any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see: (1) The application for amendment; and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: August 11, 1997.

Brief description of amendment: The amendment proposes to revise Compliance Plan Issue 3, Action 7 which provides for the modification of the C–360 autoclave controls to add a low instrument air pressure switch to initiate containment upon loss of instrument air. Instead of adding a low instrument air pressure switch, USEC proposes to provide a second channel for high pressure containment that does not rely on instrument air. USEC also proposes to extend the due date from August 31, 1997 to October 31, 1997.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed change involves the High Pressure Isolation and Steam Pressure Control Systems. The change will not affect the function of the system. Because there are no effluent releases associated with this change, the proposed change will not affect effluents.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed changes will not significantly increase any exposure to radiation. Therefore, the changes will not result in a significant increase in individual or cumulative radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any building construction, only equipment modification, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed changes will not increase the probability of occurrence or consequence of any postulated accident currently identified in the safety analysis report. The proposed change will reduce the failure modes of the High Pressure Isolation and Steam Pressure Control Systems. The extension of the completion date will not significantly increase the probability of an accident. The existing Justification for Continued Operation will remain in effect during the two-month extension. There is no significant increase in the potential for or radiological or chemical consequences from previously evaluated accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The function of the High Pressure Isolation and Steam Pressure Control systems will not be changed by the modifications. The proposed changes will not create any new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The safety limit associated with the modifications remains unchanged. The proposed change will provide for two safety channels for initiating autoclave containment that do not rely on instrument air. These changes do not decrease the margins of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Implementation of the proposed changes do not change the safety, safeguards, or security programs. Therefore, the effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: The amendment to Certificate of Compliance GDP–1 becomes effective immediately after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP–1: Amendment will revise the Compliance Plan Issue 3, Action 7 on the autoclave upgrades to extend the due date by two months and to allow for mechanical-electrical pressure switches instead of pneumatic switches.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 15th day of September 1997.

For the Nuclear Regulatory Commission.

**Carl J. Paperiello,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 97–25213 Filed 9–22–97; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22823; File No. 812–10692]**

## Variable Annuity Portfolios, et al.; Notice of Application

September 17, 1997.

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

**ACTION:** Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting relief 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 the extent necessary to permit shares of the Variable Annuity Portfolio (the ''Trust'') to be sold to and held by: (1) separate accounts (''Separate Accounts'') funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); (2) qualified pension and retirement plans; and (3) subadvisers to certain series of the Trust.

**APPLICANTS:** Variable Annuity Portfolios and Citibank, N.A. (''Citibank'').

**FILING DATE:** The application was filed on June 5, 1997, and an amendment was filed on September 5, 1997.

**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 on this application by writing to the Secretary of the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail.

Hearing requests must be received by the Commission by 5:30 on October 14, 1997, and accompanied by proof or service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearings requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Lea Anne Copenhefer, Esq., Bingham, Dana & Gould, LLP, 150 Federal Street, Boston, Massachusetts, 02110.

**FOR FURTHER INFORMATION CONTACT:** Megan L. Dunphy, Attorney, or Mark Amorosi, Branch Chief, 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 SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

## Applicant's Representations

1. Trust is organized as a Massachusetts business trust and is registered under the 1940 Act as an open-end, management investment company. The Trust currently offers shares in five separate investment portfolios and may in the future offer shares in additional portfolios (collectively, the ''Portfolios'').

2. Citibank serves as investment adviser to each Portfolio. Responsibility for the day to day investment management of certain securities has been delegated to other investment advisers (the ''Subadvisers'').

3. Shares of the Portfolios will initially be offered only to Citicorp Life Variable Annuity Separate Account and First Citicorp Life Variable Annuity Separate Account, separate accounts of Citicorp Life Insurance Company and First Citicorp Life Insurance Company (the ''Citicorp Insurance Companies''). The Citicorp Insurance Companies are indirect subsidiaries of Citicorp, a bank holding company organized under the laws of Delaware. The Trust intends to offer shares of the Portfolios to separate accounts of other insurance companies, including insurance companies that are not affiliated with the Citicorp Insurance Companies, to serve as investment vehicles for various types of insurance products (''variable contracts'').

