

G-251a's and 305 G-251b's are completed annually.

**FOR FURTHER INFORMATION CONTACT:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**  
Clearance Officer.

[FR Doc. 00-16488 Filed 6-28-00; 8:45 am]

**BILLING CODE 7905-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24544; File No. 812-12048]

### Investment Company Act of 1940; Potomac Insurance Trust, et al.

June 22, 2000.

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

**ACTION:** Notice of application for an order of exemption under section 6(c) of the Investment Company Act of 1940 ("1940 Act") for exemption 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.

**SUMMARY OF APPLICATION:** Applicants seek an order pursuant to section 6(c) of the 1940 Act for exemptions from the provisions of sections 9(a), 13(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder to the extent necessary to permit shares of any current or future series of the Fund and shares of any other investment company that is designed to fund variable insurance products and for which Rafferty Asset Management, LLC ("Rafferty"), or any of its affiliates, may serve now or in the future, as investment adviser (the Fund and such other investment companies referred to collectively as the "Insurance Products Funds") to be offered and sold to, and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated insurance companies ("Participating insurance Companies"), qualified pension and retirement plans outside of the separate account context ("Qualified Plans"), and Rafferty or any of its affiliates (representing seed money investments in the insurance Products Funds)("Order").

**APPLICANTS:** Potomac Insurance Trust ("Fund") and Rafferty Asset Management, LLC ("Rafferty")

**FILING DATE:** This application was filed on March 24, 2000.

**HEARING OF NOTIFICATION OF HEARING:** An Order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing if the application or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on July 17, 2000. You may request a hearing in writing, giving the nature of your interest, the reason for your request, and the issues you contest, and accompany such request with proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Daniel D. O'Neill, Esq., Managing Director, Rafferty Asset Management, LLC, 1311 Mamaroneck Avenue, White Plains, New York 10605.

**FOR FURTHER INFORMATION CONTACT:** Lorna MacLeod, Senior Counsel, or Keith Carpenter, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

### Applicants' Representations

1. The Fund is a Massachusetts business trust registered under the 1940 Act as an open-end management company. The Fund currently is comprised of thirteen separately managed series, each of which has its own investment objective and policies.<sup>1</sup> Each series offers Class A and Class B shares, each of which have a different expense structure. Additional series could be added in the future.

2. Rafferty is registered under the Investment Advisers Act of 1940 and serves as the investment adviser for the Fund.

<sup>1</sup> The Fund's series are: Potomac OTC Plus Fund, Potomac OTC/Short Fund, Potomac 30 Plus Fund, Potomac 30/Short Fund, Potomac Small Cap Plus Fund, Potomac Small Cap/Short Fund, Potomac Internet Plus Fund, Potomac Internet/Short Fund, Potomac U.S. Plus Fund, Potomac U.S./Short Fund, Potomac Japan Plus Fund, Potomac Japan/Short Fund and Potomac Money Market Fund.

3. Shares of the Insurance Products Funds are or will be offered to separate accounts of Participating Insurance Companies to serve as investment vehicles for variable annuity and variable life insurance contracts (including single, premium, scheduled premium, modified single premium and flexible premium contracts) (collectively, "Variable Contracts"). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration. Shares of the Insurance Product Funds also are or will be offered to Qualified Plans.

4. The Participating Insurance Companies establish their own separate accounts and design their own Variable Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under the federal securities laws. The role of the Insurance Products Funds will be limited to that of offering their shares to separate accounts of Participating Insurance Companies and to Qualified Plans and fulfilling the conditions set forth in the application and described later in this notice. Each Participating Insurance Company will enter into a fund participating agreement with the Insurance Products Fund in which the Participating Insurance Company invests.

### Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under section 6(c) of the 1940 Act granting exemptions from sections 9(a), 13(a), 15(a) and 15(b) thereof and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Insurance Products Funds to be offered and sold to, and held by (a) variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company ("mixed funding"); (b) separate accounts of unaffiliated life insurance companies (including both variable annuity and variable life separate accounts) ("shared funding"); (c) qualified pension and retirement plans outside the separate account context; and (d) the Adviser or any of its affiliates (representing seed money investments in the Insurance Products Funds).

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e-2(b)(15) provides partial exemptions from section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These

exemptions are available only where all of the assets of the separate account consists of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer of any affiliated life insurance company. Therefore, the relief granted by Rule 6e-2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated insurance company. In addition, the relief granted by Rule 6e-2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The relief granted by Rule 6e-2(b)(15) also is not available if the shares of the Insurance Products Funds also are sold to Qualified Plans.

