impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement For the R.E. Ginna Nuclear Power Plant dated December 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on June 10, 1997, the staff consulted with Mr. Jack Spath of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment, Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 5, 1997, which is available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, New York.

Dated at Rockville, Maryland, this ninth day of July 1997.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–18993 Filed 7–17–97; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26740]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

July 11, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 4, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall 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.

AEP Generating Company (70–8237)

AEP Generating Company (''Generating''), 1 Riverside Plaza, Columbus, Ohio 43215, an electric public-utility subsidiary company of American Electric Power Company, Inc. (''AEP''), a registered holding company, has filed a post-effective amendment under section 12(c) of the Act and rules 46 and 54 under the Act to its declaration filed under section 12(c) of the Act and rule 46 under the Act.

By orders dated December 10, 1993 and August 24, 1994 (HCAR Nos. 25943 and 26112, respectively), Generating was authorized to declare and pay to AEP, through December 31, 1997:

(1) dividends up to the full amount of its retained earnings; and

(2) additional dividends (''Additional Dividends'') up to $16 million out of other paid-in capital. The authorization required Generating to maintain 30% common equity to total capitalization. To date, Generating has paid $13.5 million in such dividends. As of March 31, 1997, Generating had paid-in capital of $42,235,000.

Generating now proposes to pay dividends out of paid-in capital to AEP from time to time through December 31, 2002, to the full extent permitted by applicable corporate law.[1] Generating also requests removal of the requirement that, in the payment of any dividend out of capital, it maintain a percentage of common equity to total capitalization at or above 30%.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–18921 Filed 7–17–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22746; No. 812–10644]

The Lazard Retirement Series, Inc., et al.

July 11, 1997.

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

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

APPLICANTS: Lazard Retirement Series, Inc. (the ''Company'') and Lazard Asset Management (''LAM'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) granting 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 exemptive relief to permit shares of the Company and any other investment company that is designed to fund variable insurance products and for which LAM, or any of its affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (collectively, the ''Funds'') to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts issued by affiliated or unaffiliated life insurance companies (''Participating Insurance Companies'') or qualified pension and retirement plans (''Plans'') outside of the separate account context.

FILING DATE: The application was filed on May 7, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request

[1] Pursuant to Section 1701.33 of the Ohio Revised Code, the relevant state law applicable to Generating, the directors may declare dividends out of surplus. Surplus is defined to be the excess of a corporation's assets over its liabilities plus stated capital.

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 Commission by 5:30 p.m. on August 5, 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 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, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Lazard Frères Asset Management, 30 Rockefeller Plaza, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior 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 is a Maryland corporation registered pursuant to the 1940 Act as an open-end management investment company. The Company, which was organized in February 1997, consists of nine separate series which operate as distinct investment vehicles, all of which desire to sell their shares to fund variable insurance products.

2. LAM, a division of Lazard Frères & Co. LLC, is registered under the Investment Advisers Act of 1940, and serves as the Company's investment manager.

3. Applicants desire that the Funds have the flexibility to offer their shares to insurance company separate accounts that fund variable annuity and variable life insurance contracts (including single premium, scheduled premium, modified single premium and flexible premium) (collectively, ''Variable Contracts''), which separate accounts are established by affiliated or unaffiliated insurance companies. These separate accounts may be registered as investment companies under the 1940 Act or may be exempt from registration under the 1940 Act pursuant to Section 3(c)(1) thereunder.

4. The participating Insurance Companies will establish their own separate accounts and design their own Variable Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to such insurance company under the federal securities laws. The role of the Funds, so far as the federal securities laws are applicable, will be limited to that of offering their shares to separate accounts of Participating Insurance Companies and to Plans, and fulfilling any conditions the Commission may impose upon granting the requested relief. Each Participating Insurance Company will enter into a fund participation agreement with the Fund in which the Participating Insurance Company invests.

5. Applicants state that Fund shares also may be offered directly to Plans outside the separate account context. The Plans may choose one or more of the Funds as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given the right to select among Funds, depending on the Plans. ''Plan Participants'' include not only those participants of qualified pension or retirement plans as set forth in Treasury Regulation § 1.817–5(f)(3)(iii) and Revenue Ruling 94–62, but also include any other trust, account, contract or annuity that is determined to be within the scope of Treasury Regulation § 1.817–5(f)(3)(iii). Fund shares sold to Plans will be held, where applicable, by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act (''ERISA'').

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. The exemptions granted by Rule 6e–2(b) are available only where the management investment company underlying the separate account offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer or any affiliated life insurance company.''

2. 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 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/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' ''Mixed and shared funding'' denotes the 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 also offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed and shared funding.

