SECURITIES AND EXCHANGE COMMISSION

[Docket No. Rel. No. IC–24442; File No. 812–11826]

Warburg, Pincus Trust, et al.

May 5, 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 Warburg, Pincus Trust I (''Trust I'') and Warburg, Pincus Trust II (''Trust II'') (each, a ''Trust'' and together with Trust I, the ''Trusts'') and shares of any other investment company or series thereof that is designed to fund insurance products and for which Credit Suisse Asset Management, LLC (''CSAM'') or any of its affiliates may serve, immediately upon commencement of operation as a registered investment company or in the future, as investment adviser, administrator, manager, principal underwrite or sponsor (the Trusts, their respective existing and future investment portfolios and such other investment companies or investment portfolios thereof hereinafter referred to, individually, as a ''Fund'' and collectively as ''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 (''Qualified Plans''). The order would supersede an existing order (the ''Existing Order'') previously granted by the Commission to Trust I on December 19, 1995.

Applicants: Warburg, Pincus Trust, Warburg, Pincus Trust II and Credit Suisse Asset Management, LLC.

Filing Date: The application was filed on October 28, 1999, and amended and restated on May 3, 2000.

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 May 26, 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, N.W., Washington, D.C. 20549–0609. Applicants, 153 East 53rd Street, New York, New York 10022.

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, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Existing Order [1] was granted to certain Funds, including Trust I, and Warburg Pincus Asset Management, Inc. (''Warburg'') to permit those Funds to offer their respective shares to (a) variable annuity and variable life insurance separate accounts of both affiliate and unaffiliated life companies and (b) qualified pension and retirement plans outside of the separate account context. On February 15, 199, the parent companies of Warburg entered into an agreement with Credit Sussie Group (''Credit Sussie''), a global financial service company based in Switzerland, under which Credit Suisse would acquire Warbug (the ''Acquisition''). In conjunction with the Acquisition, Credit Suisse merged Warburg into its existing U.S. asset management business, which was converted from Credit Suisse Asset Management, a New York general partnership, into CSAM, prior to the consummation of the merger. The Acquisition and merger of CSAM and Warburg occurred simultaneously on July 6, 1999.

2. Each Trust is a Massachusetts business trust registered under the 1940 Act as an open-end management investment company. Trust I is currently comprised of six portfolios: the Emerging Growth Portfolio, the Emerging Markets Portfolio, the Growth & Income Portfolio, the International Equity Portfolio, the Post-Venture Capital Portfolio and the Small Company Growth Portfolio. Thrust II is comprised of two portfolios: the Fixed Income Portfolio and the Global Fixed Income Portfolio. Each Trust may offer additional portfolios in the future.

3. CSAM, a Delaware limited liability company, is registered with the Commission under the Investment Advisers Act of 1940 and serves as the investment adviser for each of the Funds.

4. Each Trust offers its shares to and its shares are held by separate accounts, which are registered with the Commission under the 1940 Act as unit investment trusts (''Separate Accounts''), of various life insurance companies to serve as an investment vehicle for life and variable annuity contracts issued by such insurance companies. Insurance companies whose separate account or accounts own shares of the Funds are referred to herein as ''Participating Insurance Companies.'' Shares of the Trust may also be held by separate accounts that are not registered as investment companies under the 1940 Act pursuant to an exemption therefrom.

5. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under both state and federal law. Each Participating Insurance Company will enter into a fund participating agreement with the applicable Trust on behalf of the Fund in which the Participating Insurance Company invests. The role of the Funds under this agreement, insofar as the federal securities laws are applicable, will consists of offering their shares to the Separate Accounts and fulfilling any conditions that the Commission may impose upon granting the order requested in the application.

