SEC Rel. No. IC-11958 (Sept. 25, 1981).

[33] *See* Stephen B. Flood (SEC staff letter, avail. Feb. 2, 1987); Centex Corporation (SEC staff letter, avail. Nov. 20, 1986).

Thus, if the contract holders' interest in a legally-insulated Account does not constitute a security, the Account cannot be an investment company.

For this purpose, consistent with the authorities discussed below,[34] the holder's interest under the contract *as a whole* is to be distinguished from the holder's interest in the related legally-insulated Account. The holder's whole interest under the contract comprises all of the ownership rights under the contract. Because of the MVA feature, these ownership rights may be deemed to have a significant "investment" character, and, consequently, the MVA Interests under the contracts are registered as securities under the 1933 Act.[35] The interest of a contract holder in a legally-insulated Account, however, is only *one* of the ownership rights under the contract as a whole. Moreover, it is a limited and contingent interest that is not in the nature of an investment interest and therefore, in our view, is not itself a security for purposes of 1940 Act Section 2(a)(22).

There is considerable relevant precedent for assessing whether the limited interest that the contract holder has in an Account has sufficient investment characteristics to constitute a security for purposes of 1940 Act Section 2(a)(22). One line of precedents essentially analyzes whether an interest in a pool of securities is in the nature of an interest in collateral, as opposed to an investment interest.[36] The former interests are not regarded as securities for purposes of the 1940 Act definition of an issuer, while the latter are. In our view, the contract holders' interest in the legally-insulated Accounts will not constitute an investment interest for these purposes.

Rather, *Equitable Life* will retain the investment interest in the Accounts, as part of its insurance business. As noted elsewhere in this letter, the Accounts are managed with the objective of earning a profit in a manner similar to the profit Equitable Life seeks to earn from investment assets that it owns as other parts of its insurance business. Any such profits belong to Equitable Life, and MVA Interest holders will have no interest in them. Any losses fall on Equitable Life, and Equitable Life will make the Accounts whole for any losses. Thus, the MVA Interest holders' interest in the Accounts is, in effect, a contingent interest: so long as Equitable Life does not become insolvent, holders will have no interest in the Accounts whatsoever. Moreover, even in the unlikely event of Equitable Life's

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[34] *See* discussion on page 14 below.

[35] Of course, to the extent that the contracts have both an MVA option and a traditional variable option, the interests in the separate account supporting the traditional variable annuity option also would be deemed to be securities subject to 1933 Act registration, absent an available exemption. This additional factor for such combination contracts does not, however, affect the substance of the discussion in this paragraph.

[36] *See* III. above.

insolvency, the amount of each MVA Interest holder's claim against the related Account's assets (and against Equitable Life) would not be measured by the value of the Account's assets or the Account's investment performance over any period of time. Rather, that claim would be for any unpaid amounts guaranteed to the holder by Equitable Life in connection with that holder's MVA Interest and computed in accordance with the terms of the applicable contract.

The 1964 Prudential case[37] provides the most comprehensive guidance to date as to when an insurance company separate account supporting contracts constitutes an issuer for 1940 Act purposes. In holding that such a separate account constituted an issuer different from the insurance company, the court in that case appears to have placed primary emphasis on the fact that the value of the holders' interest under the contracts was determined solely with reference to the investment performance of the separate account.[38]

The Prudential case also established that the interests in a separate account can be distinguished from the other rights under a contract for purposes of determining whether a separate account should be deemed to be a 1940 Act issuer. The Prudential court affirmed and essentially adopted the analysis of the Commission Opinion that was before the court on appeal. Under that analysis, "units" of interest in a separate account that are the basis of determining the contract holder's return are securities of which the separate account is the issuer; and those securities, moreover, are distinct from the holder's other rights under the contracts,[39] of which the insurance company is, in effect, the issuer.[40]

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[37] Prudential Ins. Co. of Am. v. SEC, 326 F.2d 383 (3rd Cir. 1964), *cert den.*, 377 U.S. 953 [hereinafter Prudential].

