application dated September 26, 2000, and supplements dated September 27, November 9, and November 14, 2000, available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov*.

Dated at Rockville, Maryland this 22nd day of November 2000.

For the Nuclear Regulatory Commission.

John L. Minns,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–30466 Filed 11–30–00; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

December 12, 2000 Board of Directors Meeting

TIME AND DATE: Tuesday, December 12, 2000, 1:00 pm (Open Portion), 1:30 pm (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting Open to the Public from 1:00 pm to 1:30 pm Closed portion will commence at 1:30 pm (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report
2. Amendment of the OPIC Bylaws
3. Approval of September 19, 2000 Minutes (Open Portion)

FURTHER MATTERS TO BE CONSIDERED: Closed to the Public 1:30 pm)

1. Finance Project in OPIC Eligible Countries
2. Finance Project in Brazil
3. Finance Project in Argentina
4. Approval of September 19, 2000 Minutes (Closed Portion)
5. Pending Major Projects
6. Reports

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: November 28, 2000.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 00–30649 Filed 11–28–00; 12:30 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release Docket No. IC–24747; File No. 812–12260]

The Ayco Company, et al.

November 22, 2000.

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

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

Applicants: Ayco Series Trust (''Trust'') and The Ayco Company, L.P. (''Ayco'') (collectively, ''Applicants'').

Summary of Application: Applicants seek an order to permit shares for the Trust and shares of any other existing or future investment company that is designed to fund insurance products and for which Ayco, or any of its affiliates, may serve as investment manager, investment adviser, subadviser, administrator, manager, principal underwriter or sponsor (the Trust and such other investment companies being hereinafter referred to, collectively, as ''Insurance Trusts''), or permit shares of any current or future series of any Insurance Trust (''Insurance Fund''), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''); and (3) any investment manager to an Insurance Trust (''Manager'') and the affiliates thereof.

Filing Date: The application was filed on September 15, 2000. Applicants represent that they will file an amendment to the application during the notice period to conform to the representations set forth herein.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on December 15, 2000 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 writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0690. Applicants, c/o Margaret M. Keyes, Esq., Deputy General Counsel, The Ayco Company, L.P., One Wall Street, Albany, New York 12205–3894.

FOR FURTHER INFORMATION CONTACT: Ann L. Vlcek, Senior Counsel, or Lorna J. 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, N.W., Washington, DC 20549–0102 (202–942–8090).

Applicant's Representations

1. The Trust is a Delaware business trust organized on August 30, 2000. It is registered under the 1940 Act of the series type as an open-end management investment company.[1] The initial series of the Trust is the Ayco Large Cap Growth Fund I (''Fund''). The Trust is authorized to establish additional series and classes of shares.

2. Mercer Allied Company, L.P. (''Mercer Allied''), a broker-dealer registered with the Commission and a member of the National Association of Securities Dealers, Inc., serves as the Trust's distributor. The General Partner of Mercer Allied is Breham, Inc., a corporation wholly-owned by John Breyo, the Trust's Chief Executive Officer and a Trustee of the Trust.

3. Ayco Asset Management, a division of Ayco, serves as the Trust's investment manager. Ayco is registered as an investment adviser with the SEC under the Investment Advisers Act of 1940, as amended. The general partner of Ayco is Hambre, Inc., a corporation also wholly-owned by John Breyo.

4. The Insurance Trusts intend to offer shares of the Insurance Funds to registered and unregistered separate accounts of affiliated and unaffiliated insurance companies (collectively, ''Separate Accounts'' [2] in order to fund

[1] The Trust filed a notification of registration on Form N–8A, and filed its initial registration statement on Form N–1A under the 1940 Act and the Securities Act of 1933, as amended (''1933 Act''), on September 5, 2000 (File Nos. 333–45194; 811–10115). Pursuant to Rule 0–4(a) under the 1940 Act, Applicants hereby incorporate by reference the Trust's registration statement to the extent necessary to supplement the representations contained herein.

[2] The Separate Accounts are, or will be, either registered as investment companies under the 1940

Continued

various types of insurance products. These products may include, but are not limited to, variable annuity contracts, scheduled premium variable life insurance contracts, single premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively referred to herein as ''variable contracts'' or ''contracts''). Insurance companies whose Separate Account(s) may now or in the future own shares of the Insurance Funds are referred to herein as ''Participating Insurance Companies.''

5. The Participating Insurance Companies will establish their own Separate Accounts and design their own variable annuity and variable life insurance contracts. Each Participating Insurance Company will have the legal obligation to satisfy all applicable requirements under both state and federal laws. It is anticipated that Participating Insurance Companies will rely on rule 6e–2 or Rule 6e–3(T) under the 1940 Act, in connection with the establishment and maintenance of variable life insurance Separate Accounts, although some Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well.

