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Dated at Rockville, Maryland, this 3rd day of December 2008.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28530; File No. 812–13563]

TIAA–CREF Life Funds, et al.

December 10, 2008.

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

ACTION: Notice of application (''Application'') for exemption pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act''), 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.

APPLICANTS: TIAA–CREF Life Funds (the ''Trust''), the TIAA–CREF Life Insurance Company (''TIAA–CREF Life''), and Teachers Advisors, Inc. (''Advisors'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of the Trust and shares of any other future investment company (''Other Investment Companies'') that is designed to fund insurance products and for which TIAA–CREF Life, or any of its affiliates, may serve as administrator, investment manager, principal underwriter or sponsor (the Trust and Other Investment Companies being hereinafter referred to, collectively, as ''Insurance Investment Companies''), or permit shares of any current or future series of any Insurance Investment Company (''Insurance Fund''), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies of TIAA–CREF Life; (2) trustees on behalf of tax-qualified and certain other retirement and employee benefit plans outside of the separate account context (''Qualified Plans'' or ''Plans''); (3) Advisors and any affiliate of Advisors that serves as an investment adviser, manager, principal underwriter, sponsor, or administrator for the purpose of providing seed capital to an Insurance Fund (collectively, the ''Manager''); and (4) any insurance company general account that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (''General Account'') under the circumstances described in the Application.

FILING DATE: The Application was filed on August 13, 2008, and amended and restated on December 10, 2008.

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 by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 5, 2009, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Stewart P. Greene, Esq., TIAA–CREF Life Funds, 730 Third Avenue, New York, New York 10017–3206.

FOR FURTHER INFORMATION CONTACT: Michael Kosoff, Staff Attorney, at (202) 551–6754 or Harry Eisenstein, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549 (202–551–8090).

Applicant's Representations:

1. Each Insurance Investment Company is, or will be, registered as an open-end management investment company under the 1940 Act. The Trust (File Nos. 333–61759/811–08961) currently consists of, and offers shares of beneficial interest in, ten (10) investment portfolios that are sold only to separate accounts of TIAA–CREF Life which fund variable life and variable annuity contracts. The Trust may offer one or more additional series or classes of shares in the future. The Trust sells its shares directly or indirectly to TIAA–CREF Life, which holds the shares in its separate accounts to support variable annuity and variable life insurance contracts.

2. TIAA–CREF Life is a New York stock insurance company. TIAA–CREF Life is licensed to do business in all fifty (50) United States and the District of Columbia. TIAA–CREF Life is a wholly owned subsidiary of TIAA–CREF Enterprises, Inc., which is a wholly owned subsidiary of Teachers Insurance and Annuity Association of America (''TIAA''), a stock life insurance company organized under the laws of the State of New York.

3. Advisors is the investment adviser to the Trust and also is responsible for providing or obtaining at its own expense most of the services necessary to operate the Trust on a day-to-day basis, including custodial, administrative, portfolio accounting, dividend disbursing, auditing, and ordinary legal services. Advisors, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and is a wholly-owned indirect subsidiary of TIAA.

4. The Trust currently offers shares of the Insurance Funds only to the separate accounts of TIAA–CREF Life, an affiliated insurance company, in order to fund benefits under variable annuity and other variable insurance contracts. In the future, the Insurance Investment Companies intend to offer shares of the Insurance Funds to (a) both registered and unregistered separate accounts of affiliated and unaffiliated insurance companies in order to fund variable annuity and variable life insurance contracts (collectively, ''Separate Accounts''); (b) Qualified Plans; (c) any Manager; and (d) any General Accounts.