4. Each Portfolio may offer its shares to qualified pension or retirement plans (''Plans'') described in Treasury Regulation § 1.817–6(f)(3)(iii).

5. Each Portfolio may offer its shares to any Subadviser, or its affiliates, either directly or through a qualified pension or retirement plan. Any shares in a Portfolio purchased by a Subadviser will be automatically redeemed if and when the Subadviser's subadvisory agreement with that Portfolio terminates.

6. Citibank may act as an investment adviser to one or more of the Plans which purchases shares of the Portfolios. A Subadviser may act as an investment adviser to one or more Plans which may invest in the Portfolios.

## Applicant's Legal Analysis

1. Applicants request that the Commission issues an order under Section 6(c) of the 1940 Act granting 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, to the extent necessary to permit shares of the Portfolios or of any Other Portfolios to be offered and sold to, and held by: (1) both variable annuity separate accounts and variable life insurance separate accounts of the same life insurance company or of affiliated life insurance companies (''mixed funding''); (2) separate accounts of unaffiliated life insurance companies (including both variable annuity separate accounts and variable life insurance separate accounts) (''shared funding''); (3) trustees of Plans; and (4) Subadvisers to the Portfolios.

2. 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.

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 (the ''Trust Account''), Rule 6e–2(b)(15) provides 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 only where the management investment company underlying the Trust Account (''underlying fund'') offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account 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 insurance company or an affiliated or unaffiliated life insurance company. Also, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares to Plans or to the Portfolios' Subadvisers.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, 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 by Rule 6e–3(T)(b)(15) are available only where the Trust Account's underlying fund offers its shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis added). Thus, Rule 6e–3(T) grants an exemption if the underlying fund engages in mixed funding, but not if it engages in shared funding or sells its shares to Plans or to the Portfolios' Subadvisers.

5. Applicants state that the current tax law permits the Portfolios or any Other Portfolios to increase its asset base through the sale of shares to Plans. 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 held in the Portfolios. The Code provides that such variable contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not adequately diversified as prescribed by the Treasury regulations. To meet the diversification requirements, all of the beneficial interests in an underlying fund must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5. The regulations do contain certain exceptions to this requirement, however, 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. The promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury regulations. Applicants state that, given the then-current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as 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)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a), subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

8. Applicants assert that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9, 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 state 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, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants also assert that it is unnecessary to apply the restrictions of Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize a Portfolio as the funding medium for variable contracts.

9. Applicants maintain that there is no regulatory purpose in extending the Section 9(a) monitoring requirements because of mixed and shared funding and sales to Plans. The Participating Insurance Companies and participating Plans are not expected to play any role in the management or administration of the Portfolios. Those individuals who participate in the management or administration of the Portfolios will remain the same regardless of which separate accounts, insurance companies or Plans use the Portfolios. The increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. In addition, since the Plans are not investment companies and will not be deemed affiliates by virtue of their shareholdings, no additional relief is required with respect to Plans.

10. Applicants further state that no regulatory purpose is served by extending the Section 9(a) monitoring requirements in the context of the Portfolios selling shares to the Subadvisers. Rules 6e–2 and 6e–3(T) provide relief from the eligibility restrictions of Section 9(a) only for officers, directors or employees of Participating Insurance Companies or their affiliates. Applicants state that it is not anticipated that any of the Subadvisers will be the Participating Insurance Companies or their affiliates, and if they were, the eligibility restrictions would apply to those who participate directly in the management or administration of the Portfolios. Applicants also maintain that the monitoring requirements should not extend to all officers, directors and employees of the Participating Insurance Companies and their affiliates simply because the Portfolios sell certain shares to the Shareadvisers. This monitoring would not benefit contract owners and Plan participants and would only increase costs, thereby reducing net rates of return.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a ''pass-through voting'' requirement with respect to management investment company shares held by a separate account. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(*1*) provide that an insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such companies to make (or refrain from making) certain investments which would result in changes in the subclassification or investment objectives of such companies or to approve or disapprove any contract between a Portfolio and its investment adviser, when required to do so by an insurance regulatory authority, subject to certain requirements. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that an insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T).

