II. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this notice is ML061160195. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 21st day of June, 2006.

For the Nuclear Regulatory Commission.

Gary S. Janosko,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–10194 Filed 6–27–06; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

July 6, 2006 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 71, Number 109, Page 33006) June 7, 2006. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's July 13, 2006 Board of Directors meeting scheduled for 2 p.m. on July 6, 2006 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: June 26, 2006.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 06–5813 Filed 6–26–06; 12:33 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27416; File No. 812–13180]

Cohen & Steers VIF Realty Fund, Inc. et al.; Notice of Application

June 22, 2006.

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

ACTION: Notice of Application for Exemption pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act''), for an exemption from the provisions of 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.

APPLICANTS: Cohen & Steers VIF Realty Fund, Inc. (the ''Fund'') and Cohen & Steers Capital Management, Inc. (the ''Investment Adviser'') (collectively the ''Applicants'').

SUMMARY OF APPLICATION: Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting certain life insurance companies and their separate accounts that currently invest in or may hereafter invest in the Fund from the provisions of 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, to the extent necessary to permit shares of the Fund (the ''Shares''), and shares of any existing or future investment company that is designed to fund insurance products and for which the Investment Adviser or any of its affiliates, may serve as investment adviser, investment manager, subadviser, administrator, principal underwriter or sponsor (collectively the ''Insurance Funds'') to be sold to and held by: (a) Separate accounts funding variable annuity contracts and variable life insurance policies (collectively ''Variable Contracts'') issued by both affiliated life insurance companies and unaffiliated life insurance companies; (b) trustees of qualified group pension and group retirement plans outside of the separate account context, (''Qualified Plans''); (c) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act; (d) the Investment Adviser or any successor in interest to the Investment Adviser (''Adviser'') for the purpose of providing seed capital to an Insurance Fund; and (e) any other account of a Participating Insurance Company permitted to hold shares of an Insurance Fund (''General Accounts'').

FILING DATE: The Application was filed on March 28, 2005 and amended and restated on October 3, 2005 and June 16, 2006.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on July 19, 2006. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or in the case of any attorney-at-law by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: The Commission: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: C/O Lawrence B. Stoller, Esq., 280 Park Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch, SEC's Public Reference Branch, 100 F Street, NE., Room 1580, Washington, DC 20549 (telephone (202) 551–8090).

Applicant's Representations

1. Each Insurance Funds is, or will be, registered under the 1940 Act as an open-end management investment company. The Fund (1940 Act Registration No. 811–21669) was incorporated under Maryland law on November 10, 2004 and is registered under the 1940 Act as a non-diversified management investment company. The Fund's registration statement became effective on January 27, 2005. The Fund's Shares are not sold to the general public, but are currently offered to separate accounts funding variable annuity contracts issued by Merrill Lynch Life Insurance Company, ML Life Insurance Company of New York and affiliated entities.

2. The Investment Adviser was organized in 1986, under the laws of the State of New York, and registered with the Commission under the Investment Advisers Act of 1940. The Investment

Adviser is a wholly owned subsidiary of Cohen & Steers, Inc., a publicly traded company whose common stock is listed on the New York Stock Exchange under the symbol ''CNS.''

3. Applicants represent that the Fund intends to, and other Insurance Funds may in the future, offer Shares to separate accounts of affiliated and unaffiliated insurance companies in order to fund various types of insurance products. Applicants represent that these products may include, but are not limited to, variable annuity contracts, scheduled premium variable life insurance policies, single premium variable life insurance policies and flexible premium variable life insurance polices. Applicants further represent that these separate accounts are, or will be, registered as investment companies under the 1940 Act or will be exempt from such registration (individually a ''Separate Account'' and collectively the ''Separate Accounts''). Insurance companies whose Separate Account(s) may now or in the future own Shares are referred to herein as ''Participating Insurance Companies.''

4. Applicants represent that the Participating Insurance Companies have established, or will establish, their own Separate Accounts and design their own Variable Contracts. Each Participating Insurance Company has, or will have, the legal obligation to satisfy all applicable requirements under both state and federal law. Each Participating Insurance Company may rely on Rule 6e–2 or Rule 6e–3(T) under the 1940 Act, although in connection with the establishment and maintenance of Separate Accounts funding variable life insurance polices some Participating Insurance Companies may rely on individual exemptive orders as well.