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e-3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consists of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, the exemptions provided by Rule 6e-3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but are not available if the fund is engaged in shared funding or if the fund sells its shares to Qualified Plans.

4. Applicants state that the current tax law permits the Insurance Products Funds to increase their assets base through the sale of shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of Variable Contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any

subsequent period) during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated assets accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of 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 also to 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)).

5. Applicants state that the promulgation of Rules 6e-2 and 6e-3(T) preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same underlying fund to separate accounts and to Plans could not have been envisioned at the time of the adoption of rules 6e-2(b)(15) and 6e-3(T)(b)(15).

6. Applicants request relief for a class or classes of persons and transactions consisting of Participating Insurance Companies and their scheduled premium variable life insurance separate accounts and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such separate accounts) investing in any of the Insurance Products Funds.

7. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an 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. Applicants assert 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.

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e-2(b)(15)(i) and (ii), and 6e-

3(T)(b)(15)(i) and (ii) provide partial exemptions from section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

9. Applicants state that the relief from section 9(a) provided by Rules 6e-2(b)(15) and 6e-3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert 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 who do not directly participate in the administration or management of the Insurance Products Funds, who are employed by the various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Products Funds as the funding medium for Variable Contracts. Applicants do not expect the Participating Insurance Companies to play any role in the management or administration of the Insurance Products Funds. Applicants assert, therefore, that applying the restrictions of section 9(a) to individuals employed by Participating Insurance Companies serves no regulatory purpose.

10. Applicants state that the relief requested should not be affected by the proposed sale of Insurance Products Funds to Qualified Plans because such plans are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings.

11. Applicants submit that Rule 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) assume the existence of a "pass-through voting" requirement with respect to management investment company shares held by a separate account. Applicants state that Rule 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide exceptions from the pass-through voting requirements in limited situations, assuming the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder are observed. More specifically, Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying investment company if such instructions would

require such shares to be voted to cause an underlying investment company to make, or refrain from making, certain investments which would result in changes in the sub-classification or investment objectives of such company, or to approve or disapprove any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority. In addition, Rules 6e-2(b)(15)(iii)(B) and 6e-3(T)(b)(15)(iii)(B) provide that an insurance company may disregard contract owners' voting instructions with regard to changes initiated by the contract owners in the investment company's investment policies, principal underwriter or investment adviser, provided that disregarding such voting instructions is based on specific good faith determinations.

12. Shares of the Insurance Products funds sold to Qualified Plans will be held by the trustees of such plans as required by section 403(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) when the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the two exceptions stated in section 403(a) applies, the Qualified Plan trustees have exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Where a Qualified Plan does not provide its participants with the right to give voting instructions, Applicants state that they do not see any potential for irreconcilable material conflicts of interest between or among Variable Contract holders and Plan participants with respect to voting of the respective Insurance Products Funds shares. Accordingly, Applicants note that, unlike the case with insurance

company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since such plans are not entitled to pass-through voting privileges. Even if a Qualified Plan were to hold a controlling interest in an insurance Products Fund, the Applicants do not believe that such control would disadvantage other investors in such Insurance Products Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, the Applicants submit that investment in an Insurance Products Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding.

13. Applicants state that some of the Qualified Plans may provide for the trustee(s), an investment adviser(s) or another named fiduciary to exercise voting rights in accordance with instructions from Qualified Plan participants. Applicants state that, in such cases, the purchase of shares by such Qualified Plans does not present any complications not otherwise occasioned by mixed or shared funding.

14. Applicants state that no increased conflict of interest would be presented by the granting of the requested relief. Applicants submit that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. In this regard, Applicants note that when different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. The possibility however, is no different or greater than exists when a single insurer and its affiliates offer their insurance products in several states, as is currently permitted.

15. Applicants state that affiliation does not reduce the potential if any exists, for differences in state regulatory requirements. In any event, the conditions set forth in the application and later in this notice (which are adapted from the conditions included in Rule 6e-3(T)(b)(5)) are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's

decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Insurance Products Funds.