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as 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. 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 any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance 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 with respect to a flexible premium variable life insurance separate account, but precludes shared funding.

4. Applicants assert that the use of the Funds as common investment media for the Variable Contracts would allow Participating Insurance Companies to benefit not only from the investment and administrative expertise of LAM, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants submit that mixed and shared funding would benefit Variable Contract owners by: (a) eliminating a significant portion of the costs of establishing and administering separate funds; (b) permitting a greater number of assets to be available for investment by the Funds, thereby promoting economies of scale, permitting greater diversification, and 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 the design and pricing of Variable

Contracts, which can be expected to result in greater product variation and lower charges.

5. Applicants assert that the relief granted by sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T) should not be affected by the proposed sale of Fund shares to Plans. Applicants note, however, that because the relief under sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T) is available only where shares are offered exclusively to separate accounts of life insurance companies, additional exemptive relief is necessary if shares of the Funds also are to be sold to Plans.

6. Applicants state that current tax law permits the Funds to increase their asset base through the sale of Fund shares to the Plans. Applicants 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 variable annuity contracts and variable life contracts held by the portfolios of the Funds. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. 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. Treas. Reg. § 1.817–5 (1989). 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 annuity and variable life contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

7. 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).

8. Applicants therefore request an Order of the Commission exempting variable life insurance variable annuity separate accounts of Participating Insurance Companies (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) and Applicants from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and sub-paragraph (b)(15) of Rules 6e–2 and 63–3(T) thereunder, when shares of the Funds are offered and sold to, and held by, such separate accounts in the mixed and shared funding context, regardless of whether shares of the Funds also are offered and sold directly to Plans.

9. 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).

10. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by sub-paragraph (b)(15)(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of an insurance company or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying investment company. The relief provided by sub-paragraph (b)(15)(ii) of Rules 6e–2 and 6e–3(T) 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.

11. Applicants state that the partial relief from Section 9(a) found in sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T), 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 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 in an insurance company complex, who will have no involvement in matters pertaining to the investment company funding the separate accounts. 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 state that the relief requested should not be affected by the proposed sale of Fund shares to the Plans, because the insulation of the Funds from those individuals who are disqualified under the 1940 Act remains in place. Moreover, since the Plans are not investment companies and will not be deemed to be affiliated solely by virtue of their shareholdings, no additional relief is necessary.

12. Sections 13(a), 15(a) and 15(b) of the 1940 Act require ''pass-through'' voting with respect to underlying investment company shares held by a separate account. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) under the 1940 Act provides partial exemptions from the pass-through voting requirements in limited situations.

13. For example, sub-paragraph (b)(15)(iii)(B) of Rule 6e–2 and sub-paragraph (b)(iii)(B) of Rule 6e–3(T) provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in the investment company's investment policies, principal underwriter, or investment adviser. Under the Rules, voting instructions with respect to a change in investment management may be disregarded only if the insurance company makes a good faith determination that such changes would: (a) Violate state law; (b) result in investment that were not consistent with the investment objectives of the separate account; or (c) result in investments that would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives.

14. 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 of insurance. Applicants maintain, therefore, that in adopting Rule 6e–2, the Commission expressly recognized 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. Flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority, and therefore, 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 submit that these considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding, and that such funding does not compromise the goals of the insurance regulatory authorities or of the Commission.

15. Applicants further state that the sale of Fund shares to Plans does not affect the relief requested in this regard. As previously noted, Fund shares 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 assets of the Plans 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.

16. 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 share 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 not 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 where the Plans do not provide participants with the right to give voting instructions.

17. Applicants submit that there is no contractual or other relationship between the Participant Insurance Companies and any Plans which would affect the solvency of the life insurer, would affect the performance of the life insurer's contractual obligations, or would be expected to increase the risks undertaken by the life insurer. Accordingly, Applicants submit that where Plans provide participants with the right to give voting instructions, the purchase of shares by Plans does not present any complications not otherwise occasioned by mixed or shared funding.

18. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that share 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 other 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 an its affiliates offer their insurance products in several states.

19. 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)) discusses 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.

20. 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 Variable Contract owner voting instructions. Potential disagreement is limited by the requirements 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 Variable 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.

21. 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 Fund or series thereof funded only variable annuity or variable life insurance contracts. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurer or type of insurance product.

22. Applicants note that Section 817(h) of the Code imposes certain diversification requirements on the underlying assets of variable annuity and variable life insurance 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, Applicants have concluded that neither the code, the Treasury Regulations, nor the Revenue Rulings thereunder present any inherent conflicts of interest if the Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

23. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, 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 Variable Contract.

24. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under the Plans and owners of the Variable Contracts issued by the separate accounts of Participating Insurance Companies 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.