5. Applicants state that each Participating Insurance Company on behalf of its Separate Accounts has entered, or will enter, into a participating agreement with each Insurance Fund in which it invests which will govern participation by the Participating Insurance Company in such Insurance Fund (a ''Participating Agreement''). The role of the Insurance Fund under this arrangement, insofar as federal securities laws are applicable, will consist of offering Shares to the Separate Accounts and fulfilling any conditions that the Commission may impose upon granting the order requesting herein.

6. Applicants propose that the Insurance Funds also be permitted to offer and/or sell Shares to Qualified Plans administered by a Trustee. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of Separate Accounts funding Variable Contracts. In particular, the Code provides that Variable Contracts shall not be treated as an annuity contract or life insurance policy for any period (and any subsequent period) for which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations (individually a ''Treasury Regulation'' and collectively the ''Treasury Regulations''), specifically Treasury Regulation Section 1.817–5, that established diversification requirements for Variable Contracts, which require the Separate Accounts upon which these contracts or policies are based to be diversified as provided in the Treasury Regulations. In the case of Separate Accounts that invest in underlying investment companies, the Treasury Regulations provide a ''look through'' rule that permits the Separate Account to look to the underlying investment company for purposes of meeting the diversification requirements, provided that the beneficial interests in the investment company are held only by the segregated asset accounts of one or more insurance companies. However, the Treasury Regulations also contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by Separate Accounts funding Variable Contracts (Treas. Reg. Section 1.817–5(f)(3)(iii)). Another exception allows the investment manager of the investment company and certain companies related to the investment manager to hold shares of the investment company, an exception that is often used to provide the capital required by Section 14(a) of the 1940 Act.

7. Qualified Plans may choose the Shares offered as the sole investment under the Qualified Plan or as one of several investments. Qualified Plan participants may or may not be given an investment choice depending on the terms of the Qualified Plan itself. Exercise of voting rights by participants in any such Qualified Plans as opposed to the trustees of such Qualified Plans, as opposed to the trustees of such Qualified Plans, cannot be mandated by the Applicants. Each Qualified Plan must be administered in accordance with the terms of the Qualified Plan and as determined by its trustee or trustees. To the extent permitted under applicable law, an Adviser or an affiliated person of the Adviser may act as investment adviser or trustee to Qualified Plans that purchase Shares.

8. Applicants propose that the Insurance Funds also be permitted to offer and/or sell Shares to an Adviser. The Treasury Regulations permit such sales as long as the return on Shares held by the Adviser is computed in he same manner as for Shares held by the Separate Accounts, and the Adviser does not intend to sell the shares to the Public. The Treasury Regulations impose an additional restriction on sales to an Adviser, who may hold Shares only in connection with the creation of an Insurance Fund. Applicants anticipate that sales will be made to an Adviser for the purpose of providing necessary capital required by Section 14(a) of the 1940 Act. Any Shares purchased by an Adviser will automatically be redeemed if and when the Adviser's investment advisory agreement terminates.

9. Applicants proposed that the Insurance Funds also be permitted to offer and/or sell Shares to General Accounts. The Treasury Regulations permit sales to General Accounts as long as the return on Shares held by General Accounts is computed in the same manner as for Shares held by a Separate Account, and the General Accounts do not intend to sell the Shares to the Public. Applicants anticipate that sales may be made to General Accounts for purposes of creation of the Insurance Funds.

Applicant's Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance policies issued through a Separate Account registered as a unit investment trust (''UIT'') under the 1940 Act, Rule 6e–2(B)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 act. Section (a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any UIT, if an affiliated person of that company is subject to disqualification enumerated in Section 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a) and 15(b) of the 1940 Act has been deemed by the Commission to require ''pass-thorugh'' voting with respect to an underlying investment company's shares. Rule 6e–2(b)(15) provides these exemptions apply only where all of the assets of the UIT are shares of 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 with respect to a scheduled premium life insurance Separate Account that owns shares of an underlying fund that also offers its shares to a variable annuity Separate Account or a flexible premium variable annuity Separate Account or a flexible premium variable life insurance Separate Account of the same company or any other affiliated company. The use of a common management investment company as the underlying investment vehicle 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. The relief granted by rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance Separate Accounts that owns shares of an underlying fund that also offers its shares to Separate Accounts funding Variable Contracts issued by one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment vehicle for Separate Accounts funding Variable Contracts issued by one or more unaffiliated life insurance companies is referred to herein as ''shared funding.''

