years thereafter, and will be subject to examination by the SEC and its staff.[3]

2. In connection with the Section 17 Transactions, the Board, through the General Partner, will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any transaction, with respect to the possible involvement in the transaction of any affiliated person, promoter of, or principal underwriter for the Partnerships, or any affiliated person of that person, promoter, or principal underwriter.

3. The General Partner will not invest the funds of any Partnership in any investment in which a ''Co-Investor'' (as defined below) has acquired, or proposes to acquire, the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless the Co-Investor, prior to disposing of all or part of its investment (i) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (ii) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to, or concurrently with, on the same terms as, and pro rata with, the Co-Investor. The term ''Co-Investor'' means any person who is (i) an ''affiliated person'' (as that term is defined in the Act) of the Partnership (other than a Third Party Fund); (ii) Chase Capital Partners or another entity within the Chase Group; (iii) an officer, director or partner of Chase Capital Partners or another entity within the Chase Group; or (iv) a company in which the General Partner of the Partnership acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by a Co-Investor (i) to its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (ii) to Qualified Family Members of the Co-Investor or a trust or other investment vehicle established for a Qualified Family Member; (iii) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (iv) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under that Act, or (v) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which the foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner or the investment manager of the Partnership will maintain and preserve, for the life of the Partnership and at least two years thereafter, those accounts, books, and other documents that constitute the record forming the basis for the audited financial statements that are to be provided to the Limited Partners, and each annual report of the Partnership required to be sent to the Limited Partners, and agree that all of those records will be subject to examination by the SEC and its staff.[4]

5. The General Partner will send to each Limited Partner who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. As of the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of that fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, as soon as practicable after the end of each fiscal year of each Partnership, the General Partner will send a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth tax information as will be necessary for the preparation by the Limited Partner of federal and state income tax returns, and a report of the investment activities of the Partnership during that year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with that Partnership by reason of a 5% or more investment in that entity by a Chase Group director, officer or employee, that individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14112 Filed 5–27–98; 8:45 am]

BILLING CODE 8010–01–M

[3] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23199; File No. 812–10978]

U.S. Global Leaders Variable Insurance Trust, et al.; Notice of Application

May 20, 1998.

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

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting exemptive relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to permit shares of any current or future series of U.S. Global Leaders Variable Insurance Trust (the ''Fund'') and shares of any other investment company that is designed to fund variable insurance products for which Yeager, Wood & Marshall, Inc. (the ''Adviser'') or any of its affiliates, may now or in the future serve as manager, investment adviser, administrator, principal underwriter or sponsor (the Fund and such other investment companies, collectively, ''Insurance Products Funds'') to be sold to and held by: (1) 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 outside of the separate account context (''Qualified Plans'' or ''Plans''); and (3) the Adviser or any of its affiliates (representing seed money investments in the Insurance Products Funds).

Applicants: U.S. Global Leaders Variable Insurance Trust and Yeager, Wood & Marshall, Inc.

Filing Date: The application was filed on January 23, 1998, and amended on March 26, 1998.

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 Commission 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 June 15, 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 may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Raymond A. O'Hara, III, Esq., Blazzard, Grodd & Hasenauer, P.C., 943 Post Road East, Westport, Connecticut 06881.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicant's Representations

1. The Fund is a Delaware business trust registered under the 1940 Act as an open-end management investment company. The Fund, which was organized in October 1997, currently consists of one series.

2. The Adviser, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as the Fund's investment adviser.

3. Applicants desire that the Insurance Products Funds have the flexibility to offer their shares to separate accounts of Participating Insurance Companies that fund variable annuity and variable life insurance contracts (including single premium, scheduled premium, modified single premium and flexible premium contracts) (collectively, ''Variable contracts''). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration.

