prospectus for the RAVA Advantage Contract. Furthermore, the Offering Communication (and any Termination Notice) will contain concise, plain English statements that: (i) The Exchange Offer is suitable only for an Old Contract owner who expects to hold RAVA Advantage as a long-term investment; (ii) if the RAVA Advantage Contract is surrendered during the initial CDSC period or annuitized during the first few years, the lower M&E charges and any applicable Purchase Payment Credits and Exchange Credits may be more than offset by the CDSC or lower annuity settlement rates and an Old Contract owner may be worse off than if he or she had rejected the Exchange Offer; (iii) IDS Life will allocate an Exchange Credit of 1% on the initial Purchase Payment applied (but not on subsequent Purchase Payments received) if the initial Purchase Payment to the RAVA Advantage Contract is less than $100,000; (iv) the guaranteed interest rate on RAVA Advantage's fixed account option may be less than the guaranteed interest rate on the Old Contract's fixed account option; (v) the current death benefit on the Old Contract may be greater than the initial death benefit on RAVA Advantage; (vi) an Old Contract owner may lose some tax benefits (when applicable); and (vii) IDS Life reserves the right to terminate the Exchange Offer. Applicants assert that Contract owners should have the opportunity to decide, on the basis of full and fair disclosure, whether the enhancements of the RAVA Advantage Contract justify accepting the offer.

### Conclusion

Applicants submit, for the reasons stated herein, that the Exchange Offer is consistent with the protections provided by Section 11 of the Act, and that approval of the Exchange Offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants submit that the requested order approving the terms of the proposed Exchange Offer therefore should be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–4054 Filed 2–19–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–25421; 812–12760]**

## DFA Investment Dimensions Group Inc., et al.

February 13, 2002.

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

**ACTION:** Notice of Application for Exemption under Section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act''), for an exemption 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.

**APPLICANTS:** DFA Investment Dimensions Group Inc. (the ''Fund'') and Dimensional Fund Advisors, Inc. (''DFA'') (the Fund together with DFA, are the ''Applicants'').

**SUMMARY OF APPLICATION:** Applicants and certain life insurance companies and their separate accounts that currently invest or may hereafter invest in the Fund (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) seek exemptive relief 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, to the extent necessary to permit shares of the Fund and shares of any other investment company or portfolio that is designed to fund insurance products and for which DFA or any of its affiliates may serve in the future as investment adviser, manager, principal underwriter, sponsor, or administrator (''Future Funds'') (the Fund, together with Future Funds, are the ''Funds'') to be sold to and held by: (i) separate accounts funding variable annuity and variable life insurance contracts (collectively referred to herein as ''Variable Contracts'') issued by both affiliated and unaffiliated life insurance companies; (ii) qualified pension and retirement plans (''Qualified Plans'') outside of the separate account context; (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act; (iv) DFA or certain related corporations (collectively ''DFA''); and (v) any other person permitted to hold shares of the Funds pursuant to Treasury Regulation 1.817–5 (''General Accounts''), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Funds or certain related corporations.

**FILING DATES:** The application was filed on January 18, 2002.

**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, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 8, 2002, 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 writer'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 SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC, 20549–0609. Applicants, c/o Stradley, Ronon, Stevens & Young, LLP, 2600 One Commerce Square, Philadelphia, PA 19103–7098, Attention: Mark A. Sheehan, Esq.

**FOR FURTHER INFORMATION CONTACT:** Patrick Scott, Attorney, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

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

### Applicants' Representations

1. The Fund is registered with the Commission as an open-end management investment company and is organized as a Maryland corporation. DFA is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended, and serves as the investment adviser to the Fund. The Fund currently consists of thirty-eight investment portfolios, including six investment portfolios that are sold only to separate accounts of insurance companies in conjunction with variable life and variable annuity contracts: VA Small Value Portfolio, VA Large Value Portfolio, VA International Value Portfolio, VA International Small Portfolio, VA Short-Term Fixed Portfolio and VA Global Bond Portfolio (each, a ''Portfolio,'' and collectively, the ''Portfolios''). The Fund or any Future Funds may offer one or more

additional investment portfolios in the future (also referred to as ''Portfolios'').

2. Shares of the Portfolios will be offered to separate accounts of affiliated and unaffiliated insurance companies (each, a ''Participating Insurance Company'') to serve as investment vehicles to fund Variable Contracts. These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration pursuant to exemptions from registration under Section 3(c) of the 1940 Act (individually, a ''Separate Account'' and collectively, the ''Separate Accounts''). Shares of the Portfolios may also be offered to Qualified Plans, DFA or certain related corporations (collectively ''DFA''), and any other person permitted to hold shares of the Funds pursuant to Treasury Regulation 1.817–5 (''General Accounts''), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Funds or certain related corporations.

