

### 3. The Proposed Revision to OMB's FAIR Act Guidance

As GAO noted in its report, most of the "employee challenges" to the 1999 FAIR Act inventories were within the scope of the statutory challenge-and-appeal process, but only one-third of the "industry challenges" fell within the scope of the statute. In light of the experience gained during the 1999 challenge-and-appeal process, including the agencies' denials of those challenges that "did not meet the challenge provisions of the FAIR Act" (GAO Report, p. 11), it would be reasonable to expect that "interested parties" have now developed a better understanding of what matters may, and may not, be raised during the challenge-and-appeal process that Congress established in the FAIR Act.

As was noted above, and in GAO's report, the FAIR Act itself provides the operative test: Section 3 of the FAIR Act states an interested party may submit challenges and appeals to "an omission of a particular activity from, or an inclusion of a particular activity on," the agency's FAIR Act inventory of commercial activities. In accordance with this test, OMB in its June 1999 guidance stated that "an agency's decision to include or exclude a particular activity from the Commercial Activity Inventory is subject to administrative challenge and, then possible appeal by an 'interested party,'" and OMB further stated that the challenge "must set forth the activity being challenged with as much specificity as possible, and the reasons for the interested party's belief that the particular activity should be reclassified as inherently Governmental (and therefore be deleted from the inventory) or as commercial (and therefore be added to the inventory)." (Paragraphs G.2 and G.3 of Appendix 2 of the Revised Supplemental Handbook for Circular A-76.)

OMB believes that it is in the interest of all affected parties—namely, the interested parties that may file challenges and appeals, and the agencies that must respond to them—to eliminate any remaining confusion that may still exist about the scope of the challenge-and-appeal process that Congress established in the FAIR Act. Accordingly, OMB proposes to revise its implementation guidance for the FAIR Act to provide additional clarification regarding what matters are, and are not, subject to challenge and appeal. Specifically, OMB proposes to revise the introductory paragraph of Paragraph G.2 of Appendix 2 to the Revised

Supplemental Handbook for Circular A-76 so that it reads as follows (the proposed new language is in italics):

2. Challenges and Appeals: Under Section 3 of the FAIR Act, an agency's decision to include or exclude a particular activity from the Commercial Activity Inventory is subject to administrative challenge and, then, possible appeal by an "interested party." *In other words, if an agency has not included an activity on its Inventory, then an "interested party" may submit a challenge and appeal contending that the activity is commercial and, therefore, should be added to the Inventory. Conversely, if an agency has included an activity on its Inventory, then an "interested party" may submit a challenge and appeal contending that the particular activity is inherently governmental and, therefore, should be deleted from the Inventory. The FAIR Act does not authorize any other types of challenges and appeals. Thus, for example, in the case of an activity that an agency has included in its Inventory, an "interested party" may not submit a challenge and appeal that agrees with the agency's decision that the activity is commercial but disagrees with how the agency has described the activity (with respect to, for example, the Function Codes and Reason Codes that the agency used in describing the activity).* Section 3(b) of the FAIR Act defines "interested party as . . ."

OMB requests comment on the proposed revisions.

**Jacob J. Lew,**  
Director.

#### **Circular No. A-76 (Revised); Proposed Transmittal Memorandum No. 23**

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Performance of Commercial Activities

This Transmittal Memorandum implements changes to the OMB Circular A-76 Revised Supplemental Handbook, in furtherance of the requirements of the Federal Activities Inventory Reform Act ("The FAIR Act"), Public Law 105-270. The March 1996 Revised Supplemental Handbook was issued through Transmittal Memorandum No. 15 (61 FR 14338). The March 1996 Revised Supplemental Handbook was further revised to implement the requirements of the FAIR Act through Transmittal Memorandum No. 20 (64 FR 33927) and Transmittal Memorandum No. 22 (65 FR 54568).

To clarify that the FAIR Act's administrative challenge and appeal process is limited to the inclusion or the omission of an activity on or off the list, the following change at Appendix 2, paragraph G. 2, of the

OMB Circular A-76 Supplemental Handbook is proposed (see italics):

"2. Challenges and Appeals: Under Section 3 of the FAIR Act, an agency's decision to include or exclude a particular activity from the Commercial Activity Inventory is subject to administrative challenge and, then possible appeal by an "interested party." *An agency's decision with regard to the application of appropriate Function Codes, Reason Codes and agency decisions regarding the aggregation or dis-aggregation of FTE for purposes of reporting commercial activities on the inventory are not subject to administrative challenge or appeal by an "interested party."* Section 3(b) of the FAIR Act defines "interested party as..."

