Schedule B

No Schedule B authorities were established in June 1996.

The following Schedule B authority was revoked in June 1996:

Federal Deposit Insurance Corporation

Temporary positions in the Washington, D.C. Headquarters offices of the Resolution Trust Corporation when filled by individuals with specialized experience in field and regional offices. Effective June 8, 1996.

Schedule C

The following Schedule C authorities were established in 1996.

Commission on Civil Rights

Special Assistant to a Commissioner. Effective June 7, 1996.

Special Assistant to a Commissioner. Effective June 24, 1996.

Department of Agriculture

Staff Assistant to the Chief Economist. Effective June 17, 1996.

Confidential Assistant to the Administrator, Rural Business and Cooperative Development Service. Effective June 18, 1996.

Confidential Assistant to the Administrator, Farm Service Agency. Effective June 19, 1996.

Department of Commerce

Deputy Press Secretary-Agency Coordination to the Director for Communications and Press Secretary. Effective June 7, 1996.

Special Assistant to the Assistant Secretary for International Economic Policy. Effective June 7, 1996.

Special Assistant to the General Counsel, Office of the General Counsel. Effective June 14, 1996.

Executive Assistant to the Secretary of Commerce. Effective June 14, 1996.

Special Assistant to the Director, Legislative, Intergovernmental and Public Affairs. Effective June 14, 1996.

Special Assistant to the Assistant Secretary for Import Administration, International Trade Administration. Effective June 19, 1996.

Associate Under Secretary for Economic Affairs to the Under Secretary for Economic Affairs. Effective June 19, 1996.

Director, Office of Congressional Affairs to the Assistant Secretary for Communication and Information. Effective June 21, 1996.

Special Assistant to the Director, Office of the White House Liaison. Effective June 21, 1996.

Director, Office of the White House Liaison to the Deputy Chief of Staff. Effective June 21, 1996.

Special Assistant to the Deputy Assistant Secretary for Domestic Operations. Effective June 24, 1996.

Confidential Assistant to the Deputy Chief of Staff. Effective June 24, 1996.

Deputy Director of Scheduling to the Deputy Director of External Affairs and Director of Scheduling. Effective June 24, 1996.

Department of Defense

Assistant to the Deputy Secretary of Defense. Effective June 4, 1996.

Executive Director (Outreach and Integration) to the Deputy Under Secretary (Industrial Affairs and Installations). Effective June 6, 1996.

Staff Specialist to the Chief, Plans and Analysis Group. Effective June 7, 1996.

Personal and Confidential Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective June 19, 1996.

Department of Education

Confidential Assistant to the Director, Scheduling and Briefing. Effective June 19, 1996.

Confidential Assistant to the Director, Executive Secretariat. Effective June 19, 1996.

Department of Energy

Staff Assistant to the Director, Office of Budget Planning and Customer Service. Effective June 7, 1996.

Legislative Affairs Liaison Officer to the Deputy Assistant Secretary for House Liaison. Effective June 24, 1996.

Special Assistant to the Principal Deputy Assistant Secretary for Congressional Public and Intergovernmental Affairs. Effective June 28, 1996.

Department of Health and Human Services

Confidential Assistant to the Executive Secretary. Effective June 19, 1996.

Department of Housing and Urban Development

Special Assistant to the Assistant Secretary for Administration. Effective June 14, 1996.

Department of Labor

Press Secretary to the Assistant Secretary for Occupational Safety and Health, Occupational Safety and Health Administration. Effective June 12, 1996.

Department of Transportation

Special Assistant to the Chief of Staff. Effective June 21, 1996.

Department of the Treasury

Attorney-Advisor (General) to the General Counsel. Effective June 19, 1996.

Senior Policy Analyst to the Deputy Executive Secretary. Effective June 20, 1996.

Occupational Safety and Health Review Commission

Confidential Assistant to a Member (Commissioner). Effective June 20, 1996.

Office of Management and Budget

Confidential Assistant to the Associate Director, Health and Personnel Division. Effective June 28, 1996.

U.S. International Trade Commission

Confidential Secretary (Office Automation) to the Chairman. Effective June 28, 1996.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–19101 Filed 7–26–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22082; File No. 812–10058]

BT Insurance Funds Trust, et al.

