front fees that may be paid for any Letter of Credit to up to one percent of the face amount of such Letter of Credit. These terms and conditions include, *inter alia*, assignments by SERI of contractual rights held be SERI under certain agreements entered into among SERI, Entergy and the Operating Subsidiaries as additional security for holders of any series of Bonds or in connection with the issuance of Tax-Exempt Bonds.

Entergy Corporation, et al. (70–8863)

Entergy Corporation (''Entergy''), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, and Entergy Power Marketing Corporation (''EPMC''), 900 South Shackleford Road, Suite 210, Little Rock, Arkansas 72211, a proposed wholly owned nonutility subsidiary company of Entergy, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 54, 87(b)(1), 90 and 91 thereunder.

Presently, EPMC has an order from the Federal Energy Regulatory Commission (''FERC'') certifying it as an exempt wholesale generator (''EWG'') in accordance with the requirements of the Act. Entergy, which owns 100% of the authorized and issued common stock of EPMC, has invested in EPMC and complied with the applicable requirements of section 32 and rule 53, of the Act, However, due to the uncertainty surrounding the requirement that EWGs be engaged solely and exclusively in the business of owning and/or operating eligible facilities and selling electric energy at wholesale, EPMC states that it will elect to decertify, and not maintain its status as a EWG.

As a result thereof, Entergy now proposes to finance EPMC, as a wholly owned nonutility subsidiary company, and EPMC will engage in wholesale brokering and marketing of energy commodities. EPMC will not own any utility assets, not will it own or operate any electric or gas utility company, as defined under the Act.

Specifically, EPMC proposes to provide, on behalf of associate and nonassociate companies, choices to major customers with respect to the purchase, sale, borrowing and lending of electricity, natural gas and other fuels, and the management of their operations. In connection with these activities, EPMC will purchase, sell, supply, market, broker, or otherwise trade electricity, gas or other fuels,[1] provide electricity or fuel management services, and engage in activities or perform services, related to the foregoing. In addition, EPMC proposes to provide instantaneous supply and sales options to electric generators; help customers manage price changes in electricity and fuel relative to time and location; and assist electric utilities and nonutility generators by managing fuel supply and transportation contracts, banking electricity until needed and providing price and deliver flexibility.[2]

EPMC also anticipates that it may engage in fuel delivery or fuel conversion, activities, whereby EPMC would deliver fuel supplies to a utility or non-utility generator for the conversion of such fuel into electric energy which then would be delivered to EPMC for resale. With respect to traditional power brokering activities, EPMC will act as an agent or broker for utilities, non-utility generators and other power marketers, to effectuate such parties' sales and purchases of electric energy at wholesale. With respect to retail activities, the applicants request that the Commission reserve jurisdiction pending completion of the record.

In order top finance the above-mentioned activities, Entergy seeks authority to make capital contributions to EPMC in an amount up to $20 million, and to provide up to $150 million in credit support, in the form of guarantees, for certain of EPMC's proposed transactions. Entergy's investment in EPMC will constitute EPMC's total capitalization.

EPMC proposes to engage in risk management transactions, including swaps, options and futures contracts that will assist its customers in hedging against adverse price impacts, However, EPMC will employ risk-reduction measures to limit potential losses that could be incurred through its activities. Specifically, EPMC will: (1) Seek to minimize the financial exposure of Entergy through its guarantees; and (2) not engage in speculative trading in the energy market and will use market hedging measures solely to minimize risk and will limit hedging activity to no more than the total amount of its commodities subject to market price fluctuation.

EPMC proposes to enter into a service contract with Entergy Enterprises, Inc. (''EEI''), whereby EEI will provide EPMC with administrative services, including maintaining books and records and preparing corporate filings. EEI will provide such services on an at-cost basis in accordance with rules 90 and 91 of the Act.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17151 Filed 7–3–96; 8:45 am]

BILLING CODE 8010–01–M

[1] EMPC anticipates that such fuels will include those likely to be involved in transactions concerning natural gas, such as oil and other hydrocarbons, wood chips, wastes and other combustible substances.