This change is effective immediately. Current A-76 and FAIR Act implementation guidance can be accessed at OMB's homepage at <http://www.whitehouse.gov/OMB/procurement/fair-index.html>.

Jacob J. Lew,  
Director.

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### OFFICE OF MANAGEMENT AND BUDGET

#### **Public Availability of Year 2000 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270) ("FAIR Act")**

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of Public Availability of Commercial Activities Inventories.

**SUMMARY:** Year 2000 FAIR Act Commercial Activities Inventories are now available to the public from the agencies listed below. The Office of Federal Procurement Policy has prepared and is making available a summary FAIR Act User's Guide through its Internet site:

<http://www.whitehouse.gov/OMB/procurement/index.html>.

This User's Guide will help interested parties review Year 2000 FAIR Act inventories, and will also include the web-site addresses to access agency inventories.

The "Federal Activities Inventory Reform Act of 1998" (Public Law 105-270) ("FAIR Act") requires that OMB publish an announcement of public availability of agency Commercial Activities Inventories upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. OMB has completed this process for the agencies listed below. Further

announcements will be published as OMB and the agencies complete their review and consultation process.

The attached Commercial Activities Inventories are now available.

**Jacob J. Lew,**  
*Director.*

Agency	Contact
African Development Foundation .....	Tom Wilson, 202-673-3948. Website: <a href="http://www.adf.gov">www.adf.gov</a> .
Agency for International Development .....	Deborah Lewis, 202-712-0936. Website: <a href="http://www.usaid.gov/procurement-bus-opp">www.usaid.gov/procurement-bus-opp</a> .
Agency for International Development (OIG) .....	Deborah Lewis, 202-712-0936. Website: <a href="http://www.usaid.gov/procurement-bus-opp">www.usaid.gov/procurement-bus-opp</a>
Agriculture .....	Richard Guyer, 202-690-0291. Website: <a href="http://www.usda.gov/ocfo">www.usda.gov/ocfo</a> .
.....	Richard Kodl, 202-884-7666. Website: <a href="http://www.arc.gov/infopubs/infomain.htm">www.arc.gov/infopubs/infomain.htm</a> .
Appalachian Regional Commission .....	Hubert Sparks, 202-884-7675. Website: <a href="http://www.arc.gov/infopubs/infomain.htm">www.arc.gov/infopubs/infomain.htm</a> .
Appalachian Regional Commission (OIG) .....	Richard Guyer, 202-690-0291. Website: <a href="http://www.usda.gov/ocfo">www.usda.gov/ocfo</a> .
Architectural and Transportation Barriers Compliance Board .....	Lawrence W. Roffee, 202-272-5434, ext. 113 Website: <a href="http://www.access-board.gov">www.access-board.gov</a> .
Barry Goldwater Scholarship and Excellence in Education Foundation ..	Gerald J. Smith, 703-756-6012. Website: <a href="http://www.act.org/goldwater">www.act.org/goldwater</a>
Christopher Columbus Fellowship Foundation .....	Judith M. Shellenberger, (315) 258-0090 Website: <a href="http://www.columbusfdn.org">www.columbusfdn.org</a>
Commerce .....	Edna Campbell, 202-482-0585. Website: <a href="http://www.doc.gov/oebam/fair">www.doc.gov/oebam/fair</a> .
Commission on Fine Arts .....	Jeff Carson, 202-504-2200. No Website currently available.
Committee for Purchase from People who are Blind or Severely Disabled.	Lee Wilson, 703-603-7740. Website: <a href="http://www.jwod.gov">www.jwod.gov</a> .
Council on Environmental Quality .....	Ellen Athas, 202-456-6541. Website: <a href="http://www.whitehouse.gov/CEQ">www.whitehouse.gov/CEQ</a> .
Consumer Product Safety Commission .....	Edward E. Quist, 301-504-0029. ext. 2240. Website: <a href="http://www.cpsc.gov/businfo/businfo.html">www.cpsc.gov/businfo/businfo.html</a> .
