the event that PSCCC becomes a direct subsidiary of NCE); and (3) nonexempt guarantees and credit support arrangements among the subsidiaries of NCE from $50 million to $100 million. In addition, Applicants propose to use the proceeds from the various financings authorized by the August 1997 Order, as modified by an order authorizing this post-effective amendment, to invest in ''energy-related companies'' within the meaning of rule 58 under the Act, subject to the limitations of rule 58(a)(1).

American Electric Power Company, Inc. (70–9191)

American Electric Power Company, Inc. (''AEP''), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed a declaration under section 12(b) of the Act and rule 45.

American Electric Power Service Corporation (''AEPSC''), AEP's service company subsidiary, leases office space (''Premises'') for its employees under an agreement dated as of October 11, 1979 with American Property Investors IX (''Investors''), as amended to date (''Lease''). AEPSC agreed in the Lease to pay an initial annual lease amount of $458,636, through December 31, 2009. It can extend the Lease for four successive five-year terms. The annual lease amount for each additional term would be determined by the market, provided that the new annual payment does not exceed the initial annual lease amount.

On April 1, 1995, Ohio Power Company (''OPCo''), an operating company subsidiary of AEP and an associate company of AEPSC, occupied the Premises. Concurrently, AEPSC, OPCo and American Real Estate Holdings Limited Partnership (''American Real Estate''), as successor to Investors, entered into an assignment of the Lease (''Assignment''), dated as of April 1, 1995. Under the terms of the Assignment, AEPSC was released from, and OPCo assumed, all of the liabilities under the Lease.

Due to a recent office realignment, AEPSC intends to once again occupy the Premises and will reassume its obligations under the Lease. In connection with its assumption of these obligations, AEP now requests authority to enter into an agreement with American Real Estate to guarantee AEPSC's obligations under the Lease.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–9464 Filed 4–9–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Docket No. IC–23100; File No. 812–10816]

Salomon Brothers Variable Series Funds Inc, et al; Notice of Application

April 3, 1998.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting relief from Sections 9(a), 13(a), 15(a) and 15(b) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application

Appplicants seek an order of exemption to the extent necessary to permit shares of the Fund to be sold to and held by: (i) variable annuity and variable life insurance separate accounts (''Separate Accounts'') of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''), and (ii) trustees of certain qualified pension or retirement plans.

Applicants

Salomon Brothers Variable Series Funds Inc (the ''Fund'') and Salomon Brothers Asset Management Inc (''SBAM'' or the ''Adviser'').

Filing Dates

The application was filed on October 16, 1997 and an amendment was filed on February 9, 1998.

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 Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing request should be received by the Commission by 5:30 p.m. on April 28, 1998, 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 Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Gary S. Schpero, Esq., Simpson Thacher & Barlett, 425 Lexington Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Elisa Metzger, Senior Counsel, or Mark C. Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W. Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund is a Maryland corporation and is registered under the 1940 Act as an open-end management investment company. The Fund consists of, and offers shares in, seven separate investment portfolios (the ''Initial Portfolios''), each of which has its own investment objective and policies. The Fund may in the future issue shares of additional portfolios (together with the Initial Portfolios, the ''Portfolios'') and/or multiple classes of shares of each Portfolio.

2. SBAM serves as the investment adviser to each of the Portfolios. SBAM is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). SBAM is a wholly-owned subsidiary of Salomon Brothers Holding Company Inc, which is a wholly-owned subsidiary of Salomon Smith Barney Holdings, Inc. which is, in turn, wholly-owned by Travelers Group, Inc. SBAM serves as the overall investment manager of the Portfolios, subject to the general direction and supervision of the Fund's Board of Directors (the ''Board of Directors''). SBAM has entered into a subadvisory agreement with Salomon Brothers Asia Pacific Limited (''SBAM AP''), an affiliate of SBAM and an investment adviser registered under the Advisers Act. SBAM AP serves as the sub-adviser to one of the Portfolios, Salomon Brothers Variable Asia Growth Fund. The Adviser also has entered into a subadvisory consulting agreement with Salomon Brothers Asset Management Limited (''SBAM Limited''), an affiliate of the Adviser and an investment adviser registered under the Advisers Act. SBAM Limited provides advisory services relating to

currency transactions and investments in non-dollar-denominated debt securities for the benefit of one of the Portfolios, Salomon Brothers Variable Strategic Bond Fund. SBAM AP and SBAM Limited are hereinafter referred to as the ''Sub-Advisers.''

