SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Extension:
Rule 15g–9, SEC File No. 270–325, OMB Control No. 3235–0385.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comment on the collection of information described below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 15g–9, Sales Practice Requirements for Certain Low-Priced Securities

Section 15(c)(2) of the Securities Exchange Act of 1934 (the ''Exchange Act'') authorizes the Commission to promulgate rules that prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative practices in connection with over-the-counter (''OTC'') securities transactions. Pursuant to this authority, the Commission in 1989 adopted Rule 15a–6 (the ''Rule''), which was subsequently redesignated as Rule 15g–9, 17 CFR 240.15g–9. The Rule requires broker-dealers to produce a written suitability determination for, and to obtain a written customer agreement to, certain recommended transactions in low-priced stocks that are not registered on a national securities exchange or authorized for trading on NASDAQ, and whose issuers do not meet certain minimum financial standards. The Rule is intended to prevent the indiscriminate use by broker-dealers of fraudulent, high pressure telephone sales campaigns to sell low-priced securities to unsophisticated customers. The staff estimates that approximately 270 broker-dealers incur an average burden of 78 hours per year to comply with this rule. Thus, the total burden hours to comply with the Rule is estimated at 21,060 hours (270 × 78).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing on or before March 16, 1998.

Please direct your comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Dated: January 8, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–1037 Filed 1–14–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22995; File No. 812–10794]

Goldman, Sachs & Co. et al.; Notice of Application

January 8, 1998.

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

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting relief from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 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 life insurance company separate accounts supporting variable life insurance contracts (and their insurance company depositors) to invest in shares of the Goldman Sachs Variable Insurance Trust or a ''future trust,'' as defined below (together, the ''Trust''), when the following other types of investors also hold shares of the Trust: (1) A variable life insurance (''VLI'') account of a life insurance company that is not an affiliated person of the insurance company depositor of any VLI account, (2) the Trust's investment adviser (representing seed money investments in the Trust), (3) a life insurance company separate account supporting variable annuity contracts (a ''VA account''), and/or (4) a qualified pension or retirement plan. As used herein, a ''future trust'' is any investment company (or investment portfolio or series thereof), other than the Goldman Sachs Variable Insurance Trust, designed to be sold to VLI accounts and to which Applicants or their affiliates may in the future serve as investment advisers, investment sub-advisers, investment managers, administrators, principal underwriters or sponsors.

APPLICANTS: Goldman, Sachs & Co. (''Goldman Sachs''), on behalf of itself and its operating division Goldman Sachs Asset Management (''GSAM''), Goldman Sachs Variable Insurance Trust, and Goldman Sachs Asset Management International (''GSAMI'').

FILING DATE: The application was filed on September 23, 1997 and amended on December 18, 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 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 p.m. on January 30, 1998, and must be accompanied by proof of service on the 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 who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Michael J. Richman, Goldman, Sachs & Co., 85 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, 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 SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Goldman Sachs Variable Insurance Trust is a business trust organized under the laws of Delaware on September 16, 1997. It is registered under the Act as an open-end management investment company and is a series investment company as defined by Rule 18f–2 under the Act. It is currently comprised of nine investment portfolios. It issues a separate series of shares of beneficial

interest in connection with each investment portfolio (each, a ''Fund''). It may offer each series of its shares to VLI accounts and VA accounts of various life insurance companies (''participating insurance companies'') and to pension and retirement plans qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended (the ''Code'') (''plans'').

2. Each VLI account and VA account will be established as a segregated asset account by a participating insurance company pursuant to the insurance law of the insurance company's state of domicile. As such, the assets of each will be the property of the participating insurance company and that portion of the assets of such an account equal to the reserves and other contract liabilities with respect to the account will not be chargeable with liabilities arising out of any other business that the insurance company may conduct. The income, gains and losses, realized or unrealized from such an account's assets will be credited to or charged against the account without regard to other income, gains or losses of the insurance company. If a VLI account or VA account is registered as an investment company, it will be a ''separate account'' as defined by Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust. For purposes of the Act, the life insurance company that establishes such a registered VLI account or VA account is the depositor and sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

3. The plans will be pension or retirement plans intended to qualify under Sections 401(a) and 501(a) of the Code. Many of the plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under Section 401(k) of the Code. The plans will also be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974 (''ERISA'') applicable to either defined benefit or to defined contribution profit-sharing plans.

