

Applicant's Conditions

If the requested order is granted, applicants agree to the following conditions:

1. The prospectus for each series and any sales literature or advertising that mentions the existence of the Exchange Privilege or the Rollover Privilege will disclose that the Exchange and the Rollover Privilege are subject to termination and that their terms are subject to change.

2. Whenever the Exchange Privilege or the Rollover Privilege is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that:

a. No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new series eligible for the Exchange Privilege or the Rollover Privilege, or to delete a series which has terminated; and

b. No notice need be given if, under extraordinary circumstances, either

i. There is a suspension of the redemption of units of an Exchange Trust or a Rollover Trust under section 22(e) of the Act and the rules and regulations thereunder, or

ii. An Exchange Trust or a Rollover Trust temporarily delays or ceases the sale of its units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

3. An investor who purchases units under the Exchange or Rollover Privilege will pay a lower aggregate sales charge than that which would be paid for the units by a new investor.

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

Margaret H. McFarland,

Deputy Secretary.

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[Rel. No. IC-21068; File No. 812-9438]

Smith Barney/Travelers Series Fund, et al.

May 15, 1995.

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

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Smith Barney/Travelers Series Fund ("SB/T Fund"), Smith Barney Series Fund ("Series Fund"), and certain life insurance companies and their separate accounts investing now or in the future in the SB/T Fund or the Series Fund.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from the provisions of Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the SB/T Fund, the Series Fund and all future open-end investment companies for which Smith Barney Mutual Fund Management, Inc., or any affiliate thereof, serves as investment adviser, manager, principal underwriter, or sponsor and whose shares are sold to separate accounts of insurance companies and qualified person and retirement plans the "Future Funds" (the SB/T Fund, the Series Fund and the Future Funds collectively are referred to as the "Funds") to be sold to and held by: (a) Variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies"); and (b) qualified pension and retirement plans outside of the separate account context ("Qualified Plans").

FILING DATES: The application was filed on January 18, 1995, and amended on May 5, 1995.

HEARING AND NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the 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 June 9, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Christina T. Sydor, Esquire, Smith Barney, Inc., 388 Greenwich Street, Twenty-Second Floor, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Wendy Finck Friedlander, Deputy Chief, at

(202) 942-0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The SB/T Fund, a Maryland corporation incorporated on February 22, 1994, is registered under the 1940 Act as an open-end, diversified management investment company. The SB/T Fund consists of eleven portfolios: The Smith Barney Income and Growth Portfolio, the Alliance Growth Portfolio, the American Capital Enterprise Portfolio, the Smith Barney International Equity Portfolio, the Smith Barney Pacific Basin Portfolio, the TBC Managed Income Portfolio, the Putnam Diversified Income Portfolio, the G.T. Global Strategic Income Portfolio, the Smith Barney High Income Portfolio, the MFS Total Return Portfolio, and the Smith Barney Money Market Portfolio. Additional portfolios may be added in the future.

2. The Series Fund, a Massachusetts business trust organized on May 13, 1991, is registered under the 1940 Act as an open-end, diversified management investment company. The Series Fund consists of ten separate portfolios (together with the portfolios of the SB/T Fund and Future Funds, the "Portfolios"): the Money Market Portfolio, the Intermediate High Grade Portfolio, the Diversified Strategic Income Portfolio, the Equity Income Portfolio, the Equity Index Portfolio, the Growth & Global Income Portfolio, the Appreciation Portfolio, the Total Return Portfolio, the Emerging Growth Portfolio, and the International Equity Portfolio. Additional portfolios may be added in the future.

3. Smith Barney Mutual Funds Management, Inc. ("SBMFM") is the investment adviser for the SB/T Fund, and is a wholly-owned subsidiary of Smith Barney Holdings, Incorporated. Smith Barney Holdings, Inc. is a wholly-owned subsidiary of Travelers Group, which is a financial services holding company engaged, through its subsidiaries, principally in four business segments: investment services, consumer finance services, life insurance services, and property and casualty insurance services.