5. Affiliated or unaffiliated insurance companies whose Separate Account(s) may now or in the future own shares of the Insurance Funds are referred to herein as ''Participating Insurance Companies.'' The Participating Insurance Companies have established or will establish their own Separate Accounts and design their own variable contracts. Each Participating Insurance Company has or will have the legal obligation to satisfy all applicable requirements under both state and federal law. Participating Insurance Companies may rely on Rules 6e–2 and 6e–3(T) under the 1940 Act in connection with the establishment and maintenance of variable life insurance Separate Accounts, although some Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well. Each

Participating Insurance Company will enter into a participation agreement with the applicable Insurance Investment Company on behalf of the Insurance Funds in which that Participating Insurance Company invests. The role of the Insurance Funds under this arrangement, insofar as federal securities laws are applicable, will consist 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. The Insurance Investment Companies intend to offer shares of the Insurance Funds directly to Qualified Plans outside of the separate account context. Qualified Plans may choose any of the Insurance Funds that are offered as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. Shares of any of the Insurance Funds sold to such Qualified Plans would be held or deemed to be held by the trustee(s) of said Plans. Certain Qualified Plans, including Section 403(b)(7) Plans and Section 408(a) Plans, may vest voting rights in Plan participants instead of Plan trustees. Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by the Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

7. Shares of each Insurance Fund also may be offered to a Manager or to General Accounts, in reliance on regulations issued by the Treasury Department (Treas. Reg. 1.817–5) that established diversification requirements for variable annuity and variable life insurance contracts (''Treasury Regulations''). Treasury Regulation 1.817–5(f)(3)(ii) permits such sales as long as the return on shares held by the Manager is computed in the same manner as for shares held by the Separate Accounts, and the Manager does not intend to sell to the public shares of the Insurance Investment Company that it holds. An additional restriction is imposed by the Treasury Regulations on sales to the Manager, who may hold shares only in connection with the creation or management of the Insurance Investment Company. Applicants represent that sales in reliance on Treasury Regulation 1.817–5(f)(3)(ii) will be made to a Manager consistent with the above conditions and for the purpose of providing seed capital. Treasury Regulation 1.817–51(f)(3) permits sales to general accounts of insurance companies and their corporate affiliates as long as the return on shares held by such persons is computed in the same manner as for shares held by a Separate Account, such persons do not intend to sell to the public shares of the Insurance Fund that they hold, and a segregated asset account of the life insurance company whose general account holds those shares also holds or will hold a beneficial interest in the Insurance Fund. Applicants represent that sales to General Accounts will be made consistent with these provisions.

Applicants' Legal Analysis:

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act granting 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 (including any comparable provisions of a permanent rule that replaces Rule 6e–3(T)), to the extent necessary to permit shares of each Insurance Investment Company to be offered and sold to, and held by: (1) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) Qualified Plans; (3) any Manager to an Insurance Fund; and (4) General Accounts under the circumstances described in the Application.

2. Section 6(c) authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the 1940 Act and/or of any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust (''Trust Account''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to an insurance company by Rule 6e–2(b)(15) are available only where each registered management investment company underlying the Trust Account (''underlying fund'') offers its shares ''exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *.'' (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company. The use of a common underlying fund 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.''

4. In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.'' Moreover, because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to General Accounts, Qualified Plans or the Manager.

5. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 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 an underlying fund's shares. 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 underlying funds which offer 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 added). 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 underlying fund 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. The relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Investment Companies by Qualified Plans, the Manager or General Accounts. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to Qualified Plans, the Manager or General Accounts.

6. Applicants assert that none of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, the Manager or General Accounts, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Investment Companies may themselves be investment companies that rely upon Rules 6e–2 and 6e–3(T) and wish to continue to rely upon that relief provided in those Rules, that the Applicants are applying for the relief described in the Application. If and when a material irreconcilable conflict between the Separate Accounts arises in this context or between Separate Accounts on the one hand and Qualified Plans, the Manager or General Accounts on the other hand, the Participating Insurance Companies, Qualified Plans and the Manager must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as eligible investment options. Applicants have concluded that investment by the Manager or the inclusion of Qualified Plans or General Accounts as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans, Manager or General Accounts arose, the Qualified Plans, Manager or General Accounts, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants thus argue that allowing the Manager, General Accounts or Qualified Plans to invest directly in the Insurance Investment Companies should not increase the opportunity for conflicts of interest.

