over-pressurization events that could challenge the RPV is 9.5×10^{-4}/yr for BWR–4 facilities and 9×10^{-4}/yr for other than BWR–4 facilities. After accounting for actual injections which were not included in the BWRVIP analysis, the staff conservatively estimates that the total frequency could be as high as 1×10^{-3}/yr (a point estimate).

The initial industry review determined that the failure frequency of circumferential welds was 2.2×10^{-41}/yr. This frequency was determined using importance sampling, generic weld variables and design basis events. Subsequent analyses using ''Monte Carlo'' calculation methods, plant-specific weld variables and pressures and temperatures associated with cold over-pressure events, determined that the limiting plant-specific conditional probability of vessel failure, P(F|E) for circumferential welds at 32 effective full power years (EFPY) were 1×10^{-6} from the BWRVIP's re-analysis and 8.2×10^{-6} from the NRC staff's analysis. Combining the frequency of cold over-pressure events with the P(F|E), the BWRVIP failure frequency for the limiting circumferential welds was 9.0×10^{-10}/yr [$(9 \times 10^{-4}$/yr event frequency for a BWR–3$) \times (1.0 \text{ x } 10^{-6}$ conditional probability of failure)]. The limiting plant-specific failure frequency for circumferential welds at 32 EFPY was determined by the staff to be 8.2×10^{-8}/yr [$(1 \times 10^{-3}$/yr event frequency$) \times (8.2 \times 10^{-5}$ P(F|E))]. As depicted in NUREG 1560, Vol. I, core damage frequencies (CDF) for BWR plants were reported to be approximately 10^{-7}/yr to 10^{-4}/yr. In addition, Regulatory Guide (RG) 1.154 indicates that PWR plants are acceptable for operation if the plant-specific analyses predict the mean frequency of through-wall crack penetration for pressurized thermal shock events is less than 5×10^{-6}/yr. The failure frequencies of circumferential welds in BWR vessels are significantly below the criteria specified in RG 1.154.

RG 1.174 provides guidelines as to how defense-in-depth and safety margins are maintained, and states that a risk assessment should be used to address the principle that proposed increases in risk, and their cumulative effect, are small and do not cause the NRC Safety Goals to be exceeded. The estimated failure frequency of the BWR RPV circumferential welds is well below the acceptable core damage frequency (CDF) and large early release frequency (LERF) criteria discussed in RG 1.174. Although the frequency of RPV weld failure can not be directly compared to the frequencies of core damage or large early release, the staff believes that the estimated frequency of RPV circumferential weld failure bounds the corresponding CDF and LERF that may result from a vessel weld failure. On the above bases, the staff has concluded that the BWRVIP–05 proposal, as modified, to eliminate BWR vessel circumferential weld examinations, is acceptable.

Permitted Action

BWR licensees may request permanent (i.e., for the remaining term of operation under the existing, initial, license) relief from the inservice inspection requirements of 10 CFR 50.55a(g) for the volumetric examination of circumferential reactor pressure vessel welds (ASME Code Section XI, Table IWB–2500–1, Examination Category B–A, Item 1.11, Circumferential Shell Welds) by demonstrating that: (1) At the expiration of their license, the circumferential welds will continue to satisfy the limiting conditional failure probability for circumferential welds in the staff's July 28, 1998, safety evaluation, and (2) licensees have implemented operator training and established procedures that limit the frequency of cold over-pressure events to the amount specified in the staff's July 28, 1998, safety evaluation. Licensees will still need to perform their required inspections of ''essentially 100 percent'' of all axial welds.

This generic letter requires no specific action or written response. Any action on the part of addressees to request relief from the inservice inspection requirements of 10 CFR 50.55a(g) for the volumetric examination of the circumferential reactor pressure vessel welds, in accordance with the guidance of this generic letter, is strictly voluntary.

Dated at Rockville, Maryland, this 31st day of July 1998.

For the Nuclear Regulatory Commission,

Jack W. Roe,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–21166 Filed 8–6–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23370, 812–10800]

Bankers Trust Company, et al.; Notice of Application

July 31, 1998.