3. The Fund currently offers shares of certain of its Initial Portfolios to Separate Accounts of Sun Life of Canada U.S. (''Sun Life'') in order to serve as the investment vehicle for certain variable annuity contracts. In the future, the Fund wishes to offer shares of its Portfolios, to Separate Accounts of Sun Life and other insurance companies in order to serve as the investment vehicle for various types of insurance products, which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively referred to herein as ''Contracts''). Applicants represent that the Participating Insurance Companies will establish their own Separate Accounts and design their own Contracts.

4. The Fund also may offer shares of the Fund to the trustees (or custodians) of certain qualified pension or retirement plans (the ''Plans'') as permitted by Treasury Regulation § 1.817–5(f)(3)(iii) adopted pursuant to § 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code'') and described in Revenue Ruling 94–62.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company.'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management company that also offers its shares to a variable annuity separate account of the same insurance company or any other insurance company or to trustees of a Plan. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.''

2. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common management company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.''

3. The relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act similar to those provided by Rule 6e–2. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Therefore, Rule 6e–3(T)(b)(15) grants the exemptions if the underlying fund engages in mixed funding, but not if it engages in shared funding or sells its shares to Plans.

5. Applicants state that the current tax law permits the Fund to increase its asset base through the sale of shares to Plans. Section 817(h) of the Code imposes certain diversification requirements on the underlying assets of the Contracts invested in the Fund. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not adequately diversified as prescribed by Treasury regulations. To meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their contracts. Treas. Reg. § 1–817–5(f)(3)(iii).

6. The promulgation of Rules 6e–2 and 6e–3(T) preceding the issuance of these Treasury regulations. Applicants state that given the then-current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Accordingly, Applicants hereby request an order of the Commission exempting the variable life insurance Separate Accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such a Separate Account) and the Applicants from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T) thereunder (and any permanent rule comparable to Rule 6e–3(T)), to the extent necessary to permit shares of the Fund to be offered and sold to, and held by: (1) both variable annuity Separate Accounts and variable life insurance Separate Accounts of the same life insurance company or of affiliated life insurance companies (*i.e.*, mixed funding); (2) Separate Accounts of unaffiliated life insurance companies (including both variable annuity Separate Accounts and variable life insurance Separate Accounts) (*i.e.*, shared funding); and (3) trustees of Plans.

Disqualification

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a), subject to the limitations on mixed and shared funding. These rules provide: (i) that the eligibility restrictions of Section 9(a) shall not apply to persons who are

officers, directors or employees of the life insurer or its affiliates who do not participate directly in the management or administration of the underlying fund; and (ii) that an insurer shall be ineligible to serve as an investment advisor or principal underwriter of the underlying fund only if an affiliated person of the life insurer who is disqualified by Section 9(a) participates in the management or administration of the fund.

9. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from requirements of section 9, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9 when the life insurer serves as investment adviser to or principal underwriter for the underlying fund. Applicants state that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to many individuals in a typical insurance company complex, most of whom will have no involvement in matters pertaining to underlying investment companies.

10. Applicants submit that there is no regulatory purpose in denying the partial exemptions because of mixed and shared funding and sales to Plans. Applicants further assert that sales to those entities does not change the fact that the purposes of the 1940 Act are not advanced by applying the prohibitions of Section 9(a) to persons in a life insurance complex who have no involvement in the underlying fund.

Pass-Through Voting

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through voting privileges will be provided with respect to all Contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners.

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority and subject to certain requirements. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in such insurance company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T)).

13. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts, and is subject to extensive state regulation of insurance. Applicants assert that in adopting Rules 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary to ''assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Applicants state that in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Applicants assert that the corresponding provisions of Rule 6e–3(T) undoubtedly were adopted in recognition of the same factors.

14. Applicants further represent that the offer and sale of shares of the Fund to Plans will not have any impact on the relief requested in this regard. Shares of the Fund sold to Plans would be held by the trustees of the Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), or applicable provisions of the Code. Section 403(a) of ERISA also provides that trustee(s) must have exclusive authority and discretion to manage and control the Plan investments with two exceptions: (a) when the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions of such fiduciary which are made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, ERISA permits but does not require pass-through voting to the participants in Plans. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Plans because they are not entitled to pass-through voting privileges.

15. Applicants explain that some Plans, however, may provide participants with the right to give voting instructions. Applicants note, however, that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Applicants submit that, therefore, the purchase of the shares of the Fund by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

Conflicts of Interest

16. Applicants submit that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

17. Applicants submit that shared funding, in this respect, is no different than the use of the same investment company as the funding vehicle for

affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions proposed in the application, which are adapted from the conditions included in Rule 6e–3(T)(b)(15), are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulatory decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the Fund.

18. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners under certain circumstances. Applicants assert that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Applicants submit that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rule 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

19. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. The insurer's action possibly could be different from the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the Fund's election, to withdraw its Separate Account's investment in the Fund, with the result that no charge or penalty would be imposed as a result of such withdrawal.

