

year. The proposed Substitution will not be treated as a transfer for the purpose of assessing transfer fees. Moreover, Sage Life will allow the Owners, with respect to shares substituted, to transfer the Contract values held in the subaccount invested in the Substituting Portfolio for a period of 31 days without collecting transfer fees or imposing any additional restrictions on transfers. Moreover, such a transfer will not be counted as a transfer request under any contractual provisions of the Contracts that may limit the number of transfers that may be made without charge.

12. In anticipation of the filing of the Application, the Applicants have supplemented the prospectuses for the Contracts to reflect the proposed Substitution. The supplement was mailed to Owners on December 27, 2002. Within five days after the Substitution, Sage Life will send to Owners written notice of the Substitution (the "Notice"), identifying the shares of the Replaced Portfolios that have been eliminated and the shares of the Substituting Portfolios that have been substituted. Sage Life will include in such mailing the applicable prospectus supplement for the Contracts of the Variable Account Applicants describing the Substitution. In addition, Sage Life will provide a copy of the prospectuses for the Substituting Portfolios with the Notice. Owners will be advised in the Notice that for a period of 31 days from the mailing of the Notice, Owners may transfer all assets, as substituted, to any other available subaccount without limitation or transfer charge (the "Free Transfer Period").

#### *Applicants' Legal Analysis*

1. Section 26(c) (formerly, section 26 (b)) of the 1940 Act provides that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the [Commission] shall have approved such substitution." Section 26(b) of the 1940 Act (now section 26 (c)) was enacted as part of the Investment Company Act Amendments of 1970. Prior to the enactment of these 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 (5) days after 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 security, recommended that section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval. The Commission will issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants assert that the purposes, terms and conditions of the substitution are consistent with the principles and purposes of section 26(c) and do not entail any of the abuses that section 26(c) is designed to prevent. Applicants represent that the Substitution will generally result in lower expense ratios for the Owners that have allocated their Contract values to the Substituting Portfolios or, in the case of the S&P 500® Equity Index Fund substitution, Applicants will provide the dollar value necessary to offset any differential in the expense ratios of the substituting and replaced funds. In addition, to the extent an Owner does not wish to participate in the Substitution, he or she is free to transfer to any other option available under the relevant Contract prior to the Substitution and within 31 days after the date of the Notice for the Substitution without any transfer fee. As discussed below, Owners will be substituted into a Substituting Portfolio whose investment objectives are substantially similar to those of the Replaced Portfolio.

3. Applicants submit that the Substitution does not present the type of costly forced redemption or other harms that section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(a) The Substitution will continue to fulfill Owners' objectives and risk expectations, because the investment objectives of each Substituting Portfolio are similar to those of each Replaced Portfolio;

(b) After receipt of the Notice informing an Owner of the Substitution, an Owner may request that his or her assets be reallocated to another subaccount at any time during the Free Transfer Period. The Free Transfer Period provides sufficient time for Owners to consider their reinvestment options;

(c) The Substitution will be at net asset value of the respective shares, without the imposition of any transfer or similar charge;

(d) Neither the Owners, the Replaced Portfolios nor the Substituting Portfolios will bear any costs of the Substitution, including any brokerage fees relating to the Substitution, whether incurred on the date of the Substitution or on any prior date, and accordingly, the Substitution will have no impact on the Owners' Contract values;

(e) The Substitution will in no way alter the contractual obligations of Sage Life or the rights and privileges of Owners under the Contracts;

(f) The Substitution will in no way alter the tax benefits to Owners; and

(g) The Substitution is expected to confer certain economic benefits on Owners by virtue of enhanced asset size and lower expenses, as described below.

4. The prospectuses by which the Contracts are offered state that Sage Life has, subject to the requirements of the 1940 Act, the right to substitute the shares of any underlying registered investment company held by the Variable Account Applicants with shares of another registered investment company. The Applicants represent that each Substituting Portfolio is an appropriate replacement for each Replaced Portfolio and an appropriate investment vehicle for the Owners because they share similar investment objectives. The investment objectives, strategies and risks of each Replaced Portfolio and of each Substituting Portfolio are below.