6. Each Participating Insurance Company will enter into a participation agreement with the applicable Insurance Trust on behalf of the Insurance Funds in which the Participating Insurance Company invests. The role of the Insurance Funds under this arrangement, insofar as federal securities laws are applicable, will consist of offering their shares to the Separate Accounts and fulfilling any conditions that the Commission may impose upon granting the order requested herein.

7. The Insurance Trusts intend to offer shares of the Insurance funds directly to Qualified Plans outside of the separate accounts context. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of separate accounts funding variable annuity contracts and variable life insurance contracts. In particular, the Code provides that such contracts shall not be treated as an annuity contracts or life insurance contract for any period (and any subsequent period) for which the separate account investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) (''Treasury Regulations'') that establish diversification requirements for variable annuity and variable life insurance contracts, which require the separate accounts upon which these contracts are based to be diversified as provided in the Treasury Regulations. In the case of separate accounts that invest in underlying investment companies, the Treasury Regulations provide a ''look through'' rule that permits the separate account to look to the underlying investment company for purposes of meeting the diversification requirements, provided that the beneficial interests in the investment company are held only by the segregated asset accounts of one or more insurance companies. However, the Treasury Regulations also contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. 1.817–5(f)(3)(iii). Another exception allows the investment manager of the investment company and certain companies related to the investment manager to hold shares of the investment company.

8. Qualified Plans may choose any of the Insurance Funds that are offered as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. Shares of any of the Insurance Funds sold to such Qualified Plans would be held or deemed to be held by the trustee(s) of said Plans.[3] Certain Qualified Plans, including Section 403(b)(7) Plans and Section 408(a) Plans, may vest voting rights in Plan participants instead of Plan trustees. Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by the Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

9. shares of each Insurance Trust also may be offered to the Manager and its affiliates, in reliance on Treasury Regulation 1.817–5(f)(3)(ii). Applicants state that the Treasury Regulations permit such sales as long as the return on shares held by the Manager or its affiliates is computed in the same manner as for shares held by the Separate Accounts, and the Manager and its affiliates do not intend to sell to the public shares of the Insurance Trust that they hold. An additional restriction is imposed by the Treasury Regulations on sales to the Manager and its affiliates who may hold shares only in connection with the creation or management of the Insurance Trust. Applicants anticipate that sales in reliance on these provisions of the Treasury Regulations generally will be made to the Manager and its affiliates and generally for the purpose of providing necessary capital required by Section 14(a) of the 1940 Act.

10. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act preceded the issuance of the Treasury Regulations that made it possible for shares of an investment company to be held by a Qualified Plan or the investment company's investment manager or its affiliates without adversely affecting the ability of shares in the same investment company to also be held by separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, Applicants believe that the sale of shares of the same investment company to separate accounts through which variable life insurance contracts and variable annuity contracts are issued, to Qualified Plans, or to the investment company's investment manager and its affiliates (collectively, ''eligible shareholders'') could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

Act or exempt from registration thereunder pursuant to Section 3(c)(1) of the Act.

[3] Qualified Plans described in Code Section 403(b)(7) (''Section 403(b)(7) Plans'') and in Section 408(a) (''Section 408(a) Plans'') may invest in mutual funds through custodial arrangements. Such custodial arrangements typically provide that shares held of record by the custodian are held for the benefit of the participant that beneficially owns such shares. Shares of the Insurance Trusts may be offered and sold to Section 403(b)(7) Plans and Section 408(a) Plans encompassing participants in custodial arrangements, to the extent shares owned of record by a custodian are deemed to be held in trust. The obligations of custodians of Section 403(b)(7) Plans and Section 408(a) Plans to participants in such plans are typically much more limited than the obligations of trustees of other Qualified Plans to participants in such Plans. For example, the decision whether to purchase or sell shares of any particular investment option, and the decision of how to vote on any particular matter presented to shareholders, typically is vested in participants in Section 403(b)(7) Plans and Section 408(a) Plans, rather than custodians. Because of the limited role of custodians of Section 403(b)(7) Plans and Section 408(a) Plans, Applicants intend to treat each participant in a Section 403(b)(7) Plan and a Section 408(a) Plan as a separate Qualified Plan for purposes of this Application.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust (''Trust Account''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act.[4] The exemptions granted to a separate account by Rule 6e–2(b)(15) are available only where each registered management investment company underlying the Trust Account (''underlying fund'') offers its shares *''exclusively* to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *.'' (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company.[5] The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.''

2. In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.''

3. Moreover, because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans or to the Manager and its affiliates.

4. Accordingly, Applicants are requesting an order of the Commission granting exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit shares of each Insurance Trust to be offered and sold to, and held by: (a) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (b) Qualified Plans; and (c) any Manager to an Insurance Trust and affiliates thereof.

5. In connection with the funding of flexible premium variable life insurance contracts through a Trust Account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with the respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more underlying funds which offer their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offers their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis added). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions.[6] However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

6. The relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Trusts by Qualified Plans or by the Manager and its affiliates. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans or to the Manager and its affiliates.

