SECURITIES AND EXCHANGE COMMISSION

[Docket No. IC–24997; File No. 812–12326]

Met Investors Series Trust, *et al.*

June 5, 2001.

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

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

Summary of Application: Applicants seek an order to permit shares of any current or future series of Met Investors Series Trust (the ''Trust'') and shares of any other investment company that is designed to fund insurance products and for which Met Investors Advisory Corp. (''Met Advisory'' or the ''Manager'') or any of its affiliates may in the future serve as investment adviser, administrator, manager, principal underwriter or sponsor (the Trust and such other investment companies collectively, the ''Funds'') to be sold to and held by: (a) variable annuity and variable life insurance separate accounts (''Participating Separate Accounts'') of both affiliated qualified pension and retirement plans outside the separate account context (''Plans''); and (c) the investment adviser of any Fund or any of the investment adviser's affiliates.

Applicants: The Trust and Met Advisory.

Filing Date: The Application was filed on November 21, 2000, and amended on March 5, 2001 and June 4, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 2, 2001, and should 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 writer'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 20549–0609. Applicants, c/o Elizabeth M. Forget, President, Met Investors Series Trust, 610 Newport Center Drive, Suite 1400, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Keith E. Carpenter, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 [tel. (202) 942–8090).

Applicants' Representations

1. The Trust was organized on July 27, 2000 as a Delaware business trust and is registered with the SEC as an open-end investment company. The Trust consists of multiple separately managed investment portfolios (''Portfolios'') and may in the future issue shares of additional Portfolios.

2. Met Advisory serves as Manager of the Trust. Met Advisory is a subsidiary of Met Life Investors Group, Inc. (formerly known as Security First Group, Inc.) which in turn is an indirect wholly-owned subsidiary of Metropolitan Life Insurance Company. The Manager is responsible for providing investment management and certain administrative services to the Trust and in the exercise of such responsibility selects other affiliated and unaffiliated registered investment advisers (''Advisers'') for each of the Portfolios and monitors the Advisers' investment programs and results, reviews brokerage matters, oversees compliance matters and supervises the provision of services by third parties as the Trust's custodian and administrator. The Manager will enter into investment advisory agreements with the Advisers that will be primarily responsible for the day-to-day investment programs of each Portfolio. Met Advisory is registered under the Investment Advisers Act of 1940.

3. The Funds (including the Trust) propose to offer shares of one or more of their series to insurance company separate accounts that fund variable annuity and variable life insurance to insurance company separate accounts that fund variable annuity and variable life insurance contracts (the ''Contracts'') established by Participating Insurance Companies including Security First Life Insurance Company (which is in the process of changing its name to MetLife Investors USA Insurance Company) and certain of its affiliates. These separate accounts may be registered as investment companies under the Act or exempt from registration under the Act. Each Participating Insurance Company will enter into a fund participation agreement with the Funds in which the Participating Separate Account invests.

4. The Funds also will offer shares of each series directly to Plans outside of the separate account context. The Plans may choose from one of several series of any of the 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 Funds, depending on the Plans. 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 the holders of annuity contracts described in Section 403(b) of the Code, including Section 403(b)(7); holders of individual retirement accounts described in Section 408(b) of the Code; and holders of any other trust, account, contract or annuity that is determined to be within the scope of Treasury Regulation § 1.817–5(f)(3)(iii).

5. In addition, shares of a Fund may be offered to the Manager, an Adviser, or any of their affiliates for purposes of providing necessary capital required by Section 14(a) of the 1940 Act or for other investment purposes in compliance with Treasury Regulation 1.817–5(f)(3)(ii). The return on shares of a Fund purchased by the Manager, an Advisor, or their affiliates will be computed in the same manner as for shares held by a separate account. Any shares of a Fund purchased by such persons will be automatically redeemed if and when their investment advisory agreement with a Fund terminates, to the extent required to comply with applicable Treasury Regulations.

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 (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act. The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the UIT offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, 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 a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common management investment company as the underlying investment medium for variable annuity and 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 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 funding as well as shared funding.

