the extent that such services are pass-through services from EUA Service Corporation, and (ii) market prices to the extent such goods and services originate from other associate companies, pursuant to an exception from the requirements of section 13(b) and rules 90 and 91 thereunder. The types of goods and services which Cogenex-Canada and its associate companies would provide to the JV ESCO would include marketing, accounting and engineering services and products used in energy conservation projects. JV ESCO will not be providing goods or services to Cogenex-Canada or its associate companies.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–22229 Filed 8–29–96; 8:45 am]

**BILLING CODE 8010–01–M**

**[Rel. No. IC–22170; File No. 812–10118]**

## Morgan Stanley Universal Funds, Inc. et al.

August 23, 1996.

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

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

**APPLICANTS:** Morgan Stanley Universal Funds, Inc. (''MS Fund''), Morgan Stanley Asset Management Inc. (''MSAM'') and Miller Anderson & Sherrerd, LLP (''MAS'').

**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 an order to the extent necessary to permit shares of the MS Fund and shares of any other investment company that is designed to fund insurance products and for which MSAM and MAS, or any of their affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (collectively, the ''Funds'') to be sold to and held by: (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); and (b) qualified pension and retirement plans outside the separate account context (''Qualified Plans'').

**FILING DATE:** The application was filed on May 1, 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 on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 17, 1996, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Morgan, Lewis & Bockius LLP, Attention: Richard W. Grant, Esq. and James B. Kimmel, Esq., 2000 One Logan Square, Philadelphia, Pennsylvania 19103–1993.

**FOR FURTHER INFORMATION CONTACT:** Joyce Merrick Pickholz, Senior Counsel, or Patrice M. Pitts, Special Counsel, 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 SEC.

### Applicant's Representations

1. The MS Fund, an open-end, management investment company organized as a Maryland corporation, currently consists of 17 separate investment portfolios. The MS Fund may create additional portfolios in the future.

2. MSAM and MAS serve as the investment advisers to the MS Fund. They are wholly owned subsidiaries of Morgan Stanley Group, Inc. and are registered as investment advisers under the Investment Advisers Act of 1940.

3. The MS Fund intends to offer its shares to variable annuity separate accounts and variable life insurance separate accounts established by insurance companies that may or may not be affiliated with one another and to Qualified Plans.

4. The Participating Insurance Companies will establish their own separate accounts and design their own variable annuity and variable life insurance contracts (''Contracts''). The Funds will offer shares to the separate accounts and fulfill any conditions that the Commission may impose upon granting the order requested in the application.

5. The Funds can increase their respective asset bases by selling shares to Qualified Plans. The Qualified Plans may choose a Fund as the sole investment option, or as one of several investment options, under a Plan. Participants in the Qualified Plans may or may not be given an investment choice, depending upon the Qualified Plan. Shares of a Fund sold to a Qualified Plan will be held by the trustee(s) of the Qualified Plan as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). ERISA does not require pass-through voting to be provided to participants in Qualified Plans.

### *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 6e–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 is available to a separate account's investment adviser, principal underwriter, and depositor. The exemptions provided under Rule 6e–2(b)(15) are available 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.'' The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is referred to as ''mixed funding.'' The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' The relief provided under Rule 6e–2(b)(15) is not applicable to a scheduled premium variable life insurance separate account that owns shares of an underlying fund where the underlying fund offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) does not provide exemptive relief for either mixed funding or shared funding.

2. Applicants state that with respect to Rule 6e–2, exemptive relief is also necessary if shares of the Funds are also to be sold to Qualified Plans since the relief under Rule 6e–2 is available only where shares are offered exclusively to

separate accounts of insurance companies.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as 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 provided under Rule 6e–3(T)(b)(15) are available only where all 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 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.'' Therefore, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicants state that with respect to Rule 6e–3(T), exemptive relief is also necessary if shares of the Funds are also to be sold to Qualified Plans since the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts of insurance companies.

5. Applicants state that changes in the tax law have created the opportunity for a Fund to increase its asset base through the sale of its shares to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of the Contracts held in a Fund. Specifically, the Code provides that such Contracts shall not be treated as annuity contracts or life insurance contracts 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, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment company to both 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).

7. Applicants therefore request relief 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 to the extent necessary to permit shares of the Funds to be offered and sold to Qualified Plans and to variable annuity and variable life separate accounts in connection with both mixed and shared funding.

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as 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) (i) and (ii) and 6e–3(T)(b)(15) (i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the disqualification to affiliated individuals or companies that participate directly in the management or administration of the underlying investment company.

9. Applicants state that the partial relief from Section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicants state that those 1940 Act rules recognize that it is not necessary to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, 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. The application states that the relief requested should not be affected by the proposed sale of shares of the Funds to Qualified Plans because the Plans are not investment companies are not, therefore, subject to Section 9(a).

10. 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 shares 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.

11. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its 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. Also, 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 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.

12. Applicants represent that the sale of Fund shares to Qualified Plans does not affect the relief requested in this regard. As noted previously by Applicants, shares of the Funds sold to Qualified Plans would be held by the trustees of such Qualified Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) when the Qualified Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Qualified 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 Qualified 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 Qualified Plans.

13. 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, or all, states. Applicants note that where insurers are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one 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 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.

14. 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 majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant portfolio or underlying fund.