July 19, 1996.

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

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

APPLICANTS: BT Insurance Funds Trust (''Trust''), Bankers Trust Global Investment Management, a unit of Bankers Trust Company (''Investment Management''), and certain other life insurance companies and their separate accounts investing now or in the future in the Trust.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for 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 exemptive relief to the extent necessary to permit shares of the Trust and any other investment company that is offered to fund variable insurance products and for which Investment Management, or any of its affiliates, may serve as investment adviser,

administrator, manager, principal underwriter, or sponsor (collectively, ''Investment Companies'') to be sold to and held by the separate accounts (''Separate Accounts'') funding variable annuity and variable life insurance contracts (''Variable Contracts'') issued by affiliated or unaffiliated life insurance companies (''Participating Insurance Companies'') or to future qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

FILING DATE: The application was filed on March 25, 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 SEC's Secretary 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 August 13, 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: Burton M. Leibert, Esq. or Rosalind A. Fahey, Esq., Wilkie Farr & Gallagher, One Citicorp Center, 153 East 53rd Street, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

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

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the 1940 Act as an open-end management investment company. The Trust currently consists of two series, each representing an interest in a separate investment portfolio (''Portfolios''). The Trust may establish additional series of shares at any time.

2. Investment Management serves as investment adviser to each Portfolio of the Trust. Investment Management is a New York banking corporation and a wholly owned subsidiary of Bankers Trust New York Corporation (''Bankers Trust'').

3. 440 Financial Distributors, Inc., a broker-dealer registered under the Securities Exchange Act of 1934 and a company not affiliated with Bankers Trust, is the distributor of the Portfolios' shares.

4. Applicants propose that the Investment Companies serve as investment vehicles for various types of Variable Contracts. Investment Companies' shares will be offered to Separate Accounts of Participating Insurance Companies which enter into participation agreements with the Trust. These Separate Accounts may be registered with the Commission under the 1940 Act or exempt from registration under Section 3(c)(1) of the 1940 Act.

5. Applicants state that each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under state law and the federal securities laws in connection with any Variable Contract issued by such company. Applicants further state that the role of the Trust under this arrangement will consist of offering its shares to the Separate Accounts and fulfilling any conditions the Commission may impose upon granting the order requested in this application.

6. In addition, Applicants state that the Trust desires to avail itself of the opportunity to increase its assets base through the sale of its shares to Qualified Plans, consistent with applicable tax law. The Qualified Plans may choose any of the Investment Companies as the sole investment option under the Qualified Plan or as one of several investment options. Qualified Plans' participants may or may not be given an investment choice among available alternatives depending on the Qualified Plan itself. Shares of any Investment Company sold to Qualified Plans would be held by the trustee(s) of such Qualified Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). Investment Management may act as investment adviser to any of the Qualified Plans that will purchase shares of the Trust. Applicants note that pass-through voting is not required to be provided to participants in Qualified Plans under ERISA.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them 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) to the extent necessary to permit mixed and shared funding, as defined below in Paragraphs 4 and 5.

2. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Rules 6e–2(b)(15) provides partial exemptive relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to separate accounts registered under the 1940 Act as unit investment trusts to the extent necessary to offer and sell scheduled premium variable life insurance contracts. The relief provided by the ruled also extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

4. The exemptions granted by Rule 6e–2(b)(15) are available only to a management investment company underlying a separate account (''Underlying Fund'') that offers its shares exclusively to variable life insurance separate accounts of a life insurer, or of any other affiliated life insurance company, issuing scheduled premium variable life insurance contracts. The relief granted by Rule 6e–2(b)(15) is not available to a separate account issuing scheduled premium variable life insurance contracts if the Underlying Fund also offers its shares to a separate account issuing variable annuity or flexible premium variable life insurance contracts. The use of a common Underlying Fund as an investment vehicle for both variable annuity contracts and scheduled or flexible premium variable life insurance contracts is referred to herein as ''mixed funding.''

5. Additionally, the relief granted by Rule 6e–2(b)(15) is not available to separate accounts issuing scheduled premium variable life insurance contracts if the Underlying Fund also offers its shares to unaffiliated life insurance company separate accounts funding variable contracts. The use of a common fund as an underlying investment vehicle for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.'' Moreover, because the relief granted by Rule 6e–2(b)(15) is available only where shares of the Underlying Fund are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if the shares of the Trust also are to be sold to Qualified Plans.