7. Accordingly, Applicants are requesting an order of the Commission granting exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rule 6e–3(T)(b)(15) (and any comparable permanent rule) thereunder, to the extent necessary to permit shares of each Insurance Fund to be offered and sold to, and held by: (a) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by unaffiliated life insurance companies; (b) Qualified Plans; and (c) any Manager to an Insurance Trust and affiliates thereof.

8. Applicants state that none of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, the Manager and its affiliates, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Trusts may themselves be investment companies that rely upon the relief provided by Rules 6e–2 and 6e–3(T) and wish to continue to rely upon that relief provided in those Rules, that the Applicants are applying for the relief described in this Application.

9. In its most recent release adopting amendments to Rule 6e–3(T), the Commission stated that shared funding arrangements presented ''a very new and somewhat complicated area from a regulatory perspective'' (Investment Company Act Release No. 15651 (March 30, 1987)). In the context of mixed funding, the Commission noted in this same Release that ''it would prefer to see any evolvement in this area * * * take place in the context of the application process.''

10. Applicants presume that the reason that the Commission did not grant greater relief in the area of mixed and shared funding when it adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that any Commission concern in this area is not warranted in the context of this Application. Applicants state that, if and when a material irreconcilable

[4] The relief provided by Rule 6e–2 is also available to a separate account's investment manager, principal underwriter, and sponsor or depositor.

[5] The Commission has published proposed amendments to Rule 6e–2 that, if adopted, would permit shares of one underlying fund to be sold to separate accounts of the insurer, or any affiliated life insurance company, offering variable annuity contracts or scheduled premium or flexible premium variable life insurance. *See* Investment Company Act Release No. 14421 (Mar. 15, 1985). However, the proposed amendments would not permit shares of one underlying fund to be sold to separate accounts of unaffiliated companies.

[6] The relief provided by Rule 6e–3(T) is also available to a separate account's investment manager, principal underwriter, and sponsor or depositor.

conflict between the Separate Accounts arises in this context or between Separate Accounts on the one hand and Qualified Plans or the Manager and its affiliates on the other hand, the Participating Insurance Companies, Qualified Plans and the Manager and its affiliates must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as an eligible investment option. Applicants believe that investment by the Manager and its affiliates or the inclusion of Qualified Plans as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. Applicants further assert, however, that even if a material irreconcilable conflict involving the Qualified Plans arose, the Qualified Plans, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants thus argue that allowing the Manager and its affiliates or Qualified Plans to invest directly in the Insurance Trusts should not increase the opportunity for conflicts of interest.

11. The Commission has previously granted exemptive orders permitting open-end management investment companies to offer their shares directly to Qualified Plans as well as to separate accounts of affiliated or unaffiliated insurance companies that issue variable annuity contracts and variable life insurance contracts,[7] and has granted comparable relief in instances in which the investment managers of investment companies serving as the underlying investment media for variable insurance contracts proposed to purchase shares of such investment companies.[8]

12. 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 the Insurance Funds. Applicants maintain that there is ample precedent, in a variety of contexts, for granting exemptive relief not only to the applicants in a given case, but also to members of the class not currently identified that may be similarly situated in the future. In the context of mixed and shared funding, the Commission has granted exemptions covering a class composed of registered investment companies designed to fund variable contracts for which a named party to the exemptive application or, in some instances, an affiliate thereof, would serve in one of more of the following capacities: investment manager, investment adviser, sub-adviser, administrator, manager, principal underwriter or sponsor.[9]

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

14. In general, Section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from acting or serving in various capacities with respect to a registered investment company. More specifically, paragraph (3) of Section 9(a) provides, among other things, that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (a)(2). Rule 6e–2(b)(15)(i) and (ii) under the 1940 Act and Rule 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying fund.

15. Applicants state that the relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) under the 1940 Act permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund.

16. Applicants contend that the relief provided by Rules 6e–2(b)(15)(ii) and 63–3(T)(b)(15)(ii) under the 1940 Act permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible, pursuant to Section 9(a), are participating in the management or administration of the Trust.

17. Applicants state that 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 limits, in effect, the amount of monitoring of an insurer's personnel, which would otherwise be necessary to ensure compliance with Section 9, to that which is appropriate in light of the policy and purposes of Section 9. Applicants maintain that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will