[38] The Prudential court quoted the Commission's reasoning (set out in the Commission's opinion that precipitated Prudential's appeal before that court) that Prudential would create a separate account "*exclusively* for investment" and sell "*equity* interests in the *fortunes*" of that separate account to holders. *Id.* at 386 n.3 (quoting The Prudential Ins. Co. of Am., SEC Rel. No. IC-3620 (Jan. 20, 1963) at 6) [hereinafter Commission Opinion]) (emphasis added). The Prudential court found that a holder who "has an interest" in a "completely segregated" separate account that is "devoted to *investing*" has an interest in that separate account and "no other entity" (Prudential at 387 (emphasis added)) or, in other words, solely in the separate account. The Prudential court characterized this "interest" by quoting the Supreme Court, which observed, in SEC v. Variable Annuity Life Ins. Co., 359 U.S. 65 (1959) [hereinafter VALIC], that a holder "gets . . . a *pro rata* share of what the portfolio of equity interests reflects -- which may be a lot, a little, or nothing" (Prudential at 387 (quoting VALIC, 359 U.S. at 71)) or, in other words, an interest in the investment performance of the separate account.

[39] The court, quoting the Commission Opinion being appealed, described such other rights as consisting of "the insurance and annuity promises and the obligation to set up the investment fund." Prudential at 388.

[40] *Id.* at 386 n.3 (quoting the Commission Opinion), 388.

Applying the analysis of the court and the Commission in Prudential, the question is whether the limited and contingent interest that contract holders will have in the legally-insulated Accounts, as distinct from their other rights under Equitable Life's contracts,[41] constitutes a security. Unlike Prudential's separate account, Equitable Life's Accounts will not have units of interest that measure values under MVA Interests by the performance of the Accounts. Nor will the Accounts have any other outstanding interests that could be viewed as the economic equivalent of such units. Accordingly, we do not believe that, under the reasoning in Prudential, the Accounts should be construed to be issuers of securities.

As the Commission staff is aware, a number of precedents bear on the question of whether general account interests under contracts constitute securities for purposes of the federal securities laws.[42] These authorities, generally speaking, evaluate the degree to which such interests have the characteristics of an investment (*i.e.*, a security) or the characteristics of insurance (*i.e.*, not a security). These precedents also have relevance to whether contract holder interests in the Accounts constitute securities, because that question also turns on whether such interests are in the nature of an investment interest (rather than primarily an interest in collateral). Such precedents have focused primarily on the following factors:[43]

a. *The degree to which the participant bears the investment risk in connection with the contract.* Providing legal insulation for the Accounts, of course, will reduce rather than increase the "credit" risk to which MVA Interest holders are exposed and will not affect any other types of investment risk.

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[41] For this purpose, it should not matter whether, as in the Prudential case, such other rights *do not* constitute a security issued by the insurance company or whether, as here, such other rights *do* (because of the MVA feature) constitute a security issued by the insurance company. Even in the latter case, the security that arises as a result of the MVA feature is a security of which only the insurance company (and not the related Account) is the issuer.

[42] *See, e.g.*, SEC v. United Benefit Life Ins. Co., 387 U.S. 202 (1967); VALIC, *supra* note 38; Associates in Adolescent Psychiatry v. Home Life Ins. Co., 941 F.2d 561 (7th Cir. 1991); Rule 151 under the 1933 Act. Certain of the authorities address the status of interests in annuity contracts primarily in terms of the availability of Section 3(a)(8) under the 1933 Act. Although Section 3(a)(8) by its literal terms exempts annuity contracts from registration under the 1933 Act, the Commission's stated position is that contracts falling within the Section 3(a)(8) exemption are not to be regarded as securities for other purposes as well. SEC Rel. No. 33-6558, n. 25 and accompanying text (Nov. 21, 1984).

[43] As the Commission staff is aware, however, not all of the relevant precedents refer to all of these factors.

b. *The degree to which the insurance company assumes meaningful mortality and investment risks under the contract.* Providing legal insulation for the Accounts will not in any way affect the mortality or investment risks assumed by Equitable Life under any contracts.[44]

c. *The degree to which the interests are marketed as an investment.* Equitable Life will take steps to ensure that its marketing program and materials refer to the Accounts accurately: *i.e.*, as pools of assets that provide an additional measure of assurance that MVA Interest holders will receive full payment and not as investment vehicles in whose performance MVA Interest holders will have any interest.[45]

Accordingly, regardless of the relative weights given to the above three factors, legal insulation for the Accounts would not, under the circumstances, tip the scale toward a finding that interests in the Accounts are securities.

