Mississippi also may be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to federal income tax. Also in the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, and Mississippi also may be required to indemnify the bondholders against any other additions to interest, penalties and additions to tax.

In order to obtain the benefit of ratings for the Revenue Bonds equivalent to the rating of Mississippi's first mortgage bonds outstanding under the indenture dated as of September 1, 1941 between Mississippi and Deutsche Bank Trust Company Americas, as successor trustee, as supplemented and amended (''Mortgage''), Mississippi may determine to secure its obligations under the Note and/or the Agreement by delivering to the Trustee, to be held as collateral, a series of its first mortgage bonds (''Collateral Bonds''). The aggregate principal amount of the Collateral Bonds would be equal to either: (i) The principal amount of the Revenue Bonds or (ii) the sum of such principal amount of the Revenue Bonds plus interest payments thereon for a specified period.

As a further alternative to, or in conjunction with, securing its obligations through the issuance of the Collateral Bonds, Mississippi may: (i) Cause an irrevocable Letter of Credit or other credit facility (''Letter of Credit'') of a bank or other financial institution to be delivered to the Trustee; and/or (ii) cause an insurance company to issue a policy (''Policy'') guaranteeing the payment of the Revenue Bonds. In the event that the Letter of Credit is delivered to the Trustee as an alternative to the issuance of the Collateral Bonds, Mississippi may also convey to the County a subordinated security interest in the Project or other property of Mississippi as further security for Mississippi's obligations under the Agreement and the Note.

The effective cost to Mississippi of any series of the Revenue Bonds will not exceed the greater of (i) 200 basis points over comparable term U.S. Treasury securities, or (ii) a gross spread over such Treasury securities which is consistent with comparable securities. Such effective cost will reflect the applicable interest rate or rates and any underwriters' discount or commission.

Mississippi also proposes to issue and sell, at any time during the Authorization Period: One or more series of its (a) Senior Notes; (b) first mortgage bonds (''First Mortgage Bonds''); and (c) preferred stock in an aggregate amount of up to $475 million, in any combination of issuance. The Senior Notes will have a maturity that will not exceed approximately 50 years. The interest rate on each issue of Senior Notes may be either a fixed rate or an adjustable rate to be determined on a periodic basis by auction or remarketing procedures, in accordance with formula or formulae based upon certain reference rates, or by other predetermined methods. The Senior Notes will be direct, unsecured and unsubordinated obligations of Mississippi ranking *pari passu* with all other unsecured and unsubordinated obligations of Mississippi. The Senior Notes will be effectively subordinated to all secured debt of Mississippi, including its First Mortgage Bonds. The Senior Notes will be governed by an indenture or other document. The effective cost of money to Mississippi on the Senior Notes will not exceed the greater of (i) 300 basis points over comparable term U.S. Treasury securities, or (ii) a gross spread over such Treasury securities which is consistent with comparable securities.

The First Mortgage Bonds will have a term of not more than 40 years and will be sold for the best price obtainable, but not less than 98% or more than 101¾% of the principal amount, plus any accrued interest. Mississippi may enhance the marketability of the First Mortgage Bonds by purchasing an insurance policy to guarantee the payment when due of the First Mortgage Bonds.

Mississippi proposes that each issuance of Mississippi's preferred stock, par or stated value of up to $100 per share (''new Preferred Stock''), will be sold for the best price obtainable (after giving effect to the purchasers' compensation) but for a price to Mississippi (before giving effect to such purchasers' compensation) of not less than 100% of the par or stated value per share.

Mississippi states that it may determine to use the proceeds from the sale of the Revenue Bonds, the Senior Notes, the First Mortgage Bonds and the new Preferred Stock to redeem or otherwise retire its outstanding senior notes, first mortgage bonds, pollution control bonds and/or preferred stock. Mississippi also proposes that it may use the proceeds from the sale of the Senior Notes, the First Mortgage Bonds and new Preferred Stock, along with other funds, to pay a portion of its cash requirements to carry on its electric utility business. Mississippi further states that it may determine to use the proceeds from the sale of the Revenue Bonds, the Senior Notes, the new Bonds and the new Preferred Stock to redeem or otherwise retire its outstanding senior notes, first mortgage bonds, pollution control bonds and/or preferred stock if such use is considered advisable. To the extent that the redemption or other retirement of outstanding preferred stock uses the proceeds from security sales as proposed in the Application, Mississippi requests this authorization under 12 (c) of the Act.