2. Applicants state that because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds also are to be sold to Plans, the Manager, an Adviser or any of their affiliates.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) 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 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.'' Thus, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicants state that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional relief is necessary if shares of the Funds also are to be sold to Plans, the Manager, an Adviser or any of their affiliates. Applicants assert that the relief granted by paragraph (b)(15) of Rules 6e–2 and 6e–3(T) should not be affected by the proposed sale of Fund shares to Plans, the Manager, an Adviser or any of their affiliates. Applicants therefore request relief in order to have the Participating Insurance Companies enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Applicants assert that if the Funds were to sell shares only to Plans, the Manager, an Adviser or their affiliates and/or separate accounts funding variable annuity contracts, no exemptive relief would be necessary. None of the relief provided for in Rule 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Plans, the Manager, an Adviser or their affiliates, or to a registered investment company's ability to sell its shares to such purchasers. It is only because some of the separate accounts that may invest in the Funds may themselves be investment companies that rely upon Rules 6e–2 and 6e–3(T) and that desire to have the relief continue in place, that the Applicants are applying for the requested relief. If and when an irreconcilable material conflict between the separate accounts arises in this context, the Participating Insurance Companies must take whatever steps necessary to remedy or eliminate the conflict, including eliminating the Funds as an eligible investment. Applicants have concluded that the inclusion of Plans as eligible shareholders should not increase the risk of irreconcilable material conflicts among shareholders. However, Applicants further assert that even if an irreconcilable material conflict involving Plans arose, the Plans, unlike the separate accounts, can redeem their shares and make alternative investments. Because shares of the Funds will be sold without either a front-end or a contingent deferred sales load, such redemption is at the net asset value of these shares. Further, the Manager, an Adviser or their affiliates that purchases Fund shares will agree to vote its shares of the Fund in the same proportion as all Contract owners having voting rights with respect to that Fund or in such other manner as may be required by the SEC or its staff. Applicants thus argue that allowing investment by Plans, the Manager, an Adviser and their affiliates in the Funds should not increase the opportunity for conflicts of interest.

5. Applicants state that current tax law permits the Funds to sell their shares to Plans, the Manager, an Adviser or any of their affiliates. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification requirements on the underlying assets of the Contracts held in the Funds. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations that established diversification requirements for the investment portfolios underlying variable contracts [Treas. Reg. § 1.817–5 (1989)]. The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in 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 contracts [Treas. Reg. § 1.817–5(f)(3)(iii)].

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

7. Applicants therefore request relief from Sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed and shared funding, and to be sold directly to Plans, the Manager, an Adviser or any of their affiliates. Relief is requested for a class or classes of persons and transactions consisting of Participating Insurance Companies and their scheduled premium variable life insurance separate accounts and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such separate accounts) investing in any of the Funds.

8. 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) and (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) 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.

9. Applicants state that the partial relief from Section 9(a) found in Rules 6e2–(b)(15) and 6e–3(T)(b)(15), 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 for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of Section 9(a) to the many individuals employed by the Participating Insurance Companies, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, applicants assert, 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 shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, subject to Section 9(a). Nor is there a regulatory purpose in extending the Section 9(a) monitoring requirements because the Funds may also sell their shares to the Manager, an Adviser, or their affiliates. Rules 6e–2 and 6e–3(T) provides relief from the eligibility restrictions of Section 9(a) only for officers, directors or employees of Participating insurance Companies or their affiliates. The eligibility restrictions of Section 9(a) will still apply to any officers, directors or employees of the Manager, an Adviser or an affiliate who participate directly in the management or administration of a Fund. Furthermore, there is no reason why the monitoring requirements should extend to all officers, directors and employees of the Participating Insurance Companies and their affiliates simply because the Funds sell certain shares to the Manager, an Adviser or their affiliates. This monitoring would not benefit Contract owners and Plan participants and would only increase costs, thus reducing net rates of return.

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants represent that the Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the SEC interprets the Act to require such privileges.

