compliance with Rule 498. Compliance with the rule's standardized format assists investors in evaluating and comparing funds.

It is estimated that approximately 176 initial profiles and 129 updated profiles are filed with the Commission annually. The Commission estimates that each profile contains on average 1.25 portfolios, resulting in 220 portfolios filed annually on initial profiles and 161 portfolios filed annually on updated profiles. The number of burden hours for preparing and filing an initial profile per portfolio is 25. The number of burden hours for preparing and filing an updated profile per portfolio is 10. The total burden hours for preparing and filing initial and updated profiles under Rule 498 is 7,110, representing a decrease of 6,640 hours from the prior estimate of 13,750. The reduction in burden hours is attributable to the lower number of profiles actually prepared and filed as compared to the previous estimates.

Rule 30a–1 Under the Investment Company Act of 1940, Annual Reports

Rule 30a–1 (17 CFR 270.30a–1) requires that investment companies registered under the Investment Company Act file annual and periodic reports with the Commission and send to the Commission copies of their reports to shareholders. These requirements are designed to ensure that the Commission has enough information in its files to effectively monitor the operations of each company and to provide investors with the kind of current information that is necessary to detect problems in the operations of the company.[1]

There is no burden associated with complying with Rule 30a–1. The respondent's reporting burdens and cost burden under Rule 30a–1 is associated with Form N–SAR. Those burdens and costs are discussed in the submission for Form N–SAR.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

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 will have practical utility, (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, ad clarity of the information collected; 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 within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Dated: January 11, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 1284 Filed 1–19–00; 8:45 am]

BILLING CODE 8010–01–M

[1] Annual and periodic reports to the Commission become part of its public files and, therefore, are available for use by prospective investors and shareholders.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24251; File No. 812–11768]

Third Avenue Variable Series Trust and ESQF Advisers, Inc.

January 12, 2000.

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

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of any current or future series of the Third Avenue Variable Series Trust designed to fund insurance products (''Insurance Funding Series'') and shares of any other investment company or series thereof now or in the future registered under the 1940 Act that is designed to fund insurance products and for which ESQF, Advisers, Inc., or any of its affiliates (''Affiliates''), may in the future serve as investment adviser, administrator, manager, principal underwriter or sponsor (the Insurance Funding Series and each other investment company hereinafter referred to, collectively, as the ''Funds''), to be sold to and held by: (a) Variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; and (b) qualified pension and retirement plans outside of the separate account context.

APPLICANTS: Third Avenue Variable Series Trust (the ''Trust'') and ESQF Advisers, Inc. (the ''Adviser'').

FILING DATE: The application was filed on September 3, 1999, and amended and restated on November 16, 1999.

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 February 7, 2000, and 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 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 20549–0609. Applicants, Third Avenue Variable Series Trust, c/o Ian M. Kirschner, 767 Third Avenue, New York, New York 10017–2023.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Susan M. Olson, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

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

Applicants' Representations

1. The Trust is a Delaware business trust registered as an open-end diversified management investment company. The Trust currently is composed of one series, Third Avenue Value Portfolio. Additional portfolios may be added in the future.

2. The Adviser is registered under the Investment Advisers Act of 1940 and will be the investment manager for the Trust.

3. The Trust intends to offer its shares to separate accounts of both affiliated and unaffiliated insurance companies (''Participating Insurance Companies''), supporting variable annuity and variable life insurance contracts.

4. The Trust also intends to offer one or more portfolios of its shares directly to qualified pension and retirement plans (''Eligible Plans'' or ''Plans'')

outside the separate account context. The Funds' shares sold to Eligible Plans which are subject to the Employee Retirement Income Security Act of 1984 (''ERISA''), as amended, may be held by the trustee(s) of the Eligible Plans.

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

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) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by rule 6e–2(b)(15) are available, however, only where the management investment company underlying the separate account (''underlying fund'') offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis supplied). Therefore, 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 or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' In addition, the relief granted by rule 6e–2(b)(15) is not available if shares of the underlying management investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for separate accounts of unaffiliated life insurance companies is referred to herein as ''shared funding.''

2. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as 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, however, are available only where the separate account's underlying fund offers its shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled [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'' (emphasis supplied). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management investment company that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

3. Applicants state that the relief granted by Rules 6e–2(b)(15) and 6e3(T)(b)(15) is not affected by the purchase of shares of the Funds by an Eligible Plan. However, because the relief under Rules 6e–2(b)(15) and 6e3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, exemptive relief is necessary if shares of the Funds are also to be sold to Eligible Plans.

4. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying variable annuity contracts and variable life insurance contracts issued by insurance company separate accounts and held in the portfolios of management investment companies. The Code provides that such contracts will not be treated as annuity contracts or life insurance contracts for any period (or any subsequent period) for which the investments 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)(the ''Regulations'') which established specific diversification requirements for investment portfolios underlying variable annuity and variable life contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the underlying investment companies. However, the Regulations also contain an exception to this requirement that allows shares of an investment company to be held by a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also 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)).

5. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e,(T)(b)(15) preceded the issuance of the Regulations, which made is possible for shares of an investment company to be held by an Eligible Plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their Contracts. Thus, the sale of shares of the same investment company to separate accounts and eligible plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(1) and 6e–3(T)(b)(15), given the then-current tax law.

6. In general, Section 9(A) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from serving in various capacities with respect to an underlying registered management investment company. More specifically, Section 9(a)(3) provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) of (2) of the 1940 Act. Rules 6e2(b)(15)(i) and (ii) and 6e3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations of mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying fund.

7. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of

Section 9 of the 1940 Act limits, in effect, the mount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those Rules recognize that it is unnecessary to apply Section 9(a) to the thousands of individuals who may be involved in a large insurance company but would have no connection with the investment company funding the separate accounts. Those individuals who participate in the management or administration of the funds will remain the same regardless of which separate accounts or insurance companies use the Funds. Applicants maintain that applying the requirements of Section 9(a) because of investment by other insurers' separate accounts would not serve any regulatory purpose. Therefore, Applicants submit that it is unnecessary to apply Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies or Participating Insurance Companies) that may utilize a Fund as a funding medium for variable contracts. Additionally, Applicants state that for the same reasons as set forth above with respect to investments by separate accounts, there is no regulatory purpose to be served in extending the monitoring requirements because of investment in the Funds by Plans.

8. Applicants state the Rules 6e2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. More specifically, Rules 6e–2(b)2(b)(15)(iii)(A) and 6e3(T)(b)(15)(iii)A provide that the insurance company may disregard the footing instructions of its contract owners with respect to the investment of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority and subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard voting instruction of contract owners in favor of any change in such company's investment policies, principal underwriter or any investment adviser (subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

9. With respect to Eligible Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Applicants state that shares of the Funds sold to Eligible Plans will be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control Eligible Plans with two exceptions: (a) When the Eligible Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Eligible Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Eligible Plan is delegated to one or more investment managers pursuant to Section 403(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

10. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Eligible Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Eligible Plans in their discretion. Some of the Eligible Plans, 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 Plan participants.

11. Where an Eligible Plan does not provide participants with the right to give voting instructions, Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among Contract holders and Plan participants with respect to voting of the respective Fund's shares. Accordingly, Applicants note that unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Eligible Plans since the Eligible Plans are not entitled to pass-through voting privileges.

12. Even if an Eligible Plan were to hold a controlling interest in a Fund, Applicants argue that such control would not disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in the Fund by a Plan will not create any of the voting complications occasioned by mixed funding or shared funding, Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

13. Where an Eligible Plan provides Plan participants with the right to give voting instructions, Applicants see no reason to believe the participants in Eligible Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Eligible Plans, would vote in a manner that would disadvantage Contract holders. The purchase of shares of the Funds by Eligible Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

14. Applicants assert that no increased conflicts of interest would be presented by the granting of the requested relief. 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. When different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators of other states in which other Participating Insurance Companies are domiciled. Applicants submit that the possibility also exists when a single insurer and its affiliates offer their insurance products in several states, as in currently permitted.