4. Goldman Sachs is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. Goldman Sachs has been registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') since 1981 and conducts its investment management activities through its operating division, GSAM, and through several investment management affiliates, including GSAMI. Through GSAM, Goldman Sachs serves as investment adviser to Goldman Sachs Variable Insurance Trust's High Yield Fund, Growth and Income Fund, CORE U.S. Equity Fund, CORE Large Cap Growth Fund, CORE Small Cap Equity Fund, Capital Growth Fund and Mid Cap Equity Fund. GSAMI is an affiliate of Goldman Sachs and serves as the investment adviser to Goldman Sachs Variable Insurance Trust's Global Income Fund and International Equity Fund. GSAMI has been registered as an investment adviser under the Advisers Act since 1991.

5. The Applicants propose that the Trust offer and sell its shares to VLI accounts and VA accounts of various participating insurance companies to serve as an investment medium to support viable life insurance contracts (''VLI contracts'') and variable annuity contracts (''VA contracts'') (together, ''variable contracts'') issued through such accounts. As described more fully below, the Trust will only sell its shares to registered VLI accounts and registered VA accounts if each participating insurance company sponsoring such a VLI account or VA account enters into a participation agreement with the Trust. The participation agreements will define the relationship between the trust and each participating insurance company and will memorialize, among other matters, the fact that, except where the agreement specifically provides otherwise, the participating insurance company will remain responsible for establishing and maintaining any VLI account or VA account covered by the agreement and for complying with all applicable requirements of state and federal law pertaining to such accounts and to the sale and distribution of variable contracts issued through such accounts.

6. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI accounts and VA accounts of the same insurance company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as ''mixed funding.'' The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI accounts and/or VA accounts of two or more insurance companies that are not affiliated persons of each other, is referred to herein as ''shared funding.''

7. The Trust may sell its shares directly to the plans. Changes in the federal tax law several years ago created the opportunity for investment companies such as the Trust to increase their net assets by selling shares to qualified pension and retirement plans such as the plans. Section 817(h) of the Code imposes certain diversification standards on the assets underlying variable contracts, such as those in each Fund of the Trust. The Code provides that variable contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying variable contracts. The regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the regulations also contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for variable contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

8. As a result of this exception to the general diversification requirement, qualified pension and retirement plans, such as the plans, may hold Trust shares and select a Fund of the Trust as an investment option without endangering the tax status of variable contracts as life insurance or annuities, respectively. Trust shares sold to the plans would be held by the trustees of the plans as required by Section 403(a) of ERISA. The trustees or other fiduciaries of the plans may vote Trust shares held by their plans in their own discretion or, if the applicable plan so provides, vote such shares in accordance with instructions from participants in such plans. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI accounts, VA accounts and plans, is referred to as ''extended mixed funding.''

Applicants' Legal Analysis

9. Rule 6e–2(b)(15) under the Act provides partial exemptions from

Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI accounts supporting scheduled premium VLI contracts and to their life insurance company depositors. The exemptions granted by the Rule are available, however, only where the Trust offers its shares *exclusively* to VLI accounts of the same participati ng insurance company and/or of participating insurance companies that are affiliated persons of the same participating insurance company and then, only where *scheduled* premium VLI contracts are issued through such VLI accounts. Therefore, VLI accounts, their depositors and their principal underwriters could not rely on the exemptions provided by Rule 6e–2(b)(15) if shares of the Trust are held by a VLI account through which flexible premium VLI contracts are issued, a VLI account of an unaffiliated participating insurance company, any VA account or a plan. In other words, Rule 6e–2(b)(15) does not permit a scheduled premium VLI account to invest in shares of a management investment company that serves as a vehicle for mixed funding, extended mixed funding or shared funding.

10. Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), and 15(b) of the Act to VLI accounts supporting flexible premium variable life insurance contracts and their life insurance company depositors. The exemptions granted by the Rule are available, however, only where the Trust offers its shares exclusvely to VLI accounts (through which either scheduled premium or flexible premium contracts are issued) of the same participating insurance company and/or of participating insurance companies that are affiliated persons of the same participating insurance company, VA accounts of the same participating insurance company or of affiliated participating insurance companies, or the general account of the same participating insurance company or of affiliated participating insurance companies. Therefore, VLI accounts, their depositors and their principal underwriters could not rely on the exemptions provided by Rule 6e–3(T)(b)(15) if shares of the Trust are held by a VLI account of an unaffiliated participating insurance company, a VA account of an unaffiliated participating insurance company, the general account of an unaffiliated participating insurance company or a plan. In other words, Rule 6e–3(T)(b)(15) permits VLI accounts supporting flexible premium VLI contracts to invest in shares of a management investment company that serves as a vehicle for mixed funding but does not permit such a VLI account to invest in shares of a management investment company that serves as a vehicle for extended mixed funding or shared funding.