11. Rules 6e–2(b)(15)(iii) and 6e–3(b)(15)(iii) under the Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the Act and the rules thereunder. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its Contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its Contract owners if the Contract owners initiate any change in the investment company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii)(B) and (C) of each Rule.

12. Applicants state that the Funds' sale of shares to Plans, the Manager, an Adviser and their affiliates will not have any impact on the relief requested in this regard. Shares of the Funds sold to 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 trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the 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 Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) or ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of irreconcilable material conflicts with respect to voting is not present with Plans because the Plans are not entitled to pass-through voting privileges. Applicants further assert that investments in the Funds by Plans will not create any of the voting complications occasioned by mixed and shared funding because Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

13. Applicants state that some Plans may provide participants with the right to give voting instructions. Applicants submit that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Accordingly, Applicants assert that the purchase of Fund shares by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding. Similarly, the exercise of voting rights by the Manager, an Adviser and their affiliates does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts.

14. Applicants state that no increased conflicts of interest would be present 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 the requirements of 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

15. 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 Funds.

16. Applicants argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. Potential disagreement is limited by the requirements that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner 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. No charge or penalty will be imposed as a result of such a withdrawal.

17. Investments by the Manager, an Adviser or an affiliate will similarly present no conflict. The Manager, Adviser or affiliate, as applicable, will agree to vote its shares of the Fund in the same proportion as all Contract owners having voting rights with respect to that Fund or in such other manner as may be required by the SEC or its staff. This ''echo'' voting requirement is similar to the requirements imposed by the SEC on the voting of shares of an underlying fund held directly by a Participating Insurance Company through a registered separate account. Should the SEC no longer interpret the Act as requiring pass-through voting privileges for Contract owners, the Manager, Adviser or affiliate will no longer be required to vote their shares in this manner. Because the Manager, Adviser or affiliate will ''echo'' the vote of Contract owners, there will be no conflict among them.

18. Applicants submit that there is no reason why the investment policies of a Fund with mixed funding would, or should, be materially different from what those policies would, or should, be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the funds will not be managed to favor or disfavor any particular insurer or type of Contract.

19. Section 817(h) of the Code imposes certain diversification requirements 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 ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, the Treasury regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity and variable life insurance separate accounts all invest in the same management investment company.

20. Applicants submit 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 a Participating Separate Account or a Plan is unable to net purchase payments to make the distributions, the Participating Separate Account or the Plan will redeem shares of the Funds at their respective net asset values. The Plan will then 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.

21. 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 Contracts issued by the Participating 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.

22. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to Plans. Applicants represent that a Fund will inform each shareholder, including each separate account and Plan, of information necessary for the shareholder meeting, including their respective share 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).

23. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans, the Manager, an Adviser and their affiliates does not create a ''senior security,'' as such term is defined under Section 18(g) of the Act, with respect to any Contract owner as opposed to a participant under a Plan or the Manager, an Adviser or their affiliates. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans, the Manager, an Adviser and its affiliates and the separate accounts have rights only with respect to their shares of the funds. Such shares may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distributions of assets or payment of dividends.

24. Applicants state there are no conflicts of interest between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power to prevent insurance companies indiscriminately redeeming their separate accounts out of one fund and investing those monies in another fund. Generally, 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 a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of Plans and Plan participants conflict, the issues can be almost immediately resolved in that

trustees of the Plans can, indpendently, redeem shares out of the Funds.

25. Applicants assert that permitting a Fund to sell its shares to the Manager or Adviser of a Fund, or a series thereof, or to an affiliate of the Manager or Adviser, in compliance with Treas. Reg. 1.817–5 will enhance Fund management without raising significant concerns regarding irreconcilable material conflicts. Section 14(a) of the 1940 Act generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares. Fund also will require more limited amounts of initial capital in connection with the creation of new series and the voting of initial shares of such series on matters requiring the approval of shareholders. In addition, the Funds may wish to purchase a substantial portfolio of securities upon commencement of operations and will require capital to do so. A potential source of the requisite initial or additional capital is the Manager, Adviser or an affiliate. These parties may have an interest in making the requisite capital expenditure, and in participating with the Fund in its organization. However, provision of seed capital or the purchase of shares in connection with the management of a Fund by its Manager, Adviser or any of their affiliates may be deemed to violate the exclusivity requirement of Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(15).

