identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Unitil Corporation (70–8969)

Unitil Corporation (''Unitil''), 6 Liberty Lane West, Hampton, New Hampshire, 03842–1720, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 54 thereunder.

By order dated November 16, 1992 (HCAR No. 25677), Unitil was authorized to issue and sell up to 76,827 shares of common stock, no par value (''Common Stock''), under its Dividend Reinvestment and Stock Purchase Plan (''DRIP''). Unitil now proposes to issue up to an additional 100,000 shares of Common Stock under the DRIP on substantially the same terms as previously authorized.

Participants in the DRIP can have cash dividends on all or part of their shares reinvested at a 5% discount from current market prices and/or invest optional cash payments, which range from $25 to $5,000 per calendar year at current market prices, whether or not dividends are reinvested.

Employees of Unitil and its subsidiaries who are eligible to participate have the additional option to use payroll deductions in the place of direct cash payments. No commission or service charge is paid by participants in connection with purchases under the DRIP. Current market prices are the average of the high and low prices reported by the American Stock Exchange during each of the last five trading days that end with the date of the dividend.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1159 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22459; File No. 812–10294]

SoGen Variable Funds, Inc., et al. January 10, 1997

AGENCY: The Securities and Exchange Commission (the ''Commission'').

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

APPLICANTS: SoGen Variable Funds, Inc. (the ''Company''), Societe Generale Asset Management Corp. (the ''Adviser'') and certain life insurance companies and their separate accounts investing now or in the future in the Company.

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 6(c) for exemptions from sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF THE APPLICATION: Applicants seek an order to permit shares of the Company to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies'') or qualified pension and retirement plans outside the separate account context (''Plans'').

FILING DATES: The application was filed on August 12, 1996.

HEARING OR 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 must be received by the Commission by 5:30 p.m. on February 4, 1997, and must 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 requestor'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, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Philip J. Bafundo, Societe Generale Asset Management Corp., 1221 Avenue of the Americas, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Veena K. Jain, Attorney, or Kevin M. Kirchoff, Branch Chief, 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 is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Company, incorporated in Maryland, is registered under the 1940 Act as an open-end management investment company. The Company currently consists of one series, the SoGen Overseas Variable Fund (the ''Fund,'' together with future series of the Company, the ''Funds''). Additional series may be established.

2. The Adviser, an indirect, majority-owned subsidiary of Societe Generale, is registered pursuant to the 1940 Act as an investment adviser and is the investment adviser to the Company.

3. Shares of the Funds will be offered initially to the Continental Assurance Company and Valley Forge Life Insurance Company, and eventually to Participating Insurance Companies and Plans, to serve as investment vehicles for insurance contracts, which may include variable annuity contracts, variable life insurance contracts and variable group life insurance contracts (collectively, ''Contracts'').

4. 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 Contract issued by such Company.

5. The Advisory will not act as investment adviser to any of the Plans that will purchase shares of the Company. There will be no pass-through voting to the participants in such Plans.

Applicants' Legal Analysis

1. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them from sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit ''mixed'' and ''shared'' funding, as defined below.

3. 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 exemptions granted by Rule 6e–2(b)(15) are available, however, 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.''

4. The relief granted by Rule 6e–2(b)(15), thus, is not available with respect to a 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 affiliated 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 insurance company or of any affiliated life insurance company is referred to as ''Mixed Funding.'' The relief granted by Rule 6e–2(b)(15) is also not available with respect to a variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''Shared Funding.'' Rule 6e–2(b)(15), therefore, precludes Mixed and Shared Funding.

5. In connection with flexible premium variable life insurance contracts issued through 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 the UIT'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.'' Rule 6e–3(T)(b)(15) thus permits Mixed Funding but does not permit Shared Funding.

6. Applicants state that because the relief under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is also necessary if shares of the Funds are to be also sold to Plans. Applicant assert that the relief granted by paragraphs (b)(15) of Rules 6e–2 and 6e–3(T) should not be affected by the proposed sale of the Funds to Plans.

7. Applicants submit that Mixed and Shared Funding should benefit 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 Company, thereby promoting economies of scale, permitting greater safety though greater diversification, and/or making the addition of Funds more feasible; and (c) encouraging more insurance companies to offer Contracts, resulting in increased competition with respect to both Contract design and pricing, which can be expected to result in more product variation and lower charges. Each Fund of the Company will be managed to attempt to achieve the Fund's investment objectives and not to favor or disfavor any participating insurer or type of insurance product.

8. Applicants state that Section 817(h) of the Internal Revenue Code, as amended, (''Code'') imposes certain diversification requirements on the underlying assets of Contracts. The Code provides that such Contracts shall not be treated as annuity contracts or life insurance contracts for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying 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 Plans without adversely effecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their Contracts. Treas. Reg. 1.817–5(f)(3)(iii).

9. 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 that 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 Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

Disqualification

10. 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). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from section 9(a) under certain circumstances. 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 63–3(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) participates in the management or administration of the fund.

11. Applicants state that the partial relief from section 9(a) of the 1940 Act found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants assert that those rules reflect a recognition that it is not necessary for the protection of investors or the purposes fairly intended by the policy or provisions 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 investment companies in that organization. It is also unnecessary to apply section 9 (a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Company as the funding medium for Contracts. Therefore, Applicants assert, applying the restrictions of section 9(a) serves no regulatory purpose. Applicants also state that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, to section 9(a).

Pass-Through Voting

12. 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.

13. Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement 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 the voting instructions of

its Contract owners with respect to the investments of an underlying fund, when required to do so by an insurance regulatory authority. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) also provide that the 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.

14. 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 the Employee Retirement Income Security Act (''ERISA''). Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustees are 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 (b) 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, 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 such 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 Plans because the Plans are not entitled to pass-through voting privileges.

Conflicts of Interest

15. 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 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 and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

16. Applicants further submit that affiliation does not reduce the potential for differences among 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 decisions of a majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Funds. The requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participating in the Company.

17. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by 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 specific 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. The requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participating in the Company.

18. 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, whether flexible premium or scheduled premium policies. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

19. Applicants note that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of 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 ''qualified pension or retirement plans'' and separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

20. Applicants note that while there are differences in the manner in which distributions are taxed for 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 cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Company at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan. A Participating Insurance Company will make distributions in accordance with the terms of the 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 Plans. Applicants represent that the transfer agent for the Company will inform each Participating Insurance Company of its share ownership as well as inform the trustees of Plans of their holdings. A 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 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 Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of Plan participants and Contract owners under their respective Plans and Contracts, the Plans and 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 the Company has any preference over any other shareholder with respect to

distribution of assets or payment of dividends.

23. Applicants state that there are no conflicts of interest between Contract owners and Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The 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 assets in another Fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans can make the decision quickly and implement redemption of shares from the Company 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 should there arise issues where the interests of Contract owners and the interests of the 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 Company.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors (''Board'') of the Company shall consist of persons who are not ''interested persons'' of the Funds, 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, 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 Board will monitor the Company for the existence of any material irreconcilable conflict between and among the interests of Contract owners of all separate accounts investing in the Company. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Company are managed; (e) a difference in voting instructions given by owners of variable annuity and variable life insurance contracts; or (f) a decision by an insurer to disregard voting instructions of Contract owners.

3. Participating Insurance Companies and the Adviser, and any Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the issued and outstanding shares of the Company (collectively, ''Participating Parties'') will report any potential or existing conflicts of which it becomes aware to the Board. participating Parties 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 it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by a Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Parties investing in the Company under their agreements governing participation in the Company, 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, Plan participants.

4. If it is determined by a majority of the Board, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Participating parties shall, at their expense and to the extent reasonably practicable (as determined by a majority of disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Company or any Fund therein and reinvesting such assets in a different investment medium, which may include another Fund, if any, of the Company or 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., variable annuity 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 Contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Plans from the Company and reinvesting those assets in a different investment medium; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because 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 insurer may be required, at the Company's election, to withdraw its separate account's investment in the Company, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility of taking remedial action in the event of a Board determination of the existence of a material irreconcilable conflict and bearing the cost of such remedial action, shall be a contractual obligation of all Participating Parties under their agreements governing participation in the Company, and these responsibilities will be carried out with a view only to the interests of the Contract owners and, as applicable, Plan participants. For purposes of this Condition Four, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Company or the Adviser or any Plan be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition Four to establish a new funding medium for any Contract if an offer to do so has been declined by a vote of a majority of Contract owners materially adversely affected by the material irreconcilable conflict.

5. All Participating Parties will be promptly informed in writing of the Board's determination that a material irreconcilable conflict exists and its implications.

6. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions timely received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of

their separate accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Company will be a contractual obligation of all participating Insurance Companies under the agreements governing participation in the Company. Each Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares it owns in the same proportion as it votes shares for which it has received instructions.

7. 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 Participating Parties 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.

8. The Company will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of Mixed and Shared Funding may be appropriate. The Company shall disclose in its prospectus that: (a) Its shares are offered to Plans and to separate accounts that fund all types of Contracts offered by various insurance companies; (b) material irreconcilable differences may arise; and (c) the Board will monitor events in order to identify any material conflicts of interest and determine what action, if any, should be taken.

9. The Company 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 Company) and in particular, the Company 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, if annual meetings are not held, comply with section 16(c) of the 1940 Act (although the Company is one of the trusts described in section 16(c) of the 1940 Act), as well as with section 16(a) and, if and when applicable, section 16(b) of the 1940 Act. Further, the 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.

10. If an to the extent Rule 6e–2 or Rule 6e–3(T) is am emended, 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 by Applicants, then the Company and/or the Participating Parties, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. No less than annually, the Participating Parties shall submit to the Board such reports, materials, or data as the Board may reasonable request so that it may carry out fully the obligations imposed upon them by the conditions stated in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of Participating Parties to provide these reports, materials, and data to the Board shall be a contractual obligation of all Participating Parties under the agreements governing their participation in the Company.

12. In the event that a Plan shareholder should ever become an owner of 10 percent or more of the assets of the Company, that Plan shareholder will execute a fund participating agreement with the Company. A Plan shareholder will execute an application containing an acknowledgement of this condition at the time of the initial purchase of shares of the Company.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions 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.

[FR Doc. 97–1160 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22458; 811–4394]

TrustFunds Institutional Funds; Notice of Application

January 10, 1997.

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

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

APPLICANT: TrustFunds Institutional Funds.

RELEVANT ACT SECTION: Section 8(f).

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

FILING DATE: The application was filed on December 30, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Sec's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 4, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 28 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT:

Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

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

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a Massachusetts business trust. On August 23, 1985, applicant registered under the Act and filed a registration statement of Form N–1A under the Act and the Securities Act of 1933. Applicant has never commenced operations.

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