3. The Participating Insurance Companies at the time of their investment in the Funds either have or will establish their own Separate Accounts and design their own Variable Contracts. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both state and federal law. Each Participating Insurance Company, on behalf of its Separate Accounts, has or will enter into an agreement with the Funds concerning such Participating Insurance Company's participation in the Portfolios. The role of the Funds under this agreement, insofar as the federal securities laws are applicable, will consist of, among other things, offering shares of the Portfolios to the participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested herein.

4. On November 29, 1994, the Commission issued an order granting exemptive relief to permit shares of the Funds to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (Investment Company Act Release No. 20743, File No. 812–9154) (the ''Original Order''). The Original Order allows the Fund to offer its shares to insurance companies as the investment vehicle for their separate accounts supporting Variable Contracts. The Original Order does not include the Future Funds as parties, nor expressly address the sale of shares of the Funds or any Future Funds to Qualified Plans, unregistered separate accounts, DFA or General Accounts. Applicants propose that the Future Funds be added as parties to the Original Order and the Funds and any Future Funds be permitted to offer and sell their shares to Qualified Plans, unregistered separate accounts, DFA and the General Accounts.

**Applicants' Legal Analysis**

1. Applicants and certain life insurance companies and their Separate Accounts that currently invest or may hereafter invest in the Fund (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) seek exemptive relief 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, to the extent necessary to permit shares of the Portfolios and shares of any Future Funds to be sold to and held by: (i) separate accounts funding Variable Contracts issued by both affiliated and unaffiliated life insurance companies; (ii) Qualified Plans outside of the separate account context; (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act; (iv) DFA or certain related corporations (collectively ''DFA''); and (v) any General Accounts, including the general account of any life insurance company whose separate account holds, or will hold, shares of the Funds or certain related corporations.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust (''UIT'') under the 1940 Act, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is also granted to the investment adviser, principal underwriter, and depositor of the separate account. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any UIT, if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a) and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares. Rule 6e–2(b)(15) provides these exemptions apply only where all of the assets of the UIT are shares of management investment companies ''which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company.'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account or flexible premium variable life insurance separate account of the same company or any other affiliated insurance company. The use of a common management investment company as the underlying investment vehicle 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.''

3. The relief granted by Rule 6e–2(b)(15) also 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 management investment company as the underlying investment vehicle for variable annuity and/or variable life insurance separate accounts of unaffiliated life insurance companies is referred to herein as ''shared funding.''

4. The relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, additional exemptive relief is necessary if the shares of the Portfolios are also to be sold to Qualified Plans or other eligible holders of shares, as described above. Applicants note that if shares of the Portfolios are sold only to Qualified Plans, exemptive relief under Rule 6e–2 would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans. The use of a common management investment company as the underlying investment vehicle for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, and for Qualified Plans, is referred to herein as ''extended mixed and shared funding.''

5. 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 1940 Act. The exemptions granted by Rule 6e–

3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies that offer to sell their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, 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 or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account.'' Therefore, Rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding. The exemptions are also granted to the investment adviser, principal underwriter and depositor of the separate account.

6. The relief under Rule 6e–3(T) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, and additional exemptive relief is necessary if the shares of the Portfolios are also to be sold to Qualified Plans or other eligible holders of shares as described above. Applicants note that if shares of the Portfolios were sold only to Qualified Plans, exemptive relief under Rule 6e–3(T)(b)(15) would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans.

7. Applicants maintain, as discussed below, that there is no policy reason for the sale of the Portfolios' shares to Qualified Plans, to DFA, or General Accounts to result in a prohibition against, or otherwise limit, a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). However, because the relief under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only when shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Portfolios are also to be sold to Qualified Plans, DFA or General Accounts. 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 note that if the Portfolios' shares were to be sold only to Qualified Plans, DFA, General Accounts and/or separate accounts funding variable annuity contracts, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would be unnecessary. The relief provided for under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans, DFA, or General Accounts, or to a registered investment company's ability to sell its shares to such purchasers.

8. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the regulations issued by the Treasury Department (''Regulations'') that made it possible for shares of an investment company portfolio to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company portfolio also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, the sale of shares of the same portfolio to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

9. Consistent with the Commission's authority under Section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, this Application requests relief for the class consisting of insurers and Separate Accounts that will invest in the Portfolios, and to the extent necessary, Qualified Plans, other eligible holders of shares and investment advisers, principal underwriters and depositors of such accounts.

10. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of 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 (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 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 management of the underlying management company.

11. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of Section 9 of the 1940 Act, 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 Section 9. Those 1940 Act 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 individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Funds. Those individuals who participate in the management of the Funds will remain the same regardless of which Separate Accounts or Qualified Plans invests in the Funds. Applying the monitoring requirements of Section 9(a) of the 1940 Act because of investment by separate accounts of other insurers or Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by contract owners.