[2] In the future, EPMC may help electric utilities find the best way to meet Clean Air Act requirements through a combination of new gas technologies, emission credits, cross-fuel management and wholesale electricity purchases and sales.

[Rel. No. IC–22045; No. 812–9988]

Royce Capital Trust, et al.

June 27, 1996.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Royce Capital Trust (''Trust'') and Quest Advisory Corp. (''Quest'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) granting exemptions 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 permitting shares of any current or future series of the Trust and shares of any other investment company that is designed to fund variable insurance products and for which Quest or its affiliates may in the future serve as investment adviser, administrator, manager, principal underwriter or sponsor (collectively with the Trust, ''Funds''), to be sold to and held by: (1) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated insurance companies (''Participating Insurance Companies''); and (2) qualified pension and retirement plans outside of the separate account context (''Plans'').

FILING DATE: The application was filed on February 9, 1996.

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 should be received by the SEC by 5:30 p.m. on July 22, 1996 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 may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Howard J. Kashner, Esq., Quest Advisory Corp., 1414 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Wendy F. Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Trust was organized as a Delaware Business Trust in January, 1996, and has registered with the Commission as an open-end management investment company.

2. Quest serves as investment adviser to the Trust and is a registered investment adviser under the Investment Advisers Act of 1940.

3. The Funds propose to offer shares of one or more of their series to insurance company separate accounts that fund variable annuity and variable life insurance contracts (''Contracts'') established by Participating Insurance Companies. These separate accounts may be registered as investment companies under the 1940 Act or exempt from registration pursuant to Section 3(c)(1) of the 1940 Act. Each Participating Insurance Company will enter into a fund participation agreement with the Funds in which the Participating Insurance company invests.

4. The Funds also intend to offer shares of each series directly to Plans outside of the separate account context. The Plans may choose one or more series of any of the Funds as the sole investment under the Plan or as one of several investments.

Applicants' Legal Analysis

1. 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 (''UIT''), Rule 63–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2(b)(15) is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where the management investment company underlying the UIT offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.''

2. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' ''Mixed and shared funding'' denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e–2(b)(15), thus, is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Rule 6e–2(b)(15), therefore, precludes mixed and shared funding.

3. Applicants state that because the relief under rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds are also to be sold to Plans.

4. In connection with flexible premium variable life insurance contracts issued through a UIT, rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. 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 which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Rule 6e–3(T) thus permits mixed funding but does not permit shared funding.

5. Applicants state that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional relief is necessary if shares of the Funds also are to be sold to Plans. Applicants assert that the relief granted by paragraphs (b)(15) of Rules 6e–2 and 6e–3(T) should not be affected by the proposed sale of Fund shares to Plans because such sales may allow for the development of larger pools of assets, resulting in the potential for greater investment and diversification opportunities and for decreased expenses at higher asset levels resulting in greater cost efficiencies.

6. Applicants state that changes in the tax law have created the opportunity for the Funds to increase their asset base through the sale of Fund shares to the Plans. Applicants state that Section 817(h) of the Internal Revenue code, as amended, (''Code'') imposes certain diversification requirements on the underlying assets of the Contracts held in the Funds. The Code provides that such Contracts shall not be treated as an annuity contract or a life insurance contract for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by a qualified pension or retirement plan without adversely effecting 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. Treas. Reg. 1.817–5(f)(3)(iii).

7. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations, and that the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Applicants therefore request relief from Section 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, to the extent necessary to permit shares of the Fund to be offered and sold in connection with both mixed and shared funding, and to be sold directly to Plans. Relief is requested 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 Funds.

Disqualification

9. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemption from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permit a person disqualified under Section 9(a) to serve as an officer, director or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permit the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the Fund.