11. In general, Section 9(a) of the Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from acting or serving in various capacities with respect to a registered investment company. More specifically, paragraph (3) of Section 9(a) provides that it is unlawful for any company to serve as investment adviser or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a) (1), or (2).

12. Subject to the limitations described above, Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15) (i) and (ii) provide exemptions from Section 9(a) to VLI accounts and their affiliates under certain circumstances and subject to certain conditions that would limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the Trust. The relief provided by Rule 6e–2(b)(15)(i) and Rule 6e–(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of a participating insurance company, or any of the insurance company's affiliates, as long as that person does not participate directly in the management or administration of the Trust. The relief provided by Rule 6e–2(b)(15)(ii) and Rule 6e–3(T)(b)(15)(ii) permits a participating insurance company to serve as the Trust's investment adviser or principal underwriter, provided that none of its personnel who are ineligible pursuant to Section 9(a) of the Act are participating in the management or administration of the Trust.

13. The partial relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) limits, in effect, the amount of monitoring of personnel that a participating insurance company and its affiliates would otherwise have to conduct to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. These Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of Section 9(a) to the many hundreds of individuals in a large insurance company complex, most of whom typically have no involvement in matters pertaining to investment companies affiliated with such an organization. These Rules also recognize that, in connection with the Trust, there exists no necessity to apply Section 9(a) to individuals in various participating insurance companies who would have no relationship to the Trust other than that their employer utilizes the Trust to support variable contracts. Applicants assert that no regulatory purpose would be served in extending the Section 9(a) monitoring requirements because of mixed funding, extended mixed funding or shared funding. Participating insurance companies and plans are not expected to play any significant role in the management of the Trust. Those individuals at Goldman Sachs, GSAM and GSAMI who would participate in the management of the Trust will do so regardless of which VLI accounts, VA accounts and plans invest in the Trust. The increased expense of extending the Section 9(a) monitoring requirements to participating insurance companies or plans could reduce the net return realized by investors in VLI accounts, VA accounts or plans and would not provide any material benefit to such investors.

14. Rule 6e–2(b)(15)(iii) and Rule 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a) and 15(b) of the Act to the extent that those Sections have been deemed by the Commission to require ''pass-through'' voting with respect to management investment company shares held by an insurance company separate account, in order to permit the insurance company to disregard the voting instructions of its VLI contract owners (''VLI owners'') in certain limited circumstances. Because the Commission has deemed Sections 13(a), 15(a) and 15(b) to require a participating insurance company to vote all shares of the Trust held by a VLI account in accordance with instructions from VLI owners, the partial exemptions from these sections provided by subparagraph (b)(15)(iii)(A) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(*1*) of Rule 6e–3(T) would permit a participating insurance company to disregard the voting instructions of such VLI owners when required to do so by any insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T)), if following such instructions would cause the insurance company to: (a) Make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of the Trust; or (b) approve or disapprove any contract between the Trust and GSAM or GSAMI

(or another investment adviser or subadviser),

15. Subparagraph (b)(15)(iii)(B) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(*2*) of Rule 6e–3(T) would permit a participating insurance company to disregard the voting instructions of such VLI owners if the owners initiate any change in the Trust's investment policies, principal underwriter, or investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B) and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T)).

16. Because the Commission has deemed Sections 13(a), 15(a) and 15(b) to require any participating insurance company to vote all shares of the Trust held by the insurer's VLI accounts in accordance with instructions from owners of variable life insurance contracts issued through such account, the partial exemption from these sections provided by subparagraph (b)(15)(iii) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(*1*) of Rule 6e–3(T) is one that almost all VLI accounts and their participating insurance companies may need to rely on.

17. Both Rule 6e–2 and Rule 6e–3(T) generally recognize that a variable life insurance contract is primarily a life insurance contract containing many important elements unique to life insurance contracts and subject to extensive state insurance regulation. Applicants assert that in adopting subparagraph (b)(15)(iii) of these Rules, the Commission implicitly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters.

18. If the Trust serves as an investment vehicle for mixed funding, extended mixed funding or shared funding, the exemptions otherwise provided by Rule 6e–2(b)(15) would not be available to VLI accounts and their participating insurance company depositors and principal underwriters. Likewise, if the Trust serves as an investment vehicle for extended mixed funding or shared funding, the exemptions otherwise provided by Rule 6e–3(T)(b)(15) would not be available to VLI accounts and their participating insurance companies and principal underwriters.

19. Applicants maintain that VLI owners and VA owners, as investors in the Trust, would have substantially identical interests. Likewise, owners of scheduled premium VLI contracts and flexible premium VLI contracts would, as investors in the Trust, have virtually identical interests.