6. Applicants propose that each Trust continue to have the ability to offer and sell shares directly to Qualified Plans. The Funds propose to offer shares to any Qualified Plans that can, consistent with applicable law, invest in the Funds consistent with the Funds serving as investment vehicles for Separate Accounts.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a Separate Account, 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

[1] *Warburg, Pincus Trust, et al.,* Investment Company Act Release No. IC–21607 (Dec. 19, 1995) (order), Investment Company Act Release No. IC–21522 (Nov. 20, 1995) (notice). Trust II was not a named party to the prior exemptive application because it had not yet been organized. Trust II has relied on the Existing Order because the prior application requested relief for shares of any other investment company or series thereof designed of fund insurance products and for which Warburg Pincus Asset Management, Inc. or its affiliates serves as investment adviser.

exemptions granted under Rule 6e–(b)(15) are available, however, only when 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 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 investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated 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 life 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 life insurance separate accounts of unaffiliated life insurance companies.

The use of a common management investment company as the underlying investment medium for variable life separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding''.

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

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. However, these exemptions are available only where all of the assets of the separate account consist of shares of one or more registered management investment companies which offers their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible 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 separate account subject to certain conditions. 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 an investment company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

4. In addition, Applicants state that because the relief granted under Rule 6e–3(T)(b)(15) is available only when 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 Qualified Plans.

5. Applicants state that changes in the tax law subsequent to the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) afford the Trusts the opportunity to increase their respective asset bases by selling shares of the Funds to Qualified Plans. 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 such as those held in the Funds. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance contract for any period (or any subsequent period) for which the investments of the underlying assets are not, in accordance with regulations issued by the Treasury Department (the ''Regulations''), adequately diversified. On March 2, 1989, the Treasury Department issued Regulations (Treas. Reg. 1.817–5) which established diversification requirements for investment companies' portfolios underlying variable contracts. The Regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset account of one or more life insurance companies. However, the Regulations also contain certain exceptions to this requirement, one of which allows shares of an investment company to be held by the trustee of a qualified pension or retirement plan, without adversely affecting the status of the investment company as an adequately diversified underlying investment for variable life contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii).

6. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations, which made it possible for shares of an investment company to be held by the trustee of a Qualified 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 contracts.

7. 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 the company is subject to a disqualification enumerated in Sections 9(a)(1) or (2) of the 1940 Act. However, Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

8. Applicants state that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals involved in a large insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the Separate Accounts. The Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert that applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants further assert that such restrictions could reduce the net rates of return realized by contractowners due to increased monitoring costs.

9. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through''

voting with respect to management investment company shares held by a Separate Account to permit the Participating Insurance Company to disregard the voting instructions of its contractowner in certain limited circumstances. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the Participating Insurance Company may disregard the voting instructions of its contractowner in connection with the voting shares of an underlying fund if such instructions would require such shares to be voted to cause such companies to make (or refrain from making) certain investments which would result in changes in the subclassification or investment objectives of such companies or to approve or disapprove any contract between a 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 additions, Rules 6e–(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard voting instructions of contractowners if the contractowners initiate any change in the investment company's investment policies, principal underwriter or any investment adviser (subject to paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

10. Applicants further represent that the Funds' sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. Applicants state that shares of the Funds sold to Qualified Plans would be held by the trustees of such Qualified 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 the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which the trustee are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of asserts of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

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

12. When a Qualified 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 variable contract holders and Qualified 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 Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

13. Where a Qualified Plans provides participants with the right to give voting instructions, Applicants submit there is no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage contract holders. The purchase of shares of the Funds by Qualified 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. Where insurers are domiciled in different states, it is possible that the particular state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirement of insurance regulators of other states in which other insurance companies are domiciled. Applicants state that the fact that a single insurer and its affiliates offer their insurance products in different states doe not create a significantly different or enlarged problem.

15. Applicants submit that shared funding is not different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Applicants state that affiliation does not reduce the potential, if any exists, 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 and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflict 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, of any exist, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contractowners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, if the insurance company's decision to disregard contractowners' voting instructions represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant Fund, to withdraw its Separate Account's investment in such Funds, and no charge or penalty would be imposed upon contractowners as a result of such withdrawal.

17. Applicants submit that no reason exists why the investment policies of the Funds with mixed funding would or should be materially different from what they would or should be if the Funds funded only variable annuity or only variable life insurance policies. Applicants represent that the Funds will be managed to attempt to achieve their investment objectives, and will not be managed to favor or disfavor any particular insurer or type of insurance product.

