sent a written notice stating that the substitutions were carried out and that they may transfer all cash value under a Policy invested in each of the affected sub-accounts to other available sub-account(s). The notice will reiterate that neither PFL nor AUSA will exercise any right reserved by it under any of the Policies to impose restrictions or fees on transfers until at least thirty days after the proposed substitutions.

Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, the section provides that ''(i)t shall be unlawful for any depositor or trustee of a registered until investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' The section further provides that the Commission shall issue an order approving such substitution of the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants request an order pursuant to section 26(b) of the 1940 Act approving the substitution. Applicants assert that the proposed substitutions meet the standards that the Commission and its staff have applied to substitutions that have been approved in the past and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits any of such affiliated persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company. The transfer of proceeds emanating out of the redemption in-kind of shares of the WRL Growth Portfolio and the purchase of shares of the Endeavor Janus Growth Portfolio may be deemed to involve the purchase and sale of securities between the WRL Fund and the Endeavor Trust or more indirectly between the WRL Fund and the Accounts and between the Accounts and the Endeavor Trust. PFL, AUSA, the Accounts, the WRL Fund and the Endeavor Trust may all be considered affiliates or affiliates of affiliates of each other subject to the restrictions of section 17(a). PFl and AUSA, through various separate accounts, own of record a majority of shares of the Endeavor Trust and, along with Western Reserve, all of the shares of the WRL Fund. In addition, the Endeavor Trust and the WRL Fund may be under the control of (or under common control with) PFL and AUSA.

4. Section 17(b) provides that the Commission may grant an order exempting a proposed transaction provided: (i) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and (iii) the proposed transaction is consistent with the general purposes of the Act.

5. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to carry out the substitution by redeeming securities in-kind or partly in-kind. Applicants assert that the terms of the proposed substitutions as set forth herein, including the consideration to be paid and received, are reasonable and fair to: (1) The Endeavor Trust and the Endeavor Janus Growth Portfolio, (2) the WRL Fund and the WRL Growth Portfolio, and (3) policy owners invested in the WRL Growth Portfolio; and do not involve overreaching on the part of any person concerned. Applicants assert that the proposed substitution will conform to all the conditions of Rule 17a–7 and each fund's procedures thereunder, except that the consideration paid for securities being purchased or sold may not be entirely cash. To the extent that in-kind transactions do not comply with the requirements of Rule 17a–7, applicants assert that the proposed transactions provide the same degree of protection as provided by the conditions of the rule. Applicants further assert that the proposed transaction is consistent with the policy of: (1) the Endeavor Trust and the Endeavor Janus Growth Portfolio, and (2) the WRL Fund and the WRL Growth Portfolio, as recited in its current registration statement and are consistent with the general purposes of the 1940 Act.

6. Applicants assert that consolidating all investment options for the Policies under the Endeavor Trust will result in overall benefits to Policy owners, by simplifying the disclosure required in each Policy's prospectus and by making the Accounts less cumbersome to administer.

Conclusion

Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7957 Filed 3–31–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23763; File No. 81–11464]

Sun Capital Advisers Trust, et. al

March 25, 1999.

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 exemptive relief 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.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of Sun Capital Advisers Trust (''Trust'') and any other similar investment companies that Sun Capital Advisers, Inc. (''Sun Advisers'' or ''Adviser'') may in the future serve or manage as investment adviser, administrator, principal underwriter or sponsor (the Trust and these similar investment companies; the ''Funds''), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context for which shares of the Funds would be held by the trustees of those plans (''Qualified Plans'' or ''Plans'').

APPLICANTS: Sun Capital Advisers Trust and Sun Capital Advisers, Inc.

FILING DATE: The application was filed on January 11, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by

mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 19, 1999, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Peter F. Demuth, Esq., Sun Life of Canada, One Sun Life Executive Park, Wellesley Hills, Massachusetts 02481.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Counsel, or Kevin M. Kirchoff, 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 SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 ((202) 942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company organized as a Delaware business trust, registered under the Securities Act of 1933 and the 1940 Act. The Trust currently consists of three separate series of shares (''Series''), each of which has its own investment objectives and policies. The Trust may issue additional classes of shares in the future.

