Street, N.W., Washington, D.C. 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.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–29288 Filed 11–15–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24734; File No. 812–12228]

Summit Mutual Funds, Inc., et al., Notice of Application

November 9, 2000.

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

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'') providing exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Applicants: Summit Mutual Funds, Inc. (the ''Fund'') and Summit Investment Partners, Inc. (the ''Adviser'').

Summary of Application: The Fund and the Adviser seek an order exempting them and certain life insurance companies (''Participating Insurance Companies'') and their separate accounts from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Ruled 6e–3(T) or Rule 6e–2, as subsequently amended) to the extent necessary to permit series of shares of any current or future investment portfolio of the Fund to be sold to and held by (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies, and (b) qualified pension and retirement plans, including, without limitation, those trusts, plans accounts, contracts or annuities described in sections 401(a), 403(a), 403(b), 408(a), 408(b), 414(d), 457(b), 408(k), or 501(c)(18) of the Internal Revenue Code of 1986, as amended (the ''Code'') and any other trust, plan, account, contract or annuity that is determined to be within the scope of Treasury Regulation 1.817.5(f)(3)(iii) outside of the separate account context (''Qualified Plans'').

Filing Date: The application was filed on August 21, 2000; an amendment substantially conforming to this Notice will be filed during the pendency of the Notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 1, 2000, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester'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 Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; the Fund, P.O. Box 40409, Cincinnati, Ohio 45240–0409; and the Adviser, 312 Elm Street, Suite 2525, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, 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 Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. The Fund, formerly known as Carillon Fund, Inc., is a management investment company with 22 separate investment portfolios (''Portfolios''), each with its own investment objective. Nine of the Portfolios (the ''Insurance Portfolio'') currently serve as funding vehicles for registered variable annuity contracts and registered variable life insurance contracts issued by The Union Central Life Insurance Company (''Union Central''). The other 13 Portfolios (the ''Public Portfolios'') are offered directly to the public and also serve as funding vehicles for unregistered variable annuity contracts and variable life insurance policies of Union Central. The Public Portfolios are not used to fund registered variable annuity contracts. None of the relief requested here would apply to any current or future Public Portfolios. The Fund is registered under the Act (File No. 811–04000), and the offering of its shares is registered under the Securities Act of 1933 (File No. 2–90309). The Fund's shares are issuable into separate series, each series representing interests in a separate Portfolio. In addition to the nine current Insurance Portfolios, the Fund may create additional Insurance Portfolios in the future and Applicants seek relief that would encompass both existing Insurance Portfolios and new Insurance Portfolios created in the future. References herein to ''Insurance Portfolios'' encompasses both existing Insurance Portfolios and ones that may be created in the future.

2. The Adviser, formerly known as Carillon Advisers, Inc., was incorporated under the laws of Ohio on August 18, 1986, as successor to the advisory business of Carillon Investments, Inc., the investment adviser for the Fund since 1984. The Adviser is a wholly-owned subsidiary of Union Central, a mutual life insurance company organized in 1867 under the laws of Ohio. The Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to each of the Portfolios.

3. Participating Insurance Companies are the life insurance companies to which shares of the Insurance Portfolios will be offered. The Participating Insurance Companies will establish their own separate accounts and design their own variable annuity and variable life insurance contracts (''Contracts''). Each such Contract will undoubtedly have certain unique features and will probably differ from other Contracts supported by the Insurance Portfolios with respect to insurance guarantees, premium structure, charges, options, distribution method, marketing techniques, sales literature, etc.

4. Each Participating Insurance Company will be the legal obligation of satisfying all applicable requirements under state and federal law. It is anticipated that Participating Insurance Companies will rely on Rule 6e–2 or 6e–3(T) under the Act, although some may rely on individual exemptive orders as well, in connection with variable life insurance contracts. The role of the

[4] 17 CFR 200.30–3(a)(1).

Fund, so far as the federal securities laws are applicable, will be limited to that of offering shares of the Insurance Portfolios to separate accounts of various insurance companies and to Qualified Plans and fulfilling any conditions the Commission may impose upon granting the order requested herein.

Applicants' Legal Analysis

5. Under current tax laws, the Insurance Portfolios are afforded an opportunity to increase their asset base through the sale of shares of the Insurance Portfolios to Qualified Plans. Section 817(h) of the Code, imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life policies held in the Insurance Portfolios.