15. Applicants state that affiliations do not reduce the potential for differences in state regulatory requirements. In any event, Applicants submit that the conditions set forth in the application and included in this notice are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Funds.

16. Applicants further assert that affiliation does not eliminate the potential for divergent judgments as to when a Participating Insurance Company could disregard Contract holder voting instructions. The potential

for disagreement is limited by the requirements in Rules 6e–2 and 6–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, if the Participating Insurance Company's decision to disregard Contract holder 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 Fund, to withdraw its separate account's investment in that Fund, and no charge or penalty would be imposed upon Contract holders as a result of such withdrawal.

17. Applicants submit that no reason exists why investment policies of the Fund with mixed funding would or should be materially different from what they would or should be if the Funds or series thereof funded only variable annuity contracts or only variable life insurance contracts, rather than Contracts and Eligible Plans. Applicants represent that the Funds will not be managed to favor or disfavor any particular insurer or type of Contract.

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

19. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Eligible Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Eligible Plan or variable annuity or variable life insurance separate accounts cannot net purchase payments to make the distributions, the separate account or Eligible Plan will redeem shares of the Funds at their net asset value. The Eligible Plan will make distributions in accordance with the terms of the Plan. The life insurance company will make distributions in accordance with the terms of the variable contract.

20. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving voting rights to Contract holders and to Eligible Plans. Applicants represent that the Fund will inform each shareholder, including each separate account and Eligible Plan, of information necessary for the shareholder meeting, including their respective share of ownership in the Fund. A Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirements of Rules 6e–2 and 6e–3(T).

21. Applicants submit that there are no conflicts between the Contract holders of the separate accounts and the participants under Eligible Plans with respect to state insurance commissioners' veto powers over investment objectives. State insurance commissioners have been given the veto power to prevent, among other things, insurance companies indiscriminately redeeming their separate accounts out of one fund and investing in another. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the Eligible Plans can quickly redeem shares from a Fund and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Therefore, Applicants conclude that even if there should arise issues where the interests of Contract holders and the interests of Eligible Plans and Plan Participants conflict, the issues can be almost immediately resolved because Eligible Plans can, on their own, redeem the shares out of the Funds.

22. Applicants assert that many insurance companies have been hindered in entering the market for offering variable annuity and variable life insurance contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Contract business on their own. Applicants submit that the use of the Funds as common investment media for Contracts would lower these barriers.

23. Applicants assert that Participating Insurance Companies would benefit not only from the investment and administrative expertise of the Adviser and its Affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Funds available for mixed and shared funding will encourage more insurance companies to offer Contracts, and accordingly should result in increased competition with respect to both Contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants state that Contract holders would benefit because mixed and shared funding eliminates a significant portion of the costs of establishing and administering separate funds. Applicants also assert that the sale of shares of the Funds to Eligible Plans should result in an increased amount of assets available for investment by such Funds. This may benefit Contract holders by promoting economies of scale, by permitting greater safety of investments through greater diversification, and by making the addition of new portfolios to the Funds more feasible.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Trustees or Board of Directors (each, a ''Board'') of the Trust and each Fund will 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 trustee or director, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Boards will monitor their respective Funds for the existence of any material irreconcilable conflict between and among the interests of the Contract holders of all separate accounts and of Plan participants and Eligible Plans investing in the Funds and determine what action, if any, should be taken in response to any such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) any 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 and variable life insurance contract holders and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Plan participants.

3. The Adviser (or any investment adviser of a Fund), any Participating Insurance Company, and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the issued and outstanding shares of a Fund (such Plans referred to hereafter as ''Participating Plans'') will be required to report any potential or existing conflicts to the Board of the relevant Fund. The Adviser (or any other investment adviser of a Fund), Participating Insurance Companies and Participating Plans will be responsible for assisting 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 includes, but is not limited to, an obligation by a Participating Insurance Company to inform the Board whenever it has determined to disregard Contract holder voting instructions, and, if pass-through voting is applicable an obligation by a Participating Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such conflicts and information, and to assist the Boards will be contractual obligations of all Participating Insurance Companies and Participating Plans investing in the Funds under their agreements governing participation in the Funds, and such agreements, shall provide that these responsibilities will be carried out with a view only to the interests of the Contract holders, and if applicable, Plan participants.