6. Applicants, therefore, request an order of the Commission exempting scheduled premium variable life

insurance separate accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such account) and the Applicants from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rule 6e–2(b) thereunder, to the extent necessary to permit shares of the Investment Companies to be offered and sold to, and held by: (1) Variable annuity separate accounts and variable life insurance separate accounts of the same life insurance company or of affiliated life insurance companies (*i.e.*, mixed funding); (2) variable life insurance separate accounts of one life insurance company and separate accounts funding variable contracts of unaffiliated life insurance companies (*i.e.*, shared funding); (3) Qualified Plans.

7. Regarding the funding of flexible premium variable life insurance contracts issued through a separate account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. This exemptive relief extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor. These exemptions are available only where the Underlying Fund of the separate account offers its 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), therefore, permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts of unaffiliated life insurance companies. Moreover, because the relief afforded by Rule 6e–3(T) is available only where shares of the Underlying Fund are offered exclusively to separate accounts of insurance companies, additional relief is necessary if shares of the Trust also are to be sold to Qualified Plans.

8. Accordingly, Applicants request an order of the Commission exempting flexible premium life insurance separate accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such accounts) and the Applicants from Sections 9(a), 13(a), 15(a), and 15(b) thereunder, to permit shares of the Investment Companies to be offered and sold to, and held by: (1) Separate accounts funding variable contracts of affiliated and unaffiliated life insurance companies; and (2) Qualified Plans.

9. Applicants state that changes in the tax law have created the opportunity for the Portfolios to increase their asset base through the sale of Portfolio shares to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (''Code''), imposes certain diversification standards on the assets underlying variable contracts, such as those in each Portfolio of the Trust. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance contract for any period for which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. These diversification requirements are applied by taking into account the assets of the Underlying Fund if all the beneficial interests in the Underlying Fund are held by certain designated persons. On March 2, 1989, the Treasury Department issued regulations that adopted diversification requirements for Underlying Funds. Treas. Reg. § 1.817–5 (1989). These regulations provide that, in order 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 permits trustee(s) of a qualified pension or retirement plan to hold shares of an investment company, the shares of which also are held by separate accounts of insurance companies, without adversely affecting the status of the investment company as an adequately diversified underlying investment vehicle for variable contracts issued through such segregated asset accounts. Treas. Reg. § 1.817–5(f)(3)(iii).

10. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Department's regulations which made it possible for shares of an investment company to be held by the trustee(s) of qualified plans without adversely affecting the ability of shares in the same investment company also to be held by 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.

11. Moreover, Applicants assert that if the Trust were to sell its shares only to Qualified Plans, no exemptive relief would be necessary. Applicants state that none of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to qualified pension or retirement plans or to an Underlying Fund's ability to sell its shares to such plans. It is only because the Separate Accounts investing in the Trust are themselves investment companies which are relying upon Rules 6e–2 and 6e–3(T) and which propose to have the relief continue in place that Applicants are applying for the requested relief.

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

13. Applicants state that the partial relief granted under subparagraphs (b)(15) of Rules 6e–2 and 6e–3(T) from the requirements of Section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that Rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company in

that organization. The Participating Insurance Companies are not expected to play any role in the management or administration of the Investment Companies. Applicants, therefore, submit that there is no regulatory reason to apply the provisions of Section 9(a) to the many individuals in various Participating Insurance Companies.

14. Subparagraphs (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its variable contract owners in certain limited circumstances.

15. Voting instructions may be disregarded under subparagraphs (b)(15)(iii)(A) of Rules 6e–2 and 6e–3(T) if they would cause the Underlying Fund to make, or refrain from making, certain investments which would result in changes to the subclassification or investment objectives of the Underlying Fund, or to approve or disapprove any contract between a fund and its investment advisers, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of each Rule.

16. Under subparagraph (b)(15)(iii)(B) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(*2*) of Rule 6e–3(T), an insurance company may disregard variable contract owners' voting instructions if the variable contract owners initiate any change in the Underlying Fund's investment objectives, principal underwriter, or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each Rule.