16. Applicants also assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Variable Contract owner voting instructions. The potential for disagreement is limited by the requirements that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if the Participating Insurance Company's decision to disregard Variable Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its separate account's investment in that Insurance Products Fund and no charge or penalty will be imposed upon the Variable Contract owners as a result of such withdrawal.

17. Applicants submit that there is no reason why the investment policies of an Insurance Products Fund with mixed funding would or should be materially different from what those policies would or should be if such Insurance Products Fund or series thereof funded only variable annuity or variable life insurance contracts. In this regard, Applicants note that a fund's adviser is legally obligated to manage the fund in accordance with the fund's investment objectives, policies and restrictions as well as any guidelines established by the fund's board. Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of the Insurance Products Funds. In addition, permitting mixed and shared funding also will facilitate the establishment of additional series of Insurance Product Funds serving diverse goals.

18. As noted above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable

life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817-5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, "qualified pension or retirement plans" and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants assert that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if the Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

19. While there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, Applicants state that the tax consequences do not raise any conflict of interests. When distributions are to be made, and the separate account of the Participating Insurance Company or Qualified Plan cannot net purchase payments to make the distributions, the separate account or Qualified Plan will redeem shares of the Insurance Products Funds at their respective net asset values. The Qualified Plan will then make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract.

20. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a "senior security," as such term is defined under section 18(g) of the 1940 Act, with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan. As noted above, regardless of the rights and benefits of participants under the Qualified Plans, or Variable Contract owners under their Variable Contracts, the Qualified Plans and the separate accounts of Participating Insurance Companies have rights only with respect to their respective shares of the Insurance Products Funds. They can redeem such shares at their net asset value. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

21. Applicants assert that there are no conflicts between the Variable Contract owners and the Plan participants with respect to state insurance commissioners' veto powers over investment objectives. The basic

premise of shareholder voting is that not all shareholders may agree with a particular proposal. While time-consuming, complex transactions must be undertaken to accomplish redemptions and transfers by separate accounts, trustees of Qualified Plans can quickly redeem shares from Insurance Products Funds and reinvest in other funding vehicles without the same regulatory impediments or, as in the case with most Qualified Plans, even hold cash or other liquid assets pending suitable alternative investment. Applicants maintain that even if there should arise issues where the interest of Variable Contract owners and the interests of participants in Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Insurance Products Funds.

22. Applicants submit that mixed and shared funding should provide benefits to Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Adviser and any sub-advisers, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment by the Insurance Products Funds, thereby promoting economics of scale, by permitting increased safety through greater diversification and by making the addition of new series more feasible. Therefore, making the Insurance Products Funds available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts, and this should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges.

#### Applicants' Conditions

To the extent required by the Commission, Applicants consent to the following conditions.

1. A majority of each Insurance Products Fund's Board of Trustees or Directors (each, a "Board") shall consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the 1940 Act and the Rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Board

member, then the operation 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 its respective Insurance Products Funds for the existence of any material irreconcilable conflict between and among the interests of the Variable Contract owners of all Participating Separate Accounts and Qualified Plans participants investing in the Insurance Products Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Products Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. Rafferty (or any other investment adviser of an Insurance Products Fund), any Participating Insurance Company and any Qualified Plan that executes a fund participating agreement upon becoming an owner of 10% or more of an Insurance Product Fund ("Participants") will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be obligated to assist the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation of each Participating Insurance Company to inform the Board whenever Variable Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan to

inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibilities to report such information and conflicts and to assist the Boards will be contractual obligations of all Participating Insurance Companies and Qualified Plans investing in the Insurance Products Funds under their respective agreements governing participation in the Insurance Products Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Variable Contract owners and, if applicable, Qualified Plan participants.

4. If a majority of an Insurance Products Fund's Board members, or a majority of the disinterested Board members, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Board members), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) Withdrawing the assets allocable to some or all of the Participating Separate Accounts from the Insurance Products Fund or any series thereof and reinvesting such assets in a different investment medium, which may include another series of an Insurance Products Fund; (b) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Variable Contract owners 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 decision by a Participating Insurance Company to disregard Variable 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 election of the Insurance Products Fund, to withdraw its separate account's investment in such fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified

Plan's decision to disregard Qualified Plan participants' 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 Products Fund, to withdraw its investment in such fund and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Products Funds and these responsibilities shall be carried out with a view only to the interests of the Variable Contract owners and, as applicable, Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of the applicable Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Products Fund or Rafferty (or any other investment adviser of the Insurance Products Funds) 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 a majority of Variable Contract owners materially and adversely affected by the material irreconcilable conflict vote to decline such offer. No Qualified Plan shall be required by Condition 4 to establish a new funding medium for such Qualified Plan if (a) a majority of Qualified Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (b) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan makes such decision without Qualified Plan participant vote.