Education Department .....	Gary Weaver, 202-401-3848. Website: <a href="http://www.ed.gov/offices/OCFO/2000fair.html">www.ed.gov/offices/OCFO/2000fair.html</a> .
Federal Election Commission .....	John O'Brien, 202-694-1215. Website: <a href="http://www.fec.gov">www.fec.gov</a> .
Federal Emergency Management Agency .....	Colleen Kennedy-Roberts, 202-646-2988. Website: <a href="http://www.fema.gov">www.fema.gov</a> .
Federal Retirement Thrift Investment Board .....	Richard White, 202-942-1633. Website: <a href="http://www.frtib.gov/eread.html">www.frtib.gov/eread.html</a> .
General Services Administration .....	Tom Fitzpatrick, 202-501-0324. Website: <a href="http://www.cfo.gsa.gov">www.cfo.gsa.gov</a> .
Harry S. Truman Scholarship Foundation .....	Louis H. Blair, 202-395-4831. Website: <a href="http://www.truman.gov">www.truman.gov</a> .
Health and Human Services .....	Michael Colvin, 202-690-7887. Website: <a href="http://www.hhs.gov/progorg/oam/fair">www.hhs.gov/progorg/oam/fair</a>
Housing and Urban Development .....	Janice W. Blake-Green, 202-708-0638. Website: <a href="http://www.hud.gov/cfo/cforept.html">www.hud.gov/cfo/cforept.html</a> .
Institute of Museum and Library Services .....	Linda Bell, 202-606-8637. Website: <a href="http://www.imls.gov">www.imls.gov</a> .
Inter-American Foundation .....	Linda Borst, (703) 306-4308. Website: <a href="http://www.iaf.gov">www.iaf.gov</a> .
James Madison Memorial Fellowship Foundation .....	Steve Weiss, 202-653-6109. Website: <a href="http://www.jamesmadison.com">www.jamesmadison.com</a> .
Japan-United States Friendship Commission .....	Eric Ganloff, 202-418-9800. Website: <a href="http://www.jusfc.gov">www.jusfc.gov</a> .
Kennedy Center for the Performing Arts .....	Jared Barlage, 202-416-8721. Website: <a href="http://www.kennedy-center.org/about/administration.html">www.kennedy-center.org/about/administration.html</a> .
Marine Mammal Commission .....	Suzanne Montgomery, 301-504-0087. No Website currently available.
National Commission on Libraries and Information Science .....	Judith C. Russell, 202-606-9200. Website: <a href="http://www.nclis.gov">www.nclis.gov</a> .
National Council on Disability .....	Ethel D. Briggs, 202-272-2004. Website: <a href="http://www.ncd.gov/newsroom/correspondence">www.ncd.gov/newsroom/correspondence</a> (pull up <a href="http://www.ncd.gov/newsroom/correspondence">lew 7-14-00.html</a> ).
National Education Goals Panel .....	John Masaitis, 202-724-0015. Website: <a href="http://www.negp.gov">www.negp.gov</a> (hit search and type in A-76).
National Endowment for the Arts .....	Mike Burke, 202-682-5497. Website: <a href="http://www.arts.gov/learn/commercial2000.html">www.arts.gov/learn/commercial2000.html</a> .
National Labor Relations Board (OIG) .....	Emil T. George, 202-273-1960. Website: <a href="http://www.nlr.gov/active.html">www.nlr.gov/active.html</a> .
Office of U.S. Trade Representative .....	Barbara Ferguson, 202-456-6001 <a href="http://www.ustr.gov">www.ustr.gov</a> .
Peace Corps .....	Susan Hancks, 202-692-1612 Website: <a href="http://www.peacecorps.gov">www.peacecorps.gov</a> .
Railroad Retirement Board .....	Henry M. Valiulis, 312-751-4520 Website: <a href="http://www.rrb.gov/emaillink.html">www.rrb.gov/emaillink.html</a> .
Railroad Retirement Board .....	Martin J. Dickman, 312-751-4690. Website: <a href="http://www.rrb.gov/emaillink.html">www.rrb.gov/emaillink.html</a> .
Smithsonian Institution .....	L. Carole Wharton, 202-357-2917. Website: <a href="http://www.si.edu/si_fairact.htm">www.si.edu/si_fairact.htm</a> .
U. S. Trade and Development Agency .....	Julie Norton, 703-875-6066 Website: <a href="http://www.tda.gov">www.tda.gov</a> .

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24788; File No. 812-12256]

### Integrity Life Insurance Company, et al.

December 8, 2000.