4. SBMFM also is the investment adviser for all the Series Fund Portfolios except the Equity Index Portfolio and the Emerging Growth Fund Portfolio. PanAgora Asset Management, Inc. is the investment adviser for the Equity Index

Portfolio, and is 50% owned by Nippon Life Insurance Company and 50% owned by Lehman Brothers, Inc., which is a wholly-owned subsidiary of Lehman Brothers Holdings, Inc. American Capital Asset Management, Inc., is the investment adviser for the Emerging Growth Fund Portfolio and is a wholly-owned subsidiary of American Capital Management & Research, Inc., which is an indirect wholly-owned subsidiary of VKM Holdings. SBMFM, PanAgora Asset Management, Inc. and American Capital Asset Management, Inc. (collectively, the "Advisers") are registered as investment advisers under the Investment Advisers Act of 1940.

5. Shares of the SB/T Fund currently are sold to a separate account (the "Travelers Separate Account") of The Travelers Insurance Company ("The Travelers") which funds benefits under variable contracts issued through that separate account. Shares of the Series Fund currently are sold to the Travelers Separate Account and to separate accounts of the IDS Life Insurance Company and the IDS Life Insurance Company of New York which fund benefits under variable contracts issued by those companies.

6. Applicants state that, upon the granting of the order requested in this application, the Funds intend to offer shares of their existing Portfolios and future investment portfolios to separate accounts of Participating Insurance Companies (the "Separate Accounts") to serve as the investment vehicle for various types of insurance products, which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts.

Applicant's Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e-2(b)(15) provides partial exemptions from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e-2 is also available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e-2(b)(15) are available only where the management investment company underlying the unit investment trust ("underlying fund") offers its 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 variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any other life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliate life insurance company is referred to herein as "mixed funding."

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

3. Applicants state that the relief granted by Rule 6e-2(b)(15) is not affected by the purchase of shares of a Fund by the Qualified Plans. Applicants note, however, that because the relief under Rule 6e-2(b)(15) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Funds also are to be sold to Qualified Plans.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a unit investment trust, Rule 6e-3(T)(b)(15) provides partial exemptions from Sections 9(a), 15(a), and 15(b) of the 1940 Act. The relief provided by Rule 6e-3(T) also is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e-3(T) are available only where the unit investment trust's underlying fund offers its shares "exclusively to separate accounts of the life insurer or of any affiliated life insurance company, 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 * * *." Therefore, Rule 6e-3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account subject to

certain conditions. However, Rule 6e-3(T) does not permit shared funding because the relief granted by Rule 6e-3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

5. Applicants state that the relief granted by Rule 6e-3(T) is not affected by the purchase of shares of the Funds by the Qualified Plans. Applicants note, however, that because the relief under Rule 6e-3(T) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Funds are also to be sold to Qualified Plans.

6. Applicants state that changes in the tax law have created the opportunity for each Fund to increase its asset base through the sale of shares of the Fund to Qualified Plans. Applicants state the Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of the contracts held in the Funds. The Code provides that such contracts shall not be treated as annuity contracts or life insurance contracts for any period in which the investments are not, in accordance with regulations prescribed by the Department of the Treasury, adequately diversified. On March 2, 1989, the Department of the Treasury issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817-5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817-5(f)(3)(iii).

7. Applicants state that the promulgation of Rules 6e-2 and Rule 6e-3(T) under the 1940 Act preceded the insurance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment

company to both separate accounts and qualified pension and retirement plans could not have been envisioned at the time of the adoption of Rules 6e-2(b)(15) and 6e-3(T)(b)(15).

8. Applicants therefore request that the Commission, under its authority in Section 6(c) of the 1940 Act, grant relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder for themselves and for variable life insurance separate accounts of the Participating Insurance Companies, and the principal underwriters and depositors of such separate accounts, to the extent necessary to permit mixed funding and shared funding.

9. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to any disqualification specified in Sections 9(a)(1) or 9(a)(2), Rule 6e-2(b)(15)(i) and (ii) and Rule 6e-3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by Rules 6e-2(b)(15)(i) and 6e-3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e-2(b)(15)(ii) and 6e-3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the fund.