25. 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 Variable Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants and Variable Contract owners under their respective Plans and Variable

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.

26. Applicants state that there are no conflict of interest between Variable 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, among other things, insurance companies from indiscriminately redeeming their separate accounts out of one Fund and investing in another. 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 should the interests of Variable Contract owners and the interests of Plans and Plan participants conflict, the conflicts can be resolved almost immediately in that trustees of the Plans can, independently, redeem shares out of the Funds.

27. Applicants state that, regardless of the types of Fund shareholders, a Fund's adviser is legally obligated to manage the Funds in accordance with each Fund's investment objectives, policies and restrictions as well as any guidelines established by the Fund's Board. Applicants assert that LAM does so, and, thus, would manage the Funds in the same manner as any other mutual fund.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of each Fund's Board shall 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 death, disqualification, or bona fide resignation of any Board member, 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. Each Fund's Board will monitor the Fund for the existence of any material irreconcilable conflict between and among the interests of Variable Contract owners of all separate accounts and of Plan participants and Plans investing in the Fund, and determine what action, if any, should be taken in response to such conflicts. 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 Funds are being managed; (e) a difference in voting instructions given by owners of variable annuity and variable life insurance contracts; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Variable Contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. LAM (or any other investment adviser of a Fund), any Participating Insurance Company and any Eligible Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (collectively, ''Participants'') will report any potential or existing conflicts to the relevant Board. Participants will be obligated to assist the relevant Board in carrying out its responsibilities under these conditions by providing the Board will all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but it not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Variable Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Plan to inform the Board whenever Plan participant voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of all Participating insurance Companies and Plans investing in the Funds under their agreements governing participation in the Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Variable Contract owners and, if applicable, Plan participants.

4. If a majority of a Fund's Board members, or a majority of its disinterested Board members, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans, at their expense and to the extent reasonably practical (as determined by a majority of the disinterested Board members), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any of its series and reinvesting such assets in a different investment medium, which may include another series of the Fund or another Fund; (b) in the case of a Participating Insurance Company, submitting the question as to whether such segregation should be implemented to a vote of all affected Variable 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 Variable Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw its separate account's investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the Fund, to withdraw its investment in such 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 a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all

Participating Insurance Companies and Plans under their agreements governing participating in the Funds. These responsibilities shall be carried out with a view only to the interests of Contract owners and, as applicable, Plan participants.

5. For purposes of Condition 4, a majority of the disinterested members of the applicable Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict. In no event will a Fund or LAM (or any other investment adviser of the Funds) 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 a majority of Variable Contract owners materially and adversely affected by the material irreconcilable conflict, vote to decline such offer. No Plan shall be required by Condition 4 to establish a new funding medium for such plan if: (a) A majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer; or (b) pursuant to governing plan documents an applicable law, the Plan makes such decision without a vote by Plan Participants.

6. Participants will be informed promptly in writing of a Board's determination of the existence of a material irreconcilable conflict and its implications.

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 as requiring pass-through voting privileges for Variable Contract owners. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the Fund held in its separate accounts in a manner consistent with voting instructions timely received from Variable Contract owners. In addition, each Participating Insurance Company will vote shares of a Fund held in its separate accounts for which it has not received timely voting instructions, as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in a Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote a Fund's shares and calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Fund. Each Plan will vote as required by applicable law and governing Plan documents.

8. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the relevant Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

9. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) Its shares may be offered to insurance company separate accounts that fund both variable annuity and variable life insurance contracts, and to Plans; (b) differences in tax treatment or other considerations may cause the interests of various Variable Contract owners participating in the Fund and the interests of Plans investing in the Fund to conflict; and (c) the Board will monitor the Fund for any material conflicts and determine what action, if any, should be taken.

10. Each Fund will comply with all the provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Funds). In particular, each such Fund either will 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 (although none of the Funds shall be one of the trusts described in Section 16(c) of the 1940 Act) as well as Section 16(a) and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent Rule 6e–2 or Rule 6e–3(T) is amended, of if Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provisions of the 1940 Actor 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 Funds and/or the Participants, 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.

12. No less than annually, the Participants shall submit to each Board such reports, materials or data as each Board may reasonably request so that such Boards may carry out fully the obligations imposed upon them by the conditions stated in this application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of Participating Insurance Companies and Plans to provide these reports, materials and data upon reasonable request of a Board shall be a contractual obligation of all Participating Insurance Companies and Plans under the 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 such Fund which includes the conditions set forth herein to the extent applicable. A Plan or Plan participant will execute an application containing an acknowledgement of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

For the reasons summarized 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 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22745; 811–3881]

PIMCO Advisors Funds; Notice of Application

July 11, 1997.

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