For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Rel. No. IC–22290; No. 812–10190]

Variable Investment Trust, et al.

October 18, 1996.

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

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

APPLICANTS: Variable Investment Trust (the ''Trust''), GE Investment Management Incorporated (''GEIM'') and certain 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) for exemption 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 GEIM, 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 qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

FILING DATE: The application was filed on June 5, 1996, and amended and restated on October 11, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 12, 1996, and must 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 may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Matthew J. Simpson, Esq., GE Investment Management Incorporated, 3003 Summer Street, Stamford, Connecticut 06905.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

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

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 five separate investment portfolio (''Portfolios''), and may establish additional portfolios.

2. GEIM, a wholly-owned subsidiary of General Electric Company, serves as investment adviser to each Portfolio of the Trust.

3. The Investment Companies will serve as investment vehicles for various types of Variable Contracts. Shares of the Investment Companies 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) thereof.

4. 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. The role of the Investment Companies under this arrangement will consist of offering shares to the Separate Accounts and fulfilling any conditions the Commission may impose upon granting the order requested in this application.

5. The Trust desires to avail itself of the opportunity to increase its asset 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 or several investment options. Participants in Qualified Plans 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''). To the extent permitted under applicable law, GEIM 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) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit ''mixed'' and ''shared'' funding, as defined below.

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. Rule 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 rule also extends to the investment adviser, principal underwriter, and sponsor or depositor of a separate account.

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. Regarding the funding of flexible 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 the investment adviser, principal underwriter, and sponsor or depositor of a separate account. These exemptions are available only where the Underlying Funds 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.

7. 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 (the ''Code''), imposes certain diversification standards on the assets underlying variable contracts, such as those in each Portfolio of the Trust. 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, however, contain certain exceptions to this requirement, one of which permits the 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).

8. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of regulations of the Treasury Department 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 current tax law.

9. Moreover, Applicants assert that if the Trust were to sell its share 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 the ability of an Underlying Fund 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 do not wish to be denied such relief if the Investment Companies sell shares to Qualified Plans that Applicants are applying for the requested relief.

10. 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-end 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 office, 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 investment adviser or principal underwriter of an Underlying Fund, provided that none of the personnel of the insurer who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund.

11. 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 the personnel of an insurer 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) reflect a recognition 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. 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.

12. 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 it variable contract owners in certain limited circumstances.

13. 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.

14. 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 the voting instructions of variable contract owners if such owners initiate any change in the investment objectives, principal underwriter, or investment adviser of the Underlying Fund, 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.

15. Applicants assert that the proposed sale of shares of the Trust to Qualified Plans does not affect the relief requested. As previously noted, Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(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 sold to Qualified Plans 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: (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 of such fiduciary 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 under Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the trustee(s) of the Qualified Plan has/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 by 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.

16. Applicants state that no increased conflicts of interest would be presented 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.

17. Applicants state further that, under paragraph (b)(15) of Rules 6e–2 and 6e–3(T), the right of an insurance company to disregard the voting instructions of Variable Contract owners 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 judgements 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 disregard of voting instructions by an insurance company be reasonable and based on specific good faith determinations. If a decision of a Participating Insurance Company to disregard the instructions of Variable Contract owners 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 the investment of its Separate Account in such Investment Company. No charge or penalty will be imposed as a result of such withdrawal.

18. 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.

19. 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 in which separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity and variable life insurance contracts. Treasury Regulation § 1.817–5(f)(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.

20. 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.

21. 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.

22. 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 can redeem such shares only at their net asset value. No shareholder of the Investment Companies has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

23. Applicants have determined that no conflicts of interest exist between the Variable Contract owners of the Separate Accounts and Qualified Plan participants with respect to the veto powers over investment objectives of state insurance commissioners. The basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. State insurance commissioners have been given veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one Underlying Fund and invest in another. 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.

24. 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 owners of Variable Contracts funded through Separate Accounts from possible future changes in the federal tax laws than that which already exists between Variable Contract owners.

25. 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 insurance 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 investments. Applicants argue that use of Investment Companies as common investment vehicles for Variable Contracts helps to alleviate these concerns because Participating Insurance Companies benefit not only from the investment and administrative expertise of the investment adviser of the Trust, 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 insurance contracts and, accordingly, could result in increased competition with respect to both variable insurance 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 insurance 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.

26. 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 accumulate 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 Trustees or Directors of each Investment Company (''Board'') shall consist of persons who are not ''interested persons'' of such investment company, 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: (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 as the Commission may prescribe by order upon application.

2. The Boards 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 determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) 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; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Variable Contract

owners; or (g) as appropriate, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies and GEIM, or any other investment manager of an Investment Company, and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of the Investment Company (collectively, ''Participants'') will report any potential or existing conflicts, of which they become aware, to the relevant Board. Participants will be obligated to assist the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever the voting instructions of Variable Contract owners 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 such responsibilities will be carried out with a view only to the interests of the Variable Contract owners or, as appropriate, Qualified Plan participants.

4. If a majority of a Board, or a majority of its disinterested members (''Independent Members''), 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 Members), 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; (b) in the case of Participating Insurance Companies, submitting the question whether such segregation should be implemented to a vote of all affected Variable 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 Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of the decision of a Participating Insurance Company to disregard the voting instructions of Variable Contract owners, and that decision represents a minority position or would preclude a majority vote, such Participating Insurance Company may be required, at the election of the relevant Investment Company, to withdraw the investment of its Separate Account therein. No charge or penalty will be imposed as a result of such withdrawal. Likewise, and as appropriate, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the relevant Investment Company, to withdraw its investment in the Investment Company; 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 a 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 will be carried out with a view only to the interests of Variable Contract owners or, as appropriate Qualified Plan participants.