2. Sun Advisers is registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and is the investment adviser for each Series.

3. The Funds would offer shares of its Series to separate accounts registered under the 1940 Act as unit investment trusts (''Separate Accounts'') of multiple affiliated and unaffiliated life insurance companies to serve as the investment medium for variable contracts issued by the life insurance companies. Variable contracts may include variable annuity contracts and variable life insurance contracts (collectively, ''Variable Contracts''). The Funds may in the future offer their shares to other separate accounts that are not registered as investment companies under the 1940 Act pursuant to the exceptions from registration in sections 3(c)(1) and 3(c)(11) of the 1940 Act. Insurance companies whose separate accounts would own shares of the Funds are referred to as ''participating insurance companies.''

4. Each participating insurance company will have the legal obligation to satisfy all requirements applicable to it under the federal securities laws in connection with any Variable Contract issued by such company. The Funds' role under this arrangement, so far as the federal securities laws are applicable, will be limited to that of offering their shares to separate accounts of participating insurance companies and fulfilling any conditions the Commission may impose upon granting the order requested herein.

5. The Funds also may offer shares directly to Qualified Plans outside of the separate account context. The Funds propose to offer shares to any Qualified Plans that can, consistent with applicable federal income tax law, invest in the Funds consistent with the Funds serving as investment vehicles for Variable Contracts.

6. It is anticipated that Qualified Plans may choose a Fund (or any one or more series thereof) as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice among available alternatives, depending on the Plan itself. Shares of the Funds sold to Qualified Plans would be held by the trustee(s) of these Plans as mandated by section 403(a) of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). Pass-through voting need not be, but may be, provided to the participants in such Qualified Plans pursuant to ERISA.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through Separate Accounts, 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 only if the management investment company underlying the Separate Account (''underlying fund'') offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or any affiliated life insurance company'' (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available for 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 flexible premium variable life insurance policy of the same company or of any affiliated life insurance company. 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 as ''mixed funding.''

2. The relief granted by Rule 6e–2(b)(15) also is not available for a scheduled premium variable life insurance separate account that owns shares of an underlying fund 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 investment company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding Variable Contracts of one or more unaffiliated insurance companies is referred to as ''shared funding.''

3. Applicants assert that the relief granted by Rule 6e–2(b)(15) is in no way affected by the purchase of shares of the Funds by Qualified Plans. However, because the relief under Rule 6e–2(b)(15) is available only if shares are offered exclusively to separate accounts, additional exemptive relief is necessary if the shares of the Funds are also to be sold to Plans.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Separate Account, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9, 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by 6e–3(T) are available only if the Separate Account's underlying fund offers its 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.'' (emphasis added). Thus, Rule 6e–3(T)(b)(15) permits mixed funding for a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief is not available for a flexible premium variable life insurance separate account that owns shares of a management investment company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

5. Applicants assert that the relief granted by Rule 6e–3(T) is in no way affected by the purchase of shares of the Funds by Qualified Plans. However, because the relief under Rule 6e–3(T) is available only if shares are offered exclusively to separate accounts, additional exemptive relief is necessary if the shares of the funds are also to be sold to Plans.

