Street, NW. (Lower Level), Washington, DC. The computer software for NUREG/CR–6270 can be purchased from the Energy Science and Technology Software Center, P.O. Box 1020, Oak Ridge, TN 37831–1020, Phone: (423) 576–2606.

For further information contact George J. Mencinsky, U.S. Nuclear Regulatory Commission, Mail Stop T–9 F31, Washington, DC 20555, Phone: (301) 415–6206.

Dated at Rockville, Maryland, this 23rd day of August, 1996.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 96–22509 Filed 9–3–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, September 12, 1996, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: August 27, 1996.

Phyllis G. Foley,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 96–22499 Filed 9–3–96; 8:45 am]

BILLING CODE 6325–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, September 19, 1996 and Friday, September 20, 1996, at the Washington Marriott, 1221 22nd Street NW, Washington, DC, in the third floor conference center. The meetings are tentatively scheduled to begin at 9:00 a.m. each day. The Commission expects to discuss such issues as its comments on the Secretary's report on Volume Performance Standards, workforce trends, managing Medicare fee for service, Medigap portability, PSOs, federal premium contributions, and to hear updates on revising practice expense relative values in the Medicare Fee Schedule, antitrust issues, the 5-year review of Medicare work relative values, HCFA regulations on physician financial incentives, and the Medicare SELECT evaluation. Panels on Medicare managed care, the response of academic medical centers, and structuring choice in the Medicare program are scheduled. The agenda is tentative at this time; a final agenda will be available on Friday, September 13, 1996 and will be mailed at that time.

ADDRESS: 2120 L Street, N.W., Suite 200; Washington, D.C. 20037. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Annette Hennessey, Executive Assistant, at 202/653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202/653–7220 after September 13, 1996.

Lauren LeRoy,

Executive Director.

[FR Doc. 96–22502 Filed 9–3–96; 8:45 am]

BILLING CODE 6820–SE–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22180; File No. 812–10052]

Schwab Annuity Portfolios, et al.

August 27, 1996.

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

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

APPLICANT: Schwab Annuity Portfolios (the ''Trust'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order to the extent necessary to permit shares of the Trust and shares of any other investment company (the ''Future Funds,'' collectively, with the Trust, the ''Funds'') that is designed to fund variable insurance products, and for which Charles Schwab Investment Management, Inc. (the ''Investment Manager'') or an affiliate may serve as investment adviser, manager, principal underwriter or sponsor, to be sold to and held by: (a) variable annuity and variable life insurance separate accounts (the ''Separate Accounts'') of both affiliated and unaffiliated life insurance companies (the ''Participating Insurance Companies''); and (b) qualified pension and retirement plans outside of the separate account context (the ''Plans'').

FILING DATE: The application was filed on March 21, 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 23, 1996, and accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the 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. Applicant, Frances Cole, Esq., Charles Schwab Investment Management, Inc., 101 Montgomery Street, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Mark Amorosi, Attorney, 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 Trust, an open-end management investment company organized as a Massachusetts business trust on January 21, 1994, currently consists of one series: the Schwab Money Market Portfolio (the ''Series'').

2. The Investment Manager, registered investment adviser under the Investment Advisers Act of 1940, serves as the investment adviser and administrator to each Fund. The Investment Manager is a wholly-owned subsidiary of the Charles Schwab Corporation, a parent of investment services companies incorporated in California.

3. The Trust currently offers shares of the Series only to Transamerica Separate Account VA–5, a separate account of Transamerica Occidental Life Insurance Company and to Separate Account VA–5 NLNY, a separate account of First Transamerica Life Insurance Company (collectively referred to as ''Transamerica''), to fund the benefits of Schwab Investment Advantage™, a variable annuity contract issued by Transamerica. It is intended, however, that shares of the Funds will be offered to separate accounts of other insurance companies, including insurance companies that are not affiliated with Transamerica. The Funds also may be used as investment vehicles for qualified pension and retirement plans outside of the separate account context.

4. Upon the granting of the order requested in the application, the Funds intend to offer to Separate Accounts of Participating Insurance Companies shares of the Series and of future investment series to serve as the investment vehicle for various types of variable insurance products, including, but not limited to, variable annuity contracts, single premium variable life insurance policies, and flexible premium variable life insurance contracts (collectively, the ''Contracts''). The Funds also may offer shares of the Series and of future investment series directly to Plans outside of the separate account context.

