The allocation includes the following minimum quota-holding countries: Congo Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay.

Michael Kantor,

United States Trade Representative.

[FR Doc. 96–4777 Filed 3–4–96; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21789; File No. 812–9746]

Tomorrow Funds Retirement Trust, et al.

February 27, 1996.

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

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

APPLICANTS: Tomorrow Funds Retirement Trust (the ''Trust''), and Weiss, Peck & Greer, L.L.C. (the ''Adviser'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act 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 to the extent necessary to permit shares of the Trust and beneficial interests and/or shares of any other investment company (or series thereof) that is designed to fund variable insurance products and for which the Adviser, or any of its affiliates, may serve now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (collectively, ''Insurance Products Funds'') to be sold to and held by (a) variable annuity and variable life separate accounts of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''), and (b) qualified pension and retirement plans (''Qualified Plans'').

FILING DATE: The application was filed on September 6, 1995, and amended on February 20, 1996.

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 Secretary of the Commission 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 March 25, 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 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 Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Jay C. Nadel, Weiss, Peck & Greer, L.L.C., One New York Plaza, New York, New York 10004.

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

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

Applicants' Representations

1. The Trust is a series Delaware business trust which is registered under the 1940 Act as an open-end management investment company. The Trust consists of six diversified series mutual funds (collectively, the ''Funds''). The Trust's initial registration statement on Form N–1A was declared effective on November 21, 1995.[1]

2. Each Fund of the Trust is authorized to offer two classes of shares. The Adviser Class of shares may be purchased only by Qualified Plans. The Institutional Class of shares may be purchased by Qualified Plans or by separate accounts of Participating Insurance Companies to serve as investment vehicles for variable annuity and variable life insurance contracts.

3. Various fees and charges are imposed by the Trust. The Tomorrow Post-Retirement Fund will pay the Adviser a monthly fee equal on an annual basis to 0.65% of its average daily net assets. The remaining Funds will each pay the Adviser a monthly fee equal on an annual basis to 0.75% of the Fund's average daily net assets. Pursuant to an administration agreement, the Adviser also will serve as administrator for each Fund for which the Adviser will receive a fee, computed daily and payable monthly, at an annual rate equal to 0.09% of each Fund's average daily net assets.

4. Applicants state that the Trust, on behalf of each Fund, has adopted a service plan pursuant to which each Fund pays service fees at an aggregate annual rate of up to 0.25% of a Fund's average daily net assets attributable to the Institutional Class shares. The service fee is intended to be compensation for Qualified Plan fiduciaries for providing personal services and/or account maintenance services to the underlying beneficial owners of the Institution Class shares. The Trust, on behalf of the applicable Fund, will make monthly payments to Qualified Plan fiduciaries based on the average net asset value of the Institutional Class shares which are attributable to the applicable Qualified Plan.

5. Shares of the Insurance Products Funds will be offered to separate accounts of other insurance companies, including insurance companies that are not affiliated with one another, 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.

6. Applicants state that upon commencement of operation, each Fund of the Trust will be managed and its shares will be distributed by the Adviser which will not be affiliated with any Participating Insurance Company whose variable contracts utilize the Trust as the underlying investment. The Adviser, a Delaware limited liability company, consists of 44 general principals, one of whom is a member of the New York Stock Exchange, and certain associate principals. The Adviser, together with its wholly-owned subsidiary, Weiss, Peck & Greer Advisers, Inc., acts as investment adviser for approximately $13 billion of institutional and private investment accounts.

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, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act.[2] The exemptions granted by Rule 6e–2(b)(15) are available only where a management investment company underlying a unit investment trust (''underlying fund'') offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life

[1] File Nos. 33–60841 and 811–7315.

[2] The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

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 separate account of the same company or of any affiliated or unaffiliated 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 a single insurance company or of any affiliated 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. 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), 13(a), 15(a), and 15(b) of the 1940 Act.[3] The exemptions granted by Rule 6e–3(T) are available only where a 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 for flexible premium variable life insurance. 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 permium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

4. Applicants state that the relief granted by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is not affected by the purchase of shares of an Insurance Products Fund by a Qualified Plan. Applicants note, however, that exemptive relief is requested with respect to the sale of shares to Qualified Plans because the separate accounts investing in the Insurance Products Funds are themselves investment companies seeking relief under Rules 6e–2 and 6e–3(T) and do not wish to be denied such relief if the Insurance Products Funds sell shares to Qualified Plans.