Mississippi represents that it will maintain its common equity as a percentage of its capitalization (inclusive of short-term debt) at no less than 30 percent. Mississippi further represents that no guarantees or other securities may be issued unless: (i) The security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of Mississippi that are rated are rated investment grade; and (iii) all outstanding securities of Southern that are rated are rated investment grade. For purposes of this condition, a security will be considered rated investment grade if it is rated investment grade by at least one ''nationally recognized statistical rating organization,'' as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. Mississippi requests that the Commission reserve jurisdiction over the issuance by Mississippi of any securities that are rated below investment grade. Mississippi further requests that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6656 Filed 3–19–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25962; File No. 812–11474]

The Timothy Plan, et al.; Notice of Application

March 14, 2003.

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

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemptions from the provisions of sections 9(a), 13(a), 15(a)

and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: The Timothy Plan (''Trust'') and Timothy Partners, Ltd. (''TPL'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 6(c) of the Act granting exemptions from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trust's series that are designed to fund insurance products (''Variable Series'') and the series of any other investment company that is designed to fund insurance products and for which TPL or its affiliates may serve as investment adviser, investment sub-adviser, administrator, principal underwriter or sponsor (''Future Variable Series'') to be sold to and held by variable annuity and variable life insurance separate accounts when the following other types of investors also hold shares of the Variable Series or a Future Variable Series: (1) A variable life insurance account (''VLI Account'') of a life insurance company that is not an affiliated person of the insurance company depositor of any VLI Account, (2) TPL (representing seed money investments in the Variable Series or Future Variable Series), (3) a life insurance company separate account (''VA Account'') supporting variable annuity contracts (''VA Contracts''), whether or not the insurance company depositor of any such VA Account is an affiliated person of the insurance company depositor of any VLI Account, and/or (4) a qualified pension or retirement plan.

FILING DATE: The application was filed on January 11, 1999, and amended and restated on December 18, 2001, November 14, 2002 and March 7, 2003.

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 April 8, 2003, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Arthur D. Ally, Timothy Partners, Ltd., 1304 West Fairbanks Avenue, Winter Park, FL 32789.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Zandra Y. Bailes, 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 may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end, management investment company (File Nos. 811–08228 and 33–73248). The Trust currently consists of eleven investment portfolios, which include six traditional funds (''Traditional Funds''), two asset allocation funds (''Asset Allocation Funds'') and three Timothy Plan Variable Series that are designed to fund insurance products.

2. TPL serves as the investment manager to the Trust. TPL is registered with the Commission as an investment adviser pursuant to the Investment Advisers Act of 1940.

3. According to the application, the Variable Series will invest their assets in the Traditional Funds, which sell shares to the general public. A fund that so invests is called a ''fund of funds.'' Applicants state that this fund of funds arrangement involving the Variable Series is consistent with the diversification requirements of section 817(h) of the Code and Regulation 1.817–5 thereunder based on recent decisions by the IRS that have ruled favorably on fund of funds situations involving first-tier series that sell exclusively to separate accounts. In addition, each Variable Series discloses in its prospectus that no more than 55% of its assets will be invested in one of the Traditional Funds, no more than 70% will be invested in two of the Traditional Funds, no more than 80% will be invested in three of the Traditional Funds and no more than 90% will be invested in four of the Traditional Funds.

4. The Trust proposes to offer and sell shares of the Variable Series to insurance companies (''Participating Insurance Companies'') as an investment vehicle for their VLI Accounts and VA Accounts (collectively, ''Variable Accounts''). Each Variable Account will be established as a segregated asset account by a Participating Insurance Company pursuant to the insurance laws of such insurance company's state of domicile. As such, the assets of each will be the property of the Participating Insurance Company, and that portion of the assets of such an account equal to the reserves and other contract liabilities with respect to the account will not be chargeable with liabilities arising out of any other business that the insurance company may conduct. The income, gains and losses, realized and unrealized, from such an account's assets will be credited to or charged against the account without regard to other income, gains or losses of the insurance company. If a VA Account is registered as an investment company, it will be a ''separate account'' as defined by Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust (''UIT''). If a VLI Account is registered as an investment company, it will be a separate account as described in Rule 6e–2(a) or Rule 6e–3(T)(a) and will be registered as a UIT. For purposes of the Act, the life insurance company that establishes such a registered Variable Account is the depositor and sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

5. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under both state and federal law. Each Participating Insurance Company will enter into a participation agreement with the Trust on behalf of its Participating Separate Account. The role of the Trust under this agreement, insofar as the federal securities laws are applicable, will consist of offering shares of the Variable Series to the Participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested in the application.

6. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI Accounts and VA Accounts of the same insurance company, or of two or more affiliated insurance companies, is referred to herein as ''mixed funding.'' The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts and/or VA Accounts of two or more unaffiliated insurance companies is referred to herein as ''shared funding.''

7. The Trust also proposes to sell shares of the Variable Series directly to pension or retirement plans (''Qualified Plans'') intended to qualify under sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended (the ''Code''). Many of the Qualified Plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under section 401(k) of the Code. The Qualified Plans also will be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). The Qualified Plans therefore will be subject to regulatory provisions under the Code and ERISA including, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and enforcement provisions.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c) of the Act exempting them from sections 9(a), 13(a), 15(a), and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Variable Series to be offered and sold to, and held by: (a) VA Accounts and VLI Accounts of the same insurance company or of two or more affiliated insurance companies (''mixed funding''); (b) VA Accounts and VLI Accounts of two or more unaffiliated insurance companies (''shared funding''); and (c) Qualified Plans.

2. Rule 6e–2(b)(15) under the Act provides partial exemptions from: (a) Section 9(a) of the Act, which makes it unlawful for certain individuals and companies to act in certain capacities with respect to registered investment companies; and (b) sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections might be deemed to require ''pass-through'' voting with respect to the shares of a registered management investment company underlying a UIT (an ''underlying fund'') to VLI Accounts supporting scheduled premium VLI Contracts and to their life insurance company depositors, investment advisers, and principal underwriters. The exemptions granted by the Rule are available, however, only if an underlying fund offers its shares exclusively to VLI Accounts of a single Participating Insurance Company or an affiliated insurance company, and then, only if scheduled premium VLI Contracts are issued through such VLI Accounts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI Account that owns shares of an underlying fund that engages in mixed funding by also offering its shares to a VA Account or to a flexible premium VLI Account of the same company or of any affiliated life insurance company. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the underlying fund engages in shared funding by offering its shares to VA Accounts or VLI Accounts of unaffiliated life insurance companies. Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

3. Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI Accounts supporting flexible premium variable life insurance contracts and their life insurance company depositors, investment advisers and principal underwriters. The exemptions granted by the Rule are available, however, only where shares of the Variable Series are offered exclusively to separate accounts of the Participating Insurance Company, or of any affiliated insurance company, offering either scheduled premium contracts or flexible premium contracts, or both, or which also offer their shares to VA Accounts of the Participating Insurance Company or of an affiliated life insurance company. Therefore Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium VLI Account, subject to certain conditions. However, Rule 6e–3(T)(b)(15) does not permit shared funding because the relief granted is not available with respect to a VLI Account that owns shares of an underlying fund that also offers its shares to separate accounts (including VA Accounts and flexible premium and scheduled premium VLI Accounts) of unaffiliated Participating Insurance Companies. Also, Rule 6e–3(T)(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

4. Applicants state that current tax law permits shares of the Variable Series to be sold directly to Qualified Plans. Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts, such as those in the Variable Series. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets fail to be adequately diversified in accordance with regulations issued by the Treasury Department. On March 1, 1989, the Treasury Department adopted regulations (Treas. Reg. 1.817–5) (the ''Regulations'') that established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

5. As a result, Qualified Plans may select the Variable Series as an investment option without endangering the tax status of Variable Contracts issued through Participating Separate Accounts as life insurance annuities. Variable Series shares sold to the Qualified Plans would be held by the Trustees of such Plans as required by section 403(a) of ERISA. The Trustees or other fiduciaries of the Qualified Plans may vote Variable Series shares held by the Qualified Plans in their own discretion or, if the applicable Qualified Plan so provides, vote such shares in accordance with instructions from participants in such Plans. The use of a common management investment company (or investment portfolio thereof) as an investment medium for Variable Accounts and Qualified Plans is referred to herein as ''extended mixed funding.''

6. Applicants note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act preceded the issuance of the Regulations. Thus, the sale of shares of the same investment company to both Participating 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), and, therefore, Applicants assert that the restrictions of such Rules do not evidence an intent of the Commission to prevent extended mixed funding.