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

ACTION: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 17(a) and 17(e) of the Act, under section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered management investment companies to use cash collateral from securities lending transactions (''Cash Collateral'') to purchase shares of an affiliated registered management investment company (the ''Trust''), and to pay fees based on a share of the revenue generated from securities lending transactions to Bankers Trust Company (''Bankers Trust''). The order also would permit Bankers Trust and certain of its affiliates to engage in principal securities transactions with, and receive brokerage commissions from, certain other registered investment companies that are affiliated with Bankers Trust solely as a result of investing Cash Collateral in the Trust.

Applicants: Bankers Trust; Cash Management Portfolio, Treasury Money Portfolio, Tax Free Money Portfolio, NY Tax Free Money Portfolio, International Equity Portfolio, Equity 500 Index Portfolio, Short/Intermediate U.S. Government Securities Portfolio, Asset Management Portfolio, Capital Appreciation Portfolio, Intermediate Tax Free Portfolio, BT Investment Portfolios and future series of the foregoing; the Trust, BT Investment Funds, BT Insurance Funds Trust, BT Pyramid Mutual Funds, BT Advisor Funds and future series of the foregoing; Fidelity Commonwealth Trust in respect of its Spartan Market Index Fund, Fidelity Concord Street Trust in respect of its Spartan extended Market Index Fund, Spartan International Index Fund, Spartan Total Market Index Fund, and Spartan US Equity Index Fund, and Fidelity Variable Insurance Products Fund II in respect of its Index 500 Portfolio, and any other registered open-end or closed—end management investment company advised or sub-advised, or that invests substantially all of its assets in a registered investment company advised or subadvised, by bankers Trust or an entity controlling, controlled by or under common control with bankers Trust (each a ''BT Entity'') (collectively, ''Affiliated Lending Funds''); and Institutional Daily Assets Fund (the ''Money Fund''), and any series of the Trust or other registered management investment companies

advised by a BT Entity and established in the future in connection with the investment of Cash Collateral from securities lending transactions (together with the Money fund, the ''Investment Funds'').

FILING DATES: The application was filed on September 25, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is described in this notice.

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 SEC by 5:30 p.m. on August 25, 1998, and should be 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 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. Bankers Trust Entities, c/o Mr. Gerald T. Lins, Esq., Bankers Trust Company, One Bankers Trust Plaza, 31st Floor, New York, NY 10006. Fidelity Funds, c/o Fidelity Investments, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

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 (tel. 202–942–8090).

Applicants' Representations

1. Bankers Trust, a New York banking corporation, is a wholly-owned subsidiary of Bankers Trust Corporation. Bankers Trust serves as the investment adviser to the Affiliated Lending Funds, which are either open-end or closed-end management investment companies registered under the Act.[1] Bankers Trust also is one of the world's leading providers of institutional custody services. In conjunction with its global custodial services, Bankers Trust operates one of the largest and most extensive securities lending programs (the ''Securities Lending Program'').

2. The Trust is an unincorporated business association organized under the laws of Massachusetts and is registered as an open-end management investment company under the Act. The Trust has several series, including the Money Fund. Shares of the Money Fund are offered primarily to Affiliated Lending Funds and other institutional investors participating in the Securities Lending Program, including other registered management investment companies (''Other Lending Funds''). The Money Fund values its securities using the amortized cost method and complies with rule 2a–7 under the Act. Shares of the Trust (''Shares'') are not subject to any sales load, redemption fee, or asset-based distribution fee. Bankers Trust serves as the investment adviser, custodian, transfer agent and administrator of the Money Fund and receives fees for these services. Other Investment Funds will be structured and operated in the same manner, but might not be money market funds.

3. Affiliated Lending Funds and Other Lending Funds (collectively, ''Lending Funds'') may loan their portfolio securities to various institutional borrowers. Pursuant to a securities lending agreement (the ''Securities Lending Agreement''), Bankers Trust acts as the securities lending agent for each Lending Fund. Each Lending Fund will represent to Bankers Trust that its policies generally permit the Lending Fund to engage in securities lending transactions. In addition, each Affiliated Lending Fund's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons'' of the Fund (the ''Independent Trustees''), will initially approve Bankers Trust as the lending agent.