20. Each Fund of the Trust will be managed to attempt to achieve the investment objective or objectives of such Fund, and not to favor or disfavor any particular participating insurance company or type of variable contract. Applicants assert that there is no reason to believe that the different features of various types of variable contracts, including any ''minimum death benefit'' guarantee under certain VLI contracts, will lead to different investment policies for different types of variable contracts. To the extent that the degree of risk may differ between VLI contracts and VA contracts, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure to risk in either case.

21. Furthermore, no single investment strategy can be identified as appropriate to one particular type of variable contract but not another. Each pool of VLI owners and VA owners is composed of individual of diverse financial status, age, and insurance and investment goals. A Fund of the Trust supporting one type of variable contract must accommodate these diverse factors in order to attract and retain owners of other types of variable contracts. Permitting mixed funding will facilitate the success of each Fund and will broaden the base of VLI owners and VA owners and encourage the Trust to add additional Funds.

22. Applicants maintain that qualified retirement plan investors in the Trust would have substantially the same interests as do VLI owners and VA owners. Like VLI and VA owners, qualified retirement plan investors are long-term investors. Therefore, most can be expected not to withdraw their assets from the plans.

23. In additional, neither VLI and VA owners on the one hand nor plan investors on the other would be taxed on the investment return of their respective investments in the Trust. Therefore, they would share a strong interest in the Trust operating in a manner that preserves this tax status. For example, material conflicts between these two groups of investors regarding capital transactions would be unlikely to occur. In this regard, ERISA imposes general diversification requirements on qualified pension or retirement plan investments that are wholly consistent with those required of each Fund of the Trust under Section 817(h) of the Code.

24. VLI accounts. VA accounts and the plans are governed in similar ways. Plan committees (and other plan fiduciaries) have a fiduciary duty to participants that is similar to the obligations that a participating insurance company has to look after the interests of its VLI owners and VA owners. In this respect, Applicants note that participating insurance companies and their VLI accounts would not require any exemptions from the Act other than those necessary for mixed funding and shared funding if participants in certain qualified pension and retirement plans invest indirectly in the Trust when their plan purchases a variable annuity contract offered by a participating insurance company in the qualified plan market. The various plans may or may not offer an annuity option.

25. In light of the fact that plan investors would have beneficial interest in the Trust very similar to those of VLI owners and VA owners, Applicants assert that, provided that they (and VLI accounts and participating insurance companies) comply with the conditions explained below, the addition of the plans as shareholders of the Trust and the addition of participants as persons having beneficial interests in the Trust should not increase the risk of material irreconcilable conflicts among and between investors. Applicants further assert that even if a material irreconcilable conflict involving the plans, or participants arose, the trustees (or other fiduciaries) of the plans, unlike participating insurance companies, can, if their fiduciary duty to the participants requires if, redeem the shares of the Trust held by the plans and make alternative investments without obtaining prior regulatory approval. Similarly, most, if not all, of the plans, unlike the VLI accounts or the VA accounts, may hold cash or other liquid asserts pending their reinvestment in a suitable alternative investment.

26. Applicants maintain that VLI owners and VA owners would benefit from the expected increase in net assets of the Funds of the Trust occasioned by participant investments. Not only should such additional investments not increase the likelihood of material irreconcilable conflicts of interest between or among different types of investors, but such additional investments should reduce some of the costs of investing for variable contract owners. In particular, additional investments would promote economies of scale, permit increased safety through greater portfolio diversification, provide each Fund's investment adviser with greater flexibility due to a larger portfolio and make the addition of future new Funds more feasible.

27. When the Commission last revised Rule 6e–3(T) in 1987, the Treasury

Department had not issued the current regulations (Treas. Reg. 1.817–5) which make it possible for the Trust to sell shares to qualified pension or retirement plans without adversely affecting the tax status of VLI contracts and VA contracts. Applicants submit that, although proposed regulations had been published, the Commission did not envision this possibility when it last examined paragraph (b)(15) of the Rule and might well have broadened the exclusivity provision of that paragraph at that time to include plans such as those covered by this application had this possibility been apparent. In this regard, the Commission has recently issued several orders under Section 6(c) granting the same exemptions requested herein to other Applicants in very similar circumstances.

28. In light of the fact that the proposed plan investments in the Trust should not increase the likelihood of material irreconcilable conflicts and would otherwise benefit VA owners and VLI owners and in light of the recent supporting precedent, Applicants believe that the Commission should grant the requested exemptions.