3. Moreover, because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance Separate Accounts of a life insurer or any affiliated life insurance company, additional exemptive relief is necessary if the Shares are also to be sold to Qualified Plans, an Adviser and General Accounts (collectively, ''Eligible Purchasers''). Applicants note that if the Shares were sole only to Separate Accounts funding variable annuity contracts and/or Eligible Purchasers, exemptive relief under Rule 6e–2(b)(15) would not be necessary. The relief provided for under this section does not relate to Eligible Purchasers or to a registered investment company's ability to sell its shares to Eligible Purchasers. The use of a common management investment company as the underlying investment vehicle for Separate Accounts funding Variable Contracts issued by affiliated and unaffiliated insurance companies, and for Eligible Purchasers, is referred to herein as ''extended mixed and shared funding.''

4. In connection with flexible premium variable life insurance contracts issued through a Separate Account registered under the 1940 Act as a UIT, Rule 6e–3(T)(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–3(T)(b)(15) are available only where all the assets of the Separate Account consist of the shares of one or more registered management investment companies that offer to sell their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible 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 or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account.'' Therefore, Rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding.

5. Moreover, because the relief under Rule 6e–3(T)(b)(15) is available only where Shares are offered exclusively to Separate Accounts funding Variable Contracts issued by a life insurer or any affiliated life insurance company, additional exemptive relief is necessary if the Shares are also to be sold to Eligible Purchasers, as described above. Applicants noted that if the Shares were sold only to Separate Accounts funding variable annuity contracts and/or Eligible Purchasers, exemptive relief under Rule 6e–3(T)(b)(15) would not be necessary. The relief provided for under this section does not relate to Eligible Purchasers or to a registered investment company's ability to sell its shares to Eligible Purchasers.

6. Applicants maintain, as discussed below, that there is no policy reason for the sale of the Shares to Eligible Purchasers to result in a prohibition against, or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e–3(T)(b)(15) and 6e–3(T)(b)(15). However, because the relief under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only when shares are offered exclusively to certain Separate Accounts, additional exemptive relief may be necessary if the Shares are also to be sold to Eligible Purchasers. Applicants therefore request relief in order to have the Participating Insurance Companies enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) even where Eligible Purchasers are investing in the relevant Insurance Fund. Applicants note that if the Shares were to be sold only to Eligible Purchasers, and/or Separate Accounts funding variable annuity contracts, exemptive relief under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) would be unnecessary. The relief provided for under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Eligible Purchasers, or to a registered investment company's ability to sell its shares to Eligible Purchasers.

7. Consistent with the Commission's authority under Section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, this Application requests relief for the class consisting of Participating Insurance Companies and their Separate Accounts (and to the extent necessary, investment advisers, principal underwriters and depositors of such Separate Accounts).

8. In effect, the partial relief granted in Rules 6e-2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of Section 9 of the 1940 Act 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. Those rules recognize 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 individuals in a large insurance complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply Section 9(a) of the 1940 Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Funds as investment vehicles for Variable Contracts. Applicants argue that there is no regulatory purpose in extending the monitoring requirements to embrace a full application of section 9(a)'s eligibility restrictions because of mixed funding or shared funding and sales to Qualified Plans, an Adviser or General Accounts. Applicants represent that the Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Insurance Funds. Applicants further represent that those individuals who participate in the management of the Insurance Funds will remain the same regardless of which Separate Accounts or Qualified Plans invest in the Insurance Funds. Applicants argue that applying the monitoring requirements of Section 9(a) of the 1940 Act because of investment by Separate Accounts of Participating Insurance Companies or Qualified Plans would be unjustified, would not serve any regulatory purpose

and could reduce the net rates of return realized by contract owners and Qualified Plan holders due to the increased monitoring costs.

9. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from pass-through voting requirements 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 such a fund and its investment adviser, when required to so by an insurance regulatory authority (subject to the provisions of Rules 6e–2(b)(5)(i), 6e–2(b)(7)(ii)(A), 6e–3(T)(b)(5)(i) and 6e–3(T)(b)(7)(ii)(A) under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that an insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in an underlying fund's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of Rules 6e–2(b)(5)(ii), 6e–2(b)(7)(ii)(B), 6e–2(b)(7)(ii)(C), 6e–3(T)(b)(5)(ii), 6e–3(T)(b)(7)(ii)(B), and 6e–3(T)(b)(7)(ii)(C) under the 1940 Act).

10. Rule 6e–2 under the 1940 Act recognizes that a variable insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation. 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 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.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Applicants, therefore, assert that the corresponding provisions of Rule 6e–3(T) under the 1940 Act undoubtedly were adopted in recognition of the same factors.

11. Applicants also assert that the sale of Shares to Qualified Plans, an Adviser and General Accounts will not have any impact on the relief requested. With respect to Qualified Plans, which are not registered as investment companies under the 1940 Act, shares of a portfolio of an investment company sold to a Qualified Plan must be held by the trustee(s) of the Qualified Plan pursuant to Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). Applicants note that (1) Section 403(a) of ERISA endows Qualified Plan trustees with the exclusive authority and responsibility for voting proxies provided neither of two enumerated exceptions to that provision applies; (2) some of the Qualified Plans may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants; and (3) there is no requirement to pass through voting rights to Qualified Plan participants.

12. Applicants argue that an Adviser and General Accounts are similar in that they are not subject to any pass-through voting requirements. Applicants, therefore, conclude that unlike the case with insurance company Separate Accounts, the issue of resolution of material irreconcilable conflicts with respect to voting is not present with Eligible Purchasers.

13. Applicants represent that where a Qualified Plan does not provide participants with the right to give voting instructions, the trustee or named fiduciary has fiduciary responsibility to vote the shares held by the Qualified Plan in the best interest of the Qualified Plan participants. Accordingly, Applicants argue that even if an Adviser or an affiliate of an Adviser were to serve in the capacity of trustee or named fiduciary with voting responsibilities, an Adviser or its affiliates would have a fiduciary duty to vote relevant Shares in the best interest of the Qualified Plan participants.

14. Further, Applicants assert that even if a Qualified Plan were to hold a controlling interest in an Insurance Fund, Applicants do not believe such control would disadvantage other investors in such Insurance 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 an Insurance Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed funding or shared funding, Applicants argue that Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

15. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. Applicants assert that the purchase of Shares by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

16. Applicants do not believe that the sale of the Shares to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those that would otherwise exist between Variable Contract owners.

17. Applicants assert that permitting an Insurance Fund to sell its shares to an Adviser or to the General Account of a Participating Insurance Company will enhance management of each Insurance Fund without raising significant concerns regarding material irreconcilable conflicts. Unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, an Insurance Fund may be deemed to lack an insurance company ''promoter'' for purposes of Rule 14a–2 under the 1940 Act. Accordingly, any Insurance Funds that are established as new registrants may be subject to the requirements of Section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares. Insurance Funds also will require more limited amounts of initial capital in connection with the creation of any new series of Shares and the voting of initial Shares of such series on matters requiring the approval of Shareholders. A potential source of the requisite initial capital is an Insurance Fund's investment adviser or a Participating Insurance Company. Either of these parties may have an interest in making the requisite capital and in participating with an Insurance Fund in its organization. However, provision of

seed capital or the purchase of shares in connection with the management of an Insurance Fund by its investment adviser or by a Participating Insurance Company may be deemed to violate the exclusivity requirement of Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(15).

18. Given the conditions of Treas. Reg. Section 1.817–5(f)(3) and the harmony of interest between an Insurance Fund, on the one hand, and an Adviser or a Participating Insurance Company, on the other, Applicants assert that little incentive for overreaching exists. Applicants further assert that such investment should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants argue that permitting investments by an Adviser, or by General Accounts, will permit the orderly and efficient creation of an Insurance Fund, and reduce the expense and uncertainty of using outside parties at the early stages of the Insurance Fund's operations.