17. Applicants assert that the proposed sale of shares of the Trust to Qualified Plans does not impact of the relief requested. As previously noted, Rules 6e–2(b)(15)(iii) and 6e–3(T)(15)(iii) permit an insurer to disregard variable contract owner voting instructions in certain circumstances. Offering shares of the Trust to Qualified Plans would not affect the circumstances and conditions under which any veto right would be exercised by a Participating Insurance Company. Furthermore, as stated above, shares of the Trust would be sold only to Qualified Plans for which such shares would be held by the trustee(s) of such plans as mandated by Section 403(a) of ERISA. Section 403(a) provides that the trustee(s) must have exclusive authority and discretion to manage and control the qualified plan with two exceptions: (1) When the qualified plan expressly provides that the trustee(s) are subject to the direction of an named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions of such fiduciary made in accordance with the terms of the qualified plan and not contrary to ERISA; and (2) when the authority to manage, acquire, a dispose of assets of the Qualified Plans is delegated to one or more investment managers under Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Qualified Plans' trustee(s) have the exclusive authority and responsibility for voting proxies. When 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 trustee(s) or the named fiduciary. In any event, Applicants assert that pass-through voting to the participants in such Qualified Plans is not required. 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 Qualified Plans.

18. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants assert that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its variable contracts. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

19. Applicants state further that, under paragraph (b)(15) of Rules 6e–2 and 6e–3(T), the right of an insurance company to disregard Variable Contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser. Applicants state that the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. If a participating Insurance Company's decision to disregard Variable Contract owners' instructions represents a minority position or would preclude a majority vote approving a particular change, however, such Participating Insurance Company may be required, at the election of the relevant Investment Company, to withdraw its Separate Account's investment in such Investment Company. No charge or penalty will be imposed as result of such withdrawal.

20. Applicants state that there is no reason why the investment policies of the Investment Companies with mixed funding would or should be materially different from what they would or should be if the Investment Companies funded only variable annuity contracts or variable life insurance policies. Each type of insurance product is designed as a long-term investment program. Moreover, Applicants assert that the Investment Companies will continue to be managed in an attempt to achieve their investment objectives, and not to favor any particular Participating Insurance Company or type of insurance product. Applicants, therefore, argue that there is no reason to believe that conflicts of interest would result from mixed funding.

21. In addition, Applicants assert that the sale of shares of the Trust to Qualified Plans will not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Section 817 is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on Underlying Funds of variable contracts. Treasury Regulation 1.817–5(f)(3)(iii) specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Applicants, therefore, have concluded that neither the Code, nor the Treasury regulations or revenue rulings thereunder, present any inherent conflicts of interest between or among qualified pension or retirement plan participants and variable contract owners if qualified pension and retirement plans and variable annuity and variable life separate accounts invest in the same management investment company.

22. Applicants assert that while there are differences in the manner in which distributions are taxed for variable annuity and variable life insurance contracts and Qualified Plans, these tax consequences do not raise any conflicts of interest. When distributions are made, and the Separate Account or the Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account or the Qualified Plan will redeem shares of the Investment Companies at their respective net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Plan, and a Participating Insurance Company will surrender values from the Separate Account into the general account to make distributions in accordance with the terms of the variable contract.

23. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving rights to Variable Contract owners and participants in the Qualified Plans. In connection with any meeting of shareholders, the Trust will inform each shareholder, including each Separate Account and Qualified Plan, of the information necessary for the meeting, including their respective share of ownership in the Investment Companies. A Participating Insurance Company will solicit voting instructions in accordance with the ''pass-through'' voting requirement. Qualified Plans and Separate Accounts each will have the opportunity to exercise voting rights with respect to their shares in the investment Companies, although only the Separate Accounts are required to pass through their vote to Contract owners. The voting rights provided to Qualified Plans with respect to shares of the Trust would be no different from the voting rights that are provided to Qualified Plans with respect to shares of mutual funds sold to the general public.

24. Applicants argue that the ability of the Investment Companies to sell their shares directly to Qualified Plans does not create a ''senior security'' as defined by Section 18(g) of the 1940 Act. As noted above, regardless of the rights and benefits of participants under Qualified Plans, or variable Contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts have rights only with respect to their respective shares of the Investment Companies. They only can redeem such shares at their net asset value. No shareholder of the Investment Companies has any preference over any other shareholder with respect to distribution of assets of payment of dividends.