12. Rule 6e-2 recognizes that a variable life insurance contract has important elements unique to insurance contracts; and is subject to extensive state regulation. Applicants assert that in adopting Rule 6e-2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require change in investment policies, investment advisers or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary ''to assure the solvency of the life insurer and 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, in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, the corresponding provisions of Rule 6e-3(T) were adopted in recognition of the same factors.

13. Applicants further represent that the offer and sale of the Portfolio's shares to Plans will not have any impact on the relief requested in this regard. Shares of the Portfolios sold to Plans would be held by the Trustees of the Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974 (''ERISA''). Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the 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, ERISA does not require pass-through voting to the participants in 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 they are not entitled to pass-through voting privileges.

14. Some Plans, however, may provide participants with the right to give voting instructions. However, Applicants note that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage contract owners. Therefore, Applicants submit that the purchase of Portfolio shares by Plans that provide voting rights to their participants does not present any complications not otherwise occasioned by mixed and shared funding.

15. Applicants state that the prohibitions on mixed and shared funding may reflect some concern with possible divergent interests among different classes of investors. Applicants submit 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. In this regard, Applicants not that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

16. Applicants submit that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce.

17. Rule 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Affiliation does not eliminate the potential for divergent judgments as to the advisability or legality of a change in investment policies, principle underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instruction be reasonable and based on specific good-faith determinations.

18. A particular insurer's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Portfolio, to withdraw its separate account's investment in such Portfolio, and no charge or penalty will be imposed as a result of such withdrawal.

19. Applicants submit that investment by the Plans in any of the Portfolios will present no conflict. Applicants assert that the likelihood that voting instructions of insurance company separate account holders will be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Plan choosing to invest in the Portfolios. Moreover, Applicants state that even if a material irreconcilable conflict involving Plans arises, the Plans may simply redeem their shares and make alternative investments.

20. Applicants submit that investments by the Subadvisers will similarly present no conflict. Applicants state that each Subadviser will agree to vote its shares of a Portfolio in the same proportion as all contract owners having voting rights with respect to that Portfolio or in such other manner as may be required by the Commission or its staff.

21. Applicants state that there is no reason why the investment policies of any Portfolio would or should be materially different from what those policies would or should be if any such Portfolio funded only variable annuity contracts or variable life insurance products, whether flexible premium or scheduled premium contracts. In this regard, Applicants note that each type of variable contract is designed as a long-term investment program, and that Plans also have long-term investment goals. Moreover, Applicants submit that the Portfolios will be managed to attempt to achieve their investment objectives, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

22. Applicants further note that Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts 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 ''qualified pension or retirement plans'' and insurance company 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 account 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 Portfolios at their respective net asset value. The Plans will then make distributions in accordance with the terms of the Plan, and a Participating Insurance Company will make distributions in accordance with the terms of the variable contract.