29. Applicants do not believe that plan investments in the Trust would increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Section 403(a) of ERISA provides that the trustee(s) of a plan 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 subject to the direction of a named fiduciary who is not a trustee in which event the trustee(s) is 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 advisers pursuant to Section 402(c)(3) of ERISA. Absent one of these exceptions, the trustee(s) of the plan would have the exclusive authority and responsibility for exercising voting rights attributable to their plan's investment securities. Where a named fiduciary appoints an investment adviser, the adviser has the authority and responsibility to exercise such voting rights unless the authority and responsibility is reserved to the trustee(s) or a non-trustee fiduciary.

30. Applicants generally expect many of the plans to have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the plan in their discretion. Some of the plan, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

31. Where plans provide participants with the right to give voting instructions, Applicants see no reason to believe that participants in the plans generally or those in a particular plan, either as a single group or in combination with participants in other plans, would vote in a manner that would disadvantage VLI owners or VA owners. The purchase of Trust shares by the plans that provide voting rights does not present any complications not otherwise occasioned by mixed funding or by shared funding.

32. Section 817(h) of the Code is the codification of certain aspects of a series of published and unpublished rulings issued by the Internal Revenue Service directed at the control of investments supporting VLI contracts and VA contracts. In light of Treasury Regulation 1.817–5(f)(3)(iii) which specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company, Applicants have concluded that neither the Code, nor other Treasury Regulations or revenue rulings thereunder, would create any inherent conflicts of interest between or among plan investors, VLI owners and VA owners.

33. Although there are differences in the manner in which distributions from the plans and distributions from VLI and VA contracts are taxed, Applicants maintain that these differences will have no impact on the Trust. VLI accounts, VA accounts, participating insurance companies and the plans each will redeem Trust shares in the same manner and using the same procedures. Each will purchase and redeem such shares at net asset value in conformity with Rule 22c–1 under the Act.

34. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of plan investors and over Trust investors from possible future changes in the federal tax laws than that which already exists with regard to such conflicts arising between VLI owners and VA owners.

35. Applicants assert that the holding of Trust shares by separate accounts of unaffiliated insurance companies would not entail greater potential for material irreconcilable conflicts arising between or among the interests of VLI owners and VA owners than would mixed funding. Likewise, the holding of Trust shares by separate accounts of unaffiliated insurance companies would not entail greater potential for material irreconcilable conflicts arising between or among the interests of VLI owners, VA owners and plan investors than would extended mixed funding where only separate accounts of affiliated participating insurance companies held such shares.

36. A particular state insurance regulator could require action of an insurer domiciled or licensed in its jurisdiction that conflicts with or is inconsistent with the regulatory requirements of or actions required by the regulator of another state where the insurer is domiciled or licensed. The fact that different insurance companies are domiciled in different states does not enlarge or create significantly different issues in connection with conflicting state regulatory requirements. Affiliation among or between such insurance companies does not diminish the potential for such issues to arise nor, in light of the source of such issues, does it dramatically increase the likelihood of their being resolved.

37. Concern also has existed that material irreconcilable conflicts between or among the interests of VLI owners and/or VA owners of unaffiliated insurance companies were more likely to arise in the event that such companies exercised their limited right to disregard VLI owner voting instructions than would be the case between or among affiliated companies. Applicants assert, however, that the right of an insurance company to disregard VLI owner voting instructions does not raise any issues different from those raised by the authority of different state insurance regulators over separate accounts. Similarly, affiliation between or among insurance companies does not diminish or eliminate the potential for divergent judgments by such companies as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser of a mutual fund in which their separate account invests. Applicants believe that the potential for disagreement between or among insurance companies is limited by requirements in Rule 6e–2 and Rule 6e–3(T) that a company's disregard of voting instructions be reasonable and based on specific good faith determinations. Moreover, in the event that a decision by a participating life insurance company to disregard VLI owners' voting instructions represents a minority position or would preclude a majority vote at a Trust shareholders meeting, the company could be required by the Trust's board of trustees to withdraw from the Trust.

38. Various factors have discouraged a number of life insurance companies

from offering variable contracts. These factors include the cost of organizing and operating a funding medium (such as the Trust), the lack of expertise with respect to investment management (principally with respect to equity investments and derivative instruments) and the lack of name recognition by the public of many such insurers as investment professionals with whom an investor can feel comfortable entrusting their investment dollars. For example, a number of smaller life insurance companies do not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Funds of the Trust as a mixed funding and shared funding vehicle for variable contracts would reduce or eliminate such concerns for small life insurance companies.