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

For purposes of this Condition 4, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will a Fund, or the Adviser (or any other investment adviser of the Funds) be required to establish a new funding medium for any Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any Contract if a majority of Contract holders materially and adversely affected by the irreconcilable material conflict vote to decline this offer. No Participating Plan shall be required by this Condition 4 to establish a new funding medium for such Plan if: (a) A majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing plan documents and applicable law, the Participating Plan makes such decision with a Plan participant plan.

5. The Adviser, all Participating Insurance Companies with respect to a Fund and Participating Plans with respect to a Fund will be promptly informed in writing of any determination by the Board of such Fund that a material irreconcilable conflict exists and its implications.

6. Participating Insurance Companies will be required to provide pass-through voting privileges to all Contract holders so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract holders. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions timely received from Contract holders. Participating Insurance Companies shall be responsible for assuring that each of their separate accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. Each Participating Insurance Company will be required to vote shares for which it has not received voting instructions as well as shares attributable to it, in the same proportions as it votes shares for which it has received instructions. Each Participating Plan will vote as required by applicable law governing plan documents.

7. All reports of potential or existing conflicts received by a Board and all Board action with regard to determining the existence of a conflict, notifying the Adviser, Participating Insurance Companies and Participating Plans of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

8. Each Fund will notify all Participating Insurance Companies and Participating Plans that disclosure in separate account prospectuses or plan prospectuses or other plan disclosure documents regarding potential risks of

mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) shares of the Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to Plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract holders participating in the Fund and the interests of Plans investing in the Fund may conflict; and (c) the Board will monitor such Fund for any material conflicts of interest and determine what action, if any, should be taken.

9. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the respective Fund), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings), or comply with Section 16(c) of the 1940 Act (although the Funds are not within the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent Rules 6e–2 and 6e–3(T) are 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 by Applicants, then the Funds shall and the Participating Insurance Companies, as appropriate, shall be required to take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent applicable.

11. No less than annually, the Adviser (or any other investment adviser of a Fund) the Participating Insurance Companies and Participating Plans shall submit to the Boards such reports, materials or data as such Boards may reasonably request so that the Boards may fully carry out obligations imposed upon them by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Adviser, Participating Insurance Companies and Participating Plans to provide these reports, materials and data to the Boards, shall be a contractual obligation of the Adviser, all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Funds.

12. If a Plan or Plan participating shareholder should become an owner of 10% or more of the issued and outstanding shares of a Fund, such Plan will execute a participation agreement with such Fund, including the conditions set forth herein to the extent applicable. A Plan or Plan participant shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Fund.

Conclusion

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

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1285 Filed 1–19–00; 8:45 am]

BILLING CODE 8010–01–M

STATE DEPARTMENT

[Public Notice #3188]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 15, 16, and 17, at the Westin Hotel, Fort Lauderdale, Florida. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and (4), it as been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda will include updated committee reports, a world threat overview and a round table discussion that calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, D.C. 20522–1003, phone: 202–663–0533.

Dated: January 7, 2000.

Peter E. Bergin,

Director of the Diplomatic Security Service.

[FR Doc. 00–1366 Filed 1–20–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (00–02–C–00–SWF) To Impose and Use a Passenger Facility Charge (PFC) at Stewart International Airport, Newburgh, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: This correction revises information from the previously published notice.

In notice document 99–29903 beginning on page 62243 in the issue of Tuesday, November 16, 1999, under the header section, first paragraph, the notice of intent to rule on application number should be, ''(00–02–C–00–SWF)''. Also under Supplementary Information section, third paragraph, application number should be, ''00–02–C–00–SWF''.

DATES: Comments must be received on or before February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, Project Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, N.Y. 11530.

Issued in Garden City, New York on November 24, 1999.

Thomas Felix,

Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 00–868 Filed 1–19–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–6790]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.