[7] *E.g.,* Warburg Pincus Trust, *et al.,* Investment Company Act Release No. 24482 (May 30, 2000) (order), Investment Company Act Release No. 24442 (May 5, 2000) (notice); Kelmoore Strategy TM Variable Trust, *et al.,* Investment Company Act Release No. 24454 (May 16, 2000) (order), Investment Company Act Release No. 24399 (April 19, 2000) (notice); Pacific Select Fund, *et al.,* Investment Company Act Release No. 24196 (Dec. 14, 1999) (order), Investment Company Act Release no. 24140 (Nov. 17, 1999) (notice); Aetna Variable Fund, *et al.,* Investment Company Act Release No. 23616 (Dec. 21, 1998) (order), Investment Company Act Release No. 23545 (Nov. 23, 1998) (notice); PIMCO Variable Insurance Trust, *et al.,* Investment Company Act Release No. 23022 (Feb. 9, 1998) (order), Investment Company Release No. 22994 (Jan. 7, 1998) (notice); The Dreyfus Socially Responsible Growth Fund, Inc., *et al.,* Investment Company Act Release No. 23021 (Feb. 5, 1998) (order), Investment Company Act Release No. 22996 (Jan. 9, 1998) (notice); and EQ Advisors Trust, *et al.,* Investment Company Act Release No. 22651 (Apr. 30, 1997) (order), Investment Company Act Release No. 22602 (Apr. 4, 1997) (notice).

[8] *E.g.,* Potomac Insurance Trust, *et al.,* Investment Company Act Release No. 24560 (July 18, 2000) (order), Investment Company Act Release No. 24544 (June 22, 2000) (notice); SEI Insurance Products Trust, *et al.,* Investment Company Act Release no. 24134 (Nov. 15, 1999) (order), Investment Company Act Release No. 24089 (Oct. 18, 1999) (notice); Barr Rosenberg Variable Insurance Trust, *et al.,* Investment Company Act Release No. 23402 (Aug. 26, 1998) (order), Investment Company Act Release No. 23372 (July 31, 1998) (notice); Variable Annuity Portfolios, *et al.,* Investment Company Act Release No. 22857 (Oct. 16, 1997) (order), Investment Company Act Release No. 22823 (Sept. 17, 1997) (notice); and The Palladian Trust, *et al.,* Investment Company Act Release No. 22493 (Feb. 5, 1997) (order), Investment Company Act Release No. 22456 (Jan. 9, 1997) (notice).

[9] *See* Variable Insurance funds, *et al.*, Investment Company Act Release No. 21675 (Jan. 16, 1996) (Order), Investment Company Act Release No. 21592 (Dec. 12, 1995) (notice) (Commission granted relief extending to all investment companies designed to fund insurance products for which BISYS Fund Services, or any of its affiliates, may serve as principal underwriter and administrator). *See also* precedent cited *supra* note 9 (Commission granted relief extending to all investment companies for which the named investment adviser, or an affiliate of the adviser, may serve as investment manager, investment adviser, sub-adviser, administrator, manager, principal underwriter or sponsor).

have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply Section 9(a) of the 1940 Act to the many individuals employed by Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) who do not directly participate in the administration or management of the Insurance Trusts.

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

19. Applicants state that, moreover, the relief requested should not be affected by the sale of shares of the Insurance Trusts to Qualified Plans or the Manager and its affiliates. Applicants believe that the insulation of the Insurance Trusts from those individuals who are disqualified under the 1940 Act remains in place. Because Qualified Plans and the Manager and its affiliates are not investment companies and will not be deemed to be affiliated with the Insurance Trusts solely by virtue of their shareholdings, Applicants state that no additional relief is necessary.

20. Applicants submit that 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 underlying fund shares held by a separate account. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide partial exemptions from those sections to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances. Applicants maintain that Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(*1*) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such underlying funds to make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of such underlying funds or to approve or disapprove any contract between an underlying fund and its investment manager, 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 such Rules). Applicants further state that Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such underlying funds' investment policies, principal underwriter, or any investment manager (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of Rules 6e–2 and 6e–3(T)).

21. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract is an insurance contract; it has important elements unique to insurance contracts; and it is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), Applicants believe that 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.[10]Applicants state that 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.[11] Applicants further state that 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.'' [12]

Applicants conclude that, in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Rule 6e–3(T)'s corresponding provisions presumably were adopted in recognition of the same factors.

22. Applicants believe that state insurance regulators have much the same authority with respect to variable annuity separate accounts as they have with respect to variable life insurance separate accounts. Insurers generally assume both mortality and expense risks under variable annuity contracts. Therefore, Applicants note that variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. Applicants state that the Commission staff has not addressed the general issue of state insurance regulators' authority in the context of variable annuity contracts and has not developed a single comprehensive exemptive rule for variable annuity contracts.[13]

23. Applicants assert that the Insurance Trusts' sale of shares to Qualified Plans for the Manager and its affiliates will not have any impact on the relief requested herein in this regard. Applicants note that shares of the Insurance Trusts sold to Qualified Plans would be held by the trustees of such Plans.[14] Applicants state that the exercise of voting rights by Qualified Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, Applicants submit that there is no requirement to pass through voting rights to Plan participants. Applicants believe that, indeed, to the contrary, applicable law expressly reserves voting rights associated with certain types of Plan assets to certain specified persons. Applicants state that, for example, under Section 403(a) of ERISA, shares of

[10] Investment Company Act Release No. 9482 (Oct. 18, 1976) (adopting Rule 6e–2).