20. Applicants submit that investment by the Plans in any of the Portfolios will similarly present no conflict. The likelihood that voting instructions of insurance company Separate Account holders will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Plan choosing to invest in the Fund. Moreover, Applicants state that even if a material irreconcilable conflict involving Plans were to arise, the Plans may simply redeem their shares and make alternative investments.

21. Applicants also submit that there is no reason why the investment policies of the Portfolios would or should be materially different from what these policies would or should be if the Portfolios funded only variable annuity contracts or variable life insurance contracts, whether flexible premium or scheduled premium contracts. Each type of insurance product is designed as a long-term investment program. Similarly, the investment objectives of Plans—as long-term investments—coincides with that of the Contracts and should not increase the potential for conflicts. Applicants represent that each Portfolio will be managed to attempt to achieve the investment objective of the Portfolio and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

22. Applicants note that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of the Fund. In addition, permitting mixed and shared funding also will facilitate the establishment of additional Portfolios serving diverse goals.

23. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, recognize or proscribe any inherent conflicts of interests if Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

24. While there may be differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants assert that the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Plan cannot net purchase payments to make the distributions, the Separate Account or the Plan will redeem Shares of the Fund at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

25. Applicants state that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. Applicants represent that the Portfolios will inform each shareholder, including each Separate Account and each Plan, of its respective share of ownership in the respective Portfolio. Applicants further represent that, at that time, each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

26. Applicants assert that the ability of the Portfolios to sell their respective shares directly to Plans does not create a ''senior security,'' as that term is defined in Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. As noted above, regardless of the rights and benefits of participants under the Plans or Contract owners under the Contracts, the Plans and the Separate Accounts have rights only with respect to their respective shares of the Fund. They can only redeem such shares at their net asset value. No shareholder of any of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants assert that there are no conflicts between the Contract owners of the separate accounts and the participants under the Plans with respect to state insurance Commissioners' veto powers over investment objectives. A basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time-

consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants submit that, on the other hand, trustees of Plans can make the decision quickly and implement the redemption of their shares from a Portfolio and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable reinvestment. Based on the foregoing, Applicants maintain that even if there should arise issues where the interests of Contract owners and the interests of participants in Plans are in conflict, the issues can be resolved almost immediately because the trustees of the Plans can, on their own, redeem the shares out of the Portfolio.

28. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. According to the Applicants, these factors include the costs of organizing and operating a fund medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Applicants submit that the use of the Fund as a common investment medium for variable contracts would reduce or eliminate these concerns. Applicants argue, in addition, that mixed and shared funding should provide several benefits to Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Adviser and the Sub-Advisers, but also from the cost efficiencies and investment flexibility afforded by a larger pool of asserts. Mixed and shared funding also would permit a greater amount of assets available for investment by the Fund, thereby promoting economies of scale, by permitting increased safety through greater diversification, and by making the addition of new Portfolios more feasible. Applicants assert that, therefore, making the Fund available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower changes to investors. Applicants further note that the sale of shares of the Fund to Plans can also be expected to increase the amount of assets available for investment by the Fund and thus promote economies of scale and greater diversification.

29. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to Plans, will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions if the order requested in the application is granted.

1. A majority of the Board of Directors shall consist of persons who are not ''interested persons'' of the Fund, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Director or Directors, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the remaining Directors: (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy of vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board of Directors will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the Contract owners of all Separate Accounts investing in the Fund and of the Plan participants investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by variable annuity Contract owners, variable life insurance Contract owners and trustees of Plans; (f) a decision by an insurer to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. Participating Insurance Companies, the Adviser or any other investment adviser who may serve as the adviser to any Portfolio in the future, and any Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of the Fund (collectively, the ''Participants'') will report any potential or existing conflicts of interest to the Board of Directors. Participants will be responsible for assisting the Board of Directors in carrying out its responsibilities under these conditions by providing the Board of Directors with all information reasonably necessary for the Board of Directors to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board of Directors whenever voting instructions of Contract owners are disregarded and, if pass-through voting is applicable, an obligation by each Plan to inform the Board of Directors whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board of Directors will be contractual obligations of all Participating Insurance Companies and Plans with participation agreements, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Plan participants or Contract owners, as appropriate.

4. If it is determined by a majority of the Board of Directors, or by a majority of the disinterested Directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans will, at their own expense and to the extent reasonably practicable (as determined by a majority of the disinterested Directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) withdrawing the assets allocable to some or all of the Separate Accounts from the Fund or any Portfolio and reinvesting such assets in a different investment medium, including another Portfolio of the Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one or

more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed Separate Account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, then that insurer may be required, at the Fund's election, to withdraw the insurer's Separate Account investment in the Fund or relevant Portfolio(s) and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the Fund's election, to withdraw its investment in the Fund or relevant Portfolio(s) and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by the Board of Directors of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of Contract owners and Plan participants.