7. Section 9(a)(3) of the Act provides that it is unlawful for any company to serve as investment adviser 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 (2). Rule 6e–2(b)(15) and Rule

6e–3(T)(b)(15) limit the application of the eligibility restrictions of section 9(a) to affiliated persons of a life insurance company that directly participate in the management of the underlying registered management investment company under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by Rule 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits persons who are affiliated persons of a life insurance company or its affiliates who otherwise would be disqualified under section 9(a) to serve as an officer, director or employee of an underlying fund, so long as any such person does not participate directly in the management or administration of such underlying fund. In addition, Rule 6e–2(b)(15)(ii) and Rule 6e–3(T)(b)(15)(ii) permit a Participating Insurance Company to serve as the underlying fund's investment adviser or principal underwriter, provided that none of that insurance company's personnel who are ineligible pursuant to section 9(a) of the Act participate in the management or administration of the underlying fund.

8. Applicants assert that the partial relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act from the requirements of section 9 of the Act limits the amount of monitoring of a Participating Insurance Company's personnel that is necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants state that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that applying the provisions of section 9 to the many individuals in a large insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the Participating Separate Accounts, is not necessary or appropriate in the public interest nor is it necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act. Moreover, Applicants assert that disallowing the relief permitted by Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) because shares of the Variable Series are sold to Qualified Plans would serve no regulatory purpose. Applicants assert that the sale of shares of an underlying fund to Qualified Plans does not change the fact that the purposes of the Act are not advanced by applying the prohibitions of section 9(a) to individuals who may be involved in a life insurance complex but have no involvement in the underlying fund.

9. Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15)(iii) under the Act provide partial exemptions from sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections might be deemed to require ''pass-through'' voting with respect to the shares of an underlying fund, by allowing an insurance company to disregard the voting instructions of contract owners 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) permit a Participating Insurance Company to disregard the voting instructions of its contract owners if such instructions would require an underlying fund's shares to be voted to cause such underlying fund to make (or to refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such underlying fund or to approve or disapprove any contract between such underlying fund and an 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 the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) permit a Participating Insurance Company to disregard contract owners' voting instructions if the contract owners initiate any change in the underlying fund's investment objectives, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules). Applicants assert that these rights do not raise any issues different from those raised by the authority of state insurance administrators over separate accounts.

10. Applicants submit that the reason the Commission did not grant more extensive relief in the area of mixed and shared funding when it adopted Rule 6e–3(T) under the Act is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that the Commission's concern is not warranted in the context of permitting shared funding or permitting Qualified Plans to invest in the Variable Series and that the addition of owners of Variable Contracts supported by separate accounts of unaffiliated life insurance companies and Qualified Plans as eligible shareholders will not increase the risk of material irreconcilable conflicts amongst shareholders.

11. Voting rights of shares sold to Qualified Plans are expressly reserved to certain specified persons and are not required to be passed through to Qualified Plan participants. Under section 403(a) of ERISA, shares of an underlying fund sold to a Qualified Plan must be held by the trustee(s) of the Qualified Plan, and such trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire or dispose of 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, the exclusive authority and responsibility for voting shares of an underlying fund is vested in the plan trustees. 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.

12. If 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.

13. If a Qualified Plan does not provide participants with the right to give voting instructions, the Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among owners of Variable Contracts and participants in Qualified Plans with respect to voting of an underlying fund's shares. Accordingly, unlike the case with Participating Separate Accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans because the Qualified Plans are not entitled to pass-through voting privileges.

14. Applicants further note that there is no reason to believe that participants in Qualified Plans which provide participants with the right to give voting instructions generally, or those in a particular Plan, either as a single group

or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract owners. Applicants, therefore, submit that the purchase of shares of the Variable Series by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that the presence of both VLI Accounts and VA Accounts as shareowners of an underlying fund will not lead to a greater probability of material irreconcilable conflicts than if the underlying fund did not engage in mixed funding. Similarly, shared funding does not present any issues that do not already exist where an underlying fund sells its shares to a single insurance company which sells contracts in several states. A state insurance regulatory body in one state could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that unaffiliated insurers may be domiciled in different states does not create a significantly different or enlarged problem.

16. Applicants assert that 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 Act permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential for differences in state regulatory requirements. Applicants state that the conditions summarized below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer may be required to withdraw its Participating Separate Account's investment in the Variable Series. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the Variable Series.

17. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act give the insurance company the right to disregard the voting instructions of the contract owners. Applicants assert that 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 and under certain specified conditions. Requiring that only affiliated insurance companies invest in the Variable Series does not eliminate the potential, if any exists, for divergent judgements as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. Moreover, the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's voting instructions be reasonable and based on specific good faith determinations.