4. The Participating Insurance Companies will establish their own separate accounts and design their own Variable Contracts. Each Participating Insurance company will have the legal obligation of satisfying all requirements under the federal securities laws. Each Participating Insurance company will enter into a fund participation agreement with the Insurance Products Fund in which the Participating Insurance company invests.

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

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b) are available only where the management investment company offers its shares exclusively to the variable life insurance separate accounts of the life insurer or any affiliated life insurance company.

2. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common management company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' ''Mixed and shared funding'' denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed and shared funding.

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Thus, Rule 6e–3(T) permits mixed funding with respect to a flexible-premium variable life insurance separate account, but precludes shared funding.

4. Applicants assert that the use of the Insurance Products Funds as common investment media for the Variable Contracts would allow Participating Insurance Companies to benefit not only from the investment and administrative expertise of the Adviser, but also from the cost efficiencies and investment flexibility afforded by a larger pool of funds. Applicants also submit that mixed and shared funding would benefit Variable Contract owners by: (a) Eliminating a significant portion of the costs of establishing and administering separate funds; (b) permitting a greater amount of assets available for investment by the Insurance Products Funds, thereby promoting economies of scale, permitting greater diversification, and making the addition of new portfolios more feasible; and (c) encouraging more insurance companies to offer Variable Contracts, resulting in increased competition with respect to both the design and pricing of Variable Contracts, which can be expected to result in greater product variation and lower charges.

5. Applicants assert that the relief granted by sub-paragraph (b)(15) of Ruled 6e–2 and 6e–3(T) will not be affected by the proposed sale of Insurance Products Fund shares to Plans. Applicants note, however, that because the relief under sub-paragraph

(b)(15) of Rules 6e–2 and 6e–3(T) is available only where shares are offered exclusively to separate accounts of life insurance companies, additional exemptive relief is necessary if shares of the Insurance Products Funds also are to be sold to Plans.

6. Applicants state that current tax law permits the Insurance Products Funds to increase their asset base through the sale of fund shares to Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held by the portfolios of the Insurance Products Funds. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. The regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5(1989). The regulations do, however, contain certain exceptions to this requirement, one of which permits shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

7. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations, and that the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

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

9. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2).

10. Rules 6e–2 and 6e–3(T) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by sub-paragraph (b)(15(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of an insurance company or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying investment company. The relief provided by sub-paragraph (b)(15)(ii) of Rules 6e–2 and 6e–3(T) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the fund.

11. Applicants state that the partial relief from Section 9(a) found in sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that Section. Applicants state that those rules recognize that it is not necessary to apply the provisions of Section 9(a) to the many individuals who may be involved in an insurance company complex, but who have no connection with the investment company funding the separate accounts. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Products Funds. Therefore, Applicants assert that applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants state that the relief requested should not be affected by the proposed sale of Insurance Products Funds to Qualified Plans, because the insulation of the Insurance Products Funds from those individuals who are disqualified under the 1940 Act remains in place. Moreover, since the Plans are not investment companies and will not be deemed affiliated solely by virtue of their shareholdings, no additional relief is necessary.

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

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

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

insurance regulatory authorities or of the Commission.

15. Applicants further state that the sales of shares of the Insurance Products Funds to Plans does not affect the relief requested in this regard. As previously noted, shares of the Insurance Products Funds will be held, where applicable, by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustees are subject to the direction of a name fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA.

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

17. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Applicants note that where different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with which the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different or greater than exists where a single insurer and its affiliates offer their insurance products in several states.

18. Applicants further submit that affiliation does not reduce the potential for differences in state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Insurance Products Funds.

19. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Variable Contract owner voting instructions. Potential disagreement is limited by the requirements that the Participating Insurance Company's decision to disregard voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Variable Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its separate account's investment in that Insurance Products Fund. No charge or penalty will be imposed upon the Variable Contract owners as a result of such a withdrawal.