39. Permitting the Trust to serve as a mixed funding and shared funding vehicle also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate mutual funds. Participating insurance companies would benefit not only from the investment and administrative expertise of GSAM and GSAMI, but also from the cost efficiencies and investment flexibility afforded by a large pool of assets. Permitting the Trust to serve as a mixed and shared funding vehicle also should make a greater amount of assets available for investment by each Fund than would otherwise be the case and, thereby, promote economies of scale, increase the safety of a Fund by increasing diversification of investments, and/or make the addition of new Funds more feasible. Therefore, making the Trust available to serve as a vehicle for mixed funding and shared funding could encourage more life insurance companies to offer variable contracts and thereby increase competition in the variable contracts market. Such competition, in turn, can be expected to result in more contract variation and in lower fees and charges. Applicants also assert that permitting the Trust to serve as a vehicle for extended mixed funding will result in increased assets for the Funds. This also will benefit owners of variable contracts by promoting economies of scale, increasing the safety of Funds by increasing diversification of investments, and/or make the addition of new Funds more feasible.

40. Applicants submit that regardless of the types of investors in the Trust, they each will be contractually and otherwise obligated to manage each Fund solely and exclusively in accordance with its investment objective(s), policies and restrictions as well as any additional guidelines established by trustees of the Trust. GSAM and GSAMI manage client accounts, and would manage each Fund of the Trust, without regard to the identity of the investors in such accounts. Thus, each Fund will be managed in the same manner as any other open-end management investment company.

41. Applicants see no legal impediment to permitting the Trust to serve as a vehicle for mixed funding, extended mixed funding and shared funding. The Commission has issued numerous orders permitting mixed funding, extended mixed funding and shared funding. Therefore, granting the exemptions requested herein is in the public interest and will not compromise the regulatory purpose of Section 9(a), 13(a), 15(a) or 15(b) of the Act or of Rules 6e–2 and 6e–3(T) thereunder.

42. Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act and/or any rule under it if, and to the extent that, such 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 Act. Applicants request an order of the Commission that would exempt VLI accounts and their participating insurance companies and principal underwriters as a class from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rule 6e–2 or Rule 6e–3(T)(b)(15) thereunder. The exemption of these classes of parties is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to VLI accounts whose participating insurance companies enter into participation agreements with the Trust, which agreements would subject such VLI accounts to the conditions discussed below. The Commission staff also would have the opportunity to review compliance with these conditions by participating insurance companies when it reviews the registration statements under the Securities Act of 1933 filed by each VLI account and VA account before the account could issue any variable contracts. The Commission has previously granted exemptions to classes of similarly situated parties in various contexts and from a wide variety of circumstances, including class exemptions in the context of mixed funding, extended mixed funding and shared funding.

Applicants' Conditions

1. Applicants represent and agree that if the exemptions requested herein are granted, the Trust will only sell shares to VLI accounts if the following conditions are met:

a. A majority of the board of trustees of the Trust shall consist of persons who are not interested persons of the Trust or interested persons of such persons. For this purpose, interested persons means ''interested persons'' as defined by Section 2(a)(19) of the Act, and rules thereunder, and as modified by any applicable Commission orders, 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 for: (1) A period of 45 days if the vacancy or vacancies may be filled by the remaining trustees, (2) a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies, or (3) such longer period as the Commission may prescribe by order upon application.

b. The board of trustees of the Trust shall monitor the Trust for the existence of any material irreconcilable conflicts between or among the interests of VLI owners, VA owners and plan investors and determine what action, if any, should be taken in response to those conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (1) An action by any state insurance regulatory authority, (2) 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, (3) an administrative or judicial decision in any relevant proceeding, (4) the manner in which the investments of any Fund are being managed, (5) a difference in voting instructions given by VLI owners, VA owners and plan investors, (6) a decision by a participating insurance company to disregard VLI or VA contract owner voting instructions, and (7) a decision by a plan trustee (or other plan fiduciary) to disregard voting instructions of plan participants.

c. The Trust's prospectus shall disclose that: (1) Its shares are offered in connection with mixed funding, extended mixed funding and shared funding, (2) mixed funding, extended mixed funding and shared funding may present certain conflicts of interest between VA owners, VLI owners and plan investors, and (3) the Trust's board of trustees will monitor the Trust for the existence of any material irreconcilable conflict of interest and determine what action, if any, should be taken in response to such a conflict. The Trust shall also notify the plan trustees and participating insurance companies that similar prospectus disclosure may be appropriate in separate account prospectuses or any plan prospectuses or other plan disclosure documents.

d. The Trust will comply with all of the provisions of the Act relating to security holder (*i.e.*, persons such as VLI owners and VA owners or participants in plans that provide participants with voting rights) voting including Section 16(a), 16(b) (when applicable) and 16(c) (even though the Trust is not a trust of the type described therein).