[11] Investment Company Act Release No. 8000 (Sept. 20, 1973) (proposing to amend Rule 3c–4, the predecessor of Rule 6e–2).

[12] Investment Company Act Release No. 9104 (Dec. 30, 1975) (proposing Rule 6e–2).

[13] Applicants are not aware of any rule or exemptive order granting relief for variable annuity separate accounts from the disqualification or pass-through voting provisions, and no such relief is requested herein.

[14] As noted *supra* note 8, Section 403(b)(7) Plans and Section 408(a) Plans may permit shares beneficially owned by participants to be owned of record by custodians. Offers and sales of Insurance Fund shares to such plans would be permitted to the extent that Insurance Fund shares owned of record by the custodians are deemed to be held by Section 403(b)(7) Plan and Section 408(a) Plan trustees.

a fund sold to a Qualified Plan must be held by the trustee(s) of the Plan. Applicants further note that Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the Plan expressly provides that the trustee(s) are subject to the direction of the 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 Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Applicants state that Plan trustee(s) have the exclusive authority and responsibility for voting proxies.

24. Applicants note that, 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. Applicants further note that 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. Applicants state that certain Qualified Plans, however, may provide for the trustees(s) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

25. If a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract owners and Plan participants with respect to voting of the respective Insurance Fund's shares. Accordingly, unlike the case with insurance company separate accounts, Applicants argue that 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.

26. 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, assert that the purchase of shares of the Insurance Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

27. Applicants note that, similarly, the Manager and its affiliates are not subject to any pass-through voting requirements. Accordingly, unlike the case with Separate Accounts, Applicants state that the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans or the Manager and its affiliates.

28. Applicants submit that the prohibitions on mixed and shared funding might reflect some concern with possible divergent interests among different classes of investors. Applicants note that when Rule 63–2 was adopted, variable annuity separate accounts could (and some did) invest in mutual funds whose shares were also offered to the general public. Therefore, at the time of the adoption of Rule 6e–2, Applicants state that the Commission staff contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. Applicants believe that the Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. Applicants further believe that there also may have been some concern with the problems of permitting a state insurance regulatory authority to affect the operations of a publicly-available mutual fund, and hence, affect the investments decisions of public shareholders.

29. However, for reasons unrelated to the 1940 Act, Applicants note that Internal Revenue Service Ruling 81–225 (Sept 25, 1981) (''Ruling 81–225'') effectively deprived variable annuities funded by publicly-available mutual funds of their tax-benefited status. Applicants state that the Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment medium for variable contracts (including variable life contracts). Applicants further state that Section 817(h) of 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 registered as a unit investment trust that invests in a single fund or series, Applicants maintain that Section 817(h) and the Treasury Regulations provide, in effect, that the diversification test will be applied at the underlying fund level rather that at the separate account level, but only if, subject to certain exceptions, ''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 * * *.'' [15] Applicants state that, accordingly, a Trust Account that invests solely in a publicly available mutual fund would not be adequately diversified. In addition, Applicants state that any underlying fund, including the Insurance Funds, that sells its shares to separate accounts would, in effect, be precluded from selling its shares to the public. Consequently, Applicants submit that the Insurance Funds will be obligated not to sell their shares directly to the public.

30. While there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, Applicants assert that the tax consequences do not raise any conflicts of interests. When distributions are to be made, and the separate account or the Qualified Plan cannot net purchase payments to make the distributions, Applicants state that the separate account or the Plan will redeem shares of the Insurance Trusts at their net asset value. Applicants further state that the Qualified Plan will then make distributions in accordance with the terms of the Qualified Plan and the insurance company will make distributions in accordance with the terms of the variable contract.

31. Applicants state that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants assert that 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. Applicants submit that the fact that different Participating Insurance Companies may be domiciled in different states does not create a significantly different or enlarged problem.

[15] Treas. Reg. 1.817–5, which established diversification requirements for such funds, specifically permits, among other things, investment company managers, insurance company general and separate accounts and ''qualified pension or retirement plans'' to share the same underlying management investment company. Therefore, neither the Code, the Treasury Regulations nor Revenue Rulings thereunder present any inherent conflicts of interest if investment company managers, insurance company general accounts, Qualified Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

32. Applicants submit that shared funding by unaffiliated Participating Insurance Companies is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated Participating Insurance Companies, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit under various circumstances. Applicants state that affiliated Participating Insurance Companies may be domiciled in different states and be subject to differing state law requirements, and that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. Applicants assert that, in any event, the conditions discussed below are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

33. Applicants maintain that the right under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) of an insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Applicants believe that, 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. Applicants state that 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. Applicants submit that the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

34. Applicants note, however, that a particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. Applicants state that the Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, Applicants note that the Participating Insurance Company may be required, at an Insurance Trust's election, to withdraw its Separate Account's investment in that Insurance Trust, and no charge or penalty would be imposed as a result of such withdrawal.