4. Bankers Trust states that its personnel providing day-to-day lending agency services to the Affiliated Lending Funds do not provide investment advisory services to the Funds, or participate in any way in the selection of portfolio securities or other aspects of the management of the funds.

5. Under the Securities Lending Program, Bankers Trust will enter into a borrowing agreement (the ''Borrowing Agreement'') with certain entities designated by Bankers Trust and approved by the Lending Fund as eligible to borrow portfolio securities (the ''Borrowers''). Collateral to be delivered by Borrowers under the Securities Lending Agreement and the Borrowing Agreement will be U.S. government securities, letters of credit or Cash Collateral.

6. The Securities Lending Agreement will authorize and instruct Bankers Trust as agent for the Lending Fund to invest the Cash Collateral in accordance with specific guidelines provided by the Lending Fund. These guidelines will identify the particular Investment Funds and other investment vehicles, instruments and accounts, if any, in which Cash Collateral may be invested, and the amounts of Cash Collateral that may be invested in each Investment Fund and other authorized investments.

7. An Affiliated Lending Fund and the lending agent derive income from the Securities Lending Program is one of two ways. If an Affiliated Lending Fund receives Cash Collateral it may invest the Cash Collateral and receive an investment return. Out of the return, the Affiliated Lending Fund pays the Borrower an agreed upon interest rate and retains the rest of the return. This investment return is split with the lending agent (''Shared Return''). When the collateral is a U.S. government security or a letter of credit, the Borrower pays the Affiliated Lending Fund a lending fee, which the Affiliated Lending Fund would share with the lending agent (''Shared Lending Fee'').

8. Applicants request an order to permit the Lending Funds to use Cash Collateral received from Borrowers to purchase Shares of the Money Fund and other Investment Funds. Applicants also request an order to permit the Affiliated Lending Funds to pay Bankers Trust for its services as lending agent a portion of the Shared Return or Shared Lending Fee. Finally, applicants state that the Other Lending Funds may own more than 5% of an Investment Fund's outstanding voting securities and thus become affiliated persons of the Investment Fund. Bankers Trust, as investment adviser to the Investment Fund would therefore be an affiliated person of an affiliated person of the Lending Fund. Applicants thus request an order permitting Bankers Trust to engage in principal transactions with, and receive brokerage commissions and other compensation from, the Other Lending Funds.

Applicants' Legal Analysis

A. Investment of Cash Collateral by the Lending Funds in the Money Fund

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting

[1] All existing Affiliated Lending Funds that currently intend to rely on the requested relief have been named as applicants. Any future Affiliated Lending Fund may rely on the order only in accordance with the terms and conditions in the application.

stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may knowingly sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent the exemption is consistent with the public interest and the protection of investors.

3. Applicants seek an order under section 12(d)(1)(J) of the Act exempting them from the provisions of section 12(d)(1) of the Act to permit the Lending Funds to purchase, and the Trust to sell, securities in excess of the limits of sections 12(d)(1)(A) and 12(d)(1)(B) in connection with the Lending Funds' investment of Cash Collateral.

4. Applicants state that each Investment Fund will be operated for the purpose of serving as the vehicle for the investment of Cash Collateral under the Securities Lending Program. Shares of the Investment Funds will not be subject to any sales load, redemption fee, or asset-based distribution or service fee. Applicants further state that, because investment advisory fees paid to Bankers Trust by the Affiliated Lending Funds will not be affected by the value of the collateral received by the Funds in connection with the loaned securities, the fees that would be paid to Bankers Trust by an Investment Fund, including investment advisory fees, should not be viewed as duplicative of the advisory fees paid by the Affiliated Lending Funds to Bankers Trust. Applicants also assert that there is no possibility of undue influence by the Lending Funds over the Investment Funds because each Investment Fund will be structured to accommodate the increased liquidity needs associated with securities lending transactions. Moreover, an Investment Fund will not invest in any investment company in excess of the limits of section 12(d)(1)(A) of the Act. For these reasons, applicants believe that the proposed arrangement does not raise the concerns underlying sections 12(d)(1) (A) and (B).