12. Moreover, since the Qualified Plans, DFA and General Accounts are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

13. 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 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 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 the 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).

14. Rule 6e–2 under the 1940 Act recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and 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, Applicants state, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of Rule 6e–3(T) under the 1940 Act undoubtedly were adopted in recognition of the same factors.

15. Applicants state that the sale of Portfolio shares to Qualified Plans, DFA and General Accounts will not have any impact on the relief requested herein. 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 Qualified Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Qualified Plan assets to certain specified persons. Under Section 403(a) of the Employee Retirement Income Security Act, as amended (''ERISA''), shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (i) when the Qualified Plan expressly provides that the trustee(s) 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 Qualified Plan and not contrary to ERISA, and (ii) when the authority to manage, acquire, or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

16. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants. Similarly, DFA and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, DFA or General Accounts.

17. Where a Qualified Plan does not provide participants with the right to give voting instructions, the trustee or named fiduciary has responsibility to vote the shares held by the Qualified Plan. In this circumstance, the trustee has a fiduciary duty to vote the shares in the best interest of the Qualified Plan participants. Accordingly, even if DFA or an affiliate of DFA were to serve in the capacity of trustee or named fiduciary with voting responsibilities, DFA or the affiliates would have a fiduciary duty to vote those shares in the best interest of the Qualified Plan participants.

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

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

20. The prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 under the 1940 Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, the Commission staff contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and to affect the investment decisions of public shareholders.

21. For reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Ruling 81–225 (Sept. 25, 1981) effectively deprived variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment vehicle for Variable Contracts (including variable life contracts). Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), in effect requires that the investments made by variable annuity and variable life insurance separate accounts be ''adequately diversified'' if a separate account is organized as a UIT that invests in a single fund or series, the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *''. Accordingly, a UIT separate account that invests solely in a publicly available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any Portfolio, that sells shares to separate accounts, in effect, would be precluded from also selling its shares to

the public. Consequently, there will be no public shareholders of any Portfolio.

22. 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.

23. Shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers 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 set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the affected Fund. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Portfolio.

24. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. This right 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. 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) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

25. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Fund's election, to withdraw its Separate Account's investment in such Portfolio. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in each Portfolio.

26. Each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. There is no reason to believe that different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of Variable Contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case.

27. Applicants do not believe that the sale of the shares of the Portfolios to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those which would otherwise exist between variable annuity and variable life insurance contract owners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans.

28. Applicants considered whether there are any issues raised under the Code, regulations issued by the Treasury Department (''Regulations''), or Internal Revenue Service Revenue Rulings thereunder, if Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying fund. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held in an underlying mutual fund. The Code provides that a Variable Contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

29. Regulations issued under Section 817(h) of the Code provide that, in order to meet the statutory 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. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of such shares also to be held by separate accounts of insurance companies in connection with their Variable Contracts. (Treas. Reg. 1.817–5(f)(3)(iii)) Thus, the Regulations specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor Regulations, nor Internal Revenue Service Revenue Rulings thereunder, present any inherent conflicts of interest if the Qualified Plans and Separate Accounts all invest in the same Portfolio.

30. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Funds. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Portfolio at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in

accordance with the terms of the Qualified Plan.

31. Applicants state that, there is analogous precedent for a situation in which the same funding vehicle was used for contract owners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate account. However, long-term capital gains incurred in such separate accounts were taxed on a different basis than short-term gains and other income with respect to the reserves underlying non-qualified contracts. A tax reserve at the estimated tax rate was established in the separate account affecting only the non-qualified reserves. To the best of Applicants' knowledge, that practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax consequences of distributions with respect to Participating Insurance Companies and Qualified Plans do not raise any conflicts of interest with respect to the use of the Portfolios.

32. In connection with any meeting of shareholders, the soliciting Fund will inform each shareholder, including each Separate Account, Qualified Plan, DFA and General Account, of information necessary for the meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its agreement with the Funds concerning participation in the relevant Portfolio. Shares of a Portfolio that are held by DFA and any General Account will be voted in the same proportion as all variable contract owners having voting rights with respect to that Portfolio. However, DFA and any General Account will vote their shares in such other manner as the Commission may require. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of a Portfolio would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the affected Fund, to withdraw its investment in such Portfolio, and no charge or penalty will be imposed as a result of such withdrawal.