20. Applicants submit that there is no reason why the investment policies of an Insurance Products Fund with mixed funding would, or should, be materially different from what those policies would, or should, be if such Insurance Products Fund or series thereof funded only variable annuity or variable life insurance contracts. Moreover, Applicants represent that the Insurance Products Funds will not be managed to favor or disfavor any particular insurer or type of insurance product.

21. As noted above, Section 817(h) of the Code 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, among other things, ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants assert that neither the Code, the Treasury regulations, nor the Revenue Rulings thereunder, present any inherent conflicts of interest if the Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

22. 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 Qualified Plan is unable to net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Insurance Products Funds at their respective net asset values. The Qualified Plan will then make distributions in accordance with the terms of the Plan. The Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract.

23. Applicants state that they do not see any greater potential for irreconcilable material conflicts arising between the interests of participants under the Plans and owners of the Variable Contracts issued by the separate accounts of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

24. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Variable Contract owners as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of participants under the Qualified Plans, or Variable Contract owners under their Variable Contracts, the Plans and the separate accounts have rights only with respect to their respective shares of the Insurance Products Funds. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

25. Applicants state that there are no conflicts between the Variable Contract owners and the Plan participants with respect to state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power to prevent, among other things, insurance companies from indiscriminately redeeming their separate accounts out of one fund and investing in another. To accomplish such redemptions and transfers,

complex and time consuming transactions must be undertaken. Conversely, trustees of Plans or the participants in participant-directed Plans can make the decision quickly and implement redemption of shares from an Insurance Products Fund and reinvest the moneys in another funding vehicle without the same regulatory impediments, or, as is the case with most Plans, even hold cash pending a suitable alternative investment. Based on the foregoing, Applicants represent that even should the interests of Variable Contract owners and the interests Plan participants conflict the conflicts can be resolved almost immediately in that trustees of the Plans can, independently, redeem shares out of the Insurance Products Funds.

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

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of each Insurance Products Fund's Board of Trustees or Directors (each, a ''Board'') shall consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Board member, then the operation of this condition shall be suspended: (a) for a period of 45 days, if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Insurance Products Fund's Board will monitor the fund for the existence of any material irreconcilable conflict between and among the interests of the Variable Contract owners of all separate accounts and of Plan participants and Qualified Plans investing in the Insurance Products Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Variable Contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

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

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

5. For purposes of Condition 4, a majority of the disinterested members of the applicable Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will an Insurance Products Fund or the Adviser (or any other investment adviser of the Insurance Products Funds) be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Variable Contract if a majority of Variable Contract owners materially affected by the material irreconcilable conflict vote to decline such offer. No qualified Plan shall be required by Condition 4 to establish a new funding medium for such Qualified 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 Plan participant vote.

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

7. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract Owners. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the Insurance Products Fund held in their separate accounts in a manner consistent with voting instructions timely received from Variable Contract owners. In addition, each Participating Insurance Company will vote shares of the Insurance Products Fund held in its separate accounts for which it has not received timely voting instructions from contract owners, as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in an Insurance Products Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Products Fund's shares and calculate voting privileges in a manner consistent with all other separate accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Plan will vote as required by applicable law and governing Plan documents.

8. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners, the Adviser (or any of its affiliates) will vote its shares of any series of any Insurance Products Fund in the same proportion as all Variable Contract owners having voting rights with respect to that series; provided, however, that the Adviser (or any of its affiliates) shall vote its shares in such other manner as may be required by the Commission or its staff.

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

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

11. Each Insurance Products Funds will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Insurance Products Funds). In particular, each such Insurance Products Fund either will provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although none of the Insurance Products Funds shall be one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

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

13. The Participants, at least annually, shall submit to each Board such reports, materials or data as each Board may reasonably request so that such Boards may fully carry out the obligations imposed upon them by the conditions stated in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data upon reasonable request of a Board shall be contractual obligation of all Participants under the agreements governing their participation in the Insurance Products Funs.