6. Qualified Plans may choose any of the Insurance Portfolios 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 Plan itself. Shares of any of the Insurance Portfolios sold to certain Qualified Plans would be held by the trustee(s) of those Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). As described elsewhere herein, there will be no pass-through voting to the participants in such Qualified Plans. The Adviser will not act as investment adviser to any of the Qualified Plans that will purchase shares of any of the Insurance Portfolios.

7. The promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations, which made it possible for shares of an investment company to be held by the trustee of a Qualified 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 contracts. Thus, the sale of shares of the same investment company to Separate Accounts and Qualified Plans 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.

8. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares. The exemptions granted to a separate account by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies that offer their 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 investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as ''mixed funding.''

9. In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated insurance companies. The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is commonly referred to, and is referred to herein, as ''shared funding.''

10. The relief granted by Rule 6e–2(b)(15) is in no way affected by the purchase of shares of the Insurance Portfolios by Qualified Plans. However, because the relief under Rule 6e–2(b)(15) is available only where shares are offered *exclusively* to separate accounts, additional exemptive relief is necessary if the shares of the Insurance Portfolios are also to be sold to Plans.

11. Applicants request an order of the Commission exempting scheduled premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such a separate account) from Sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit shares of the Insurance Portfolios, which will also be sold directly to Qualified Plans, to be offered and sold in connection with both mixed funding and shared funding.

12. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 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 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company'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 registered management investment companies that offer their shares ''*exclusively* to separate accounts of the life insurer, or of 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.'' (emphasis added). Therefore, Rule 6e–3(T) permits mixed funding for flexible premium variable life insurance. However, Rule 6e–3(T) does not permit shared funding. 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 investment company that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

13. The relief granted by Rule 6e–3(T) also is in no way affected by the purchase of shares of the Insurance Portfolios by Qualified Plans. However, because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if the shares of the Insurance Portfolios are also to be sold to Plans.

14. Applicants request an order exempting flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such a separate account) from Sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rule 6e–3(T)(b)(15) (and any comparable permanent rule) thereunder, to the extent necessary to permit shares of the Insurance Portfolios, which will also be sold directly to Qualified Plans, to be offered and sold to separate accounts in connection with shared funding.

15. The Commission has granted numerous exemptions similar to those requested herein with respect to the mixed and shared funding component of this Application, including ones where the fund's shares also would be sold directly to Qualified Plans.

16. Section 6(c) authorizes the Commission to exempt any person, security or transaction or any class or

classes of persons, securities or transactions from the provisions of the Act and the rules promulgated 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 Act. Applicants are not aware of any stated rationale for the exclusion of separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) or for the exclusion of separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Indeed, the Commission's proposed amendments to Rule 6e–2 would eliminate the exclusion of mixed funding from the relief provided under Rule 6e–2(b)(15) and, as noted above (*see supra* note 5), numerous exemptions permitting both mixed and shared funding have been granted since the adoption of Rules 6e–2 and 6e–3(T).

17. Similarly, Applicants are not aware of any stated rationale for excluding Participating Insurance Companies from the exemptive relief requested because the Insurance Portfolios may also sell their respective shares to Qualified Plans. If the Fund were to sell shares of the Insurance Portfolios only to Qualified Plans, no exemptive relief would be necessary. The relief provided under Rules 6e–2(b)(15) and 6e–2(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans. Exemptive relief is requested in the Application only because the separate accounts investing in the Insurance Portfolios are themselves investment companies that rely upon the relief under Rules 6e–2 and 6e–3(T) and do not wish to be denied such relief if the Insurance Portfolios sell shares to Qualified Plans.

18. Applicants believe that the same policies and considerations that led the Commission to grant such exemptions to other applicants are present here. Moreover, 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 Act.

19. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). However, 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 discussed above on mixed and shared funding. These exemptions limit the disqualification to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

20. The exemptions contained in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that it is unnecessary to apply Section 9(a) to the thousands of individuals who may be involved in a large insurance company but would have no connection with the investment company funding the separate accounts. Applicants believe that it is unnecessary to limit the applicability of the rules merely because shares of the Insurance Portfolios may be sold in connection with mixed and shared funding. The Participating Insurance Companies are not expected to play any role in the management of the Insurance Portfolios and would play only an indirect role in the administration of the Fund (*e.g.,* by performing certain shareholder servicing and recordkeeping functions for which they may be reimbursed by the Adviser). Therefore, applying the restrictions of Section 9(a) serves no regulatory purpose. Indeed, applying such restrictions would increase the monitoring costs incurred by the Participating Insurance Companies and, therefore, would reduce the net rates of return realized by Contract owners.