5. Sections 17(a) (1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of the affiliated person (''Second-Tier Affiliate''), acting as a principal, to sell any security to, or purchase any security from, the registered investment company. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any Second-Tier Affiliate, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the SEC and granted by order. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, as well as any person directly or indirectly controlling, controlled by, or under common control with, the other person, and in the case of an investment company, its investment adviser.

6. The Affiliated Lending Funds and Investment Funds are advised by Bankers Trust and thus are each affiliated persons of Bankers Trust and therefore may be deemed Second-Tier Affiliates. Accordingly, the sale and redemption of Shares of Investment Funds by the Affiliated Lending Funds may be prohibited under section 17(a). Moreover, if an Other Lending Fund acquires 5% or more of an Investment Fund's securities, the Other Lending Fund could be deemed an affiliated person of the Investment Fund, and thus subject to the same prohibitions. Applicants also state that the Affiliated Lending Funds and potentially the Other Lending Funds by purchasing and redeeming Shares, Bankers Trust by acting as investment adviser to the Affiliated Lending Funds and the Investment Funds, and Bankers Trust by providing other services to the Investment Funds at the same time that the Investment Funds sell Shares to the Lending Funds also could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

7. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if 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, the proposed transaction is consistent with the policy of each registered investment company concerned, and the general purposes of the Act.

8. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if the 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 Act.

9. Under rule 17d–1, in passing on applications for orders under section 17(d), the SEC considers whether the company's participation in the proposed transaction is consistent with the provisions, policies, and purposes of the At, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

10. Applicants request an order under sections 6(c), 17(b), and 17(d) of the Act and rule 17d–1 under the Act to permit the Lending Funds to purchase Shares of the Investment Funds. Applicants state that the Lending Funds will purchase and redeem Shares of the Investment Funds based on their net asset value determined in accordance with the Act. Applicants also state that the Investment Funds will not impose any sales load, redemption or asset based distribution or service fees. Applicants also assert that the fees that the Investment Funds will pay Bankers Trust will not be duplicative of the fees that the Affiliated Lending Funds pay to Bankers Trust.

11. Applicants further submit that a Lending Fund's Cash Collateral will be invested in a particular Investment Fund only if that Investment Fund invests in the types of instruments that the Lending Fund has authorized for the investment of its Cash Collateral. Applicants state that any Lending Fund that complies with the requirements of rule 2a–7 under the Act will invest only in an Investment Fund that also complies with that rule; and that the investment of Cash Collateral in the Investment Funds will be conducted in accordance with any SEC and staff securities lending guidelines. For these reasons, applicants believe that their requested relief meets the standards of sections 6(c), 17(b), and 17(d) of the Act and rule 17d–1 under the Act.

B. Payment of Fees by the Lending Funds to Bankers Trust

1. Bankers Trust, as investment adviser to the Affiliated Lending Funds, is an affiliated person of the Funds. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving investment companies and their affiliated persons

unless the SEC has approved the transaction. Applicants state that a lending agent agreement between a registered investment company and an affiliated person of the investment company under which compensation is based on a share of the revenue generated by the lending agent's efforts may constitute a joint arrangement within the meaning of section 17(d) and rule 17d–1. Consequently, applicants request an order to permit Bankers Trust, as lending agent, to receive either a portion of the Shared Return or a portion of the Shared Lending Fee from the Affiliated Lending Funds.