CONCLUSION

In summary, we see no basis in public policy, nor anything in the provisions of the 1940 Act, that would require Equitable Life's legally-insulated Accounts to be deemed to be "issuers" subject to regulation under the 1940 Act.

On behalf of Equitable Life, therefore, we hereby request that the Commission staff provide assurance to Equitable Life that the staff would not recommend that the Commission take enforcement action if Equitable Life modifies its contracts for the purpose and with the effect of preventing the Accounts' assets that are not in excess of reserves and contract liabilities from being chargeable with liabilities arising from any other business of Equitable Life without registration of the Accounts under the 1940 Act.

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[44] All of the contracts provide annuity payment options that impose significant mortality risks upon Equitable Life that annuitants under those options will live longer than expected. If the annuitant dies prior to the commencement of annuity payments, the Income Manager contracts provide a death benefit equal to the greater of the Annuity Account Value or the Guaranteed Period Amount. The Equi-Vest contracts provide a similar death benefit equal to the greater of the Annuity Account Value or the amount of premiums (adjusted for withdrawals and loans) paid to date. These death benefit provisions impose additional mortality risks on Equitable Life.

[45] This will not, however, preclude Equitable Life from disclosing that it expects Guaranteed Rates to be influenced by, among other things, the current yields on instruments similar to those expected to be acquired for the Accounts.

Should you have any questions, please contact the undersigned or Gary O. Cohen, Esq. or Peter E. Panarites, Esq. of this firm. Equitable Life has no objection to the staff's making its response to this letter publicly available immediately upon issuance thereof.

Thank you for your consideration of this matter.

Very truly yours,

Thomas C. Lauerman

Thomas C. Lauerman

TCL/mj
Enclosure
cc: Susan Nash, Esq.
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Exhibit A

MARKET VALUE ADJUSTMENT EXAMPLES

The examples below show how the market value adjustment would be determined and how it would be applied to a full surrender or a withdrawal, assuming that $100,000 were allocated on February 15, 1996 to a Guarantee Period with an Expiration Date of February 15, 2005 at a Guaranteed Rate of 7.00%, resulting in a Maturity Value at the Expiration Date of $183,845, and further assuming that a full surrender or a $50,000 withdrawal were made on February 15, 2000. The calculations assume a contract under which no surrender charge is payable on February 15, 2000.

		Assumed Guaranteed Rate on February 15, 2000		
		5.00%	7.00%	9.00%
As of February 15, 2000 (Before Surrender or Withdrawal)				
(1)	Present Value of Maturity Value, also Annuity Account Value	$144,048	$131,080	$119,487
(2)	Guaranteed Period Amount	131,080	131,080	131,080
(3)	Market Value Adjustment: (1)-(2) .	12,968	0	(11,593)
On February 15, 2000 (After Withdrawal)				
(4)	Portion of (3) Associated with Withdrawal: (3) x [$50,000÷(1)] ...	$ 4,501	0	$ (4,851)
(5)	Reduction in Guaranteed Period Amount: [$50,000-(4)]	45,499	50,000	54,551
(6)	Guaranteed Period Amount: (2)-(5)	85,581	81,080	76,229
(7)	Maturity Value	120,032	113,718	106,915
(8)	Present Value of (7), also Annuity Account Value	94,048	81,080	69,487

Under these examples, if a withdrawal is made when rates have increased (from 7.00% to 9.00% in the example), a portion of a negative market value adjustment is realized. On the other hand, if a withdrawal is made when rates have decreased (from 7.00% to 5.00% in the example), a portion of a positive market value adjustment is realized. If a full surrender is made in either situation, the full amount of the market value adjustment (line (3)) is realized and the Annuity Account Value shown on line (1) is the amount received on surrender.