21. Moreover, the relief requested herein will in no way be affected by the proposed sale of shares of Insurance Portfolios to Qualified Plans. The insulation of the Fund from those individuals who are disqualified under the Act will remain intact even if shares of the Insurance Portfolios are sold to Qualified Plans. Since the Qualified Plans are not investment companies and will not be deemed to be affiliated persons of the Participating Insurance Companies solely by virtue of their shareholdings in the Insurance Portfolios, no additional relief is necessary.

22. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume that Contract owners are entitled to pass-through voting privileges with respect to investment company shares held by a related separate account. However, if the limitations on mixed and shared funding are satisfied, Rules 6e–2(b)(15(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirements in limited situations.

23. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company or any contract between an investment company and its investment adviser, when an insurance regulatory authority so requires. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the 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.

24. Under the rules, voting instructions with respect to a change in investment policies may be disregarded only if the insurance company makes a good faith determination that the change would: (a) Violate state law; (b) result in investments that were not consistent with the investment objectives of the separate account; or (c) result in investments that would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Voting instructions with respect to a change in an investment adviser may be disregarded only if the insurance company makes a good faith determination that: (a) The adviser's fee would exceed the maximum rate that may be charged against the separate account's assets; (b) the proposed adviser may be expected to employ investment techniques that vary from the general techniques used by the current adviser; or (c) the proposed adviser may be expected to manage the investment company's investments in a manner that would be inconsistent with its investment objectives or in a manner that would result in investments that vary from certain standards.

25. Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts and are subject to extensive state regulation of insurance. Thus, in adopting Rule 6e–2, the Commission expressly recognized that exemptions from pass-through voting requirements were necessary ''to assure the solvency of the life insurer and the 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.'' Flexible premium variable life insurance contracts and variable

annuity contracts are subject to substantially the same state insurance regulatory authority, and therefore, the corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) presumably were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

26. These considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding. Such funding does not compromise the goals of the insurance regulatory authorities or of the Commission. While the Commission may have wished to reserve wide latitude wither respect to the once unfamiliar variable annuity product, that product is now familiar and there appears to be no reason for the maintenance of prohibitions against mixed and shared funding arrangements. Indeed, by permitting such arrangements, the Commission eliminates needless duplication of start-up and administrative expenses and potentially increases an investment company's assets, thereby making effective portfolio management strategies easier to implement and promoting other economies of scale.

27. In addition, the Insurance Portfolio's sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. Shares of the Insurance Portfolios sold to certain Plans would be held by the Plans trustees, as mandated by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the plan with two exceptions: (a) When the plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper direction 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 two exceptions stated in Section 403(a) applies, trustees have the 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 reversed to the trustees or the named fiduciary. In any event, there is no pass-through voting to the participants in such plans. Accordingly, 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 Qualified Plans.

28. 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. For example, 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 insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. That possibility, however, is no different and no greater than exists when a single insurer and its affiliates offer their insurance products in several states, as currently is permitted.

29. Affiliations do not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below (which are adapted from the conditions included in Rule 6e-3(T)(b)(15) 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 Portfolios.

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

31. There is no reason why the investment policies of an Insurance Portfolio are mixed funding would or should be materially different from what they would or should be if that Portfolio funded only variable annuity contracts or only variable life insurance contracts. Hence, there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, the Insurance Portfolios will not be managed to favor or disfavor any particular insurer or type of Contract.

32. No one investment strategy can be identified as appropriate to a particular insurance product. Each pool of Contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. Those diversities are of greater significance than any differences in insurance products. An investment company supporting even one type of insurance product must accommodate those diverse factors.

33. Section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of 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 separate accounts to share the same underlying investment company. Therefore, neither the Code, the Treasury Regulations nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

34. While there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Qualified Plan cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Fund at their net asset value. The Qualified Plan will than make distributions in accordance with the terms of the Plan and the life insurance company will make distributions in accordance with the terms of the variable contract.

35. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to separate account Contract owners and to the trustees of Qualified Plans. The transfer agent for the Fund will inform each Participating Insurance Company of its share ownership in each separate account, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company

will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

36. The ability of the Fund to sell shares of the Insurance Portfolios directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the Act, with respect to any Contract owner as opposed to a participant under a Qualified Plan. As noted above, regardless of the rights and benefits of participants under the Qualified Plans, or Contract owners under Contracts, the Qualified Plans and the separate accounts have rights only with respect to their respective shares of the Fund. They can only redeem such shares at their net asset value. No shareholder of any of the Insurance Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

37. There are no conflicts between the Contract owners of the separate accounts and the participants under the Qualified Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree that there are any inherent conflicts of interest among shareholders. The state insurance commissioners have been given the veto power to recognition of the fact that 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. On the other hand, trustees of Qualified Plans can made the decision quickly and implement the redemption of their shares from an Insurance Portfolio and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, even if there should arise issues where the interests of Contract owners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, on their own, redeem the shares out of the Fund.

38. Various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently do so. 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 public name recognition as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable life insurance or variable annuity business on their own.

39. Use of the Insurance Portfolios as common investment media for Contracts would ameliorate these concerns. Participating Insurance Companies would benefit not only from the investment advisory and administrative expertise of the Adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Portfolios available for mixed and shared funding will encourage more insurance companies to offer Contracts. This should result in increased competition with respect to both Contract design and pricing, which can be expected to result in more product variation and lower charges. Contract owners would benefit because mixed and shared funding should eliminate a significant portion of the costs of establishing and administering separate funds.

40. Moreover, sale of the shares of Insurance Portfolios to Qualified Plans should result in an increased amount of assets available for investment by those Portfolios. This, in turn, should inure to the benefit of Contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new Insurance Portfolios to the Fund more feasible.

41. Applicants see no significant legal impediment to permitting mixed and shared funding. Indeed, as noted above, the Commission has issued several orders permitting mixed and shared funding with respect to both scheduled and flexible premium contracts. In addition, the Commission has broadened its grant of exemptive relief by issuing an order permitting mixed and shared funding while Fund shares are also sold directly to Qualified Plans. Therefore, as the Commission has tacitly acknowledged, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of Section 9(a), 13(a), 15(a), or 15(b) of the Act or Rule 6e–2 or 6e–3(T) thereunder.

Applicants' Conditions

Applicants consent to the following conditions:

1. A majority of the Fund's board of directors (the ''Board'') will consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 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 of bona fide resignation of any director, 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. The Board will monitor the Insurance Portfolios for the existence of any material irreconcilable conflict between and among the interests of the Contract owners of all separate accounts and participants of all Qualified Plans investing in the Insurance Portfolios. An irreconcilable material 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 Portfolios are being managed; (e) a difference in voting instructions given by variable annuity contract owners, 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 Qualified Plan participants.

3. Participating Insurance Companies, the Adviser and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Portfolio (collectively, ''Participating Parties'') will report any potential or existing conflicts of which they become aware to the Board. Participating Parties will be responsible for assisting the 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 by a Participating Insurance Company to inform the Board whenever it has determined to disregard Contract owner voting instructions, and, if pass-through voting is applicable, an

obligation of each Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Parties under their agreements governing participation in the Insurance Portfolios, and their participation agreements with the Fund shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners and, if applicable, Qualified Plan participants.

4. If it is determined by a majority of the Board, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Participating Parties will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Insurance Portfolio(s) and reinvesting such assets in a different investment medium, which may include another Insurance Portfolio; (b) 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 Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (c) in the case of Qualified Plans, withdrawing the assets allocable to some or all of the Qualified Plans from the affected Insurance Portfolio and reinvesting those assets in a different investment medium, including another Insurance Portfolio; and (d) 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 election of the Fund, to withdraw its separate account's investment in one or more Insurance Portfolios, and no charge or penalty will be imposed as a result of that 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 Plan may be required, at the election of the Fund, to withdraw its investment in an Insurance Portfolio and no charge or penalty will be imposed as a result of such withdrawal. The responsibility of taking remedial action in the event of a Board determination of an irreconcilable material conflict and bearing the cost of such remedial action will be a contractual obligation of all Participating Parties under their respective participation agreements and these responsibilities will be carried out with a view only to the interests of Contract owners and participants in Qualified Plans.