10. Applicants state that the partial relief from Section 9(a) of the 1940 Act found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, 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 that section. Applicants state that those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy or provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals employed by the Participating Insurance Companies, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants state that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, subject to Section 9(a).

Pass-Through Voting

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company share held by a separate account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require such privileges.

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder.

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 Variable Contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its Contract owners if the Contract owners initiate any change in the investment company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii)(B) and (C) of each rule.

13. Applicants state that shares of the Funds sold to Plans will be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the 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 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, Plan 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 reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. 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 Plans because the Plans are not entitled to pass-through voting privileges. Applicants further assert that investments in the Funds by Plans will not create any of the voting complications occasioned by mixed and shared funding because Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

14. Applicants state that some Plans may provide participants with the right to give voting instructions. Applicants submit that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Accordingly, Applicants assert that the purchase of Fund shares by Plans that provide voting rights to participants does not present any complication not otherwise occasioned by mixed and shared funding.

Conflicts of Interest

15. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants assert 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. Applicants note that where 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. Applicants submit that this possibility is no different and no greater than exists where a single insurer and

its affiliates offer their insurance products in several states.

16. Applicants further submit that affiliation does not reduce the potential for differences among state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15) discussed below) are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the decisions of a majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Funds.

17. Applicants also argue that 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. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specific good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner 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 Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

18. Applicants submit that there is no reason why the investment policies of a Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

19. Applicants note that 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 ''qualified pension or retirement plans'' and separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interests if Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

20. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Plan is unable to net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their respective net asset values. The Plan will then make distributions in accordance with the terms of the Plan. A Participating Insurance Company will make distributions in accordance with the terms of the variable contract.

21. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of Plan participants and owners of the Contracts issued by the separate accounts of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

22. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to Plans. Applicants represent that a Fund will inform each shareholder, including each separate account and Plan, of information necessary for the shareholder meeting, including their respective share ownership in the Fund. A Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirements of Rules 6e–2 and 6e–3(T).

23. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans does not create a ''senior security'', as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of Plan participants and Contract owners under their respective Plans and Contracts, the Plans and separate accounts have rights only with respect to their shares of the Funds. Such share may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

24. Applicants state that there are no conflicts of interest between Contract owners and Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power to prevent insurance companies indiscriminately redeeming their separate accounts out of one Fund and investing those assets in another Fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans or the participants in participant-direct Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as in the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of the Plans and Plan participants conflict, the issues can be almost immediately resolved in that trustees of the Plans can, independently, redeem shares out of the Funds.

25. Applicants state that various factors have kept certain insurance companies from offering Contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment managers; and the lack of public name recognition as investment experts. Specifically, Applicants state that smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Contract business on their own. Applicants argue the use of the Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of Quest and its affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contract such as the Contracts, which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to

result in greater product variation and lower charges. Thus, Applicants argue that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by such Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

26. Applicants state that, regardless of the types of Fund shareholders, Quest is legally obligated to manage the Funds in accordance with each Fund's investment objectives, policies and restrictions as well as any guidelines established by the relevant Board of Directors or Trustees of the Funds. Applicants assert that Quest work with a pool of money without consideration for the identity of shareholders, and, thus, manage the Funds in the same manner as any other mutual fund.

27. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Additionally, Applicants note the previous issuance of orders permitting mixed and share funding where shares of a fund were sold directly to qualified plans, such as the Plans. Applicants note further that there is ample precedent for extending exemptive relief to members of a class or classes or persons, not currently identified, that may be similarly situated in the future. Such class relief has been granted in various contexts and from a wide variety of the 1940 Act's provisions including class exemption in the context of mixed and shared funding.