7. Applicants state that Treasury Regulations permit shares of an investment company held by the separate accounts of insurance companies funding variable life insurance contracts to also be held by a Qualified Plan, the investment company's investment manager or its affiliates, or a General Account. Thus, the sale of shares of the same investment company to separate accounts through which variable life insurance contracts and variable annuities are issued to Qualified Plans, to the investment company's investment manager and its affiliates, or to General Accounts (collectively, ''eligible shareholders'') could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

8. Applicants state that Paragraph (3) of Section 9(a) provides, among other things, that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (a)(2). Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above 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 fund.

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), are participating in the management or administration of the underlying fund.

Applicants submit that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring of an insurer's personnel, which would otherwise be necessary to ensure compliance with Section 9, to that which is appropriate in light of the policy and purposes of Section 9. 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 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply Section 9(a) of the 1940 Act to the many individuals employed by Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) who do not directly participate in the administration or management of the Insurance Investment Companies.

Applicants claim there is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed funding or shared funding. Many of the Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Investment Companies. Those individuals who participate in the management or administration of the Insurance Investment Companies will remain the same regardless of which separate accounts or insurance companies use the Insurance Investment Companies. Therefore, applying the monitoring requirements of Section 9(a) to the thousands of individuals employed by the Participating Insurance Companies would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants.

Moreover, the relief requested should not be affected by the sale of shares of the Insurance Investment Companies to Qualified Plans, the Manager or General Accounts under the circumstances described in this Application. The insulation of the Insurance Investment Companies from those individuals who are disqualified under the 1940 Act remains in place. Because Qualified Plans, the Manager and General Accounts are not investment companies and will not be deemed to be affiliated

with the Insurance Investment Companies solely by virtue of their shareholdings, no additional relief is necessary.

9. Applicants submit that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between such a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T), respectively, under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that an insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in an underlying fund'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)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C), respectively, of Rules 6e–2 and 6e–3(T) under the 1940 Act).

10. Applicants assert that Rule 6e–2 recognizes that a variable life insurance contract is an insurance contract; it has important elements unique to insurance contracts; and it is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Rule 6e–3(T)'s corresponding provisions presumably were adopted in recognition of the same factors. State insurance regulators have much the same authority with respect to variable annuity separate accounts as they have with respect to variable life insurance separate accounts. Insurers generally assume both mortality and expense risks under variable annuity contracts. Therefore, variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. The Commission staff has not addressed the general issue of state insurance regulators' authority in the context of variable annuity contracts, and has not developed a single comprehensive exemptive rule for variable annuity contracts.

11. Applicants assert that the Insurance Investment Companies' sale of shares to Qualified Plans, the Manager or General Accounts will not have any impact on the relief requested herein in this regard. Shares of the Insurance Investment Companies sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Similarly, the Manager and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with Separate Accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, the Manager or General Accounts.

12. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

13. Applicants further assert that shared funding by unaffiliated Participating Insurance Companies is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated Participating Insurance Companies, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated Participating Insurance Companies may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

14. Applicants maintain that the right under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) of an insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, a particular Participating Insurance Company's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at an Insurance Investment Company's election, to withdraw its separate account's investment in that Insurance Investment Company, and no

charge or penalty would be imposed as a result of such withdrawal.

15. With respect to voting rights, Applicants assert that it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans, the Manager or General Accounts. The transfer agent(s) for the Insurance Investment Companies will inform each shareholder, including each separate account, each Qualified Plan, the Manager and each General Account, of its share ownership, in an Insurance Investment Company. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement. Investment by Qualified Plans or General Accounts in any Insurance Investment Company will similarly present no conflict. The likelihood that voting instructions of insurance company contract owners will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Qualified Plan or General Account choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans or General Accounts arises, the Qualified Plans or General Accounts may simply redeem their shares and make alternative investments.

16. Applicants assert that there is no reason that the investment policies of an Insurance Fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans and General Accounts (i.e., long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts. Each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

17. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance needs and investment goals. An Insurance Fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the growth of the Insurance Investment Company. In addition, permitting mixed and shared funding will facilitate the establishment of additional Insurance Funds serving diverse goals. The broader base of contract owners and shareholders can also be expected to provide economic justification for the creation of additional series of each Insurance Investment Company with a greater variety of investment objectives and policies.