25. Applicants have determined that of conflicts of interest exist between the Variable Contract owners of the Separate Accounts and Qualified Plans participants with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact the insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another fund. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustee(s) of Qualified Plans or the participants in participant directed Qualified Plans could make the decision quickly and could implement the redemption of their shares from the Investment Companies and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

26. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under the Qualified Plans and Variable Contract owners of the Separate Accounts from possible future changes in the federal tax laws than that which already exists between Variable Contract owners.

27. Applicants assert that the requested relief is appropriate and in the public interest because the relief will promote competitiveness in the variable life insurance market. Various factors have limited the number of insurance companies that offer variable contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management, and the lack of name recognition by the public of certain insurers as investment experts to whom the public feels comfortable entrusting their investment dollars. Applicants argue that use of Investment Companies as common investment vehicles of Variable Contracts helps to alleviate these concerns because Participating Insurance Companies benefit not only from the investment and administrative expertise of the Trust's investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Making the Portfolios available for mixed and shared funding may encourage more insurance companies to offer variable contracts and, accordingly, could result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Mixed and shared funding also would benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate mutual funds. Furthermore, Applicants assert that the sale of shares of the Investment Companies to Qualified Plans, in addition to Separate Accounts of Participating Insurance Companies, would result in an increased amount of assets available for investment by the Investment Companies. This may benefit Variable Contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new portfolios more feasible.

28. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulated shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account, and Applicants believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the board of the Trust (''Board'') shall consist of persons who are not ''interested persons'' of the Trust 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 trustee or director, 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 Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribed by order upon application.

2. The Board will monitor the Investment Companies for the existence of any material irreconcilable conflict between the contract holders of all Separate Accounts and of participants of Qualified Plans investing in the respective Investment Companies, and determined 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) State insurance regulatory authority action; (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 Investment Companies are being managed; (e) a difference among voting instructions given by Variable Contract owners; or (f) a decision by a Participating Insurance Company to disregard Variable Contract owners' voting instructions.

3. Participating Insurance Companies and Investment Management (or any other investment manager of the Trust) and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of the Investment Company (''Participants'') will report any potential or existing conflicts, of which they become aware, to the Board. Participants will be obligated to assist the Board in carrying out is 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 each insurance company Participant to inform the board whenever Variable Contract owners' voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participants investing in an Investment Company under their participation agreements, and those participation agreements shall provide that, in the case of insurance company Participants, such responsibilities will be carried out with a view only to the interests of the Variable Contract owners.

4. If a majority of the Board, or a majority of its disinterested members (''Independent Trustees''), determines that a material irreconcilable conflict exists, the relevant Participant shall, at its expense and to the extent reasonably practicable (as determined by a majority of Independent Trustees), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Portfolios and reinvesting those assets in a different investment medium, which may include another portfolio of the relevant Investment Company, or, in the case of insurance company Participants, submitting the question 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., annuity contract owners, life insurance contract owners, or variable contract owners of one or more Participant) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurance company Participant's decision to disregard contract owners' voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participant may be required, at the election of the relevant Investment Company, to withdraw its separate account's investment therein. No charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a determination by the Board that an irreconcilable material conflict exists and to bear the cost of such remedial action shall be a contractual obligation of all Participants under their participation agreements governing participation in the Investment Companies and these responsibilities, in the case of insurance company Participants, will be carried out with a view only to the interests of the contract owners. A majority of Independent Trustees shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the relevant Investment Company or Investment Management (or any other investment adviser of the Investment Companies) be required to establish a new funding medium for any variable contract. No insurance company Participant shall be required by this condition to establish a new funding medium for any Variable Contract if an offer to do so has been declined by a vote of majority of variable contract owners materially affected by the irreconcilable material conflict.