2. Applicants propose that each Affiliated Lending Fund will adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with Bankers Trust, as lending agent, will meet the standards of rule 17d–1:

(a) In connection with the approval of Bankers Trust as lending agent for an Affiliated Lending Fund and implementation of the proposed fee arrangement, a majority of the Board, including a majority of the Independent Trustees, will determine that: (i) The contract with Bankers Trust is in the best interests of the Affiliated Lending Fund and its shareholders; (ii) the services to be performed by Bankers Trust are appropriate for the Affiliated Lending Fund; (iii) the nature and quality of the services provided by Bankers Trust are at least equal to those provided by others offering the same or similar services for similar compensation; and (iv) the fees for Bankers Trust's services are within the range of, but in any event no higher than, the fees charged by Bankers Trust for services of the same nature and quality provided to unaffiliated parties.

(b) Each Affiliated Lending Fund's contract with Bankers Trust for lending agent services will be reviewed annually by the Board and will be approved for continuation only if a majority of the Board (including a majority of the Independent Trustees) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of an arrangement whereby Bankers Trust will be compensated as lending agent based on a percentage of the revenue generated by an Affiliated Lending Fund's participation in the Securities Lending Program, the Board shall secure a certificate from Bankers Trust attesting to the factual accuracy of clause (iv) in paragraph (a) above. In addition, the Board will request and evaluate, and Bankers Trust shall furnish, such information and materials as the trustees, with and upon the advice of agents, consultants or counsel, determine to be appropriate in making the findings referred to in paragraph (a) above. Such information shall include, in any event, information concerning the fees charged by Bankers Trust to other institutional investors for performing similar services.

(d) The Board, including a majority of the Independent Trustees, will (i) at each regular quarterly meeting determine, on the basis of reports submitted by Bankers Trust, that the loan transactions during the prior quarter were conducted in compliance with the conditions and procedures set forth in the application, and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Affiliated Lending Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application or otherwise followed in connection with lending securities pursuant to the Securities Lending Program, and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Securities Lending Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, and the terms of the loan transaction. In addition, each Affiliated Lending Fund will maintain all information or materials upon which a determination was made in accordance with the procedures set forth above and the conditions to the application.

3. Applicants also request an order under section 17(d) of the Act and rule 17d–1 under the Act to permit Bankers Trust to receive lending agency fees based on a share of the securities lending revenues from certain Other Lending Funds. Applicants state that an Other Lending Fund may become a Second-Tier Affiliate of Bankers Trust by reason of acquiring 5% or more of the outstanding voting securities of an Investment Fund. Applicants also state that in certain cases Bankers Trust serves as the investment adviser to one series of a registered investment company, whereas other entities unaffiliated with Bankers Trust serve as investment advisers to other series of that investment company (each of the other series being an Other Lending Fund). Because the series may have the same board of directors, the series may be deemed to be under common control, and Bankers Trust, as adviser to one series, may be deemed a Second-Tier Affiliate of the series that are Other Lending Funds. Applicants assert that in both of these cases the decisions made on behalf of the Other Lending Funds are made by persons unaffiliated with Bankers Trust and that any fee arrangements between the Other Lending Funds and Bankers Trust therefore will be the product of arms-length bargaining.

C. Transactions by Other Lending Funds With Bankers Trust

1. Applicants state that sections 17(a)(1) and (2) of the Act described above may prohibit principal transactions between Bankers Trust an Other Lending Fund that becomes a Second-Tier Affiliate of Bankers Trust upon acquiring 5% or more of the outstanding voting securities of an Investment Fund. Applicants further state that section 17(e) of the Act may prohibit these Other Lending Funds from paying brokerage commissions or other fees to Bankers Trust.

2. Applicants request an exemption under section 6(c) of the Act from sections 17(a) and 17(e) to permit the Other Lending Funds to engage in principal transactions with, and pay brokerage commissions and other fees to, Bankers Trust or a BT Entity. Applicants assert that Bankers Trust would not have any influence over the decisions made by any Other Lending Fund and that the transactions between the BT Entities and the Other Lending Funds would be the product of arms-length bargaining.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. The securities lending program of each Lending Fund will comply with all present and future applicable SEC and staff positions regarding securities lending arrangements.