6. Applicants state that section 817(h) of the Internal Revenue Code of 1986, as amended (''the Code''), imposes certain diversification standards on the underlying assets of the Variable Contracts held by series of the Funds. The Code provides that a Variable Contract will not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the investments of the segregated asset account on which the Variable Contract is based are not adequately diversified, in accordance with regulations prescribed by the Treasury Department. These diversification regulations are applied by taking into account the assets of an underlying investment company in which the account invests if all of the beneficial interests in the regulated investment company are held by certain designated persons. On March 2, 1989, the Treasury Department published regulations (Treas. Reg. § 1.817–5) which adopted in final form diversification requirements for the investments underlying Variable Contracts. The regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in an underlying regulated investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations also contain certain exceptions to this requirement, one of which allows shares in such an investment company to be held by the trustee of a Qualified Plan. Thus, a fund that serves as an investment vehicle for Variable Contracts may also offer its shares to certain Qualified Plans without adversely affecting, for purposes of the diversification requirements under section 817(h), the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their Variable Contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

7. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, the sale of shares of the same investment company to separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

8. Accordingly, Applicants request that the Commission issue an order pursuant to section 6(c) of the 1940 Act exempting variable life insurance separate accounts of participating insurance companies (and, to the extent necessary, any principal underwriter and depositor of such an account) and the Funds from section 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to, and held by: (a) variable annuity and variable life insurance separate accounts of the same life insurance company or of affiliated or unaffiliated life insurance companies, and (b) Qualified Plans.

9. In general, section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from acting or serving in various capacities with respect to a registered investment company. More specifically, section 9(a)(3) provides that it is unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to disqualification enumerated in sections 9(a)(1) or (2).

10. Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company. The relief provided by the rules permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer or its affiliates, so long as that person does not participate directly in the management or administration of the underlying investment company. Thus, an insurer shall be eligible to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) are participating in the management of the fund.

11. Applicants state that the partial relief granted in Rules 6e–2 and 6e–3(T) from the requirements of section 9 of the 1940 Act limits, in effect, the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that section. Applicants state that there is no regulatory purpose in extending the companies' monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed or shared funding. Those individuals who participate in the management or administration of the Funds will remain the same regardless of which separate accounts or insurance companies use the Funds. Applicants assert that applying the monitoring requirements of Section 9(a) because of investment by separate accounts of other insurers would be unjustified and would not serve any regulatory purpose. Furthermore, Applicants assert that the increased monitoring costs would reduce the net rates of return realized by contract owners. Applicants further assert that the relief requested will in no way be affected by the proposed sale of shares of the Funds to Qualified Plans, and that the insulation of the Funds from those individuals who are disqualified under the 1940 Act will remain intact even if shares of the Funds are sold to Qualified Plans. Since the Qualified Plans are not investment companies and will not be deemed to be affiliated persons of the participating insurance companies solely by virtue of their shareholdings in the Funds, they are not subject to Section 9(a) and thus no additional relief is necessary.

12. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) under the 1940 Act assumes that contract owners are entitled to pass-through voting privileges with respect to investment company shares held by a separate account. However, subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides exemptions from the pass-through voting requirement with respect to several significant matters.

13. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund that would result in changes in the subclassification or investment objectives of the underlying fund, or with respect to any contract between a fund and its investment adviser, when an insurance regulatory authority so requires, subject to certain requirements. In addition, an insurance company may disregard the voting instructions of its contract owners if the

contract owners initiate any change in the underlying fund's investment policies, principal underwriter, or investment adviser (provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T)). Voting instructions with respect to a change in investment policies may be disregarded if the insurance company makes a good-faith determination that such change would: (a) Violate state law; or (b) result in investment that either would not be consistent with the investment objectives of the separate account, or would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Voting instructions with respect to a change in an investment adviser or principal underwriter may be disregarded if the insurance company makes a good-faith determination that: (a) The adviser's fees would exceed the maximum rate that may be charged against the separate account's assets; (b) the proposed adviser may be expected to employ investment techniques that vary from the general techniques used by the current adviser; or (c) the proposed adviser may be expected to manage the investments in a manner that would be inconsistent with the investment company's investment objectives or in a manner that would result in investments that vary from certain standards.