35. With respect to voting rights, Applicants maintain that it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans and the Manager and its affiliates. Applicants note that the transfer agent(s) for the Insurance Trusts will inform each shareholder, including each Separate Account, each Qualified Plan, and the Manager and its affiliates, of its share ownership, in an Insurance Trust. According to the Applicants, each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

36. Applicants assert that investment by Qualified Plans in any Insurance Trust will similarly present no conflict. Applicants submit that the likelihood that voting instructions of variable contract owners will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Qualified Plan choosing to invest in an Insurance Trust. Applicants state that, moreover, even if a material irreconcilable conflict involving Qualified Plans arises, the Qualified Plans may simply redeem their shares and make alternative investments. Applicants note that votes cast by the Qualified Plans, of course, cannot be disregarded but must be counted and given effect.

37. Applicants believe that there is no reason why the investment policies of an Insurance fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Applicants contend that each type of insurance product is designed as a long-term investment program. Applicants further submit that, similarly, the investment strategy of Qualified Plans (*i.e.,* long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts.

38. Applicants maintain that each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. Applicants submit that there is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. Applicants note that the sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

39. Applicants state that, furthermore, no one investment strategy can be identified as appropriate to a particular insurance product. Applicants state that each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. Applicants note that an underlying fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain shareholders. Applicants maintain that permitting mixed and shared funding will provide economic justification for the growth of the Insurance Funds. In addition, Applicants assert that permitting mixed and shared funding will facilitate the establishment of additional Insurance Funds serving diverse goals. Finally, Applicants submit that the broader base of shareholders can also be expected to provide economic justification for the creation of additional Insurance Funds with a greater variety of investment objectives and policies.

40. Applicants note that Section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Applicants state that Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of underlying funds. Applicants further state that Treasury Regulation 1.817–5, which established diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, ''qualified pension or retirement plans'' and separate accounts to share the same underlying fund. Applicants assert that, therefore, neither the Code nor the Treasury Regulations thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts and the Manager and its affiliates all invest in the same underlying fund.

41. Applicants maintain that the ability of the Insurance Trusts to sell their respective shares directly to Qualified Plans or the Manager and its affiliates does not create a ''senior security,'' as such term is defined under

Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Qualified Plan or the Manager and its affiliates. Applicants state that, as noted above, regardless of the rights and benefits of contract owners or Qualified Plan participants, the Separate Accounts, Qualified Plans and the Manager and its affiliates have rights only with respect to their respective shares of the Insurance Trusts. Applicants state that they can only redeem such shares at net asset value, and that no shareholder of any of the Insurance Trusts has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

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

43. Applicants state that, unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, the Insurance Trusts may be deemed to lack an insurance company ''promoter'' for purposes of Rule 14a–2 under the 1940 Act. Applicants note that it is anticipated that many other Insurance Trusts may lack an insurance company promoter. Applicants state that, accordingly, such Insurance Trusts will be subject to the requirements of Section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares. Applicants further state that Insurance Trusts also will require more limited amounts of initial capital in connection with the creation of new series and the voting of initial shares of such series on matters requiring the approval of shareholders.

44. Applicants note that a potential source of the requisite initial capital is an Insurance Trust's Manager or a Participating Insurance Company, and that either of these parties may have an interest in making the requisite capital expenditure and in participating with the Insurance Trust in its organization. Applicants submit, however, that provision of seed capital or the purchase of shares in connection with the management of an Insurance Trust by the Manager and its affiliates or by a Participating Insurance Company may be deemed to violate the exclusivity requirement of Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(15) under the 1940 Act.

45. Applicants anticipate that such investment by the Manager and its affiliates generally will be limited in scope and duration, and will be made only in connection with the operation of the Insurance Trusts. Applicants maintain that the return on shares held by the Manager and its affiliates will be calculated in the same manner as for shares held by a Separate Account. Applicants state that any shares of an Insurance Trust purchased by the Manager or its affiliates will be automatically redeemed if and when the Manager's investment management agreement terminates, to the extent required by applicable Treasury Regulations. Applicants further states that neither the Manager nor its affiliates will sell such shares of the Insurance Trust to the public. Given the conditions of Treas. Reg. 1.817–5(i)(3) under the Code and the harmony of interest between an Insurance Trust, on the one hand, and its Manager(s) or a Participating Insurance Company, on the other, Applicants assert that little incentive for overreaching exists. Furthermore, Applicants state that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Applicants state that, instead, permitting investments by the Manager and its affiliates will permit the orderly and efficient creation and operation of Insurance Trusts, and reduce the expense and uncertainty of using outside parties at the early states of Insurance Trust operations.

