Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR–Philadep–95–08 and should be submitted by January 31, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–364 Filed 1–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21651; File No. 812–9674]

M Fund, Inc., et al.

January 3, 1996.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: M. Fund, Inc. (''Company'') and M Financial Investment Advisers, Inc. (''Adviser'').

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

SUMMARY OF APPLICATION: Applicants seek an order granting exemptions to the extent necessary to permit shares of any current or future series of the Company and shares of any other investment company that is offered as a funding medium for insurance products, and for which the Adviser or any of its affiliates may in the future serve as manager, investment adviser, administrator, principal underwriter or sponsor (the Company and such other investment companies are hereinafter referred to collectively as the ''Funds''), to be sold and held by: (i) variable annuity and variable life insurance company separate accounts of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); and (ii) certain qualified pension and retirement plans outside the separate account context (''Plans'').

FILING DATE: The Application was filed on July 18, 1995, and amended on October 19, 1995. Applicants will amend during the notice period to make certain representations herein.

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 Secretary of the SEC 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 January 29, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: SEC, Secretary, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, M Fund Inc., c/o David F. Byrne, President, River Park Center, 205 S.E. Spokane Street, Portland, Oregon 97202.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Company is a Maryland corporation registered under the 1940 Act as an open-end diversified management investment company. The Company currently is composed of four separate portfolios; additional portfolios may be added in the future.

2. The Adviser for each of the Company's portfolios is a Colorado corporation registered with the SEC under the Investment Advisers Act of 1940. The Adviser is wholly-owned by the Management Partnership, an Oregon general partnership. The Adviser has engaged other registered investment advisers (''Sub-Advisers'') to conduct the investment programs of each portfolio and has entered into investment sub-advisory agreements with each Sub-adviser. The Sub-advisers are not affiliated with the Adviser or the Company.

3. The Company intends to offer its shares to variable annuity and variable life separate accounts (''Separate Accounts'') of both affiliated and unaffiliated insurance companies in support of variable annuity and variable life insurance contracts (''Contracts''). Insurance companies whose separate accounts will own shares of one or more portfolios of the Funds are referred to herein as ''Participating Insurance Companies.'' Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to it under the federal securities laws in connection with any variable contract which it issues.

4. The Company also intends to offer one or more portfolios of its shares directly to Plans. The Funds' shares sold to Plans which are subject to the Employee Retirement Income Security Act of 1984, as amended, may be held by the trustee(s) of the Plan.

5. The Adviser has no plans to offer investment advisory services to Plans or Plan participants, and will not act as investment adviser to any of the Plans that will purchase shares of the Company.

Applicants' 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 (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is 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 UIT offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' The use of a common management investment company as the underlying investment medium (''Underlying Fund'') for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common management investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' ''Mixed and shared funding'' denotes that use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. 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 offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated

[17] 17 CFR 200.30–3(a)(12) (1994).

life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed funding as well as shared funding.

2. Applicants state that because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds also are to be sold to Plans.

3. 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 to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled 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.'' Thus, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicants state that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional relief is necessary if shares of the Funds also are to be sold to Plans.

5. Furthermore, Applicants also state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification requirements on the underlying assets of the Contracts held in the Fund. The Code provides that such Contracts shall not be treated as a Contract for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. The Treasury Department issued regulations (Treas. Reg. 1.817–5) on March 2, 1989 which establish diversification requirements for the investment portfolios underlying Contracts. In order 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 Contracts. (Treas. Reg. § 1.817–5(f)(3)(iii)).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations and assert that, given the then current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of the Rules.

7. Applicants therefore request 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, to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed and shared funding.

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2) of the 1940 Act. Rules 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii), provide exemptions from Section 9(a) under certain circumstances, subject to the limitations 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 insurance company, 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 Underlying Fund.

9. Applicants state that the partial relief from Section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 of the 1940 Act to that which is appropriate in light of the policy and purposes of that Section. Applicants state that 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 the many individuals employed by the Participating Insurance Companies, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants further assert that there is no regulatory purpose in extending the monitoring requirements because of investment by Plans.