24. Applicants state that it is possible to provide an equitable means of giving voting rights to contract owners and to Plans. Applicants represent that the Portfolios will inform each shareholder, including each variable contract and each Plan, of its respective share of ownership in the respective Portfolio. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

25. Applicants submit that the ability of the Portfolios to sell their respective shares directly to Plans does not create a ''senior security,'' as that 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 participants and contract owners under the respective Plans and

contracts, the Plans and the Separate Accounts have rights only with respect to their share of the Portfolios. Such shares may be redeemed only at net asset value. No shareholder of any of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

26. Finally, Applicants state that there are no conflicts between contract owners and participants under the Plans with respect to the state insurance commissioners' powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem shares of one underlying fund held by their Separate Accounts and invest the proceeds in another underlying fund. Complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Plans may redeem shares of an investment vehicle, and reinvest the proceeds in another investment vehicle without the same regulatory impediments; most Plans may even hold cash pending suitable investment. Based on the foregoing, Applicants represent that should issues arise where the interests of contract owners and the interest of Plans conflict, the issues can be resolved almost immediately because trustees of the Plans can redeem shares out of the Portfolios independently.

27. Applicants submit that mixed and shared funding should provide benefits to contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Portfolios' investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by the Portfolios thereby promoting economies of scale, by permitting increased safety through greater diversification or by making the addition of Portfolios more feasible. Therefore, making the Portfolio available for mixed and shared funding may encourage more insurance companies to offer variable contracts, and this should result 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.

28. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to qualified Plans and Subadvisers, will have any adverse federal income tax consequences.

**Applicants' Conditions**

Applicants have consented to the following conditions:

1. A majority of the Board of Trustees of the Trust (the ''Board'') shall consist of persons who are not ''interested persons'' of the Trust, 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 trustees, 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 Trust for the existence of any material irreconcilable conflict among the interests of the contract owners of all Separate Accounts and of the Plan participants investing in any Portfolio. 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, pension or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, pension, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life contract owners and trustees of Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. The Participating Insurance Companies, the investment adviser and any other investment adviser to the Trust, and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of the Trust (the ''Participants'') will report any potential or existing conflicts to the Board. Participants will be obligated to assist the Board in carrying out its responsibilities by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by Citibank and each Plan to inform the Board whenever it is determined to disregard Plan participant voting instructions. These responsibilities will be contractual obligations of all Participating Insurance Companies and Plans investing in a Portfolio under their agreements governing participation therein. Responsibilities will be carried out with a view only to the interest of contract owners and Plan participants.

4. If a majority of the Board, or a majority of the disinterested members of the Board, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested members of the Board), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) withdrawing the assets allocable to some or all of the Separate Accounts from a Portfolio and reinvesting such assets in a different investment medium (including another Portfolio, if any) or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners, life insurance contract owners, or variable contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected variable contract owners the option of making such a change; and (b) 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 the decision represents a minority position or would

preclude a majority vote, the Participating Insurance Company may be required, at the election of the Portfolio, 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 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 Portfolio, to withdraw its investment therein and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing their participation in a Portfolio. Responsibilities will be carried out with a view only to the interests of contract owners and Plan participants.

For purposes of condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Trust or the investment adviser 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 the contract owners materially affected by the material irreconcilable conflict. Further, 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 and applicable law, the Plan makes such decision without a vote by Plan participants.

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

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

7. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for contract owners, each Subadviser will vote its shares of any Portfolio in the same proportion as all contract owners having voting rights with respect to that Portfolio; provided, however, that the Subadviser shall vote its shares in such other manner as may be required by the Commission or its staff.

8. Each Portfolio will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Portfolio shall disclose in its prospectus that: (a) its shares may be offered to Separate Accounts that fund both annuity and life insurance contracts of affiliated and unaffiliated Participating Insurance Companies and variable life insurance contracts offered by various insurance companies and for qualified pension and retirement plans; (b) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Portfolios and the interests of Plans in the Portfolios might at some time be in conflict; and (c) the Board will monitor the Trust for any material conflicts and determine what action, if any, should be taken.

9. All reports received by the Board regarding potential or existing conflicts, and all Board action with respect to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

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

11. The Trust 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 Trust) and, in particular, the Trust will either provide for annual meetings (except insofar as the Commission may interpret Section 16 not to require such meetings) or comply with Section 16(c) of the 1940 Act (although, as noted above, the Trust is a Massachusetts business trust which was organized in 1996 under a Declaration of Trust which provides for the election of Trustees by shareholders except in certain circumstances, and as such is not one of the trusts described in Section 16(c)) as well as with Section 16(a) and, if and when applicable, Section 16(b). Further, the Trust 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.