18. A particular Participating Insurance Company'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 Participating Insurance Companies (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 judgement represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Variable Series, to withdraw its Participating Separate Account's investment in such Variable Series, and no change 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 the Variable Series.

19. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of VA and VLI Contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. Variable Series supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding as well as permitting sales to Qualified Plans will provide benefits to the Variable Series shareholders. Among other things, Participating Insurance Companies and Variable Contract owners will benefit from a greater variety of investment options with lower costs.

20. Applicants do not believe that the sale of the shares of the Variable Series to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Applicants assert that there are either no conflicts of interest or that there exists the ability by the affected parties to resolve the issues without harm to the contract owners in the Participating Separate Accounts or to the participants under the Qualified Plans.

21. As noted above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. 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 the Regulations, adequately diversified.

22. The Regulations 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. The Regulations, however, 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 Plan without adversely affecting the ability of shares in the underlying fund 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 Plans and separate accounts to invest in the same portfolio of an underlying fund. For this reason, Applicants assert that neither the Code, nor the Regulations, nor the Revenue Rulings thereunder, present any inherent conflicts of interest.

23. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, the different tax consequences do not raise any conflicts of interest. If the Participating Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account or the Qualified Plan will redeem shares of the Variable Series at their net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract. Therefore, distributions and dividends

will be declared and paid by the Variable Series without regard to the character of the shareholder.

24. Applicants state that it is possible to provide an equitable means of giving voting rights to Variable Contract owners and to the trustees of Qualified Plans. The transfer agent for the Variable Series will inform each Participating Insurance Company of its share ownership in each Participating Separate Account, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T) under the Act, as applicable, and its participation agreement with the Trust. 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 the Variable Series will be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

25. Applicants submit that the ability of the Variable Series to sell shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under section 18(g) of the Act, with respect to any contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of Variable Contract owners or participants under the Qualified Plans, the Qualified Plans and the Participating Separate Accounts have rights only with respect to their respective shares of the Variable Series. They can redeem such shares at their net asset value. No shareholder of the Variable Series will have any preference over any other shareholder with respect to distribution of assets or payment of dividends.

26. Applicants also assert that the veto power of state insurance commissioners over an underlying fund's investment objectives does not create any inherent conflicts of interest between the contract owners of the Participating Separate Accounts and Qualified Plan participants. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all the shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers.

27. In contrast, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Variable Series and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

28. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such 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 insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. The use of a Variable Series as a common investment medium for variable contracts would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to Variable Contract owners by eliminating a significant portion of these costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of TPL, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Variable Series, thereby promoting economics of scale, by permitting increased safety through greater diversification, or by making the addition of new Variable Series more feasible. Applicants assert that the sale of shares of the Variable Series to Qualified Plans in addition to the Separate Accounts will result in an increased amount of assets available for investment by such Variable Series. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Variable Series more feasible.

29. Applicants also submit that the investment of seed capital in the Variable Series presents no potential for irreconcilable conflicts of interest. Seed capital for the Variable Series will be provided by TPL. Applicants note that Rule 14a–2(b) under the Act provides an exemption from the seed capital requirement for investment companies that are sponsored by an insurance company. The Commission has granted this exemption to mutual funds organized by insurance companies, but because TPL is not an insurance company, the exemption is not available to the Variable Series.

30. Applicants assert that granting the exemptions requested by Applicants will not compromise the regulatory purposes of sections 9(a), 13(a), 15(a) and 15(b) of the Act or Rules 6e–2(b)(15) or 6e–3(T)(b)(15) thereunder.

Applicants' Conditions for Relief

If the requested order is granted, Applicants consent to the following conditions:

1. A majority of the Board of Trustees of the Trust (''Board'') will consist of persons who are not ''interested persons'' of the Trust, as defined by section 2(a)(19) of the Act, and the Rules thereunder, as modified by any applicable orders of the Commission, except that if this condition is not met by reason of death, disqualification, or bona-fide resignation of any Trustee, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy may be filled by the Board; (b) for a period of 150 days if a vote of the shareholders is required to fill the vacancy; or (c) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. The Board will monitor each Variable Series for the existence of any material irreconcilable conflict between and among the interests of contract holders of all Participating Separate Accounts and participants of Qualified Plans investing in any such Variable Series 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: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Variable Series are being managed; (e) a difference in voting instructions given by VA Contract owners, VLI Contract owners, and the trustees of Qualified Plans; (f) a decision by a Participating Insurance Company to

disregard the voting instructions of contract owners; or (g) if applicable a decision by a Qualified Plan to disregard voting instructions of its participants.