5. Participating Insurance Companies will establish their own Separate Accounts and design their own variable contracts. The role of the Funds under this arrangement, insofar as the federal securities laws are applicable, will consist of offering shares to the Separate Accounts and fulfilling any conditions that the Commission may impose upon granting the order requested in the application.

6. Tax law permits the Funds to increase their asset base through the sale of shares of the Funds to Plans. Plans may choose the Funds as the sole investment option under the Plan or as one of several investment options. Which investment choices are available to a Plan participant will depend upon the Plan. Shares of the Funds sold to Plans will be held by the trustees of the Plans, as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA'').

Applicant's 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 the investment adviser, principal underwriter, and sponsor or depositor of the Separate Account. The exemptions granted by 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 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 variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that 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) precludes mixed funding as well as shared funding.

2. Applicant states 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.

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 relief provided by Rule 6e–3(T) also is available to the investment adviser, principal underwriter, and sponsor or depositor of the Separate Account. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where the UIT's underlying fund offers its 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.'' Thus, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicant states that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Funds also are to be sold to Plans.

5. Applicant states 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 Plans. 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 the Funds. The Code provides that such Contracts shall not be treated as an annuity contract 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 assets 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 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. Applicant states that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury Regulations. Applicant asserts that, given the then current tax law, 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).

7. Applicant therefore requests 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 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) and 6e–3(T)(b)(15) provide exemptions 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) 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 Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) 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) participate in the management or administration of the fund.

9. Applicant states that the partial relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicant states that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicant notes that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicant asserts, 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 the Plans because the Plans are not investment companies and 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) 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. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between an underlying fund and its investment adviser, when required to do so by an insurance regulatory authority. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that an insurance company may disregard 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. Applicant states that Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts, and are subject to extensive state regulation. Applicant maintains, therefore, that in adopting Rule 6e–2, the Commission expressly recognized that exemptions from pass-through voting requirements are necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Applicant notes that, in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts, and submits that the corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) undoubtedly were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2. Applicant further submits that these considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding, and that such mixed and shared funding does not compromise the goals of the insurance regulatory authorities or of the Commission.

13. Applicant further represents that the Funds' sale of shares to the Plans does not affect the relief requested in this regard. As noted previously, shares of the Funds sold to Plans would be held by the trustees of such Plans as required 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 Plan, with two exceptions: (a) When the 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 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, Applicant notes that, unlike the case with Separate Accounts of Participating Insurance Companies, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans.

14. Applicant states that no increased conflicts of interest would be presented if the requested relief were granted. Applicant asserts 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. Applicant notes 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. Applicant submits that this possibility is no different from and no greater than what exists where a single insurer and its affiliates offer their insurance products in several states.

15. Applicant further submits that affiliation does not reduce the potential, if any exists, for differences in 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 these differences may produce. If a particular state insurance regulator's decision conflicts with that of a majority of other state regulators, the affected insurer may be required to withdraw its Separate Account's investment in the relevant Fund.

16. Applicant also argues 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 Contract owners. 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 the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

17. Applicant states 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. Applicant therefore argues that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicant represents that the Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

18. Applicant notes that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. An investment company supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers.

19. Applicant also notes 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 management investment company. Therefore, Applicant has concluded that neither the Code, the Treasury regulations nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity Separate Accounts and variable life insurance Separate Accounts all invest in the same management investment company.

20. Applicant states 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 value. The Plan then will make distributions in accordance with the terms of the Plan. 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.

21. Applicant also states that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. Applicant represents that the Funds will inform each shareholder, including each Separate Account and Plan, of its respective share of ownership in the respective Funds. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

22. Applicant submits 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 compared to a participant under a Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans and the Separate Accounts have rights only with respect to their shares of the Funds. Such shares 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.

23. Applicant states that there are no conflicts between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually are unable to simply redeem their Separate Accounts out of one fund and invest those monies in another fund. Complex and time consuming transactions must be undertaken to accomplish such redemptions and transfers. By contrast, trustees of Plans or the participants in participant-directed 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 is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicant represents that even should there arise issues where the interest of Contract owners and the interests of Plans conflict, the issues can be resolved almost immediately in that trustees of the Plans can, independently, redeem shares out of the Funds.