46. Applicants maintain that various factors have limited the number of insurance companies that offer variable contracts. Applicants state that these factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain Participating Insurance Companies as investment experts. Applicants believe that, in particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Applicants contend that use of the Insurance Trusts as a common investment medium for variable contracts and Qualified Plans would help alleviate these concerns, because Participating Insurance Companies and Qualified Plans will benefit not only from the investment and administrative expertise of Ayco, or any other investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants submit, therefore, that making the Insurance Trusts available for mixed and shared funding and permitting the purchase of Insurance Trust shares by Qualified Plans may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation. Applicants assert that mixed and shared funding also may benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants state, furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Insurance Trusts, which may benefit variable contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Insurance Trusts, or by making the addition of new Insurance Funds more feasible.

47. Applicants note that the Commission has previously issued orders permitting mixed funding [16] and shared funding. [17] Applicants also maintain that, in addition, the Commission has broadened its grant of exemptive relief by issuing orders permitting mixed and shared funding while fund shares are also sold directly to Qualified Plans and to an investment

[16] *See, e.g.,* New York Life MFA Series Fund, Inc., *et al.,* Investment Company Act Release No. 19069 (Oct. 30, 1992) (order), Investment Company Act Release No. 19010 (Oct. 8, 1992) (notice); The Manufacturers Life Insurance Company of America, *et al.,* Investment Company Act Release No. 18112 (Apr. 25, 1991) (order), Investment Company Act Release No. 18070 (Mar. 29, 1991)(notice); United Services Life Insurance Company, Investment Company Release No. 16384 (Apr. 28, 1988) (order), Investment Company Act Release No. 16348 (Apr. 5, 1988) (notice); and Mass. Variable Life Separate Account I, Investment Company Act Release No. 14342 (Jan. 30, 1985) (order), Investment Company Act Release No. 14306 (Jan. 4, 1985) (notice).

[17] *See, e.g.,* Pacific Select Fund, *et al.,* Investment Company Act Release No. 24196 (Dec. 14, 1999) (order), Investment Company Act Release No. 24140 (Nov. 17, 1999) (notice); Aetna Variable Fund, *et al.,* Investment Company Act Release No. 23616 (Dec. 21, 1998) (order), Investment Company Act Release No. 23545 (Nov. 23, 1998) (notice); EQ Advisors Trust, *et al.,* Investment Company Act Release No. 22651 (Apr. 30, 1997) (order), Investment Company Act Release No. 22602 (Apr. 2, 1997) (notice); Neuberger & Berman Advisers Management Trust, *et al.,* Investment Company Act Release No. 21046 (May 5, 1995) (order), Investment Company Act Release No. 21003 (April 12, 1995) (notice); and Janus Aspen Series, *et al.,* Investment Company Act Release No. 20108 (Mar. 2, 1994) (order), Investment Company Act Release No. 20054 (Feb. 3, 1994) (notice).

manager and its affiliates.[18] Applicants submit that the exemptive relief requested herein is similar to exemptive recent relief granted by the Commission in Potomac Insurance Trust, *et al.,* Investment Company Act Release No. 24560 (July 18, 2000) (order), Investment Company Act Release No. 24454 (June 22, 2000) (notice). *See also* Barr Rosenberg Variable Insurance Trust, *et al.,* Investment Company Act Release No. 23402 (Aug. 26, 1998) (order), Investment Company Act Release No. 23372 (July 31, 1998) (notice); U.S. Global Leaders Variable Insurance Trust, *et al.,* Investment Company Act Release No. 23256 (June 16, 1998) (order), Investment Company Act Release No. 23199 (May 20, 1998) (notice); and Variable Annuity Portfolios, *et al.,* Investment Company Act Release No. 22823 (Sept. 17, 1997) (notice). Applicants assert that granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of Sections 9 (a), 13(a), 15(a), or 15(b) of the 1940 Act or Rules 6e–2 or 6e–3(T) thereunder.

Conditions

Applicants Consent to the Following Conditions

1. A majority of the Board of Trustees or Board of Directors (''Board'') of each Insurance Trust shall consist of persons who are not ''interested persons'' of the Insurance Trust, 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, disqualifications, or bona fide resignation of any trustee or director, then the operator of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor the respective Insurance Trust for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, and of the Plan participants, Qualified Plans, and the Manager or its affiliates investing in that Insurance Trust, 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 interpretative 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 any Insurance Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, Plan trustees, or Plan participants; (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 the voting instructions of Plan participants.

3. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Trust, any Participating Insurance Company, and the Manager and its affiliates (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Each of the Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board will 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 that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in an Insurance Trust under their agreements governing participation in the Insurance Trust, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, if applicable, Plan participants.

4. If it is determined by a majority of the Board of an Insurance Trust, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plan shall, at their expense or, at the discretion of a Manager to an Insurance Trust, at that Manager's expense, and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to an including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Insurance Trust or any series therein and reinvesting such assets in a different investment medium (including another Insurance Fund, if any); (b) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Company) that does in favor of such segregation, or offering to the affected contract owners of the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Insurance Trust's election, to withdraw its Separate Account's investment in the Insurance Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Trust, to withdraw its investment in the Insurance Trust, 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 bar the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners or, as applicable, Plan participants.