e. GSAM and GSAMI will report any material irreconcilable conflicts or any potential material irreconcilable conflicts between or among the interests of VLI owners, VA owners and plan investors to the Trust's board of trustees and will assist the board in carrying out the board's responsibilities under these conditions. Such assistance will include, but not be limited to, providing the board, at least annually, with all information reasonably necessary for the board to consider any issues raised by such existing or potential conflicts.

f. All reports sent by participating insurance companies or plans to the board of trustees of the Trust or notices sent by the board to participating insurance companies or plans notifying the recipient of the existence of or potential for a material irreconcilable conflict between the interests of VA owners, VLI owners and plan investors as well as board deliberations regarding such conflicts or such potential conflicts shall be recorded in the board meeting minutes of the Trust or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

2. In addition to the foregoing conditions, Applicants consent to the following conditions and represent and agree that if the exemptions requested herein are granted, the Trust will not sell shares to any VLI account unless the account's participating insurance company enters into a participation agreement with the Trust containing provisions that require the following:

a. A majority vote of the disinterested trustees of the Trust shall represent a conclusive determination as to the existence of a material irreconcilable conflict between or among the interests of VLI owners, VA owners and plan investors. For the purpose of subparagraph e below, a majority vote of the disinterested trustees of the Trust shall represent a conclusive determination as to whether any proposed action adequately remedies any material irreconcilable conflict between or among the interests of VLI owners, VA owners and plan investors. The Trust shall notify each participating insurance company and plan in writing of any determination of the foregoing type.

b. Each participating insurance company will monitor its operations and those of the Trust for the purpose of identifying any material irreconcilable conflicts or potential material irreconcilable conflicts between or among the interests of plan investors, VA owners and VLI owners.

c. Each participating insurance company will report any such conflicts or potential conflicts to the Trust's board of trustees and will provide the board, at least annually, with all information reasonably necessary for the board to consider any issues raised by such existing or potential conflicts or by these conditions. Each participating insurance company will also assist the board in carrying out its responsibilities under these conditions including, but not limited to: (1) Informing the board whenever it disregards VLI owner or VA owner voting instructions, and (2) providing, at least annually, such other information and reports as the board may reasonably request. Each participating insurance company will carry out these obligations with a view only to the interests of owners of its VLI contracts and VA contracts.

d. Each participating insurance company will provide ''pass-through'' voting privileges to owners of registered VA contracts and registered VLI contracts as long as the Act requires such privileges in such cases. Accordingly, such participating insurance companies, where applicable, will vote Trust shares held in their separate accounts in a manner consistent with voting instructions timely received from owners of such VLI and VA contracts. Each participating insurance company will vote Trust shares owned by itself (i.e., that are not attributable to VA contract or VLI contract reserves) in the same proportion as instructions received in a timely fashion from VA owners and VLI owners and shall be responsible for ensuring that it and other participating insurance companies calculate ''pass-through'' votes for VLI accounts and VA accounts in a consistent manner. Each participating insurance company also will vote Trust shares held in any registered VLI account or registered VA account for which it has not received timely voting instructions in the same proportion as instructions received in a timely fashion from VA owners and VLI owners.

e. In the event that a material irreconcilable conflict of interest arises between VA owners or VLI owners and plan investors, each participating insurance company will, at its own expense, take whatever action is necessary to remedy such conflict as it adversely affects owners of its VA contracts or VLI contracts up to and including: (1) Establishing a new registered management investment company, and (2) withdrawing assets attributable to reserves for the VA contracts or VLI contracts subject to the conflict from the Trust and reinvesting such assets in a different investment medium (including another Fund of the Trust) or submitting the question of whether such withdrawal should be implemented to a vote of all affected VA owners or VLI owners, and, as appropriate, segregating the assets supporting the contracts of any group of such owners that votes in favor of such withdrawal, or offering to such owners the option of making such a change. Each participating insurance company will carry out the responsibility to take the foregoing action with a view only to the interests of owners of its VA contracts and VLI contracts. Notwithstanding the foregoing, each participating insurance company will not be obligated to establish a new funding medium for any group of VA contracts or VLI contracts if an offer to do so has been declined by a vote of a majority of the VA owners or VLI owners adversely affected by the conflict.

f. If a material irreconcilable conflict arises because of a participating insurance company's decision to disregard the voting instructions of VLI owners or VA owners and that decision represents a minority position or would preclude a majority vote at any Fund shareholder meeting, then, at the request of the Trust's board of trustees, the participating insurance company will redeem the shares of the Trust to which the disregarded voting instructions relate. No charge or penalty, however, will be imposed in connection with such a redemption.

g. Each participating insurance company and VLI account will continue

to rely on Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(15), as appropriate, and to comply with all of the appropriate Rule's conditions. In the event that 6e–2 and/or Rule 6e–3(T) is amended, or any successor rule is adopted, each participating insurance company and VLI account will instead comply with such amended or successor rule.