5. A majority of Independent Members shall determine whether any proposed action adequately remedies any irreconcilable material conflict, but in no event will the relevant Investment Company or GEIM (or any other investment adviser of the Investment Companies) be required to establish a new funding medium for any variable contract. No Participating Insurance Company 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 a majority of Variable Contract owners materially affected by the irreconcilable material conflict.

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

7. 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 variable insurance contract owners. Accordingly, when appropriate, such a Participating Insurance Company will vote shares of a Portfolio held in its Separate Accounts in a manner consistent with timely voting instructions received from Variable Contract owners. A Participating Insurance Company 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. Participating Insurance Companies 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 Participating Insurance Companies. 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 Participating Insurance Companies under their participation agreements with the Investment Companies. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

8. 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 may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) because of differences in tax treatment or other considerations, the interests of Variable Contract owners investing in the Investment Company and the interests of Qualified Plans investing in the Investment Company may conflict; and (c) its Board will monitor for any material conflicts and determine what action, if any, should be taken.

9. 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. Such minutes or other records shall be made available to the Commission upon request.

10. If, and to the extent that, 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.

11. 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, will comply with Section 16(a) and, if and when applicable, Section 16(b). Further, each Investment Company will act in accordance with the interpretation of the Commission 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.

12. The Participants shall submit to the Boards, at least annually, such reports, materials or data as the Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by these stated conditions. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials, and data upon reasonable request of the Boards shall be a contractual obligation of the Participant under its participation agreement with an Investment Company.

13. None of the Investment Companies will accept a purchase order from a Plan if such purchase would make the Plan an owner of 10 percent or more of the assets of an Investment Company, unless such Qualified Plan executes a fund participation agreement with such Investment Company. A qualified Plan will execute an application containing an acknowledgment 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 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.

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[Release 34–37844; File No. 600–23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of an Application for Clearing Agency Registration

October 21, 1996.

Notice is hereby given that on October 7, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') an application, pursuant to Sections 17A and 19(a) of the Securities Exchange Act of 1934 (''Act''),[1] requesting that the Commission grant GSCC full registration as a clearing agency or in the alternative extend GSCC's temporary registration as a clearing agency until such time as the Commission is able to grant GSCC permanent registration.[2] The Commission is publishing this notice to solicit comments from interested persons.

On May 24, 1988, the Commission approved pursuant to Sections 17A and 19(a) of the Act and Rule 17Ab2–1(c) promulgated thereunder[3] the application of GSCC for registration as a clearing agency for a period of three years.[4] The Commission subsequently has extended GSCC's registration until November 30, 1996.[5]

GSCC provides clearance and settlement services for its members, transactions in government securities. GSCC offers its members services for next-day settling trades, forward settling trades, auction takedown activity, repurchase transactions (''repos''), the multilateral netting of trades, the novation of netted trades, and daily marking-to-the-market. In connection with GSCC's clearance and settlement services, GSCC provides a centralized loss procedure and maintains margin to offset netting and settlement risks.

GSCC believes that its efforts to enhance its system's safety and capacity argue in favor of permanent approval. For example, GSCC recently amended its rules (1) to enable GSCC to enter into one or more limited cross guarantee agreements[6] and (2) to allow GSCC's interdealer broker netting members to become eligible for GSCC's repo netting service.[7] In addition, GSCC represents that it and the Board of Trade Clearing Corporation have made progress toward establishing a cross-margining arrangement for the benefit of market participants that are active in both the cash and futures government markets. GSCC also represents that it is working with The Options Clearing Corporation to establish a link with the Intermarket Clearing Corporation for the settlement of certain new treasury futures products that will be offered by a futures exchange owned by the American Stock Exchange.

At the time of GSCC's initial registration, the Commission granted GSCC exemptions from the fair representation requirements in Section 17A(b)(3)(C) of the Act.[8] In its Registration Letter, GSCC has requested that the Commission withdraw GSCC's exemption from the fair representation requirements in Section 17A(b)(3)(C). GSCC believes that its current selection process for its board of directors is equitable and assures members fair representation because any GSCC member may nominate candidates for election to GSCC's board and may vote for candidates so nominated. The Commission is reviewing GSCC's request to withdraw the exemption.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by November 15, 1996. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the

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[1] 15 U.S.C. 78q–1, 78s(a) (1988).

[2] Letter from Sal Ricca, President and Chief Operating Officer, GSCC, to Richard Lindsey, Director, Division of Market Regulation, Commission (October 2, 1996) (''Registration Letter'').

[3] 17 CFR 240.17Ab2–1 (1996).

[4] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[5] Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; and 36508 (November 27, 1995), 60 FR 61719.

[6] Securities Exchange Act Release No. 37413 (July 9, 1996), 61 FR 36945.

[7] Securities Exchange Act Release No. 37482 (July 25, 1996), 61 FR 40275.

[8] In its order granting GSCC its initial temporary approval, the Commission stated that while the composition of GSCC's Board of Directors reasonably reflected GSCC's anticipated initial membership, the Commission believed that it would be appropriate to defer to a later date its determination of whether GSCC's process for selecting its Board of Directors assures participants fair representation. This decision was based on the fact that GSCC planned on expanding its services during the temporary registration period and on the uncertainty with regards to GSCC's future participant base.