For the purposes of this Condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable

[18] *See, e.g., supra* note 8.

conflict, but in no event will the Insurance Trust or its Manager be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

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

6. Participating insurance companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered separate account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such Participating Insurance Companies will vote shares of each Insurance Fund held in their registered separate accounts in a manner consistent with voting instructions timely received from such contract owners. Each Participating Insurance Company will vote shares of each Insurance Fund held in its registered Separate Accounts for which no timely voting instructions are received, as well as shares held by any such registered Separate Account, in the same proportion as those shares for which voting instructions are received. Participating insurance companies shall be responsible for assuring that each of their Separate Accounts investing in an Insurance Trust calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Trust's shares and to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in an Insurance Trust shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Trust. Each Plan will vote as required by applicable law and governing Plan documents.

7. An Insurance Trust will notify all Participating Insurance Companies and Qualified Plans that disclosure regarding potential risks of mixed and shared funding may be appropriate in prospectuses for any of the Separate Accounts and in Plan documents. Each Insurance Trust will disclose in its prospectus that: (a) Shares of the Insurance Trust are offered to insurance company Separate Accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Insurance Trust and the interests of Qualified Plans investing in the Insurance Trust might at some time be in conflict; and (c) the Board will monitor the Insurance Trust for any material conflicts and determine what action, if any, should be taken.

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

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

10. Each Insurance Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be persons having a voting interest in the shares of that Insurance Trust), and in particular each Insurance Trust will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Manager and its affiliates will vote their shares in the same proportion as all contract owners having voting rights with respect to the relevant Insurance Trust; provided, however, that the Manager and its affiliates shall vote their shares in such other manner as may be required by the Commission or its staff.

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

13. If a Qualified Plan should become an owner of 10% or more of the assets of an Insurance Trust, the Insurance Trust shall require such Plan to execute a participation agreement with such Insurance Trust which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Trust.

14. Any shares of an Insurance Trust purchased by the Manager or its affiliates will be automatically redeemed if and when the Manager's investment management agreement terminates, and to the extent required by the applicable Treasury Regulations. Neither the Manager nor its affiliates will sell such shares of the Insurance Trusts to the public.

15. A Participating Insurance Company, or an affiliate, will maintain at its home office, available to the Commission: (a) A list of its officers, directors and employees who participate directly in the management or administration of the Insurance

Trusts or any variable annuity or variable life insurance separate account, organized as a unit investment trust, that invests in the Insurance Trusts and/or (b) a list of its agents who, as registered representatives, offer and sell the variable annuity and variable life contracts funded through such a Separate Account. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the 1940 Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that, therefore, the Commission should grant the requested order.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30517 Filed 11–29–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that RiverVest Venture Fund I, L.P. (the Fund), 7701 Forsyth Boulevard, Suite 740, St. Louis, Missouri 63105, has filed a License Application under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, have sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2000)). The Fund proposes to provide equity financing to TissueLink Medical, Inc. (''TissueLink''), One Washington Center, Suite 400, Dover, New Hampshire 03820. The financing is contemplated for working capital or inventory purchase, marketing activities, and research and development.

The financing is brought within the purview of section 107.730(a)(1) of the regulations because Jay W. Schmelter and Crescendo Ventures (''Crescendo''), Associates of the Fund, currently own, directly or indirectly, greater than 10% of TissueLink and therefore TissueLink is considered an Associate of Jay W. Schmelter and Crescendo as defined in section 107.50 of the regulations. (Mr. Schmelter because he is a Control Person of the Fund, and Crescendo Ventures because Mr. Schmelter was formerly a member of the general partner of Crescendo within six months of the date of the subject financing.)

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: November 21, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–30568 Filed 11–29–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice 3481]

Bureau of Nonproliferation; Determination Under the Arms Export Control Act

AGENCY: Department of State.

ACTION: Notice.

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Department of State has made a determination pursuant to Section 73 of the Arms Export Control Act. The Department has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: November 21, 2000.

Robert J. Einhorn,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 00–30552 Filed 11–29–00; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF STATE

[Public Notice 3486]

Culturally Significant Objects Imported for Exhibition Determinations: ''Correggio and Parmigianino: Master Draftsmen of the Renaissance''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Correggio and Parmigianino: Master Draftsmen of the Renaissance,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art in New York from on or about February 5, 2001 to on or about May 6, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: November 22, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–30557 Filed 11–29–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3483]

Culturally Significant Objects Imported for Exhibition Determinations: ''Beyond the Easel: Decorative Painting by Bonnard, Vuillard, Denis, and Roussel, 1890–1930''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Beyond the Easel: Decorative Painting by Bonnard,