

Contracts. The amount of this fee is guaranteed and cannot be increased by First SunAmerica. The maintenance fee is at cost with no anticipation of profit.

11. First SunAmerica bears the risk that the maintenance fee will be insufficient to cover the cost of administering the Contracts. For assuming this expense risk, First SunAmerica deducts an expense risk charge from the Separate Account. The charge is deducted from each portfolio of the Separate Account during each valuation period at an annual rate of 0.35% of the net asset value of each portfolio. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts, First SunAmerica will bear the loss; however, if the charge is more than sufficient, the excess will be a gain to First SunAmerica. To the extent First SunAmerica realizes any gain, those amounts may be used at its discretion, including offsetting losses when the expense risk charge is insufficient. The expense risk charge may not be increased under the Contract.

#### Applicants' Legal Analysis

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

2. Sections 26(a)(2)(C) and 27(c)(2) of the Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants request an order under Section 6(c) of the Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of the mortality and expense risk charge and distribution expense charge from the assets of the Separate Account under Contracts.

4. Applicants assert that the mortality and expense risk charge of 1.25% (which includes all risk charges imposed under the Contracts with the exception of the 0.12% risk charge for the enhanced death benefit) is reasonable in relation to the risks assumed by First SunAmerica under the Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that these determinations are based on their analysis of publicly available information about similar industry practices, and by taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. First SunAmerica undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making these determinations.

5. Applicants assert that the mortality risk charge of 0.12% for the enhanced death benefit is reasonable in relation to the risks assumed by First SunAmerica under the Contracts for the enhanced death benefit. First SunAmerica undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the risk charge of 0.12% for the enhanced death benefit is reasonable in relation to the risks assumed by First SunAmerica under the Contracts.

6. First SunAmerica has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. First SunAmerica represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion. First SunAmerica further represents that the assets of the Separate Account will be invested only in management investment companies which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b-1 under the 1940 Act, to have such plan formulated and approved by their board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

7. With respect to the distribution expense charge, Applicants represent that the amount of any withdrawal charge imposed when added to any distribution expense charge previously

paid, will not exceed 9% of purchase payments and that First SunAmerica will monitor each Contract owner's account for the purpose of ensuring that this limitation is not exceeded.

#### Conclusion

For the reasons summarized above, Applicants represent that the exemptive relief requested is necessary or appropriate in the public interest and otherwise meets the standards of Section 6(c) of the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary*

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[Investment Company Act Release No. 20894; File No. 811-6228]

#### Putnam Texas Tax Exempt Income Fund; Application for Deregistration

February 10, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Putnam Texas Tax Exempt Income Fund.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATES:** The application on Form N-8F was filed on December 9, 1994, and amended on February 9, 1995.

**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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 8, 1995, and should be accompanied by proof of service on applicant, 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 5th Street NW., Washington, DC 20549. Applicant, One Post Office Square, Boston, Massachusetts 02109.

**FOR FURTHER INFORMATION CONTACT:**

James J. Dwyer, Staff Attorney, at (202) 942-0581, or C. David Messman, 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 at the SEC's Public Reference Branch.

#### Applicant's Representations

1. Applicant is an open-end non-diversified management investment company that was organized as a Massachusetts business trust. On November 26, 1990, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement became effective on March 4, 1992, and applicant's initial public offering commenced on that date.

2. At a meeting held on January 7, 1994, applicant's trustees approved an agreement and plan of reorganization (the "Plan") whereby applicant would transfer all of its assets and liabilities to Putnam Tax Exempt Income Fund (the "Income Fund"), a Massachusetts business trust registered under the Act, and subsequently liquidate. Applicant's trustees determined that the proposed reorganization would achieve economies of scale, including lower advisory and operating costs, and result in performance benefits for applicant's shareholders.

3. Applicant and Income Fund share a common investment adviser, officers, and trustees. Accordingly, applicant and Income Fund may be deemed to be affiliated persons of each other. Applicant therefore relied on the exemption provided by rule 17a-8 under the Act to effect the reorganization. Consequently, in accordance with rule 17a-8, applicant's trustees determined on January 7, 1994, that the purchase of the assets of applicant by Income Fund was in the best interests of applicant's shareholders, and that such purchase would not result in any dilution to the interests of the existing shareholders.<sup>1</sup>

4. Proxy materials relating to the Plan were filed with the SEC on March 14, 1994, and mailed to applicant's shareholders on March 29, 1994. Applicant's shareholders voted to approve the Plan at a special meeting held on May 5, 1994.

5. As of May 6, 1994, applicant had 1,862,787.75 shares outstanding, having an aggregate net asset value of \$16,314,742.28 and a per share net asset value of \$8.76. On May 9, 1994, pursuant to the Plan, applicant transferred all of its assets and liabilities to Income Fund in exchange for a number of full and fractional Class A shares of Income Fund having an aggregate net asset value equal to the value of applicant's assets attributable to shares of applicant transferred to Income Fund. No brokerage commissions were paid in connection with such transfer. Applicant then distributed to its shareholders *pro rata* the Income Fund Class A shares it received, in complete liquidation of application.

6. The expenses applicable to the Plan, consisting of accounting, printing, administrative, and certain legal expenses, were \$76,669. Applicant paid all expenses in connection with proxy printing and solicitation. All other expenses were assumed ratably by applicant and Income Fund in proportion to their net assets as of May 6, 1994.

7. Applicant has no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. On August 5, 1994, applicant filed the necessary documents in Massachusetts to terminate its existence as a Massachusetts business trust.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Rel. No. IC-20896; 811-6433]

#### Smith Breeden Institutional Intermediate Duration U.S. Government Fund; Notice of Application

February 10, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Smith Breeden Institutional Intermediate Duration U.S. Government Fund.

**RELEVANT ACT SECTION:** Order requested under section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring it has ceased to be an investment company.

**FILING DATES:** The application was filed on November 21, 1994 and amended on February 6, 1995.

**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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 7, 1995, and should be accompanied by proof of service on the applicant, 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, 200 Europa Drive, Suite 200, Chapel Hill, North Carolina 27514.

**FOR FURTHER INFORMATION CONTACT:** Marianne H. Khawly, Staff Attorney, at (202) 942-0562, or C. David Messman, 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.

#### Applicant's Representations

1. Applicant is a registered open-end, diversified, management investment company under the Act and is organized as a business trust under the laws of the Commonwealth of Massachusetts. On October 8, 1991, applicant filed a Notification of Registration on Form N-8A pursuant to section 8(a) of the Act and a registration statement on Form N-1A under section 8(b) of the Act. With respect to the securities issued by applicant pursuant to the Securities Act of 1933, a registration statement on Form N-1A was filed on November 29, 1991. The registration statement became effective on February 24, 1992, and applicant's initial public offering commenced on March 12, 1992.

2. At a joint meeting held on June 2, 1994, applicant's Board of Trustee (the "Trustees") unanimously determined that applicant's continuation was no longer in the best interest of applicant or its shareholders. The Trustees determined that applicant's

<sup>1</sup> Rule 17a-8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.