33. Applicants reviewed whether a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, is created with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan, DFA or a General Account. Applicants concluded that the ability of the Funds to sell shares of their Portfolios directly to Qualified Plans, DFA or a General Account does not create a senior security. ''Senior security'' is defined under Section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans, DFA, General Accounts and the Separate Accounts only have rights with respect to their respective shares of the Portfolio. They only can redeem such shares at net asset value. No shareholder of a Portfolio has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

**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 Directors (the ''Board'') of the Fund will consist of persons who are not ''interested persons'' of the Fund, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any Director or Directors, then the operation of this condition will be suspended: (i) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 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.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Fund, 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 such 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 Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of general account assets in a Portfolio), DFA, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Portfolio (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 Qualified Plan to inform the Board whenever it has determined to disregard Qualified 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 participation agreements with the Fund, and these 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 Qualified Plans with participation agreements, 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, or a majority of the

disinterested Directors of the Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested Directors), 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 Portfolio and reinvesting such assets in a different investment vehicle including another Portfolio, or in the case of Participating Insurance Company Participants submitting the question as to 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.,* annuity contract owners or 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 (ii) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Fund, to withdraw such insurer's Separate Account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of contract owners and Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the Fund, DFA or an affiliate of DFA, as relevant, be required to establish a new funding vehicle for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding vehicle for the Qualified Plan if: (i) A majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (ii) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

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

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners 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 Participants, where applicable, will vote shares of the applicable Portfolio held in their Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting privileges in a manner consistent with other Participants.

The obligation to calculate voting privileges as provided in this Application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Funds governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares it owns through its Separate Accounts, in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, DFA or any of its affiliates, and any General Account will vote its shares of any Portfolio in the same proportion of all variable contract owners having voting rights with respect to that Portfolio; provided, however, that DFA, any of its affiliates or any insurance company General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, shall be the persons having a voting interest in the shares of the respective Portfolio, and, in particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the funds of the type 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, the Fund 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 trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Fund will notify all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Fund will disclose in its prospectus that (i) shares of the Fund may be offered to Separate Accounts of Variable Contracts and, if applicable, to Qualified Plans; (ii) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund, if applicable, may conflict; and (iii) the Fund's 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. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and

conditions materially different from any exemptions granted in the order requested in this Application, then the Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials, and data will 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, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

12. All reports of potential or existing conflicts received by the Board, 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.

13. The Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Qualified Plan executes an agreement with the Fund governing participation in such Portfolio that includes the conditions set forth herein to the extent applicable. A Qualified Plan or Qualified Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Portfolio.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–4053 Filed 2–19–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Eagle Building Technologies, Inc. File No. 500–1; Order of Suspension of Trading

February 15, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Eagle Building Technologies, Inc. (''Eagle Building''), because of questions regarding the accuracy of assertions by Eagle Building, and by others, in documents sent to and statements made to market makers of the stock of Eagle Building, other broker-dealers, and investors concerning, among other things: (1) The company's foreign operations and (2) post-September 11 security measures marketed by Eagle Building, including an airport baggage security system, mail sterilization technology, and money laundering detection software.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, February 15, 2002, through 11:59 p.m. EST, on March 1, 2002.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02–4146 Filed 2–15–02; 4:08 pm]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45430; File No. SR–DTC–2002–01]**

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Dutch Issues in the Direct Registration System and to a Modification to the Surety Bond That is Part of the Direct Registration System

February 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 18, 2002, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change provides (i) an interpretation of a rule relating to Dutch issues in the Profile Modification System (''Profile'') feature of the Direct Registration System (''DRS'') facility and (ii) increases the limits of the surety bond that is part of the Profile Surety Program (''PSP'').[2]

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[3]

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

The purpose of the proposed rule change is to (i) provide an interpretation with respect to Dutch issues in DRS and (ii) increase the limits of the surety bond that is part of PSP.

(1) Dutch Issues

DTC established a deadline of December 14, 2001, as the date by which all securities issues eligible for DRS would have to be eligible for processing through Profile.[4] Counsel for a transfer agent for securities of certain Dutch issuers has informed DTC, however, that in order for a transfer of registration of Dutch securities to be

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

[2] For a description of DRS, including Profile and PSP, refer to Securities Exchange Act Release Nos. 35038 (December 1, 1994), 59 FR 63652; 37931 (November 7, 1996), 61 FR 58600; 41862 (September 10, 1999), 64 FR 51162; 42366 (January 28, 2000), 65 FR 5714; 42704 (April 19, 2000), 65 FR 24242; 43586 (November 17, 2000), 65 FR 70745; 44696 (August 14, 2001), 66 FR 43939; and 45232 (January 3, 2002), 67 FR 1254.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] See Securities Exchange Act Release Nos. 44696 (August 14, 2001), 66 FR 43939 [File No. SR–DTC–2001–07] and 45232 (January 3, 2002), 67 FR 1254 (File No. SR–DTC–2001–18).