

**RAILROAD RETIREMENT BOARD****Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program**

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 2001, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 2001, 38.6 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 61.4 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: March 12, 2001.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 01-7139 Filed 3-21-01; 8:45 am]

**BILLING CODE 7905-01-M**

**SECURITIES AND EXCHANGE COMMISSION****Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Digital Lava Inc., Common Stock, \$.001 Par Value) File No. 1-14831**

March 16, 2001.

Digital Lava Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its Common Stock, \$.001 par value ("Security"), from listing and registration on the American Stock Exchange ("Amex").

In its Current Report on Form 8-K with the Commission as of October 10,

2000, the Issuer announced that trading in the Security was scheduled to begin on the SmallCap Market of the Nasdaq Stock Market ("Nasdaq SmallCap"), and to cease concurrently on the Amex, at the opening of business on Thursday, October 12, 2000. The Issuer has stated that it hopes to increase its visibility to investors by having the Security quoted on the Nasdaq SmallCap and that its resultant alignment with other mainstream technology companies trading on the Nasdaq Stock Market may provide a superior base for capital formation.

The Issuer has stated in its application that it has complied with the rules of the Amex governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act<sup>3</sup> and shall affect neither its approval for quotation on the Nasdaq SmallCap nor its obligation to be registered under section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before April 6, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-7072 Filed 3-21-01; 8:45 am]

**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 35-27356]**

**Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")**

March 16, 2001.

Notice is hereby given that the following filing(s) has/have been made

<sup>3</sup> 15 U.S.C. 78l(b).

<sup>4</sup> 15 U.S.C. 78l(g).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 9, 2001, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 9, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Cinergy Corp. (70-9789)**

*Notice of Proposal To Amend Certificate of Incorporation To Issue Preferred Stock; Order Authorizing Solicitation of Proxies*

Cinergy Corp. ("Cinergy"), 139 East Fourth Street, Cincinnati, Ohio 45202, a registered holding company, has filed a declaration with the Commission, under sections 6(a)(2), 7(e), and 12(e) of the Act and rules 54, 62(d), and 65 under the Act.

By order dated June 23, 2000 (HCAR No. 27190) ("Prior Order"), the Commission authorized Cinergy to engage in various financing transactions over a five-year period commencing with the date of the Prior Order, including the issuance of preferred securities, subject to the terms and conditions of the Prior Order.

Cinergy is currently authorized, under its certificate of incorporation, to issue 600 million shares of common stock. Cinergy requests authorization to amend its certificate of incorporation to permit the company to issue preferred stock in addition to the common stock. Specifically, Cinergy intends to issue up to 10,000,000 shares of preferred stock in one or more series with the terms of each series to be determined by Cinergy's Board of Directors ("Proposed

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

Amendment"). Under the Delaware General Corporation Law, Cinergy may amend its certificate of incorporation to create new classes of stock upon appropriate action by the Board of Directors and shareholders duly adopting the proposed amendment. Cinergy's Board of Directors unanimously approved the Proposed Amendment. In order for the Proposed Amendment to be adopted, not less than a majority of the outstanding shares of common stock entitled to vote must be voted in favor of the Proposed Amendment.

Cinergy requests authorization for the solicitation of proxies from its shareholders for the purpose of obtaining the required shareholder approval of the Proposed Amendment at the shareholder meeting to be held on May 1, 2001. Cinergy requests authorization for the solicitation of proxies as soon as practicable under rule 62(d). It appears to the Commission that Cinergy's declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

For the purposes of compliance with rule 54, Cinergy states that it does not currently meet the conditions of rule 53(a). As of December 31, 2000, Cinergy's "aggregate investment," as defined in rule 53(a)(1), in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs") was approximately \$1,371,200,000. This amount is equal to approximately 119% of Cinergy's average "consolidated retained earnings," also as defined in rule 53(a)(1), for the four quarters ending December 31, 2000, of approximately \$1,151,200,000. This amount exceeds the 50% "safe harbor" limitation contained in the rule. However, by order dated March 23, 1998 (HCAR No. 26848) ("1998 Order"), the Commission authorized Cinergy to increase its aggregate investment in EWGs and FUCOs to an amount equal to 100% of Cinergy's average "consolidated retained earnings" ("100% Cap"). By order dated June 23, 2000 (HCAR No. 27190) ("2000 Order"), the Commission granted Cinergy additional authorization to invest in EWGs and FUCOs beyond that granted in the 1998 Order. Specifically, the 2000 Order authorized investment of \$1,000,000,000 in addition to Cinergy's aggregate investment as of the date of the 2000 Order (approximately \$731,000,000). Therefore, although Cinergy's aggregate investment at December 31, 2000, exceeds the 50% "safe harbor" limitation and the 100% Cap, this investment is below the limitation authorized by the 2000 Order.

Cinergy states that none of the adverse conditions of rule 53(b) exist.

As of September 30, 1997, the most recent period for which financial statement information was evaluated in the 1998 Order, Cinergy's consolidated capitalization consisted of 44.1% equity and 55.9% debt. As of December 31, 2000, Cinergy's consolidated capitalization consisted of 41.3% equity and 58.7% debt.<sup>1</sup> Cinergy represents that the proposed transactions will have no impact on its consolidated capitalization; however the ultimate issuance of the preferred stock will increase the equity component of capitalization.

Fees and expenses in connection with the proposed transactions described in the declaration are estimated to be \$158,500. Cinergy further states that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

*It Is Ordered*, under rule 62 under the Act, that the declaration regarding the proposed solicitation of proxies become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

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

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 01-7107 Filed 3-21-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24894; File No. 812-12192]

### First Variable Life Insurance Company, et al.; Notice of Application

March 16, 2001.

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

**ACTION:** Notice of Application for an Order under Section 6(c) of the Investment Company Act of 1940, as amended (the "1940 Act" or "Act") granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to permit the recapture of purchase payment credits applied to purchase payments made under certain deferred variable annuity contracts.

*Applicants:* First Variable Life Insurance Company, First Variable Annuity Fund E, and First Variable

Capital Services, Inc. ("FVCS") (collectively, "Applicants").

*Summary of Application:* Applicants seek an order under Section 6(c) of the Act to the extent necessary to permit, under specified circumstances, the recapture of purchase payment credits applied to purchase payments made under (i) deferred variable annuity contracts that First Variable Life Insurance Company ("First Variable") will issue through First Variable Annuity Fund E ("Annuity Fund E") (the "Contracts"), and (ii) contracts that First Variable may issue in the future through Annuity Fund E or any other separate account established by First Variable in the future to support certain deferred variable annuity contracts issued by First Variable ("Future Accounts"), that are substantially similar in all material respects to the Contracts (the "Future Contracts"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, First Variable, whether existing or created in the future, that serves as a distributor or principal underwriter for the Contracts or Future Contracts offered through Annuity Fund E or any Future Account ("First Variable Broker-Dealer(s)").

*Filing Date:* The application was filed on July 26, 2000, and amended and restated on March 9, 2001.

*Hearing or Notification of Hearing:* An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 9, 2001, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, Jeffrey K. Hoelzel, First Variable Life Insurance Company, 2122 York Road, Oak Brook, IL 60523.

**FOR FURTHER INFORMATION CONTACT:** Keith A. O'Connell, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of

<sup>1</sup> As of December 31, 2000, Cinergy's senior unsecured debt was rated "investment grade" by all the major rating agencies.