15. Applicants also state that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by owners of the Contracts. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified 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 a Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

16. Applicants state that there is no reason why the investment policies of a Fund would or should be materially different from what those policies would or should be if that Fund served as a funding medium for only variable annuity or only variable life insurance contracts. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

17. Section 817(h) 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 § 1.187–5(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 management investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury Regulations or the Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

18. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be 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 a Fund at their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

19. 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 the trustees of Qualified Plans. Applicants represent that the transfer agent for a Fund will inform each Participating Insurance Company of its share ownership in each separate account, and will inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

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

21. Finally, Applicants state that there are no conflicts between Contract owners and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. This does not mean that there are inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition of the fact that an insurance company cannot simply request redemption of shares held in its separate account and have those shares redeemed out of one Fund and the proceeds invested in another Fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. In contrast, trustees of Qualified Plans can make the decision quickly and implement the redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of Qualified Plans conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, independently, redeem shares out of the Funds.

22. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance 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 management; and the lack of name recognition by the public of certain insurers as investment professionals. Applicants contend that use of the Fund 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 MSAM and MAS, 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 contracts 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 represent 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 Qualified Plans should increase the amount of assets available for investment by the Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification.

Applicants' Conditions

Applicants have consented to the following conditions if an order is granted:

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

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the Contract owners investing in the separate accounts and in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative 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 Fund are managed; (e) a difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners.

3. If a Qualified Plan becomes an owner of 10% or more of the assets of a Fund, such Plan will execute a fund participation agreement with that Fund. At the time of its initial purchase of the shares of the Fund, the Qualified Plan will acknowledge this condition in its application to purchase the shares.

4. The Participating Insurance Companies, MSAM and MAS (or any other investment adviser of a Fund), and any Qualified Plan that executes a Fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the ''Participating Entities''), will report any potential or existing conflicts to the Board. Participating Entities will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with an information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of the Participating Insurance Companies and Qualified Plans investing in the Fund, and these responsibilities will be carried out with a view only to the interests of Contract owners and Qualified Plan participants.

5. If it is determined by a majority of the Board, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Participating Entities shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the separate accounts from a Fund and reinvesting such assets in a different investment medium including another portfolio of that Fund, or submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Qualified Plans from a Fund or individual portfolio thereof and reinvesting those assets in a different investment medium, including another portfolio of that Fund; 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 disregard voting instructions of the owners of the Contracts, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of a Fund, to withdraw its separate account's investment in that Funds, and no charge or penalty will be imposed as a result of such withdrawal.

6. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Entities under the agreements governing their participation in the Funds. The responsibility to take such remedial action shall be carried out with a view only to the interests of Contract owners and participants in Qualified Plans.

7. For purposes of condition 5, a majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but, in no event will a Fund, or any of its advisers, be required to establish a new funding medium for any Contract. Further, no Participating Insurance Company shall be required by condition 5 to establish a new funding medium for any Contract if an offer to do so had been declined by a vote of a majority of Contract owners materially affected by the irreconcilable material conflict.

8. A Board's determination of the existence of an irreconcilable material conflict and its implications will be

made known promptly and in writing to all Participating Entities.

9. Participating Insurance Company 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. Each Participating Insurance Company will vote shares of a Fund held in the Participating Insurance Company's separate accounts for which no voting instructions from Contract owners are timely received, as well as shares of that Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from Contract owners are timely received. Participating Insurance Companies will be responsible for assuring that each of their separate accounts participating in a Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Funds.

10. 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 a 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 not within 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, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

11. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Further, each Fund will disclose in its prospectus that (a) the Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies and for certain qualified pension and retirement plans, (b) material irreconcilable conflicts possibly may arise, and (c) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

12. If and to the extent that Rules 6e–2 and 6e–3(T) under the 1040 Act are amended (or if 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 by Applicants, then the Funds and/or the Participating Entities, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

13. No less frequently than annually, the Participating Entities shall submit to the relevant Board such reports, materials, or data as that Board may reasonably request so the Board may carry out fully the conditions contained in these express conditions. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by a Board. The obligations of the Participating Entities to provide these reports, materials, and data to a Board shall be a contractual obligation under the agreements governing their participation in the Fund.

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

Conclusion

For the reasons and upon the facts stated above, Applicants asserts that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–22228 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

**[Investment Company Act Rel. No. 22172; 812–10304]**

## Quantitative Group of Funds, et al.; Notice of Application

August 26, 1996.

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

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

**APPLICANTS:** Quantitative Group of Funds (''Quantitative''), The One Group (''One Group,'' together with Quantitative, the ''Trusts''), Quantitative Advisors Inc. (''Quantitative Advisors''), Banc One Investment Advisors Corporation (''Banc One,'' and together with Quantitative Advisors, the ''Advisors''), and Boston International Advisors, Inc. (''BIA'').

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act for an exemption from section 15(a) of the Act.

**SUMMARY OF APPLICATION:** The order would permit the implementation, without shareholder approval, of new sub-advisory contracts for a period of up to 120 days following the date of the change in control of BIA, the sub-adviser to the Trusts. The order also would permit BIA to receive from the Trusts fees earned under the new sub-advisory contracts following approval by the Trusts' shareholders.

**FILING DATE:** The application was filed on August 15, 1996. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

**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 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 September 20, 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 writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a