12. The Participants, and where appropriate the investment adviser and any other investment adviser to the Trust, at least annually, shall submit to the Board such reports, materials, or data as the Board reasonably may request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application and said reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when it so reasonably requests, shall be a contractual obligation of all Participants under their agreements governing their participating in each Portfolio.

13. If a Plan should ever become a holder of 10% or more of the assets of a Portfolio, such Plan will execute a participation agreement with the Trust. A Plan will execute an application

containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Portfolio.

**Conclusion**

For the reasons stated above, Applicants assert that the requested exemptions 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 are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provision 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

**[Release No. 34–39084; File No. SR–MSRB–97–5]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

September 16, 1997.

On September 9, 1997, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–97–5), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. 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 Proposed Rule Change

The Board is filing herewith a notice of interpretation concerning rule G–37 on political contributions and prohibitions on municipal securities business (hereafter referred to as ''the proposed rule change''). The proposed rule change is as follows:

*Rule G–37: Political Contributions and Prohibitions on Municipal Securities Business*

Transition and Inaugural Expenses

*1. Q:* May a municipal finance professional who is entitled to vote for an issuer official make contributions to pay for such official's transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer?

*A:* Yes, under certain conditions. The de minimis exception allows a municipal finance professional to contribute up to $250 per candidate per election if the municipal finance professional is entitled to vote that issuer official. The de minimis exception is keyed to an election cycle; therefore, if a municipal finance professional contributed $250 to the general election of an issuer official, the municipal finance professional would not be able to make any contributions to pay for transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional made no contributions to an issuer official prior to the election, then the municipal finance professional may, if entitled to vote for the candidate, contribute up to $250 to pay for transition or inaugural expenses and payment of debt incurred in connection with the election without causing a prohibition on municipal securities business.

Definition of Issuer Official

*2. Q:* An incumbent was seeking re-election as an issuer official but she lost the election. She is now soliciting money to pay for the debt incurred in connection with this election. Would there be a prohibition on engaging in municipal securities business with the issuer if a dealer or a municipal finance professional provides money for the payment of this debt?

*A:* No, under certain conditions. If the incumbent is out of office at the time she is soliciting money to pay for the election debt, then she is no longer considered to be within the definition of ''official of an isssuer'' and any monies given for the payment of debt incurred in connection with the election in this instance is not subject to rule G–37. If the incumbent still holds her issuer official position at the time she is soliciting money to pay for the election debt, then, if a municipal finance professional contributed $250 to her during the general election, the municipal finance professional would not be able to make any contributions for the payment of debt without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional made no contributions to the incumbent prior to the election, then the municipal finance professional may, if entitled to vote for the candidate, contribute up to $250 for the payment of debt incurred in connection with the election while the incumbent is still in office without causing a prohibition on municipal securities business. A dealer may not contribute any monies towards the payment of debt while the incumbent is still in office without causing a prohibition on municipal securities business with the issuer.

Definitions of Municipal Finance Professional and Executive Officer

*3. Q:* In making the determination of which associated persons of a dealer meet the definitions of municipal finance professional and executive officer, is it correct to designate all the executives of the dealer (e.g., President, Executive Vice Presidents) under the category of executive officers?

*A:* No. In making the determination of whether someone is a municipal finance professional or executive officer, one must review the activities of the individual and not his or her title.

Rule G–37(g)(iv) defines the term ''municipal finance professional'' as:

(A) any associated person primarily engaged in municipal securities representative activities, as defined in rule G–3(a)(i);

(B) any associated person who solicits municipal securities business, as defined paragraph (vii);

(C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in subparagraphs (A) or (B);

(D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G–1(a); or

(E) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G–1) executive or management committee or