Applicants' Conditions

Applicants consent to the following conditions with respect to each Insurance Fund:

1. A majority of the Board of each Insurance Fund will consist of persons who are not ''interested persons'' of the Insurance 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 death, disqualification or bona fide registration of any trustee or trustees, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 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 of each Insurance Fund will monitor the Insurance Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in the Insurance Fund, and determine what action, if any should be taken in response to such 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 the Insurance Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of General Account assets in an Insurance Fund), as Adviser, and any Trustee on behalf of any Qualified Plan that executes a Participation Agreement upon becoming an owner of 10 percent or more of the assets of an Insurance Fund (collectively, ''Participant'') will report any potential or existing conflicts to the Board of the relevant Insurance Fund. Participants will be reasonsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility 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 Trustee for a Qualified Plan to inform the Board whenever it has determined to disregard Qualified 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 Insurance Companies under their Participation Agreement with the relevant Insurance Fund, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans under their Participation Agreement with the relevant Insurance Fund, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board of an Insurance Fund, or a majority of the disinterested directors/trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors/trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of their Separate Accounts from the relevant Insurance Fund and reinvesting such assets in a different investment vehicle including another Insurance Fund, submitting the question as to whether such segregation should be implemented to a vote of all affected contract and policy owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* variable annuity contract owners or variable life insurance policy owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract or policy 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 or policy owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the participating Insurance Company may be required, at the election of the relevant Insurance Fund, to withdraw such participating Insurance Company's Separate Account investments in the Insurance Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Fund, to withdraw its investment in the Insurance Fund, 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 Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their Participation Agreement with the relevant Insurance Fund, and these responsibilities will be carried out with a view only to the interests of contract or policy owners and Qualified Plan participants. For purposes of this Condition 4, a majority of the disinterested directors/trustees of the Board of each Insurance Fund will determine whether or not any proposed

action adequately remedies any material irreconcilable conflict, but, in no event, will the Insurance Fund or an Adviser, as relevant, be required to establish a new funding vehicle for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract or policy owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be reuqired by this Condition 4 to establish a new funding vehicle for the Qualified Plan if: (a) A majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

5. The Board of each Insurance Fund's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners as required by the 1940 Act as interpreted by the Commission. However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participants, where applicable, will vote the Shares held in their Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in the relevant Insurance Fund calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in this Application will be a contractual obligation of all Participating Insurance Companies under their Participation Agreement with the relevant Insurance Fund. Each Participating Insurance Company will vote Shares for which it has not received timely voting instructions, as well as Shares held in its General Account or otherwise attributed to it, in the same proportion as it votes those Shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to Variable Contract owners, an Adviser and any General Account will vote their respective Shares in the same proportion as all variable contract owners having voting rights with respect to that Insurance Fund; provided, however, that an Adviser or any General Account shall vote its Shares in such other manner as may be required by the Commission or its staff.

8. Each Insurance Fund will comply with all provisions of the 1940 Act requiring voting by shareholders, which, for these purposes, shall be the persons having a voting interest in the Shares, and, in particular, the Insurance Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although each Insurance Fund is not, or will not be, one of those trusts of the type described in Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Fund will act in accordance with the Commission's interpretations of the requirements of Section 16(a) with respect to periodic elections of directors/trustees and with whatever rules the Commission may promulgate thereto.

9. An Insurance Fund will make its shares available to the Separate Accounts and Qualified Plans at or about the time it accepts any seed capital from an Adviser or General Account of a Participating Insurance Company.

10. Each Insurance Fund has notified, or will notify, all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Fund will disclose, in its prospectus that: (a) Shares of the Fund may be offered to Separate Accounts funding both variable annuity contracts and variable life insurance policies and, if applicable, to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Insurance Fund and the interests of Qualified Plans investing in the Insurance Fund, if applicable, may conflict; and (c) the Insurance Fund's Board 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.

11. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 At 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 this Application, then each Insurance Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), or Rule 6e–3, as such rules are applicable.

12. Each Participant, at least annually, will submit to the Board of each Insurance Fund such reports, materials or data as the Board reasonably may request so that the directors/trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials and data will be submitted more frequently if deemed appropriate by the Board of an Insurance Fund. The obligations of the Participants to provide these reports, materials and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their Participation Agreement with the relevant Insurance Fund.

13. All reports of potential or existing conflicts received by the Board of each Insurance Fund, and all Board action 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 Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

14. Each Insurance Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan an owner of 10 percent or more of the assets of the Insurance Fund unless the Trustee for such Qualified Plan executes an agreement with the Insurance Fund governing participation in the Insurance Fund that includes the conditions set forth herein to the extent applicable. A Trustee for a Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of Shares.