2. The approval of an Affiliated Lending Fund's Board, including a majority of the Independent Trustees, shall be required for the initial and subsequent approvals of Bankers Trust's service as lending agent for the Affiliated Lending Fund pursuant to the Securities Lending Program, for the institution of all procedures relating to the Securities Lending Program as it relates to the Affiliated Lending Fund, and for any periodic review of loan transactions for which Bankers Trust acted as lending agent pursuant to the Securities Lending Program.

3. A majority of the Board of each Affiliated Lending Fund (including a majority of the Independent Trustees of the Affiliated Lending Fund), will initially and at least annually thereafter determine that the investment of Cash Collateral in Shares of an Investment Fund is in the best interests of the shareholders of the Affiliated Lending Fund.

4. Investment in Shares of an Investment Fund by a particular Lending Fund will be consistent with such Lending Fund's investment objectives and policies. A Lending Fund that complies with rule 2a–7 under the Act will not invest its Cash Collateral in an Investment Fund that does not comply with the requirements of rule 2a–7.

5. Investment in Shares of an Investment Fund by a particular Lending Fund will be in accordance with the guidelines regarding the investment of Cash Collateral specified by the Lending Fund in the Securities Lending Agreement. A Lending Fund's Cash Collateral will be invested in a particular Investment Fund only if that Investment Fund has been approved for investment by the Lending Fund and if that Investment Fund invests in the types of instruments that the Lending Fund has authorized for the investment of its Cash Collateral.

6. The Shares of an Investment Fund will not be subject to a sales load, redemption fee, any asset-based sales charge, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers).

7. An Investment Fund will not acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98–21170 Filed 8–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23372; File No. 812–11090]

Barr Rosenberg Variable Insurance Trust, et al.

July 31, 1998.

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (''Act'') granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 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 Barr Rosenberg Variable Insurance Trust (the ''Trust'') and any other investment company that is designed to fund insurance products and for which Rosenberg Institutional Equity Management or its affiliates may serve as investment manager, investment adviser, investment sub-adviser, administration, manager, principal underwriter or sponsor (together with the Trust, ''Trusts'') to be sold to and held by: (i) Variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; (ii) qualified pension and retirement plants (''Qualified Plans'' or ''Plans'') outside of the separate account context; and (iii) the Trusts' investment adviser (representing seed money investments in the Trusts).

Applicants: Barr-Rosenberg Variable Trust (the ''Trust'') and Rosenberg Institutional Equity Management (''RIEM'').

Filing Date: The application was originally filed on March 24, 1998, and amended and restated on June 23, 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 Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 25, 1998, and should be accompanied by proof of services 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 Commission.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Edward H. Lyman, Esq., Rosenberg Institutional Equity Management, 4 Orinda Way, Building E, Orinda, California 94563.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, 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 is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end, management investment company. The Trust currently consists of one investment portfolio (the ''Fund'').

2. RIEM serves as the investment manager to the Trust. RIEM is registered with the Commission as an investment adviser pursuant to the Investment Advisers Act of 1940.

3. The Trust may offer each series of its shares to separate accounts (''Participating Separate Accounts'') registered under the Act as unit investment trusts (''UITs'') of various life insurance companies (''Participating Insurance Company'') and to Plans qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended (the ''Code''). Certain Participating Separate Accounts (''VLI Accounts'') support variable life insurance contracts (''VLI Contracts''). Other Participating Separate Accounts (''VA Accounts'') support variable annuity contracts (''VA Contracts,'' together with VLI Contracts, ''Variable Contracts'').

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 6(c) of the Act exempting them from Section 9(a), 13(a), 15(a), and 15(b) of the 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) VA Accounts and VLI Accounts of the same life insurance company or of any affiliated life insurance company (''mixed funding''); (b) VA Accounts and VLI Accounts of unaffiliated life insurance companies (''shared funding''); (c) trustees of Qualified Plans; and (d) the Trusts' investment adviser (representing seed money investments in the Trust or Future Trust).

2. Rule 6e–2(b)(15) under the Act provides partial exemptions from: (a) Section 9(a), which makes it unlawful for certain individuals and companies to act in certain capacities with respect to registered investment companies; and (b) Sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections might be deemed to require ''pass-through'' voting with respect to the