14. Applicants state that Rule 6e–2 recognizes that a variable life insurance policy is an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation. Applicants maintain that in adopting Rule 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 polices, investment advisers or principal underwriters. Applicants also state that the Commission expressly recognized that state insurance regulators have authority to require an insurance company to draw from its general account to cover costs imposed upon the insurance company by a change approved by contract owners over the insurance company's objection. Therefore, the Commission deemed exemptions from pass-through voting requirements necessary ''to assure the solvency of the life insurer and the 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 assert that in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; and that therefore the corresponding provisions of Rule 6e–3(T) undoubtedly were adopted in recognition of the same factors.

15. Applicants submit that state insurance regulators have much the same authority over variable annuity separate accounts as they have over variable life insurance separate accounts, and that variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. Applicants submit that while the Commission staff has not been called upon to address the general issue of state insurance regulators' authority over variable annuity contracts, perhaps this is because the Commission has not developed a single comprehensive exemptive rule for variable annuity contracts.

16. Applicants assert that these considerations are no less important or necessary in connection with mixed and shared funding. Applicants state that mixed and shared funding does not compromise the goals of state insurance regulatory authorities or of the Commission. Indeed, Applicants assert that by permitting these arrangements, the Commission eliminates needless duplication of start-up and administrative expenses and facilities the growth of underlying fund assets, thereby making effective portfolio management strategies easier to implement and promoting other economies of scale. Applicants further state that the sale of Fund shares to Plans will not have any impact on the relief requested in this regard. As previously noted, shares of the Funds will be held by the trustees of the Plans as required by section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan investments with two exceptions: (a) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions 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. If 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 the named fiduciary. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts between or among contract holders and Plan participants with respect to voting of a Fund's shares. Accordingly, Applicants assert that 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 Qualified Plans since the Qualified Plans are not required to pass-through voting privileges.

17. Applicants submit that even if a Qualified Plan were to hold a controlling interest in a Fund, Applicants do not believe that such control would disadvantage other investors in the Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Plan will not create any of the voting issues occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Plan participant voting rights cannot be frustrated by veto rights of insurers or state regulators. While a Qualified Plan may provide participants with the right to give voting instructions, Applicants assert that there is no reason to believe that participants in Qualified Plans generally, or those in a particular Plan, either as a single group or in combination with participants in other Plans, would vote in a manner that would disadvantage contract owners. In this regard, Applicants submit that the purchase of shares of Funds by Qualified Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

18. Applicants assert that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding by unaffiliated insurance companies should not present any issues that do not already exist for a single insurance company that is licensed to do business in several or all states. Applicants note that where an insurer is licensed to do business in several or all states, it is possible 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 Variable contracts. Applicants submit that this possibility is not significantly different or greater than exists where different insurers may be domiciled in different states.

19. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. In any event, the conditions (adapted from the conditions included in rule 6e–3(T)(b)(15)) discussed below 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 regulator's decision conflicts with the majority of other state regulators, the affected insurer will be required to withdraw its separate account's investment in the affected Fund. This requirement will be provided for in agreements that will be entered into by participating insurance companies with respect to their participation in the Funds (''participation agreements'').

20. Applicants also argue 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. Potential disagreement is limited by the requirement that disregarding voting instructions be reasonable and based on specific good faith determinations. However, if an insurer's decision to disregard contract owner voting instructions represents a minority position or would preclude a majority vote, such insurer may be required, at a Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such a withdrawal. This requirement will be provided for in the Fund's participation agreement.

21. Applicants submit that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if the Funds 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. Each Fund will be managed to attempt to achieve the Fund's investment objectives, and not to favor or disfavor any particular participating insurer or type of insurance product. Applicants assert that there is no reason to believe that different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of Variable Contracts. Applicants state that under existing statutes and regulations, an insurance company and its affiliates can offer a variety of variable annuity and life insurance contracts, some with death benefit guarantees, all funded by a single mutual fund.

22. Applicants also submit that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of Variable Contract owners is composed of individuals of diverse financial status, ages, insurance needs and investment goals. A Fund supporting even one type of insurance product must accommodate these diverse factors to attract and retain purchasers. Applicants also assert that permitting mixed and shared funding will provide economic support for the growth of the Funds and may encourage more insurance companies to offer Variable Contracts.