5. Applicants state that in 1989, due to changes in the tax law, underlying funds such as the Trust were afforded the opportunity to increase their asset base through the sale of shares of the Insurance Products Funds to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of variable contracts. 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).

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. 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).

7. 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 to the extent necessary to permit mixed and shared funding.

8. Section 9(a) of the 1940 Act provides that 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 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.

9. 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 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 an investment company within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Products Funds. Therefore, Applicants submit that there is no regulatory reason to apply the provisions of section 9(a) to the many individuals in various

[3] The relief provided by Rule 6e–3(T) is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Trust as the funding medium for variable contracts.

10. 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.

11. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard voting instructions of its contract owners with respect to the investment of an underlying investment company or any contract between an investment company and its investment adviser when required to do so by an insurance regulatory authority.

12. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that an 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 other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each Rule.

13. Applicants state that Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts and are subject to extensive state regulation. Applicants maintain, therefore, that, in adopting Rule 6e–2, the Commission expressly recognizes that exemptions from pass-through voting requirements were necessary ''to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Applicants state that flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority, and therefore, the corresponding provisions of Rule 6e–3(T) presumably were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2. Applicants argue that these considerations are no less important or necessary when an insurance company funds its separate accounts on a mixed and shared funds basis and that such funding does not compromise the goals of the insurance regulatory authorities or of the Commission.

14. Applicants assert that the sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. Shares of the Insurance Products Funds sold to Qualified Plans will be held by the trustees of the Qualified Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act of 1974 (''ERISA''). Section 403(a) also provides that the trustee must have exclusive authority and discretion to manage and control the plan with two exceptions: (1) when the plan expressly provides that the trustee is subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA, and (2) when the authority to manage, acquire, or dispose of assets of the 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.

15. Applicants state that no increased 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.

16. 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)(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 Insurance Products Funds.

17. 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 be the requirement that the decision by the Participating Insurance Company to disregard voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard contract owner voting 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 Insurance Products Funds, to withdraw its investment in that fund and no charge or penalty will be imposed as a result of such withdrawal.

18. Applicants state that there is no reason why the investment policies of an Insurance Products 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 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 state that, assuming it were possible, the Insurance Products Funds will not be managed to favor or disfavor any particular insurer or type of contract.

19. 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.

20. A 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 recognize any inherent conflicts of interest if Qualified Plans, variable separate accounts and variable life insurance separate accounts all invest in the same management investment company.

21. While there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, Applicants state that the tax consequences do not raise any conflicts of interest. 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 Trust at their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Qualified Plan and the life insurance company will make distributions in accordance with the terms of the variable contract.

22. 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 state that the transfer agent for each Insurance Products 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).

23. Applicants argue that the ability of the Insurance Products 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 contract owner as compared 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 Insurance Products Fund. Such shares may be redeemed only at net asset value. No shareholder of any Insurance Products Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

24. Finally, Applicants assert that there are no conflicts between variable contract owners of the separate accounts 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 that there are any inherent conflicts of interest between shareholders. 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 in another fund. To accomplish such redemptions and transfers, complex, time-consuming transactions must be undertaken. One the other hand, trustees of Qualified Plans can make the decision quickly and implement the redemption of shares from an Insurance Products Fund and reinvest 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 maintain 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 Insurance Products Fund.

25. 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 Insurance Products Funds as common investment media for variable contracts would ameliorate these concerns. Applicants submit that mixed 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 Insurance Products 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.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of Trustees or Directors (each, a ''Board'' and referred to herein collectively as ''Boards'') of each Insurance Products Fund 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, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, 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 Boards will monitor their respective Insurance Products Funds for the existence of any material irreconcilable conflict between the interests of the variable contract owners of all separate accounts investing in the Insurance Products Funds. 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, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Products Funds are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance contract owners; (f) a decision by a Participating Insurance Company to disregard contract owner voting instructions; and (g) if applicable, a decision by a Qualified Plan to

disregard the voting instructions of Qualified Plan participants.

3. Any Participating Insurance Company, the Adviser (or any other investment adviser of the Insurance Products Funds), and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Products Fund will report any potential or existing conflicts, of which they become aware, to the Board and 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 and the Adviser to inform the Board whenever it has determined to disregard contract owner voting instructions and, if pass-through voting is applicable, an obligation by the Adviser and a Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of the Adviser and all Participating Insurance Companies and Qualified Plans investing in Insurance Products Funds under their agreements governing participation therein, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the contract owners, and if applicable, Qualified Plan participants.