18. Applicants do not believe that the sale of shares of the Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contractowners.

19. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants state that neither the Code, nor the Treasury Regulations, nor the Revenue Rulings thereunder present any inherent conflicts of interest between or among Qualified Plan participants and variable contractowners if Qualified Plans and variable annuity and variable life separate accounts all invest in the same management investment company.

20. Applicants note that while there are differences in the manner in which distributions from variable contracts and Qualified Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and the Qualified Plan will redeem shares of the Funds at their net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company will make distributions in accordance with the terms of the variable contract.

21. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving voting rights to Separate Account contractowners and to Qualified Plans. Applicants represent that the Funds will inform each Separate Account and Qualified Plan of their respective share of ownership in the respective Fund. A Participating Insurance Company will then solicit voting instructions consistent with the ''pass through'' voting requirement. Qualified Plans and Separate Accounts will each have the opportunity to exercise voting rights with respect to their shares in the Funds, although only the Separate Accounts are required to pass through their vote to contractowners. The voting rights provided to Qualified Plans with respect to shares of Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds offered to the general public.

22. Applicants submit that the ability of the 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 annuity or variable life insurance contractowner as opposed to a Qualified Plan participant. As noted above, regardless of the rights and benefits of Qualified Plan participants, or contractowners under variable contracts, the Qualified Plan and the Separate Accounts have rights only with respect to their respective shares of the Funds. They can only redeem such shares at their net asset value. No shareholder of any Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

23. Applicants submit that there are no conflicts between the contractowners of the Separate Accounts and the Qualified Plan participants with respect to state insurance commissioners' veto powers over investment objectives. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their shares from the Funds and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Therefore, Applicants conclude that even if there should arise issues where the interests of contractowners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved because the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Funds.

24. Applicants also assert that there is no greater potential for material irreconcilable conflicts arising between the interests of Qualified Plan participants and contractowners of Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contractowners and variable life insurance contractowners.

25. Applicants state that various factors have limited the number of insurance companies that offer variable annuities 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 variable contract business on their own. Applicants submit that use of the Funds as common investment vehicles for variable contracts helps alleviate these concerns because Participating Insurance Companies benefit not only from the investment advisory and administrative expertise of the Funds' investment adviser, 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 may encourage more insurance companies to offer variable contracts, and accordingly could result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants assert that mixed and shared funding also would benefit contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, Applicants assert that the sale of shares of the Funds to Qualified Plans in addition to Separate Accounts of Participating Insurance Companies will result in an increased amount of assets available for investment by the Funds. This may benefit contractowners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new portfolios more feasible.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Trustees (each, a ''Board'') of each fund 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 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 appropriate 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 Board will monitor its respective Funds for the existence of any material irreconcilable conflict among the interests of the contract holders of all Separate Accounts and of participants of Qualified Plans investing in the respective 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) 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 managed; (e) a difference in voting instructions given by owners of variable annuity contracts, owners of variable life insurance contracts and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract holders; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

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

4. If it is determined by a majority of the Board of a Trust, or a majority of its disinterested members, that a material irreconcilable conflict exists, the relevant Participant shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested members of such Board), take whatever steps are necessary to eliminate the material irreconcilable conflict, up to and including: (a) withdrawing the assets allocable to some or all of the Separate Accounts from the Funds and reinvesting such assets in a different investment medium, which may include another portfolio of the relevant Fund, if any, or, in the case of insurance company Participants, submitting the question 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.,* annuity contract holders, life insurance contract holders or variable contract holders of one of more Participant) that votes in favor of such segregation, or offering to the affected contract holders the option of making such a change; (b) in the case of participating Qualified Plans, withdrawing the assets allocable to some or all of the Qualified Plans from the relevant Fund and reinvesting those assets in a different investment medium; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurance company Participant's decision to disregard contract holders' voting instructions and that decision represents a minority position or would preclude a majority vote, such Participant may be required, at the relevant Fund's election, to withdraw its separate account's investment in the 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 Qualified 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 relevant Fund, to withdraw its investment in such Fund, and no charge or penalty imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a determination by a Board of a material irreconcilable conflict, and to bear the cost of such remedial action, will be a contractual obligation of all Participants under their agreements governing participation in the Funds, and this responsibility will be carried out with a view only to the interests of contract holders and participants in Qualified Plans, as applicable. For purposes of this Condition 4, a majority of the disinterested members of a Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund or CSAM (or any other investment adviser of the Funds) be required to establish a new funding medium for any variable contract. No insurance company Participant will be required to establish a new funding medium for any variable contracts if an offer to do so has been declined by the vote of a majority of contract holders materially affected by the irreconcilable material conflict. Further, no Qualified Plan shall be required by this Condition 4 to establish a new funding medium for the Qualified Plan if: (a) a majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

