

participation of MetLife Investors USA and Security Equity Life in such purchase or sale transactions could be viewed as entailing the purchase of such portfolio securities from the Substituted Portfolio and the sale of such portfolio securities to the Replacement Portfolio by MetLife Investors USA and Security Equity Life each acting as principal, and therefore may be in contravention of section 17(a) of the 1940 Act.

55. Any in-kind redemptions of Substituted Portfolio shares and purchases of Replacement Portfolio shares for purposes of the proposed substitutions will be effected in a manner consistent with the investment objective, principal investment strategies and other policies of the Substituted Portfolio and the Replacement Portfolio. Both the VIP Fund II and Metropolitan Series will agree on the terms of any in-kind redemption. If the two management companies cannot agree, the VIP Fund II will redeem Substituted Portfolio shares for cash. If the parties do agree, the Replacement Portfolio will receive an approximately proportionate amount of each of the Substituted Portfolio's holdings and cash at the time of the substitution, as determined by the investment adviser of the Substituted Portfolio. After the Replacement Portfolio receives these portfolio holdings, MetLife will review them and determine which holdings to retain for the Replacement Portfolio based on the overall context of the Portfolio's investment objective, principal investment strategies and other policies and consistent with its management of the Replacement Portfolio. The redemption of Substituted Portfolio shares in kind is intended to reduce the costs of the proposed substitutions.

56. MetLife Investors USA and Security Equity Life assert that the terms under which any in-kind redemptions and purchases will be effected are reasonable and fair and will not involve overreaching on the part of any person principally because the transactions will not cause Contract owner interests to be diluted and because the transactions will conform to all but two of the conditions in rule 17a-7. The proposed transactions will take place at relative net asset value in conformity with the requirements of section 22(c) of the 1940 Act and rule 22c-1 thereunder with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not suffer any adverse tax consequences as a result of the Substitution. The fees and charges

under the Contracts will not increase because of the Substitution.

57. Both the board of directors of Metropolitan Series and the board of trustees of VIP Fund II have adopted procedures, as required by rule 17a-7 under the Act, pursuant to which the Portfolios of each may purchase securities from or sell securities to their affiliates. MetLife Investors USA and Security Equity Life will carry out the proposed substitutions in conformity with all of the conditions of rule 17a-7 and Metropolitan Series' and VIP Fund II's procedures thereunder, except that: (1) the consideration paid for the securities being purchased or sold will not be entirely cash, and (2) the board of directors of Metropolitan Series and the board of trustees of VIP Fund II will not separately review each portfolio security purchased and sold.

58. Even though MetLife Investors USA and Security Equity Life may not rely on rule 17a-7, they believe that the rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons. When the Commission first proposed and then adopted rule 17a-7, it noted that the purpose of the rule was to eliminate the filing and processing of applications "in circumstances where there appears to be no likelihood that the statutory finding for a specific exemption under section 17(b) could not be made" by establishing "conditions as to the availability of the exemption to those situations where the Commission, upon the basis of its experience, considers that there is no likelihood of overreaching of the investment companies participating in the transaction."

59. Applicants assert that where, as here, they or the relevant investment company would comply with most, but not all, of the conditions of the rule, the Commission should consider the extent to which the conditions that they propose to meet would protect investors under the circumstances of the particular proposed transaction and issue an order if compliance with those conditions would fully protect investors under such circumstances. The circumstances surrounding the proposed substitutions will be such as to offer the same degree of protection to the Substituted Portfolio and the Replaced Portfolio from overreaching that rule 17a-7 provides to them generally in connection with their purchase and sale of securities under that rule in the ordinary course of their

business. In particular, because of the circumstances surrounding the proposed substitutions, VIP Fund II and the Replaced Portfolio could not "dump" undesirable securities on Metropolitan Series or the Substituted Portfolio, or retain its desirable securities for itself. Because both Portfolios are "index funds" that seek to match the performance of the same stock market index, both Portfolios hold substantially the same portfolio securities, and the Substituted Portfolio would receive from the Replaced Portfolio a pro-rata share of such securities held by the latter, the Replaced Portfolio would not have the opportunity to "dump" undesirable securities on, or otherwise overreach, the Substituted Portfolio. Nor can MetLife Investors USA or Security Equity Life effect the proposed transactions at a price that is disadvantageous to either the Replaced Portfolio or the Substituted Portfolio. Although the transactions may not be entirely for cash and the boards (or directors or trustees) will not make the determinations required by paragraph (e)(3) of rule 17a-7, each will be effected based upon: (a) the independent market price of the portfolio securities valued as specified in paragraph (b) of rule 17a-7, and (b) the net asset value per share of the Substituted Portfolio and the Replacement Portfolio valued in accordance with the procedures disclosed in the registration statement of each and as required by rule 22c-1 under the Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the transaction.

60. The prohibitions of section 17(a) of the 1940 Act were designed to protect overreaching of an investment company primarily by its long-standing or "permanent" affiliates (e.g., investment advisers and principal underwriters or their corporate parents) not other investment companies managed by an independent party that are only occasionally affiliates when a single party owns 5% or more of each of their shares. Applicants assert that, in the context of the proposed substitutions, board review of a lengthy, non-discretionary list of portfolio securities would not increase protection of Contract owners, but would only serve to distract directors' and trustees' attention from more important matters.

61. Any in-kind redemptions and purchases will be carried out in a manner consistent with the policies of both the Substituted Portfolio and the Replacement Portfolio, as recited in their respective registration statements and in any reports by filed by either