4. If a majority of the Board of an Insurance Products Fund, or a majority of the disinterested members of such Board, determines that a material irreconcilable conflict exists, the Adviser and the relevant Participating Insurance Companies and Qualified Plans will, at their expense and to the extent reasonably practicable (as determined by a majority of disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict. Such steps could include: (a) withdrawing the assets allocable to some or all of the separate accounts from an Insurance Products Fund or any series thereof and reinvesting such assets in a different investment medium, which may include another series of the Insurance Products Fund or another Insurance Products Fund; (b) submitting the question of whether such segregation should be implemented to a vote of all affected variable contract owners and, as appropriate, segregating the assets of any appropriate groups (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected variable contract owners the option of making such a change; and (c) establishing a new registered management investment company (or series thereof) 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 relevant Insurance Products Fund, to withdraw its separate account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Products Fund to withdraw its investment in such Insurance Products Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of the Adviser and all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Products Funds and these responsibilities will be carried out with a view only to the interests of the contract owners, and, if appropriate, Qualified Plan participants.

5. For purposes of condition 4, a majority of disinterested members of the applicable Board will determine whether any proposed action adequately remedies any irreconcilable material conflict, but in no event will the relevant Insurance Products Fund or the Adviser (or any other investment adviser of the Insurance Products Fund) be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by 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 and adversely affected by the irreconcilable material conflict.

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

7. 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, the Participating Insurance Companies will vote shares of an Insurance Products Fund held in their separate accounts in a manner consistent with voting instructions timely received from variable contract owners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts that participates in the Insurance Products Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Insurance Products Fund. Each Participating Insurance Companies will vote shares for which it has not received timely voting instructions as well as shares attributable to it in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

8. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict of interest, notifying the Adviser, Participating Insurance Companies and Qualified 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 Commission upon request.

9. Each Insurance Products Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund will disclose in its prospectus that: (a) shares of the Insurance Products Fund may be offered to insurance company separate accounts which fund both annuity and life

insurance contracts, and to Qualified Plans; (b) because of differences of tax treatment and other considerations, the interests of various contract owners participating in the Insurance Products Funds and the interests of Qualified Plans investing in the Insurance Products Funds may conflict; and (c) the Board will monitor its respective Insurance Products Fund for any material conflicts of interest and determine what action, if any, should be taken.

10. Each Insurance Products 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 Insurance Products Fund), and, in particular, each such Insurance Products Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act), as well as with Sections 16(a) and, if applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products 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. If and to the extent Rule 6e–2 and Rule 6e–3(T) 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 Applicants, then the Insurance Products Funds and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extend such rules are applicable.

12. No less than annually, the Adviser, the Participating Insurance Companies and Qualified Plans shall submit to the Boards such reports, materials or data as the Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by these stated conditions. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Adviser, the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to the Boards when it so reasonably requests, shall be a contractual obligation of the Adviser, the Participating Insurance Companies and Qualified Plans under the agreements governing their participation in the Insurance Products Funds.

13. If a Qualified Plan becomes an owner of 10% or more of the assets of an Insurance Products Fund, such Qualified Plan will execute a fund participation agreement with the applicable Insurance Products Fund including the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Qualified Plan's initial purchase of the shares of the Insurance Products Fund.

Conclusion

For the reasons stated above, Applicants state that the requested exemptions, in accordance with the standards of Section 6(c), are 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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Self-Regulation Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Limitation of Liability of Index Reporting Authorities

February 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 7, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to amend Exchange Rule 24.14, which provides for disclaimers of liability on behalf of designated index reporting authorities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 24.14, which in its present form contains four separate disclaimers of liability on behalf of four different index reporting authorities.[3] Index reporting authorities provide index values to the Exchange that serve as the basis for the various classes of index options listed and traded on the Exchange. Pursuant to the terms of the Exchange's contracts with certain index reporting authorities, the Exchange has agreed to include these specific liability disclaimers in its rules. Although the substance of each of these disclaimers is the same, they differ somewhat in their language, as reflected in the four paragraphs of existing Exchange Rule 24.14. The proposed rule change would combine the four existing disclaimers in a single paragraph in order to eliminate editorial differences among them, and add the CBOE and any other designated index reporting authorities as persons entitled to the benefit of the disclaimer.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and with Section 6(b)(5) in particular,[4] in that by

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] In Exchange Rule 24.1(h), the CBOE defines the term "reporting authority" in respect of a particular index as the institution or reporting service designated by the Exchange as the official source for calculating the level of the index from the reported prices of the underlying securities that are the basis of the index and reporting such level.

[4] 15 U.S.C. § 78f(b)(5) (1988).