18. Applicants maintain that Section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5, which established diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, ''qualified pension or retirement plans,'' ''the general account of a life insurance company,'' ''the manager * * * of an investment company'' and separate accounts to share the same underlying management investment company. Applicants therefore have concluded that neither the Code nor the Treasury Regulations nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts, the Manager and General Accounts all invest in the same underlying fund.

19. Applicants maintain that the ability of the Insurance Investment Companies to sell their shares directly to Qualified Plans, the Manager or General Accounts does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any variable contract, Qualified Plan, Manager or General Accounts. As noted above, regardless of the rights and benefits of contract owners or Qualified Plan participants, the Separate Accounts, Qualified Plans, the Manager and the General Accounts have rights only with respect to their respective shares of the Insurance Investment Companies. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Investment Companies has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

20. Applicants considered whether there is a potential for future conflicts of interest between Participating Separate Accounts and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contract owners of Participating Separate Accounts 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.

21. Applicants assert that permitting an Insurance Investment Company to sell its shares to the Manager in compliance with Treas. Reg. 1.817–5 will enhance Insurance Investment Company management without raising significant concerns regarding material irreconcilable conflicts.

22. Applicants submit that given the conditions of Treas. Reg. 1.817–5(i)(3) and the harmony of interest between an Insurance Investment Company, on the one hand, and its Manager(s) or a Participating Insurance Company, on the other, little incentive for overreaching exists. Applicants assert that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants assert that permitting investment by the Manager or General Accounts will permit the orderly and efficient creation and operation of Insurance Investment Companies, and reduce the expense and uncertainty of using outside parties at the early stages of Insurance Investment Company operations.

23. Applicants assert that various factors have limited the number of insurance companies that offer variable 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 of certain Participating Insurance Companies 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. Use of the Insurance Investment

Companies as a common investment medium for variable contracts, Qualified Plans and General Accounts would help alleviate these concerns, because Participating Insurance Companies, Qualified Plans and General Accounts will benefit not only from the administrative expertise of Advisors and its affiliates, as well as the investment expertise of any investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Investment Companies available for mixed and shared funding and permitting the purchase of Insurance Investment Company shares by Qualified Plans and General Accounts may encourage more insurance companies to offer variable contracts, and this should 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. Mixed and shared funding also may benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Insurance Investment Companies. This may benefit variable contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Insurance Investment Companies, or by making the addition of new Insurance Funds more feasible.

Applicants' Conditions:

Applicants and the Manager agree that the order granting the requested relief shall be subject to the following conditions, which shall apply to the Trust as well as any future Insurance Investment Company that relies on the order:

1. A majority of the Board of Trustees or Board of Directors (''Board'') of each Insurance Investment Company shall consist of persons who are not ''interested persons'' of the Insurance Investment Company, 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 (''Independent Board Members''), 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: (i) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. The Board of each Insurance Investment Company will monitor the Insurance Investment Company for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, participants of Qualified Plans, the Manager or General Accounts investing in that Insurance Investment Company, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any Insurance Fund are being managed; (v) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of General Account assets in all Insurance Investment Companies), a Manager, and any trustee on behalf of any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Investment Company (''Participating Qualified Plan'') (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each trustee for a Qualified Plan that is a Participant 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 Board will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Investment Company, and such responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts and to assist the Board also will be contractual obligations of all Participating Qualified Plans under their agreements governing participation in the Insurance Investment Company, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board of an Insurance Investment Company, or a majority of its Independent Board Members, that a material irreconcilable conflict exists, the relevant Participant shall, at its expense and to the extent reasonably practicable (as determined by a majority of the Independent Board Members), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Insurance Investment Company or any series therein and reinvesting such assets in a different investment medium (including another Insurance Fund, if any); (ii) in the case of Participating Insurance Companies, 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 contract owners 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; (iii) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Insurance Investment Company or any Insurance Fund and reinvesting those assets in a different investment medium; and (iv) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision 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 Insurance Investment Company's election, to withdraw its Separate Account's investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Investment Company, to withdraw its investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participants under their agreements governing participation in the Insurance Investment Company, and these responsibilities will be carried out with a view only to the interests of the contract owners or Plan participants.