26. Applicants anticipate that such investments by the Manager, an Adviser or their affiliates generally will be limited in scope and duration, and will be made only in connection with the operation of the Funds. Given the conditions of Treas. Reg. 1.817–5(f)(3) and the harmony of interest between a Fund, on the one hand, and its Manager or Adviser, on the other, Applicants assert that little incentive for overreaching exists. Furthermore, such limited investments should not implicate the concerns discussed above regarding the creation of irreconcilable material conflicts. Instead, permitting investment by the Manager, an Adviser or their affiliates will permit the orderly and efficient creation and operation of Funds, or series thereof, and reduce the expense and uncertainty of using outside parties at the early stages of Fund operations.

27. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment managers (principally with respect to stock and money market investments); and the lack of public name recognition as investment experts. Specifically, Applicants state that 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 argue the use of the Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of Met Advisory and the Advisers, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts, which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants argue that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by such Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

28. Applicants state that, regardless of the types of Fund shareholders, Met Advisory is legally obligated to manage the Funds in accordance with each Fund's investment objectives, policies and restrictions as well as any guidelines established by the relevant Board of Directors or Trustees of the Funds. Applicants assert that Met Advisory works with a pool of money without consideration for the identity of shareholders, and, thus, manages the Funds in the same manner as any other mutual fund.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. A majority of the Board of Trustees or Board of Directors (each, a ''Board'') of each Fund will consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the SEC, except that if this condition is not met by reason of death, disqualification, or bona fide resignation of any trustee(s) or director(s), 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 SEC may prescribe by order upon application.

2. The Board will monitor their respective Funds for the existence of any irreconcilable material conflict between the interests of Contract owners of all Participating Separate Accounts and of Plan Participants and Plans investing in the Funds, and determine what action, if any, should be taken in response to such conflicts. An irreconcilable material conflict may arise for a variety of reasons, which may include: (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 and variable life insurance Contract owners or trustees of Eligible Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; and (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. The Manager, Advisers (or any other 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 report any potential or existing conflicts to the Board of any relevant Fund. The Manager, Advisers (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 owner

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 information and conflicts and to assist the Boards will be contractual obligations of all Participating Insurance Companies and Participating Plans investing in 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 Contract owners 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 an irreconcilable material conflict exists, the relevant Participating Insurance Companies and Participating Plans, at their expense and to the extent reasonably practical (as determined by a majority of the disinterested trustees or directors), will take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of Participating Separate Accounts from the Fund or any series and reinvesting such assets in a different investment medium, which may include another series of a Fund or another Fund; (b) submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* variable annuity or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If an irreconcilable material conflict arises because of a decision by a Participating Insurance Company to disregard Contract owner 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, and no charge or penalty will be imposed as a result of such withdrawal. If an irreconcilable material conflict arises because of a Participating Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minor 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, and no charge or penalty will be 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 an irreconcilable material conflict and bearing the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Funds,and these responsibilities will be carried out with a view only to the interests of Contract owners 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 irreconcilable material conflict, but in no event will a Fund, Manager, or Advisers (or any other investment adviser of the Funds) be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition 4 to establish a new funding medium for any Contract if a majority of Contract owners materially and adversely affected by the irreconcilable material conflict, vote to decline such 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 without Plan participant vote.

5. Manager, Advisers, all Participating Insurance Companies and Participating Plans will be promptly informed in writing of any Board's determination that an irreconcilable material conflict exists, and its implications.