10. 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 Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the SEC interprets the 1940 Act to require such privileges.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(1) 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 a fund and its investment adviser, when required to do so by an insurance regulatory authority. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that an insurance company may disregard voting instructions of its Contract owners if the Contract owners initiate any change in the investment company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii)(B) and (C) of each rule.

12. The offer and sale of the Funds' shares to Plans will not have any impact on the relief requested in this regard. Applicants state that shares of the Funds sold to Plans will be held by the trustees of such Plans, as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with certain exceptions not relevant herein. Accordingly, Plan trustees have exclusive authority and responsibility for voting proxies on behalf of a Plan.

13. Applicants state that no increased conflicts of interest would be present 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 states. Applicants note that where different 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 submit that this possibility is no different or greater than exists where a single insurer and its affiliates offer their insurance products in several states.

14. Applicants further submit that affiliation does not reduce the potential 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 these differences 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 Funds.

15. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. 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 separate account's investment in that Fund. No charge or penalty will be imposed as a result of such a withdrawal.

16. Applicants submit 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 or series thereof funded only variable annuity or 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 Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

17. Furthermore, Applicants have concluded that since the Code imposes certain diversification requirements on Underlying Fund assets and Treasury Regulation 1.817–5(f)(3)(iii) specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company, no inherent conflicts of interest are present if Plans and Separate Accounts all invest in the same management investment company.

18. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contract, variable life insurance contracts and Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Plan is unable to net purchase payments to make the distributions, the Separate Account or the Plan will redeem shares of the Funds at their respective net asset value. The Plan will then make distributions in accordance with the terms of the Plan. The life insurance company will make distributions in accordance with the terms of the Contract.

19. In connection with any meeting of shareholders, the Funds will inform each shareholder, including each Separate Account and Plan, of information necessary for the meeting. A Participating Insurance Company will then solicit voting instructions consistent with the ''pass-through'' voting requirement. Separate Accounts and Plans will each have the opportunity to exercise voting rights with respect to their shares in the Funds, although the Separate Accounts are required to follow the pass-through voting procedure.

20. Applicants state that there are no conflicts of interest between Contract owners and participants under the Plans with respect to state insurance commissioners' veto powers over investment objectives. State insurance commissioners have been given the veto power to prevent insurance companies indiscriminately redeeming their separate accounts out of one fund and investing those monies in another fund. Generally, to accomplish such redemptions and transfers, complex and time-consuming transactions must be undertaken. Conversely, trustees of Plans or the participants in participant-directed 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 Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even where the interests of Contract owners and the interests of Plans and Plan participants conflict, the issues can be almost immediately resolved in that trustees of the Plans can, independently, redeem shares out of the Funds.

21. Applicants submit that there is no greater potential for material irreconcilable conflicts arising between the interests of participants under Plans and Contract owners of Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

22. Finally, Applicants argue that the ability of the Funds to sell their respective shares directly to Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contact owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans and the separate accounts have rights only with respect to their shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distributions of assets or payment of dividends.

23. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment managers (principally with respect to stock and money market investments); and the lack of public name recognition as investment experts. Specifically, Applicants state that smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Contract business on their own. Applicants argue the use of the Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of the Adviser, but also from

the cost efficiencies and investment flexibility afforded by a large pool of funds.

24. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges.

25. Applicants argue that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by such Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

26. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Additionally, Applicants note the previous insurance of orders permitting mixed and shared funding where shares of a fund were sold directly to qualified plans such as the Plans.

Applicants' Conditions

Applicants have consented to the following conditions if the order requested in the application is granted:

1. A majority of the Board of Directors of each Fund (each a ''Board'') will consist of persons who are not ''interested persons'' thereof, 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 (''disinterested directors''), 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: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Boards will monitor their respective Funds for the existence of any material irreconcilable conflict between the interests of Contract owners of all Separate Accounts and participants under Plans investing in the respective Funds. An irreconcilable material 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 interpretative 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 portfolio of Funds are being managed; (e) a difference in voting instructions given by Contract owners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; and (g) if applicable, a decision by a Participating Plan (as defined below) to disregard the voting instructions of Plan participants.