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

6. Insurance company Participants 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 variable contract owners. Accordingly, such Participants, where appropriate, will vote shares of a Portfolio held in their Separate Accounts in a manner consistent with timely voting instructions received from contract owners. Insurance company Participants also will vote shares of a Portfolio held in its Separate Accounts for which no timely voting instructions from Variable Contract owners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Insurance company Participants shall be responsible for assuring that each of their Separate Accounts investing in an Investment Company calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in an Investment Company shall be a contractual obligation of all insurance company Participants under their participation agreements.

7. Each Investment Company will notify all Participants that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Investment Company shall disclose in its Prospectus that: (a) Its shares of the Investment Company may be offered to insurance company separate accounts of both annuity and life insurance variable contracts and to qualified plans; (b) because of differences of tax treatment or other considerations, the interests of various contract owners participating in the Investment Company and the interests of Qualified Plan investing in the Investment Companies may conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

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

9. If and to the extent Rule 6e–2 or Rule 6e–3(T) is amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Investment Companies and/or the Participants, as appropriate, shall take such steps as

may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. Each Investment Company 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 Investment Companies), and, in particular, each Investment Company will provide for meetings as required by applicable State law or the 1940 Act, including Section 16(c) of the 1940 Act (although the Investment Companies are not one of the trusts described in that section) as will as with Section 16(a) and, if and when applicable, Section 16(b). Further, each Portfolio 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 adopt with respect thereto.

11. The Participants shall, at least annually, submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data upon reasonable request of the Board shall be a contractual obligation of all Participants under their participation agreements with the Investment Companies.

12. None of the Investment Companies will accept a purchase order from a Plan if such purchase would make the Plan shareholder an owner of 10% or more of the assets of an Investment Company unless such Qualified Plan executes fund participation agreement with such Investment Company. A plan shareholder will execute an application containing an acknowledgement of this condition upon its initial purchase of the shares of an Investment Company.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19118 Filed 7–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22086; International Series Release No. 1009; File No. 812–10192]

The First Trust Special Situations Trust; Notice of Application

July 22, 1996.

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

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

APPLICANT: The First Trust Special Situations Trust.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 12(d)(3) of the Act.

SUMMARY OF APPLICATIONS: Applicant requests an order on behalf of itself and certain series (the ''Series'') to permit certain Series (the ''Foreign Target Ten Series'') to invest up to 10.5% and certain other Series (the ''Foreign Target Five Series'') to invest up to 20.5% of their respective total assets insecurities of issuers that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities (''Securities Related Issuers'').

FILING DATE: The application was filed on June 5, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1001 Warrenville Road, Lisle, Illinois 60532.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

Each Series will be a series of the First Trust Special Situations Trust (the ''Trust''), a unit investment trust registered under the Act. Nike Securities L.P. (the ''Sponsor'') is the depositor for the Trust.

2. Each Series' investment objective is to provide total return through a combination of potential capital appreciation and current dividend income. The Foreign Target Ten Series will invest approximately 10%, but in no event more than 10.5%, of the value of its total assets in each of the ten common stocks in the Financial Times Ordinary Share Index (the ''FT Index''), the Hang Seng Index, or the Nikkei 225 Index, as the case may be, with the highest dividend yields, and will hold those stocks for approximately one year. The Foreign Target Five Series will invest approximately 20%, but in no event more than 20.5% of the value of its total assets in each of the five lowest dollar price per share stocks of the ten common stocks in the FT Index, Hang Seng Index or the Nikkei 225 Index, as the case may be, having the highest dividend yields, and will hold those stocks for approximately one year. The Sponsor currently intends (but is not obligated) to offer a new Series at about the time each Series terminates.

3. The FT Index comprises 30 common stocks listed on the London Stock Exchange chosen by the editors of the Financial Times (London) as representative of British industry and commerce. The companies are major factors in their industries and their stocks are widely held by individuals and institutional investors. The Hang Seng Index is a weighted average of 33

[1] The Sponsor will attempt to purchase equal values of each of the common stocks in the portfolio of a Foreign Target Ten Series and a Foreign Target Five Series. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, each Foreign Target Ten Series may purchase securities of a Securities Related Issuer which represent over ten percent, but in no event more than 10.5 percent, of such Series' assets, and each Foreign Target Five Series may purchase securities of a Securities Related Issuer which represent over twenty percent, but in no event more than 20.5%, of such Series' assets on the initial date of deposit, to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.