10. Applicants state that the partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from the requirements of Section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that Rules 6e-2 and 6e-3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company in that organization. Applicants submit that there is no regulatory reason to apply the provisions of Section 9(a) to

the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Funds as the funding medium for variable contracts. The application states that the relief requested will not be affected by the proposed sale of shares of the Funds to Qualified Plans. The insulation of the Funds from individuals disqualified under the 1940 Act remains in place. Applicants assert that, since the Qualified Plans are not investment companies and will not be deemed affiliated by virtue of their shareholdings, no additional relief is necessary.

11. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all contract owners so long as the Commission interprets the 1940 Act to require such privileges.

12. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances.

Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such companies to make, or refrain from making, certain investments which would result in changes in the subclassification or investment objectives of such companies, or to approve or disapprove any contract between a Fund and its investment adviser, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of each Rule.

Rules 6e-2(b)(15)(iii)(B) and 6e-3(T)(b)(15)(iii)(B) provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such company's investment policies or any principal underwriter or investment adviser, provided that disregarding such voting instructions is

reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of each Rule.

13. Applicants further represent that the sale of shares by a Fund to the Qualified Plans does not impact relief requested in this regard. Shares of the Funds sold to Qualified Plans would be held by the trustees of the Qualified Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in Qualified Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans because they are not entitled to pass-through voting privileges.

14. Applicants state that no increase conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that where Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants state that the possibility, however, is no different and no greater than exists where a single

insurer and its affiliates offer their insurance products in several states.

15. Applicants argue that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e-3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that different state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Fund.

16. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company properly may disregard voting instructions of contract owners. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

17. Applicants state that there is no reason why the investment policies of a Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company of series thereof funded only variable annuity or only variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Portfolios will be managed to attempt to achieve the investment objective(s) of such Portfolio and not to favor or disfavor any particular insurer or type of variable contract.

18. Applicants note that no single investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. An investment company supporting even one type of insurance product must accommodate

those diverse factors in order to attract and retain purchasers.

19. Applicants further note that Section 817 of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817-5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company. Therefore, neither the Code, the Treasury regulations nor the revenue rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

20. While there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance conflicts and Qualified Plans. Applicants state that the tax consequences do not raise any conflicts of interests with respect to the use of the Funds. When distributions are to be made, and the separate account or the Qualified Plan is unable to net purchase payments to make the distributions, the separate account or the Qualified Plan will redeem shares of the affected Fund at their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Qualified Plan. The life insurance company will surrender values from the separate account into the general account to make distributions in accordance with the terms of the variable contract.

21. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans. Applicants represent that the transfer agent for each Fund will inform each Participating Insurance Company of its share ownership in each Separate Account, as well as inform the trustees of the Qualified Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e-2 and 6e-3(T).

22. Applicants argue that the ability of Funds to sell their shares directly to Qualified Plans does not create a "senior security", as such term is defined under Section 18(g) of the 1940

Act, with respect to any variable annuity or variable life contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of participants and contract owners under the respective Qualified Plans and contracts, the Qualified Plans and the separate accounts have rights only with respect to their respective shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of any Fund has any preference over any other shareholder of that Fund with respect to distribution of assets or payment of dividends.

23. Finally, Applicants assert that there are no conflicts between contract owners and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest those monies in another fund. To accomplish such redemptions and transfers, complex, time consuming transactions must be undertaken. Conversely, trustees of Qualified Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of contract owners and the interests of Qualified Plans conflict, the issues can be resolved almost immediately because trustees of the Qualified Plans can, independently, redeem shares out of the Funds.

24. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. These factors include the cost of organizing and operating an investment funding medium, the lack of expertise with respect to investment management and the lack of public name recognition of certain insurers as investment professionals. Applicants argue that use of the Funds as common investment media for the contracts would ameliorate these concerns. Applicants submit that mixed funding and shared funding should benefit variable contract owners by: (a)

Eliminating a significant portion of the costs of establishing and administering separate funds; (b) allowing for a greater amount of assets available for investment by the Funds, thereby promoting economies of scale, permitting greater safety through greater diversification, and/or making the addition of new portfolios more feasible; and (c) encouraging more insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Each Fund will be managed to attempt to achieve its investment objectives and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

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

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of Directors or Board of Trustees (as appropriate) (the "Board") of each Fund shall consist of persons who are not "interested persons," as defined by Section 2(a)(19) of the 1940 Act and 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 resignation of any director or directors, then the operation of this condition shall be suspended: (i) For a period of 45 days, if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board of each fund will monitor its Fund for the existence of any material irreconcilable conflict between and among the interests of the contract owners of all Separate Accounts investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) State insurance regulatory authority action; (b) a change in applicable federal or state insurance tax or securities laws

or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance contract owners; or (f) a decision by a Participating Insurance Company to disregard contract owner voting instructions.