**AGENCY:** Securities and Exchange Commission (“SEC” or “Commission”).

**ACTION:** Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (“1940 Act”) granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder.

*Applicants:* Integrity Life Insurance Company (“Integrity”), National Integrity Life Insurance Company (“National Integrity,” together with Integrity, the “Companies”), Separate Account I of Integrity Life Insurance Company, Separate Account I of National Integrity Life Insurance Company (together with Separate Account I of Integrity Life Insurance Company, the “Accounts”), and Touchstone Securities, Inc. (“Touchstone”).

*Summary of Application:* Applicants seek an order of exemption pursuant to Section 6(c) of the 1940 Act to the extent necessary to permit the recapture, under specified circumstances, of credits applied to contributions made under certain flexible premium variable annuity contracts that the Companies will issue through the Accounts (the “Contracts”), as well as other contracts that the Companies may issue in the future through their existing or future separate accounts (“Other Accounts”) that are substantially similar to the Contracts in all material respects (“Future Contracts”). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (“NASD”) member broker-dealer controlling or controlled by, or under common control or affiliated with, Touchstone, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future Contracts (“Affiliated Broker-Dealers”).

*Filing Date:* The application was filed on September 15, 2000, and amended and restated on December 4, 2000.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request

a hearing by writing to the Commission’s Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 2, 2001, and should 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 Commission’s Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o G. Stephen Wastek, Esq., Assistant General Counsel, Integrity Life Insurance Company, 515 West Market Street, Louisville, Kentucky 40202.

**FOR FURTHER INFORMATION CONTACT:** Ronald A. Holinsky, Senior Counsel, or Lorna J. MacLeod, 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 is available for a fee from the SEC’s Public Reference Branch at (202) 942-8090.

#### Applicants’ Representations

1. Integrity is a stock life insurance company organized under the laws of the State of Ohio. It is authorized to sell life insurance and annuities in 47 states and the District of Columbia. Integrity is a subsidiary of Western and Southern Life Insurance Company (“Western and Southern”), a mutual life insurance company organized under the laws of the State of Ohio.

2. National Integrity is a stock life insurance company organized under the laws of New York. It is authorized to sell life insurance and annuities in four states and the District of Columbia. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of Western and Southern.

3. Separate Account I of Integrity Life Insurance Company was established in 1986 as a separate account under Ohio law for the purpose of funding variable annuity contracts issued by Integrity. It is a segregated asset account of Integrity and is registered with the Commission as a unit investment trust under the Act (File No. 811-04844).

4. Separate Account I of National Integrity Life Insurance Company was established in 1986 as a separate account under New York law for the

purpose of funding variable annuity contracts issued by National Integrity. It is a segregated asset account of National Integrity and is registered with the Commission as a unit investment trust under the Act (File No. 811-04846).

5. The Accounts will fund the variable benefits available under the Contracts. Each Company’s offering of the Contracts is registered under the Securities Act of 1933. That portion of the assets of the Accounts that is equal to the reserves and other Contract liabilities with respect to the Accounts is not chargeable with liabilities arising out of any other business of the Companies. Any income, gains or losses, realized or unrealized, from assets allocated to the Accounts are, in accordance with the Contracts, credited to or charged against the Accounts, without regard to other income, gains or losses of the Companies.

6. Touchstone is the principal underwriter of the Contracts. Touchstone is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. The Contracts are sold by registered representatives of broker-dealers that have entered into distribution agreements with Touchstone. Touchstone is a wholly owned subsidiary of Western and Southern.

7. The minimum initial contribution is \$1,000. An owner may make additional contributions of at least \$100 at any time. The Companies may limit total contributions to \$1,000,000 if the owner is under age 76 and to \$250,000 if the owner is over age 76.

8. The Added Value Option is an optional credit to the Contracts of between 1% and 5% of the total first year contributions (the “Credit”). If an owner selects the Added Value Option at the time of application, the Companies will credit an extra amount to a Contract each time the owner makes a contribution within the first twelve months after the contract is issued. The owner may select a Credit form 1% to 5%. The Companies will allocate Credits pro rata among the investment options in the same ratio as the contribution. The Companies will fund Credits from their general account assets.

9. The annual charge for the Added Value Option is .15% for each percentage of Credit an owner selects. The charge is assessed against the Accounts and the fixed accounts. For example, if the owner selects the 3% Credit, the annual charge is .45%. The charge is subject to a minimum and maximum dollar amount. The minimum amount is .145% multiplied