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

6. Insurance company Participants will provide pass-through voting privileges to all contract holders to the extent that the Commission continues to interpret the 1940 Act to require pass-through voting for contract holders. Accordingly, such Participants, where applicable, will vote shares of a Fund held in its Separate Accounts in a manner consistent with voting instructions timely received from contract holders. Insurance company Participants shall be responsible for assuring that each Separate Account investing in a Fund calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in the Application shall be a contractual obligation of all insurance company Participants under the agreement governing participation in a Fund. Each insurance company Participant will vote shares for which it has not received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received instructions. Each Qualified

Plan shall vote as required by applicable law and its governing Qualified Plan documents.

7. 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 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 one of 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.

8. Each Fund will notify all Participants that disclosure in Separate Account or Qualified Plan prospectuses, or other disclosure documents, regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall 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, an Qualified Plans; (b) due to differences of tax treatment and other considerations, the interests of various contract holders participating in the Funds and the interests of Qualified Plans investing in the Funds may at some time be in conflict; and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

9. The Participants shall at least annualy submit to each Board such reports, materials or data as such Boards may reasonably request so that such 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 Boards. The obligations of the Participants to provide these reports, materials and data to the appropriate Board when it so reasonably requests, shall be a contractual obligation of all Participants under the agreement governing their participation in the Funds.

10. All reports received by a board with respect to potential or existing conflicts and all board action with regard to (a) determination of the existence of a conflict, (b) notification of Participants of the existence of a conflict and (c) determination of 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, and such minutes or other records will be made available to the Commission upon request.

11. If and to the extent Rule 6–92 or 6–93(T) is amended, or proposed Rule 6–93 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6–92 or 6–93(T), as amended, or Rule 6–93, as adopted, to the extent such rules are applicable.

12. None of the Funds will accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10% or more of the assets of a Fund unless such Qualified Plan executes a fund participation agreement with such Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of a Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with 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– 42750; File No. SR–CBOE–99–60]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Maintenance Standards for the Dow Jones High Yield Select Ten Index

May 2, 2000.

I. Introduction

On November 9, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, a proposed rule change. In its proposal, the CBOE seeks to clarify certain procedures regarding the maintenance of the Dow Jones High Yield Select 10 Index (''Index''). The proposed rule change was published for comment in the **Federal Register** on February 28, 2000.[3] The Commission received no comments on the proposed rule change and this order approves the proposal.

II. Description of the Proposal

The CBOE currently lists and trades European-style, cash-settled options on the Dow Jones High Yield Select 10 Index, an equal weighted index composed of the ten highest yielding stocks from the 30 stocks in the Dow Jones Industrial Average (''DJIA''). The Index was designed to replicate a popular contrarian strategy that assumes that the ten highest yielding stocks in the DJIA are oversold and therefore, undervalued relative to the other stocks in the average. The index is reconstituted annually and the stocks comprising the index are retained for a full year.

Normally, the Index represents a subset of the DJIA. However, Dow Jones can change the components of the DJIA at any time, and in some cases remove stocks that also happen to be components of the Index. The strategy upon which the Index is based, and the convention followed by investors and money managers, calls for the portfolio to be held for a full year even if certain components are no longer part of the DJIA.

The maintenance procedures set forth in SR–CBOE–97–63 state that if it

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42439 (Feburary 18, 2000), 65 FR 10573.