Conclusions

Applicants submit that, for the reasons summarized above and to the extent necessary or appropriate to

provide for the transactions described herein, the requested 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, in accordance with the standards of Section 6(c) of the 1940 Act, are in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisiosn of the 1940 Act.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–5747 Filed 6–27–06; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54023; File No. SR–NASD–2004–183]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing Amendment No. 2 to Proposed Rule Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities

June 21, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2004, NASD filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), the proposed rule. NASD filed amendment No. 1 on July 8, 2005, which replaced and superseded the text of the original rule filing. The proposed rule, as amended by Amendment No. 1, was published for comment in the **Federal Register** on July 21, 2005.[3] The Commission received approximately 1500 comments on the proposal.[4] NASD filed Amendment No. 2 on May 4, 2006, which addressed the comments and proposed responsive amendments. Amendment No. 2 is described in Items I, II and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on Amendment No. 2 to the proposed rule from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act. Re. No. 52046A (July 19, 2005); 70 FR 42126 (July 21, 2005) (SR–NASD–2004–183).

[4] Approximately 1300 of these comments were virtually identical.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

NASD is proposing a new rule, NASD Rule 2821, that would set forth recommendation requirements (including a suitability obligation), principal review and approval requirements, and supervisory and training requirements tailored specifically to transactions in deferred variable annuities. Below is the amended text of the proposed rule.

* * * * *

2821. Members' Responsibilities Regarding Deferred Variable Annuities

(a) General Considerations

(1) Application

This Rule applies to the purchase or exchange of a deferred variable annuity and the subaccount allocations. This Rule does not apply to reallocations of subaccounts made or to funds paid after the initial purchase or exchange of a deferred variable annuity. This Rule also does not apply to deferred variable annuity transactions made in connection with any tax-qualified, employer-sponsored retirement or benefit plan that either is defined as a ''qualified plan'' under Section 3(a)(12)(C) of the Securities Exchange Act of 1934 or meets the requirements of Internal Revenue Code Sections 403(b), 457(b) or 457(f), unless, in the case of any such plan, a member makes recommendations to an individual plan participant regarding a deferred variable annuity, in which case the Rule would apply as to the individual plan participant to whom the member makes such recommendations.

(2) Creation, Storage and Transmission of Documents

For purposes of this Rule, documents may be created, stored and transmitted in electronic or paper form, and signatures may be evidenced in electronic or other written form.

(3) Definitions

For purposes of this Rule, the term ''registered principal'' shall mean a person registered as a General Securities Sales Supervisor (Series 9/10), a General Securities Principal (Series 24) or an Investment Company Products/Variable Contracts Principal (Series 26), as applicable.

(b) Recommendation Requirements

(1) No member or person associated with a member shall recommend to any customer the purchase or exchange of a deferred variable annuity unless such member or person associated with a member has a reasonable basis to believe that.

(A) The customer has been informed of the material features of a deferred variable annuity, such as the potential surrender period and surrender charge; potential tax penalty if the customer sells or redeems the deferred variable annuity before he or she reaches the age of 59½; mortality and expense fees; investment advisory fees; potential charges for and features of riders; the insurance and investment components of a deferred variable annuity; and market risk;

(B) The customer would benefit from the unique features of a deferred variable annuity (e.g., tax-deferred growth, annuitization or a death benefit); and

(C) The particular deferred variable annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity and riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also is suitable) for the particular customer based ont he information required by paragraph (b)(2) of this Rule.

These determinations shall be documented and signed by the associated person recommending the transaction.

(2) Prior to recommending the purchase or exchange of a deferred variable annuity, a member or person associated with a member shall make reasonable efforts to obtain, at a minimum, information concerning the customer's age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the deferred variable annuity, investment time horizon, existing investment and life insurance holdings, liquidity needs, liquid net worth, risk tolerance, tax status and such other information used or considered to be reasonable by the member or person associated with the member in making recommendations to customers.

(c) Principal Review and Approval

(1) No later than two business days following the date when a member or person associated with a member transmits a customer's application for a deferred variable annuity to the issuing insurance company for processing and irrespective of whether the transaction has been recommended, a registered principal shall review and determine whether he or she approves of the purchase or exchange of the deferred variable annuity. In reviewing the