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

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40008; File No. SR–Amex–98–17]

Self-Regulatory Organizations; Notice of Filing of Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Listing and Trading of Warrants on the PaineWebber Oil & Gas Producers Index

May 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 1998, the American Stock Exchange, Incorporated (''Amex'' or Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 The Proposed Rule Change

The Amex proposes to list and trade warrants on the PaineWebber Oil & Gas Producers Index (''Index''), a narrow-based index developed by PaineWebber Incorporated currently comprised of stocks of 22 companies in the oil and gas industry. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.[3]

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and represented that no comments were received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to permit the Amex to list and trade warrants on the Index. The Amex states that warrants on the Index are designed to provide investors with an investment vehicle to participate in or hedge against volatility associated with the ownership of stocks of companies in the oil and gas industry and decrease the risk involved in selecting individual stocks in this industry. The Amex filed this proposal pursuant to Section 19(b)(3)(A) of the Act, and Section 106[4] of the Amex *Company Guide* and Amex Rule 901C, Commentary .02, which together provide for the commencement of the trading of warrants on the Index thirty days after the date of this filing. The proposal meets all the criteria set forth in Section 106 of the Amex *Company Guide,* Amex Rule 901C, Commentary .02 and the Commission's order approving Exchange Rule 910C.[5]

Criteria Under Section 106 of the Amex Company Guide. Warrant issues on the Index will conform to the listing guidelines under Section 106 of the Amex *Company Guide,* which provide, among other things, that (1) the issuer shall have tangible net worth in excess of $250,000,000 and otherwise substantially exceed size and earnings requirements in Section 101(A) of the *Company Guide* or meet the alternate guideline in paragraph (a); (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

Criteria Under Exchange Rule 901C For Index Components. Pursuant to Commentary .02 to Exchange Rule 901C, (1) each of the component securities has a minimum market capitalization of at least $75 million and has a trading volume in each of the last six months of not less than 1,000,0000 shares; (2) the lesser of the five highest weighted component securities in the Index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months; (3) at least 90% of the Index's numerical index value and at least 80% of the total number of component securities meet the current criteria for standardized option trading set forth in Exchange Rule 915 (in fact, all of the component securities in the Index currently underlie standardized options); (4) the Index contains no American Depositary Receipts (''ADRs''); (5) all component stocks are listed on the Amex, the New York Stock Exchange (''NYSE''), or traded through the facilities of the National Association of Securities Dealers Automated Quotation System and are reported National Market System securities (''Nasdaq/NMS''); and (6) no component security represents more than 25% of the weight of the Index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60% of the weight of the Index.

Index Design. The Index was designed by PaineWebber and will be maintained by the Amex. The Amex represents that the Index is a narrow-based index currently comprised of stocks of 22 companies from the oil and gas industry. The total capitalization of the component securities in the Index as of April 21, 1998 was approximately $57 billion. The average capitalization on that date was approximately $2.6 billion. The individual market capitalization of the component securities ranges from $324 million to $9.9 billion. the components in the Index had a six month average daily trading volume of 7 million shares per day and ranged from 1.6 million shares per day to 13.2 million shares per day.

Index Calculation. The Index is market capitalization-weighted such that the Index value is calculated by multiplying the primary exchange regular way last sale price of each component security by its number of shares outstanding, adding the sums

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] The text of the proposed rule change contains a list of the component securities including the individual component security weights and average daily trading value and market capitalization for each security.

[4] Section 106(j) of the Amex *Company Guide* provides that in order to list warrants on a stock index industry group pursuant to Section 19(b)(3)(A) of the Act, the Exchange may file for approval of a stock index industry group underlying a proposed warrant pursuant to the procedures and criteria set forth in Commentary .02 to Exchange Rule 901C. (See also Securities Exchange Act Release No. 34–37007 (March 21, 1996), 61 FR 14165 (March 29, 1996).

[5] See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994). Accordingly, the Exchange has represented that the proposed rule will not become operative for 30 days after the date of this filing. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change.