3. Participating Insurance Companies, the Advisers and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the "Participants") will report any potential or existing conflicts, of which they become aware, to the Board. Participants will be obligated to assist the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This 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. These responsibilities will be contractual obligations of all Participating Insurance Companies and Qualified Plans investing in a Fund under their agreements governing participation therein, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners.

4. If a majority of the Board, or a majority of the disinterested members of the Board, determine that a material irreconcilable conflict exists the relevant Participating Insurance Companies and Qualified Plans shall, at their expense and to the extent reasonably practicable (as determined by a majority of disinterested members of the Board), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Fund or any series therein and reinvesting such assets in a different investment medium (including another series of the Fund), or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners, life insurance contract owners, or variable contract owners of

one or more Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Fund or any Portfolio of the Fund and reinvesting such assets in a different investment medium, including another Portfolio of the Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw its Separate Account's investment therein, 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 an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of the contract owners and participants in the Qualified Plans.

For the purposes of condition (4), a majority of disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or the Advisers be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority of contract owners materially affected by the irreconcilable material conflict.

5. The determination by the Board of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participating Insurance Companies and Qualified Plans.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners so long as the Commission continues to interpret the 1940 Act to require pass-through voting privileges for variable contract owners. Accordingly, each Participating Insurance Company, where applicable, will vote shares of the

Fund held in its Separate Accounts in a manner consistent with timely voting instructions received from contract owners. Each Participating Insurance Company also will vote shares of each Fund held in its Separate Accounts for which no timely voting instructions from contract owners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Each Participating Insurance Company shall be responsible for assuring that each of their Separate Accounts participating in the Fund calculates voting privileges in a manner consistent with all other Participants. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund.

7. Each Fund will notify all Participants that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) Its shares are offered to qualified pension and retirement plans and to separate accounts which fund both annuity and life insurance contracts of both affiliated and unaffiliated Participating Insurance Companies; (b) material irreconcilable conflicts may arise from mixed and shared funding; and (c) the Board will monitor the Fund for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board regarding potential or existing conflicts, and all Board action with respect 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.

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

10. Each 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 of the Fund), and in particular each Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) (although the Funds are not within the trusts described in this section) as well as with Sections 16(a) and, if and when applicable, Section 16(b). Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. The Participants, at least annually, shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to the Board when it so reasonably requests shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Funds.

12. In the event that a Qualified Plan ever should become an owner of 10 percent or more of the assets of a Fund, such Qualified Plan will execute a fund participation agreement with the applicable Fund. A Qualified Plan shareholder will execute an application with each of the Funds, including Future Funds, that contains an acknowledgement of this condition at the time of the Qualified Plan's initial purchase of shares of the Fund.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c), as appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 04/05-0018]

Investor's Equity, Inc.; Notice of Surrender of Licensee

Notice is hereby given that Investor's Equity, Inc., 1355 Peachtree Street, Atlanta, Georgia 30309 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Investor's Equity was licensed by the Small Business Administration on August 10, 1961.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on May 4, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 16, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95-12571 Filed 5-22-95; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5351]

Exim Capital Corporation

Notice is hereby given that Exim Capital Corporation (Exim), 241 Fifth Avenue, New York, New York 10016, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), in connection with the proposed financing of a small concern is seeking an exemption under Section 312 of the Act and Section 107.903 Conflicts of interest of the SBA Rules and Regulations (13 CFR 107.903 (1994)). An exemption may not be granted by SBA until Notices of this transaction have been published. Exim proposes to provide debt financing to KBJ Cleaners, Inc. (KBJ) located 6-01 Saddle River Road, Fairlawn, New Jersey. The financing is contemplated for use in the expansion of KBJ's existing operations and additional working capital.

The financing is brought within the purview of Section 107.903(b)(1) of the regulations because Mr. Byung Hyun An