5. For purposes of Condition 4, a majority of the disinterested Directors will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Contract if any offer to do so has been declined by vote of a majority of the Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Plan shall be required by Condition 4 to establish a new funding medium for such Plan if (a) a majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

6. The determination of the Board of Directors of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, Participating Insurance Companies will vote shares of the Fund held in their Separate Accounts in a manner consistent with voting instructions timely-received from Contract owners. Each Participating Insurance Company will also vote shares of the Fund held in its Separate Accounts for which no voting instructions from Contract owners are timely-received, as well as shares of the Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from Contract owners are timely-received. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts participating in the Fund calculates voting privileges in a manner consistent with other Participating Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in the Fund. Each Plan will vote as required by applicable law and governing Plan documents.

8. All reports of potential or existing conflicts received by the Board of Directors, and all action by the Board of Directors with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the Board of Directors or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. The Fund will notify all Participating Insurance Companies that separate account disclosure in their respective Separate Account prospectuses may be appropriate to advise accounts regarding the potential risk of mixed and shared funding. The Fund shall disclose in its prospectus that (a) the Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for Plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in the Fund and the interests of Plans investing in the Fund may conflict; and (c) the Board of Directors will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. The Fund will comply with all provisions of the 1940 Act that require voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Fund), and, in particular, the Fund will provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) and comply with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic election of Directors and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent that Rule 6e–2 or 6e–3(T) under the 1940 Act is amended, or proposed rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with such Rules 6e–2 and 6e–3(T), as amended, or proposed Rule 6e-3 as adopted, to the extent that such rules are applicable.

12. The Participants, at least annually, will submit to the Board of Directors such reports, materials, or data as the Board of Directors may reasonably request so that the Board of Directors may fully carry out the obligations imposed upon it by the conditions contained in the application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board of Directors. The obligations of the Participants to provide these reports, materials, and data to the Board of Directors, when the Board of Directors so reasonably requests, shall be a contractual obligation of all Participants under their agreements governing participation in the Fund.

13. If a plan should ever become a holder of ten percent or more of the assets of the Fund, such Plan will execute a participation agreement with the Fund that includes conditions set

forth herein to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of the Fund.

Conclusion

For the reasons set forth above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–9466 Filed 4–9–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23101; File No. 812–10844]

STI Classic Variable Trust, et al.; Notice of Application

April 3, 1998.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of STI Classic Variable Trust (the ''Trust'') and shares of any other investment company or portfolio that is designed to fund insurance products and for which STI Capital Management, N.A. may serve in the future, as investment adviser, administrator, manager, principal underwriter, or sponsor (together with the Trust, ''Trusts'') to be sold to and held by: (1) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); and (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

APPLICANTS: STI Classic Variable Trust and STI Capital Management, N.A. (''STI Capital'').

FILING DATE: The application was filed on October 28, 1997, and amended and restated on February 9, 1998.

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 on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 28, 1998, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Kevin P. Robins, Esq., SEI Investments Company, Oaks, Pennsylvania 19456.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Mark C. Amorosi, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust and is registered under the 1940 Act as an open-end management investment company. The Trust currently consists of five separate portfolios (''Funds''), each of which has its own investment objective or objectives and policies.

2. STI Capital, and investment adviser registered under the Investment Advisers Act of 1940, serves as the investment adviser to the Trust. STI Capital is an indirect wholly owned subsidiary of Sun Trust Banks, Inc.

3. Shares representing interest in each Fund currently offered to insurance companies as an investment vehicle for their separate accounts that fund variable annuity contracts. The Trust intends to offer shares representing interests in each Fund, and any other portfolio established by the Trust in the future (''Future Portfolio'') (Fund, together with Future Portfolios, ''Portfolios'' or each a ''Portfolio''), to separate accounts of Participating Insurance Companies (''Separate Accounts'') to serve as the investment vehicle for variable annuity contracts and variable life insurance contracts (collectively, ''Variable Contracts'').

4. Applicants also propose that the Trusts offer and sell shares representing interests in their Portfolios directly to Qualified Plans.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts to be offered and sold to and held by: (a) both variable annuity and variable life insurance separate accounts of the same life insurance company or any affiliated life insurance company (''mixed funding''); (b) separate accounts of unaffiliated life insurance companies (''shared funding''); and (c) trustees of Qualified Plans.

2. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' [1] Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible

[1] The exemptions provided by Rule 6e–2 also are available to the investment adviser, principal underwriter, and sponsor or depositor of the separate account.