24. Applicant states that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicant, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment management (particularly with respect to stock and money market investments); and the lack of name recognition by the public of certain insurers as investment professionals. Applicant argues that 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 the Funds' investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicant states that making the Funds available as common investment media for variable insurance contracts would benefit contract owners by: (a) Eliminating a significant portion of the costs of establishing and administering separate funds; (b) increasing the amount of assets available for investment by the Funds, thereby promoting economies of scale, permitting increased safety of investments through greater diversification, and making the addition of new portfolios more feasible; and (c) encouraging more insurance companies to offer variable contracts, resulting in

increased competition with respect to both the design and the pricing of variable contracts, which can be expected to result in greater product variation and lower charges. Applicant believes that there is no significant legal impediment to permitting mixed and shared funding.

Applicant's Conditions

Applicant has consented to the following conditions if the order requested in the application is granted:

1. A majority of the Board of Trustees or Directors of each Fund (each, a ''Board'') shall consist of persons who are not ''interested persons'' of the Funds, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, of 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 of all of the Separate Accounts investing in the respective Funds. 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 any series of the Funds 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. The Participating Insurance Companies, the Investment Manager (or any affiliated adviser), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the ''Participants'') will report any potential or existing conflicts to the respective responsible Board. Participants 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 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 to and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Plans investing in the Funds under their agreements governing participation in the Funds and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners, and, if applicable, Plan participants.

4. If it is determined by a majority of the Board, or by a majority of its disinterested trustees or directors, that an irreconcilable material conflicts exists, the relevant Participating Insurance Company and Plan shall, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take any steps 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 affected Funds and reinvesting such assets in a different investment medium including another series of the relevant Fund, or submitting the question as to 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 variable contract owners the option of making such a charge; (b) withdrawing the assets allocable to some or all of the Plans from the affected Fund or any series of the Fund and reinvesting such assets in a different investment medium, including another series of the 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 Contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant 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.

5. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Plans 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 intents of Contract owners and Participants in the Plan.

6. For purposes of Condition Four, a majority of the disinterested members of the applicable Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund or the Investment Manager (or any affiliated adviser) be required to establish a new funding medium for any Contract. Further, no Participating Insurance Company shall be required by Condition Four to establish a new funding medium for any Contract if any offer to do so has been declined by a vote of a majority of the Contract owners materially affected by the material irreconcilable conflict.

7. A Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly and in writing to all Participants.

8. 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 the Funds 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 Account(s) for which no voting instructions from the Contract owners are timely received, as well as shares of the 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 that participates in the Funds 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.

9. All reports received by the Board of potential or existing conflicts, and all Board action with regard 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 appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. Each Fund shall 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 certain qualified pension and retirement plans; (b) material irreconcilable conflicts 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. Each Fund will notify all Participating Insurance Companies that Separate Account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

11. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders, 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 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, 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 (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

12. If, and to the extent that, Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act 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 Applicant, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

13. No less than annually, the Participants shall submit to each Fund's Board such reports, materials, or data as the Board reasonably may request so that the directors or trustees, as appropriate, of the Fund may carry out fully the obligations imposed upon them by the conditions contained in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Plans to provide these reports, materials, and data to a Fund's Board, when the appropriate Board so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies and Plans under the agreements governing their participation in the Funds.

14. If a Plan becomes an owner of 10% or more of the assets of a Fund, such Plan will execute a fund participation agreement with the applicable Fund including the conditions set forth herein to the extent applicable. A Plan will execute an application with each of the Funds containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

For the reasons stated above, Applicant asserts that the requested exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2 and 6e–3(T) thereunder 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. 96–22454 Filed 9–3–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Enterprise Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

[License No. 07/07–0098]

On September 19, 1995, an application was filed by Enterprise Fund, L.P., Clayton, Missouri 63105–3753, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107–102 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 07/07–0098 on May 14, 1996, to Enterprise Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 26, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–22463 Filed 9–3–96; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/09–0406]

FNF Ventures, Inc.; Notice of Issuance of a Small Business Investment Company License

On December 14, 1995, an application was filed by FNF Ventures, Inc., Fidelity National Ventures, Inc., 17911 Von Karman, Suite 500, Irvine, California 92714–6253, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09–0406 on August 20, 1996, to FNF Ventures, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 26, 1996

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–22466 Filed 9–3–96; 8:45 am]

BILLING CODE 8025–01–P

[License No. 02/02–0568]

Toronto Dominion Capital (U.S.A.), Inc.; Notice of Issuance of a Small Business Investment Company License

On January 19, 1996, an application was filed by Toronto Dominion Capital