3. In addition to the foregoing conditions, Applicants consent to the following conditions and represent and agree that if the exemptions requested herein are granted, the Trust will not sell shares of any Fund to a plan if such sale would result in the plan owning 10% more of that Fund's outstanding shares unless the plan first enters into a participation agreement with the Trust containing provisions that require the following:

a. The trustees or plan committees of the plan will: (1) Monitor the plan's operations and those of the Trust for the purpose of identifying any material irreconcilable conflicts or potential material irreconcilable conflicts between or among the interests of plan investors, VA owners and VLI owners, (2) report any such conflicts or potential conflicts to the Trust's board of trustees, (3) provide the board, at least annually, with all information reasonably necessary for the board to consider any issues raised by such existing or potential conflicts and any other information and reports that the board may reasonably request, (4) inform the board whenever it (or another fiduciary) disregards the voting instructions of plan participants (of a plan that provides voting rights to its participants), and (5) ensure that the plan votes Trust shares as required by applicable law and governing plan documents. The trustees or plan committees of the plan will carry out these obligations with a view only to the interests of plan investors in its plan.

b. In the event that a conflict of interest arises between plan investors and VA owners, VLI owners or other investors in the Trust, each plan will, at its own expense, take whatever action is necessary to remedy such conflict as it adversely affects that plan or participants in that plan up to and including: (1) Establishing a new registered management investment company, and (2) withdrawing plan assets subject to the conflict from the Trust and reinvesting such assets in a different investment medium (including another Fund of the Trust) or submitting the question of whether such withdrawal should be implemented to a vote of all affected plan investors and, as appropriate, segregating the assets of any group of such participants that votes in favor of such withdrawal, or offering to such participants the option of making such a change. Each plan will carry out the responsibility to take the foregoing action with a view only to the interests of plan investor in its plan. Notwithstanding the foregoing, no plan will be obligated to establish a new funding medium for any group of participants or plan investors if an offer to do so has been declined by a vote of a majority of the plan's participants or plan investors adversely affected by the conflict.

c. If a material irreconcilable conflict arises because of a plan trustee's (or other fiduciary's) decision to disregard the voting instructions of plan participants (of a plan that provides voting rights to its participants) and that decision represents a minority position or would preclude a majority vote at any shareholder meeting, then, at the request of the Trust's board of trustees, the plan will redeem the shares of the Trust to which the disregarded voting instructions relate. No charge or penalty, however, will be imposed in connection with such a redemption.

4. Applicants also represent and agree that if the exemptions requested herein are granted, the Trust will not sell shares of any Fund to a plan until the plan executes an application containing an acknowledgement of the condition that the Trust cannot sell shares of any Fund if such sale would result in that plan owning 10% or more of the Fund's outstanding shares unless that plan first enters into a participation agreement as described above.

Conclusion

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

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98–1040 Filed 1–14–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39526; File No. 600–23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of an Application for Clearing Agency Registration

January 8, 1998.

Notice is hereby given that on October 2, 1997, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') an application, pursuant to Sections 17A and 19(a) of the Securities Exchange Act of 1934 (''Act''),[1] requesting that the Commission grant GSCC full registration as a clearing agency or in the alternative extend GSCC's temporary registration as a clearing agency until such time as the Commission is able to grant GSCC permanent registration.[2] The Commission is publishing this notice to solicit comments from interested persons.

On May 24, 1988, the Commission approved pursuant to Sections 17A and 19(a) of the Act and Rule 17Ab2–1(c) promulgated thereunder [3] the application of GSCC for registration as a clearing agency for a period of three years.[4] The Commission subsequently has extended GSCC's registration until February 28, 1998.[5]

GSCC provides clearance and settlement services for its members' transactions in government securities. GSCC offers its members services for next-day settling trades, forward settling trades, auction takedown activity, and repurchase transactions. In connection with GSCC' clearance and settlement services, GSCC provides a centralized loss allocation procedure and maintains margin to offset netting and settlement risks.

GSCC believes that it should obtain permanent registration and has implemented several changes in the past year to enhance its operations. The Commission has recently approved GSCC's proposed rule change that institutes new election procedures for

[1] 15 U.S.C. 78q–1, 78s(a).

[2] Letter from Sal Ricca, President and Chief Operating Officer, GSCC (September 25, 1997).

[3] 17 CFR 240.17Ab2–1.

[4] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[5] Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 14542; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; and 39698 (May 30, 1997), 62 FR 30911.