5. Participants will be informed promptly in writing of a Board's determination of existence of a material irreconcilable conflict and its implications.

6. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission interprets the 1940 Act to require pass-through voting for Variable Contracts owners. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the Insurance Products Fund held in their

Participating Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. In addition, each Participating Insurance Company will vote shares of the Insurance Products Fund held in its Participating Separate Account for which it has not received timely voting instructions from Variable Contract owners, as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their Participating Separate Accounts investing in an Insurance Products Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Products Fund's shares and calculate voting privileges in a manner consistent with all other separate accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participating in the Insurance Products Fund. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners, Rafferty (or any of its affiliates) will vote its shares in any series of any Insurance Products Fund in the same proportion as all Variable Contract owners having voting rights with respect to that series; provided, however, that Rafferty (or any of its affiliates) shall vote its shares in such other manner as may be required by the Commission or its staff.

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

9. Each Insurance Products Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding the potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund shall disclose in its prospectus that: (a) Its shares may be offered to insurance company separate accounts that fund both variable annuity and variable life

insurance contracts, and to Qualified Plans; (b) differences in tax treatment or other considerations may cause the interests of various Variable Contract owners participating in an Insurance Products Fund and the interests of Qualified Plans investing in that Insurance Product Fund to conflict; and (c) the Board will monitor the Insurance Product Fund for any material conflicts and determine what action, if any, should be taken.

10. Each Insurance Products fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in shares of the Insurance Products Fund). In particular, each such Insurance Products Fund either will provide for annual shareholder 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 none of the Insurance Products Fund shall be one of the trusts described in section 16(c) of the 1940 Act), as well as with sections 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, each insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

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

12. The Participants, at least annually, shall submit to the Board such reports, materials, or data as the Board may reasonably request so that such Board may fully carry out the obligations imposed upon them by the conditions stated in this Application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the applicable Board. The obligations of the Participants to provide these reports, materials, and data to the Boards shall be a contractual obligation of all Participants under the agreements

governing their participation in the Insurance Products Funds.

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

#### Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c) of the 1940 Act, 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.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SOCIAL SECURITY ADMINISTRATION

#### Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance

Officer on (410) 965-4145, or by writing to him at the address listed at the end of this publication.

1. Application for Lump Sum Death Payment—0960-0013. The information collected on form SSA-8 by the Social Security Administration is required to authorize payment of a lump-sum death benefit to a widow, widower, or children as defined in Section 202(i) of the Social Security Act. The respondents are widows, widowers or children who apply for a lump-sum death payment.

Number of respondents .....	43,850
Frequency of response .....	1
Average burden per response .....	10 mins.
Estimated annual burden .....	7308 hrs.

2. Application for Special Age 72-or-Over Monthly Payments—0960-0096. Form SSA-19-F6 is needed by the Social Security Administration (SSA) to determine whether an individual is entitled to Special Age-72 payments. Eligibility requirements will be evaluated by the data collected on this form. The respondents are individuals who attained age 72 before 1972.

Number of respondents .....	10
Frequency of response .....	1
Average burden per response .....	20 mins.
Estimated annual burden .....	3 hrs.

3. Request for Self-Employment Information, Request for Employee Information, Request for Employer Information—0960-0508. SSA needs the information collected on Forms SSA-L2765, SSA-L3365 and SSA-L4002 in order to credit the reported earnings to the proper earnings record. When W-2 wage data for an individual cannot be identified, the data are placed in the earnings suspense file, and SSA sends decentralized correspondence (DECOR) to the employee (in certain instances to the employer) in an attempt to obtain his/her correct name and SSN. The respondents are employees, employers or self-employed individuals being requested to furnish additional information for individuals for whom earnings were reported.

Number of respondents .....	3,000,000
Frequency of response .....	1
Average burden per response ..	10 mins.
Estimated annual burden .....	500,000 hrs.

4. State Agency Report of Obligations for SSA Disability Programs—0960-0421. The data collected on Form SSA-4513 are necessary for detailed analysis and evolution of costs incurred by Disability Determination Services (DDS) in making disability determinations for SSA. The data collected also help to