3. The Adviser (or any other investment adviser of a Fund), any Participating Insurance Company, and any Plan that executes a Fund participation agreement upon becoming an owner of 10% or more of the assets of the Fund (referred to hereafter as a ''Participating Plans''), will report any potential or existing conflicts to the Board. The Adviser, Participating Insurance Companies and Participating Plans will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Contract owner voting instructions are disregarded and an obligation by each Participating Plan to inform the Board whenever Plan participant voting instructions disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Participating Plans investing in the Funds under their agreements governing participation in each Fund, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Contract owners and Plan participants, as applicable.

4. If it is determined by a majority of the Board of a Fund, or a majority of its disinterested directors, that a material irreconcilable conflict exists with respect to a portfolio of a Fund, a Participating Insurance Company or Participating Plan will, at its expense and to the extent reasonably practical (as determined by a majority of the disinterested directors of that Fund), 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 portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of that Fund or another Fund; (b) submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (c) establishing a new registered management investment company. 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 in that Fund (or any portfolio thereof), and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Participating Plan's decision to disregard a minority position or would preclude a majority vote, the Participating Plan may be required, at the election of the Fund, to withdraw its investment in that Fund (or any portfolio thereof), and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of an irreconcilable material conflict and bearing the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Funds, and these responsibilities will be carried out with a view only to the interest of Contract owners and Plan participants, as applicable.

5. For purposes of Condition Four, a majority of the disinterested directors of the applicable Board will determine whether any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or the Adviser (or any other investment adviser of a Fund) be required to establish a new funding medium for any Contract. No Participating Insurance

Company will be required by Condition Four to establish a new funding medium for any Contract if a majority of Contract owners materially and adversely affected by the irreconcilable material conflict vote to decline such offer. No Participating Plan will be required by Condition Four to establish a new funding medium for such Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Participating Plan makes such decision without a Plan participant vote.

6. The Adviser, all Participating Insurance Companies, and Participating Plans will be promptly informed, in writing, of the Board's determination that an irreconcilable material conflict exists, and its implications.

7. Participating Insurance Companies will provide pass-through voting privileges of Fund shares to all Contract owners so long as the SEC interprets the 1940 Act to require pass-through voting privileges for Contract owners. Accordingly, Participating Insurance Companies will vote shares of the Funds held in their separate accounts in a manner consistent with timely voting instructions received from Contract owners. Each Participating Insurance Company will vote Fund shares held in its Separate Accounts for which it has not received timely voting instructions from Contract owners, as well as Fund shares held in its general account or otherwise attributable to it, in the same proportion as it votes Fund shares for which it has received instructions. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in each Fund calculates voting privileges in a manner consistent with the separate accounts of other Participating Insurance Companies investing in that Fund. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in each Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in that Fund.

8. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to determining the existence of a conflict, notifying the Adviser, Participating Insurance Companies and Participating Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the SEC upon request.

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

10. Each Fund will disclose in its prospectus that: (a) the Fund is intended to be the funding vehicle for Contracts offered by various Participating Insurance Companies and to Plans; (b) material irreconcilable conflicts may arise among various Contract owners and Plan participants; and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflict and determine what action, if any, should be taken in response to such conflict. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

11. If and to the extent that Rules 6e–2 and 6e–3(T) under the 1940 Act are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provisions 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 by the Applicants, then the Funds and the Participating Insurance Companies, as appropriate, will take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent applicable.

12. No less than annually, the Adviser (and/or its affiliates), the Participating Insurance Companies and Participating Plans, will submit to the Board such reports, materials, or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Participating Plans to provide these reports, materials and data to the Board will be a contractual obligation of the Participating Insurance Companies and Participating Plans under their agreements governing their participation in the Funds.

13. If a Plan or Plan participant should become an owner of 10% or more of the assets of a Fund, such Plan or Plan participant will execute a participation agreement with that Fund including the conditions set forth herein to the extent applicable. A Plan or Plan participant will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of the Funds.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–368 Filed 1–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21652; 811–3366]

Renaissance Assets Trust; Notice of Application for Deregistration

January 4, 1996.

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

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Renaissance Assets Trust.

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

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

FILING DATE: The application was filed on November 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