23. As noted above, section 817(h) of the Code imposes certain diversification standards on the assets underlying 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 separate accounts to invest in the same underlying management investment company. Therefore, Applicants assert that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

24. Applicants note that while there may be differences in the manner in which distributions from variable annuity contracts, variable life insurance contracts and Qualified Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or Qualified Plan cannot net purchase payments to make the distributions, the Separate Account or Qualified Plan will redeem shares of the Funds as their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Plan, and the life insurance company will make distributions in accordance with the terms of the Variable Contract. Distributions and dividends will be declared and paid by the Funds without regard to the character of the shareholder.

25. Applicants also state that it is possible to provide an equitable means of giving voting rights to Separate Account Contract owners and to the trustees of Qualified Plans. Each Fund or its agent will inform each participating insurance company of each Separate Account's ownership of Fund shares, as well as inform the trustees of Qualified Plans of their holdings. Each participating insurance company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T). Qualified Plans and Separate Accounts will each have the opportunity to exercise voting rights with respect to their Fund shares, although only the Separate Accounts are required to pass through their voting rights to contract owners.

26. Applicants submit that the ability of the Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as this term is defined under Section 18(g) of the 1940 Act, with respect to any Variable Contract owner as opposed to a participant in a Qualified Plan. Regardless of the rights and benefits of participants in the Qualified Plans, or Variable Contract owners, the Qualified Plans and the Separate Accounts have rights only with respect to their respective shares of the Funds. They can only redeem such shares at their net asset value. No shareholder of any of the Funds will have any preference over any other shareholder with respect to distribution of assets or payments of dividends.

27. Applicants state that there are no conflicts between the contract owners of the Separate Accounts and participants in the Qualified Plans with respect to the state insurance commissioners' veto power over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish these redemptions and transfer. On the other hand, trustees of Qualified Plans can make the decision quickly and implement the redemption of their shares from the Funds and reinvest in

another investment vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even if conflicts of interest arise between Variable Contract owners and Qualified plans, the issue can be almost immediately resolved because the trustees of the Qualified Plans can, on their own initiative, redeem their Fund shares.

28. Applicants assert that various factors have limited the number of insurance companies that offer variable annuities and variable life insurance policies. Applicants state that these factors include the costs of organizing and operating investment vehicles, 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. Applicants assert that use of the Funds as common investment medium for Variable Contracts would help alleviate these concerns, because participating insurance companies will benefit not only from the investment and administrative expertise of the Adviser, but also from the cost efficiencies and investment flexibility afforded by pooling assets for multiple Variable Contracts and insurance companies in a single underlying Fund. Therefore, Applicants assert, making the Funds available 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 charges.

29. Applicants also submit that mixed and shared funding should provide benefits to Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate underlying funds. Furthermore, the sale of shares of the Funds to Qualified Plans should result in an increased amount of assets available for investment by the Funds. This may benefit Variable Contract owners by promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new series more feasible. Applicants further believe that the sale of the Funds to Qualified Plans does not increase the risk of material irreconcilable conflicts to the Funds or the participating Separate Accounts.

30. Applicants assert that they believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the board of trustees (each a ''Board'') of each of the Funds will consist of persons who are not ''interested persons'' of the Funds, 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. However, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee(s), then the operation of this condition shall be suspended: (a) For a period of 45 days, if the vacancy or vacancies may be filed by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Funds for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts investing in the Funds and all other persons investing in the Funds, including Qualified Plans, and determine what action, if any, should be taken in response to these conflicts. 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 interpretive 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 series of the Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and Plan trustees; (f) a decision by an insurer to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard voting instructions of Plan participants.