5. For purposes of condition 4, a majority of the disinterested directors of the Board will determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any Contract. No Participating Insurance company shall be required by this condition 4 to establish a new funding medium for any Contract if an offer to do so has been declined by vote of a majority of Contract owners materially and adversely affected by the irreconcilable material conflict. Further, no Qualified Plan will be required by this condition 4 to establish a new funding medium for the Plan if: (a) A majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline that offer; or (b) pursuant to documents governing the Qualified Plan, the Plan makes that decision without a Plan participant vote.

6. The Board's determination of the existence of an irreconcilable material conflict and its implications will be made known promptly in writing to all Participating Parties.

7. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the Act to require pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of an Insurance Portfolio held in their separate accounts in a manner consistent with voting instructions timely received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their registered separate accounts calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other registered separate accounts investing in the Insurance Portfolios will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Portfolios. Each Participating Insurance Company will vote shares for which it has not received voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

8. The Fund will notify all Participating Insurance Companies that separate account prospectus disclosure, or Qualified Plan prospectus disclosure or other Qualified Plan document disclosure, regarding potential risks of mixed and shared funding may be appropriate. The Fund will disclose in its prospectus that: (a) Its shares are offered to Qualified Plans and to separate accounts that fund both annuity and life insurance contracts of affiliated and unaffiliated Participating Insurance Companies; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in an Insurance Portfolio and the interests of Qualified Plans investing in such Insurance Portfolio, if applicable, may conflict as a result of the mixed and shared funding arrangement; and (c) the Fund's Board will monitor for the existence of any material conflicts and determine what action, if any, should be taken.

9. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participating Insurance Companies and Qualified Plans 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.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are emended (or if Rule 6e–3 under the Act is adopted) to provide exemptive relief from any provision of the Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Fund and/or the Participating Insurance Companies, 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 applicable.

11. The Fund will comply with all provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in shares of the Insurance Portfolios), and, in particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although the Fund is not an investment company of the type described in Section 16(c) of the Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

12. No less than annually, the Participating Insurance Companies and/or the Adviser shall submit to the Board such reports, materials, or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in these express conditions. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Parties to provide these reports, materials, and date to the Board shall be a contractual obligation of all Participating Parties under the agreements governing their participation in the Insurance Portfolios.

13. In the event that a Qualified Plan shareholder should ever become an owner of 10% or more of the assets of an Insurance Portfolio, that Qualified Plan shareholder will execute a fund participation agreement with the Fund including the conditions set forth herein to the extent applicable. A Qualified Plan shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Insurance Portfolio.

Conclusion

For the reasons and upon the facts stated above, 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 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43530; File No. SR–CHX–00–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc., to Amend its Rule Relating to Automatic Execution of Agency Limit Orders for Dual Trading System Issues

November 7, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 14, 2000, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its rule relating to automatic execution of agency limit orders for Dual Trading System issues in the event of a trade-through. Specifically, the Exchange proposes to amend Article XX, Rule 37(b)(6). The text of the proposed rule change is below. Proposed additions are in italics. Proposed deletions are in brackets.

Guaranteed Execution System And Midwest Automated Execution System

Rule 37.

* * * * *

(b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule (Article XX, Rule 37(a)) and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

* * * * *

(6) Execution of Dual Trading System Issues. In Dual Trading Systems issues there shall be a fifteen (15) second delay between the time a market order is entered into MAX and the time it is automatically executed. In the event that the spread between the ITS BEST Bid and ITS Best Offer in a stock eligible for automatic execution in MAX, is equal to the minimum variation at the time an order is entered into MAX, that order shall be executed immediately (*i.e.,* in 0 seconds without the 15 second delay). All agency market orders and all limit orders that are marketable when entered into the MAX System, that are of a size less than or equal to the auto-execution threshold and are eligible for execution under the BEST Rule will automatically be filled at the ITS Best Bid (for a sell order) or ITS Best Offer (for a buy order) or better. All other agency limit orders will be [automatically] filled at the limit price when there is a price penetration of *the* limit price in the primary market. *A specialist may elect automatic execution of such agency limit orders on an issue-by-issue basis.* [However, if the price differential between the trade-through price and the last sale is more than ¼ point or 1% of the value of the trade-through price, whichever is less, a second print at a trade-through price which is less than ¼ point (or 1%) away from the previous trade-through price is necessary before the MAX system will automatically execute the agency limit order.] For purposes of this Rule, ''agency order'' shall mean an order for the account for a customer but shall not include professional orders as defined in Article XXX, Rule 2, interpretation and policy .04.

* * * * *

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

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

[2] 17 CFR 240.19b–4.