For the purposes of this Condition (4), a majority of the Independent Board Members shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Investment Company or its Manager be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially and adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (i) a majority of Qualified Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (ii) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan makes such decision without Qualified Plan participant vote.

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

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered Separate Account as required by the 1940 Act as interpreted by the Commission. However, as to variable contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of each Insurance Fund held in their Separate Accounts in a manner consistent with voting instructions timely received from such contract owners. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts investing in an Insurance Investment Company calculates voting privileges in a manner consistent with all other Participating Insurance Companies, as instructed by the Insurance Investment Company.

The obligation to calculate voting privileges as provided in this Application shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Investment Company. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares held in its General Account or otherwise attributed to it, in the same proportion as it votes those shares for which it has received voting instructions. Each Plan will vote as required by applicable law and governing Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners or the Commission interprets the 1940 Act to require the same, a Manager and any General Account will vote their respective shares in the same proportion as all variable contract owners having voting rights with respect to that Insurance Investment Company or Insurance Fund, as the case may be; provided, however, that a Manager or any General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. An Insurance Fund will make its shares available to a Separate Account and/or Qualified Plans at or about the same time it accepts any seed capital from any Manager or any General Account of a Participating Insurance Company.

9. An Insurance Investment Company will notify all Participants that disclosure regarding potential risks of mixed and shared funding may be appropriate in prospectuses for any of the Separate Accounts and in Plan disclosure documents. Each Insurance Investment Company will disclose in its prospectus that: (i) Shares of the Insurance Investment Company may be offered to insurance company Separate Accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (ii) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Insurance Investment Company and the interests of Qualified Plans or General Accounts investing in the Insurance Investment Company might at some time be in conflict; and (iii) 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.

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

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then each Insurance Investment Company and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

12. Each Insurance Investment Company 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 that Insurance Investment Company or Insurance Fund, as the case may be), and in particular each Insurance Investment Company will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although each Insurance Investment Company is not, or will not be, one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Investment Company

will act in accordance with the Commission's interpretation of the requirements of Section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

13. Each Participant shall at least annually submit to the Board of an Insurance Investment Company such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in this Application. Such reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of the Participants to provide these reports, materials and data to the Board of the Insurance Investment Company when it so reasonably requests, shall be a contractual obligation of the Participants under their agreements governing participation in each Insurance Investment Company.

14. Each Insurance Investment Company will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan an owner of 10% or more of the assets of the Insurance Investment Company unless the trustee for such Plan executes a participation agreement with such Insurance Investment Company which includes the conditions set forth herein to the extent applicable. A trustee for a Qualified Plan will execute an application containing an acknowledgment of this condition at the time of such Plan's initial purchase of the shares of any Insurance Investment Company or Insurance Fund.

Conclusion: Applicants submit that, for the reasons summarized above, the requested exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, in accordance with the standards of Section 6(c) of the 1940 Act, are in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59068; File No. SR–CBOE–2008–120]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Non-Member Market-Maker Transaction Fees

December 8, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 26, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend its Fees Schedule regarding non-member market-maker transaction fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

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

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this proposed rule change is to lower the Exchange's non-member market-maker transaction fee for certain orders. The Exchange currently charges non-member market-makers $.45 per contract for electronically executed orders and $.25 per contract for manually executed orders.[1] In order to encourage non-member market-makers to provide liquidity in the Exchange's Automated Improvement Mechanism (''AIM''), the Exchange proposes to charge a discounted transaction fee of $.20 per contract for non-member market-maker orders executed on AIM.[2] The Exchange proposes to make this fee change effective December 1, 2008.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[3] in general, and furthers the objectives of Section 6(b)(4)[4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. The Exchange believes the proposed rule change should enhance liquidity on AIM by reducing fees for non-member market-makers trading on AIM.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or

[1] These fees are reflected as ''broker-dealer'' transaction fees on the CBOE Fees Schedule. All transaction fees are assessed to CBOE members.

[2] AIM is an electronic auction system that exposes certain orders electronically in an auction to provide such orders with the opportunity to receive an execution at an improved price. AIM is governed by CBOE Rule 6.74A.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).