6. As to Contracts issued by Participating Separate Accounts under the Act, Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the SEC interprets the Act to require pass-through voting privileges for Contract owners. However, as to Contracts issued by unregistered Participating Separate Accounts, pass-through voting privileges will be extended to Contract owners to the extent granted by the issuing insurance company. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their Participating Separate Accounts in a manner consistent with voting instructions received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their Participating 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 Participating 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 vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions. Each Participating Plan will vote as required by applicable law and governing Plan documents.

7. As long as the SEC continues to interpret the Act as requiring pass-through voting privileges for Contract owners whose Contracts are funded through a registered separate account, the Manager, Adviser of, if applicable, any of their affiliates will vote the shares of any Fund or series thereof in the same proportion as all Contract owners having voting rights with respect to that Fund or series thereof, provided, that the Manager, Adviser or any such affiliates shall vote its shares in such other manner as may be required by the SEC or its staff.

8. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to determining the existence of a conflict, notifying the Manager, Advisers, 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 shall be made available to the SEC upon request.

9. Each Fund will notify all Participating Insurance Companies and all Participating Plans that disclosure in separate account prospectuses or any Qualified 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 owners participating in the Fund and the interests of Plans

investing in the Fund may conflict; and (c) the Board will monitor events in order to identify the existence of any material conflicts of interest and to determine what action, if any, should be taken in response to any such conflict.

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

11. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the Act is adopted) to provide exemptive relief from any provisions of the Act or the rules promulgated 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, the Participating Insurance Companies and Participating Plans, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent applicable.

12. No less than annually, the Manager, Advisers (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 carry out fully the 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 Manager, Advisers (or any other investment adviser for a Fund), Participating Insurance Companies and Participating Plans to provide these reports, materials and data to the Boards shall be a contractual obligation of the Manager, Advisers (or any other investment adviser of a Fund), Participating Insurance Companies and Participating Plans under the agreements governing their participation in the Funds.

13. If a Plan or Plan participant 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 represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and 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. 34–44394; File No. SR–CBOE–00–43]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change Relating to Participation Rights in Crossing Transactions

June 6, 2001.

I. Introduction

On august 29, 2000, the Chicago Board Options Exchange, Inc.(''CBOE'') filed with 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 thereunder,[2] a proposed rule change to amend CBOE Rule 6.74(d), which currently entitles a floor broker representing a member firm to cross a certain percentage of each customer order the firm sends to the floor against another order on behalf of the same firm.

The proposed rule change would: (a) Make clear that Rule 6.74(d) includes the situation where a floor broker is seeking to cross a *solicited* order against the original customer order; and (b) expand Rule 6.74(d) to allow the floor broker representing the original customer order to solicit the order to trade against it even if that floor broker is not a nominee of the originating firm.

The proposed rule change was published for comment in the **Federal Register** on November 21, 2000.[3] The Commission received no comments on the proposal. The CBOE filed Amendment Nos. 1 and 2 to the proposed rule change with the Commission on February 12, 2001, and May 23, 2001, respectively.[4] This order approves the proposed rule change, accelerates approval of Amendment Nos. 1 and 2, and solicits comments from interested persons on those amendments.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, in particular, the requirements of section 6 of the Act [6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act [7] because it establishes the ability of firms and floor brokers to solicit orders to supply the contra side for customer orders in a manner that matches or improves the price available from the crowd while conforming to the principles and limitations set forth by the Commission in its original approval of Rule 6.74(d) concerning participation rights in crossing transactions.[8]

Amendment No. 1 to the proposed rule change would add Interpretation .07 to Rule 6.74 to make clear that a floor broker may not cross an order that he is holding with an order from a market maker that is then in the trading crowd. Amendment No. 2 would clarify that the proposed change to CBOE Rule 6.74 is intended to supersede the provisions of paragraph (d) of CBOE Rule 6.9, ''Solicited Transactions,'' when the conditions specified in CBOE Rule 6.74 are met. The Commission finds that Amendment Nos. 1 and 2 are

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

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 43537 (November 9, 2000), 65 FR 69977.

[4] The substance of Amendment Nos. 1 and 2 is discussed below.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000).