Applicants' Conditions

The Applicants have consented to the following conditions if the order requested in the application is granted:

1. A majority of the Board of Trustees or Board of Directors (each a ''Board'') of each Fund shall consist of persons who are not ''interested persons'' of the Funds, as defined by Section 2(a)(19) of the 1940 Act and Rules thereunder, and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any Director or Trustee, then the operation of this condition shall be suspended: (i) for a period of 45 days, if the vacancy or vacancies may be filled by the appropriate Board, (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (ii) for such longer period as the Commission may prescribe by order upon application.

2. The Boards will monitor their respective Funds for the existence of any irreconcilable material conflict between the interests of Contract owners of all separate accounts and of Plan participants and Plans investing in the 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 billing, 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 Funds are managed; (e) a difference in voting instructions given by owners of variable annuity and variable life insurance contracts; or (f) a decision by a Participating Insurance Company to disregard voting instructions of Contract owners; and, (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, Quest (or any other investment manager of a Fund), and any Plan that executes a participation agreement upon becoming an owner of 10% or more of the issued and outstanding shares of a Fund (''Participating Plans'') will report any potential or existing conflicts to the Board of any relevant Fund. Quest (or any other investment adviser of a Fund), Participating Insurance Companies and Participating Plans will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for it 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 holders' voting instructions and, if pass-through voting is applicable, an obligation by a Participating Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies and Participating Plans investing in the Funds under their agreements governing participating in the Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Contract owners and, if applicable, Plan participants.

4. If it is determined by a majority of the Board of a Fund, or by a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Participating Plans will, at their expense and to the extent reasonably practicable (as determined by a majority of disinterested trustees or members of the Board), 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 separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, which may include another series of a Fund or another Fund; (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 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; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to 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 the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Participating 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 Participating Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of the existence of an irreconcilable material conflict and bearing the cost of such remedial action, shall be a contractual obligation of all

Participating Insurance Companies and Participating Plans under their agreements governing participation in the Funds, and these responsibilities will be carried out with a view only to the interests of the Contract owners and, as applicable, Plan participants.

For purposes of this Condition Four, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund or Quest (or any other investment advisor to a Fund) be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition Four to establish a new funding medium for any Contract if an offer to do so has been declined by a vote of a majority of Contract owners materially affected by the material irreconcilable conflict. No Participating Plan shall be required by this Condition Four to establish a new funding medium for such Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer, or (b) pursuant to governing plan documents and applicable law, the Participating Plan makes such decision without Plan participant vote.

5. Quest, all Participating Insurance Companies, and Participating Plans will be promptly informed in writing of any Board's determination that a material irreconcilable conflict exists, and its implications.

6. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of a Fund 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 separate accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. 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 Participating Plan will vote as required by applicable law and governing plan documents.

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

8. Each Fund will notify all Participating Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each 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 Plans; (b) due to differences of tax treatment and other considerations, the interests of various Contracts owners participating in the Fund and the interests of Plans investing in the Fund may conflict; and, (c) the Board will monitor the Fund for any material conflicts of interest and determine what action, if any, should be taken.

9. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which for these purposes, shall be the persons having a voting interest in the shares of the Fund) and in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) and, if applicable, Section 16(b) of the 1940 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 (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent Rule 6e–2 or Rule 6e–3(T) is amended, or Rule 6e–3(T) is adopted, to provide exemptive relief from any provision of the 1940 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 the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. No less than annually, Quest (or any other investment adviser of a Fund), the Participating Insurance Companies and Participating Plans shall submit to the Boards such reports, materials, or data as the Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions stated in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of Quest, Participating Insurance Companies and Participating Plans to provide these reports, materials, and data to the Boards shall be a contractual obligation of Quest, all Participating Insurance Companies and Participating Plans under the agreements governing their participation in the Fund.

12. If a Plan should become an owner of 10% or more of the issued and outstanding shares of a Fund, such Plan will execute a participation agreement with the applicable Fund including the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Fund.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions 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, are appropriate in the public interest 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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[Rel. No. IC–22046; 811–1500]

Sherman, Dean Fund, Inc.; Notice of Application

June 28, 1996.

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

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').