3. Participating insurance companies and any Qualified Plan that executes a participation agreement with a Fund (collectively, ''Participating Parties'') and the Adviser will report any potential or existing conflicts of which it becomes aware to the Board of the relevant Fund. Participating Parties and the Adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participating Party to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Parties under their participating agreements and these agreements will be carried out with a view only to the interests of the contract owners and Qualified Plan participants.

4. If it is determined by a majority of the Board of a Fund, or a majority of its disinterested trustees, that a material irreconcilable conflict exists, the relevant Participating Parties will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. These steps may include: (a) Withdrawing the assets allocable to some or all of the Separate Accounts of the participating insurance companies from the affected Fund or any series thereof and reinvesting these assets in a different investment medium (including another series, if any, of such Fund) or submitting the question of 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.,* annuity contract owners, life insurance contract owners, or variable 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; (b) withdrawing the assets allocable to some or all of the participating Qualified Plans from the relevant Fund and reinvesting those assets in a different investment medium; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its Separate Account's investment in the Fund, and no charge or penalty will be imposed as a result of the withdrawal.

The responsibility of taking remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Parties under their participation agreements and these responsibilities will be carried out with a view only to the interests of the contract owners and participants in Qualified Plans, as applicable.

5. For the purposes of condition 4, a majority of the disinterested members of the Board of the affected Fund will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Advisor be required to establish a new funding medium for any Variable Contract or Qualified Plan. No participating insurance company will be required by condition 4 to establish a new funding medium if an offer to do so has been declined by a vote of a majority of contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan will be required by condition 4 to establish a new funding medium for the Plan if: (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline the offer; or (b) pursuant to governing Plan documents and applicable law, the Plan makes the decision without a vote of Plan participants.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly in writing to the Adviser and all Participating Parties.

7. As to Variable Contracts issued by Separate Accounts, participating insurance companies will provide pass-through voting privileges to all contract owners so long as and to the extent that the Commission continues to interpret the 1940 Act to require pass-through voting privileges for Variable Contract owners. As to Variable Contracts issued by unregistered separate accounts, pass-through voting privileges will be extended to participants to the extent granted by the issuing insurance company. Participating insurance companies will be responsible for assuring that each of their registered Separate Accounts participating in a Fund calculate voting privileges as instructed by a Fund with the objective that each such participating insurance company calculate voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Fund will be a contractual obligation of all participating insurance companies under their participating agreements. Each participating insurance company will vote Fund shares held by Separate Accounts for which it has not received voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

8. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the Fund's shares). In particular each Fund will either provide for annual meetings (except insofar as the Commission may interpret section 16 not to require such meetings) or, if annual meetings are not held, comply with section 16(c) of the 1940 Act (although the Trust is not, and the Funds may not be, one of the trusts described in section 16(c) of the 1940 Act), as well as sections 16(a) and, if and when applicable, 16(b). Further, the Funds will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Funds will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. A Fund will disclose in its prospectus that: (a) Shares of the Fund are offered to insurance company separate accounts offered by various participating insurance companies which fund both annuity and life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment or other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund might at some time conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

10. No less than annually, the Participating Parties and/or the Adviser will submit to the Boards such reports, materials or data as each Board may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the Application. These reports, materials and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participating Parties to provide these reports, materials and data to the Boards will be a contractual obligation of all Participating Parties under the participation agreements.

11. All reports received by a Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying the Adviser or Participating Parties of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and these minutes or other records will be made available to the Commission upon request.

12. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from those of any exemptions granted in the order requested in the Application, then the Funds and/or the Participating Parties, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent these rules are applicable.

13. In the event that a Qualified Plan should ever become an owner of 10% or more of the assets of a Fund, such Qualified Plan will execute a participation agreement with the Fund. A Qualified Plan will execute a certification containing an acknowledgment of this condition at the time of its initial purchase of shares of each Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are 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.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITY AND EXCHANGE COMMISSION

[Docket No. IC–23765]

Notice of Application for Deregistration under Section 8(f) of the Investment Company Act of 1940

March 26, 1999.

The following is a notice of applications for deregistration under