3. TPL (or any investment adviser to a Variable Series), and any Participating Insurance Company and Qualified Plan that executes a participation agreement, upon becoming an owner of 10 percent or more of the assets of any Variable Series (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Such 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 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 Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligations of all Participating Insurance Companies under their participation agreements with the Trust, 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 the Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested Trustees, that a material irreconcilable conflict exists, then the relevant Participating Insurance Company or Qualified Plan will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested Trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) Withdrawing the assets allocable to some or all of the Participating Separate Accounts from the relevant Variable Series and reinvesting such assets in a different investment medium, which may include another such Variable Series, (b) in the case of Participating Insurance Companies, 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.*, VA Contract owners or VLI Contract holders of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (c) establishing a new registered 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 Participating Insurance Company may be required, at the election of the Trust, to withdraw such Participating Insurance Company's separate account's investment in the relevant Variable Series, 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 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 Trust, to withdraw its investment in the relevant Variable Series, 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 Variable Series and this responsibility, in the case of Participating Insurance Companies, will be carried out with a view only to the interests of contract owners and in the case of Qualified Plans, will be carried out with a view only to the interests of Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested Trustees will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will the Trust or TPL be required to establish a new funding medium for any VA Contract or VLI Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any VA Contract or VLI Contract if an offer to do so has been declined by the vote of a majority of 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 medium for the Qualified Plan if (a) a majority of the Qualified Plan's participants materially and adversely affected by the irreconcilable conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan makes each decision without a participant vote.

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

6. Participating Insurance Companies will provide pass-through voting privileges to all VA Contract and VLI Contract owners whose contracts are funded through a registered separate account so long as the Commission continues to interpret the Act as requiring such pass-through voting privileges. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the applicable Variable Series held in its Participating Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each Participating Separate Account investing in a Variable Series calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to vote a Variable Series' shares and calculate voting privileges in a manner consistent with all other Participating Separate Accounts in a Variable Series will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in such Variable Series. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares attributable to it 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 its governing documents.

7. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges to be provided to VA Contract and VLI Contract owners, TPL and any of its affiliates will vote its shares of any Variable Series in the same proportion as all VA Contract and VLI Contract owners having voting rights with respect to the relevant Variable Series.

8. The Trust will comply with all provisions of the Act requiring voting by shareholders (including persons who have a voting interest in shares of the Variable Series), and, in particular, each such Variable Series will either provide

for annual meetings (except to the extent that the Commission may interpret section 16 of the Act not to require such meetings) or comply with section 16(c) of the Act (although the Trust is not, or will not be, the type of Trust described therein), as well as, with section 16(a) of the Act and, if and when applicable, section 16(b) of the Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participating Insurance Companies and all Qualified Plans that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed funding may be appropriate. Each Variable Series will disclose in its prospectus that: (a) Shares of such Variable Series may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Variable Series and the interests of Qualified Plans investing in such Variable Series may conflict, and (c) the Trust's Board of Trustees 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 conflict.

10. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the Act is amended or proposed Rule 6e–3 under the Act is adopted to provide exemptive relief from any provision of the Act, or 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 amended and restated Application, then the Trust and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, as adopted, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as the Board may reasonably request so that the Trustees of the Trust may fully carry out the obligations imposed upon them by the conditions contained in this amended and restated Application, and said 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 each Variable Series.

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

13. A Variable Series 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 Variable Series unless the Qualified Plan executes an agreement with the Trust governing participation in such Variable Series that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any Variable Series.

Conclusion

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

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47493; File No. SR–Amex–2002–108]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Amend Amex Rule 152 To Provide That a Member That Fails To Execute an Order May Be Compelled To Take or Supply the Securities Named in the Order

March 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2002, the American Stock Exchange LLC (''Amex'' 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 the Exchange. 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

The Amex proposes to amend Amex Rule 152 to provide that a member that fails to execute an order may be compelled to take or supply the securities named in the order. The text of the proposed rule change is below. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.

* * * * *

Taking or Supplying Stock to Fill Customer's Order

Rule 152. (a) No member or member organization shall take or supply for any account in which the member, member organization or any other member, officer or approved person therein has any direct or indirect interest, of which the member knows or should have known, the securities named in a sell or buy order accepted for execution by the member or member organization except as follows:

Error

(1) *A member who neglects to execute an order may be compelled to take or supply for his own account or that of his member organization the securities named in the order.* [A member or member organization which through

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

[2] 17 CFR 240.19b–4.