identity of such other broker-dealer; (b) the appearing broker-dealer discloses whether the quotation is submitted pursuant to any other arrangement between or among broker-dealers; (c) every broker-dealer who enters into any arrangement by which two or more broker-dealers submit quotations with respect to a particular security must inform all other broker-dealers of the existence of such an arrangement and the identity of the parties thereto; and (d) the quotation system must be one which makes it a general practice to differentiate between correspondent arrangements and all other arrangements, and which discloses the identities of all other broker-dealers where that information is required to be supplied to the quotation system. The purpose of the rule is to ensure that an inter-dealer-quotation-system clearly reveals where two or more quotations in different names for a particular security represent a single quotation or where one broker-dealer appears as a correspondent of another.

The rule requires the relevant information to be disclosed for each quotation submitted to an inter-dealer-quotation-system. Each registered market maker on an inter-dealer-quotation-system is required to disclose any correspondent broker-dealers for a particular security at the time the market maker initially registers with the inter-dealer-quotation-system as a market maker for such security. After the market maker's initial disclosure, the information is disclosed automatically through such market maker's electronic submission of a quotation to the inter-dealer-quotation-system. An aggregate total of approximately 20 of these initial disclosures are made per year. Each such initial disclosure takes approximately 1 minute to complete. Thus, the total compliance burden per year is approximately 20 minutes (0.33 burden hours).

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: November 19, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30175 Filed 11–25–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22341; File No. 812–10198]

Wanger Advisors Trust, et al.

November 19, 1996.

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

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

APPLICANTS: Wanger Advisors Trust (the ''Trust'') and Wanger Asset Management, L.P. (the ''Adviser'').

RELEVANT 1940 ACT SECTIONS AND RULES: 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: Applicants seek an order to the extent necessary to permit shares of the Trust and shares of any other investment company or series thereof that is designed to fund variable insurance products and for which the Adviser, or any of its affiliates, may serve now or in the future as investment adviser, administrator, manager, principal underwriter or sponsor (collectively, with the Trust, the ''Funds'') to be sold to and held by: (a) The variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (the ''Participating Insurance Companies''); and (b) certain qualified pension and retirement plans outside of the separate account context (the ''Qualified Plans'').

FILING DATES: The application was filed on June 12, 1996, and amended and restated on November 15, 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 December 16, 1996, and 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 writer's 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: Wanger Asset Management, L.P., 227 West Monroe Street, Suite 3000, Chicago, IL 60606, with copies to Janet D. Olsen, Bell, Boyd & Lloyd, Three First National Plaza, Suite 3300, Chicago, IL 60602.

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Law Clerk, or Patrice Pitts, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

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

Applicants' Representations

1. The Trust is a Massachusetts business trust which is registered under the 1940 Act as an open-end, management investment company. Currently, the Trust consists of two separate portfolios: Wanger U.S. Small Cap Advisor and Wanger International Small Cap Advisor (each a ''Portfolio'' and together the ''Portfolios''). The Trust may offer additional portfolios in the future. The Trust's initial registration statement on Form N–1A was declared effective on March 10, 1995.

2. The Adviser is registered with the SEC under the Investment Advisers Act of 1940, and is the investment adviser for each Portfolio. The Adviser is a Delaware limited partnership. The general partner of the Adviser is Wanger Asset Management, Ltd., a Delaware corporation.

3. The Trust currently offers its shares to, and its shares are held by: (a) separate accounts registered with the SEC under the 1940 Act as unit investment trusts of life insurance company affiliates of Phoenix Home Life Mutual Insurance Company, Safeco Life Insurance Company and First Providian Life and Health Insurance Company (collectively, the ''Companies'') and (b) Qualified Plans. The Trust serves as the investment vehicle for variable annuity contracts issued by the Companies.

4. The Funds intend to offer and sell their shares to variable annuity and variable life separate accounts (''Separate Accounts'') of Participating Insurance Companies, including the Companies and insurance companies that are affiliated or unaffiliated therewith to serve as an investment vehicle for various types of insurance

products. These products may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively, the ''Contracts''). The Funds also intend to offer their shares directly to Qualified Plans.

5. Each Participating Insurance Company will enter into a participation agreement with the Trust or Fund in which such Participating Insurance Company invests. Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to it under the federal securities laws in connection with any variable contract which it issues. The Funds will fulfill any conditions that the Commission may impose upon granting the order requested in the application.

6. The Adviser may act as an investment advisor, trustee or custodian to Qualified Plans which invest in the Trust. The Adviser is not permitted to advise such Qualified Plans to invest in the Trust, although the independent fiduciaries of such Qualified Plans may choose to invest in the Trust.

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 exemptions granted by Rule 6e–2(b)(15) are available only where a management investment company underlying a UIT (''underlying fund'') offers its shares ''exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company.'' Therefore, 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 also offers its shares to a variable annuity separate account of the same company or of any affiliated or unaffiliated 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 of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.''

2. 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 also offers its shares to separate accounts funding variable annuity or variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.'' ''Mixed and share funding'' denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. Rule 6e–2(b)(15) precludes mixed funding as well as shared funding.

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

4. In connection with flexible premium variable life insurance contracts issued through a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Section 9(a), and from Sections 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where a UIT's underlying fund offers its shares ''exclusively to separate accounts of the life insurer, or any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance 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)(b)(15) permits mixed funding for flexible premium variable life insurance, but does not permit shared funding.

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

6. Applicants therefore request that the Commission grant 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 mixed and shared funding.

7. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of 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 (a)(2). Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that Section. Applicants state that Rules 6e–2 and 6e–3(T) 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 individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies that fund the Separate Accounts that are managed, administered, or invested in by that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Accordingly, Applicants assert that there is no regulatory reason to apply the requirements of Section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Funds as funding media for variable contracts. Additionally, Applicants state that the relief requested should not be affected by the sale of shares of the Funds to Qualified Plans.

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

9. Applicants state that Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(*1*) provide that an insurance company may disregard voting instructions of its contract owners with respect to the investments of any underlying investment company or any contract between an investment company and its investment adviser, 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 the Rules).

10. Applicants state that Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the

insurance company may disregard the voting instructions of contract owners in favor of any change in such company's investment objectives, principal underwriter, or any investment adviser (subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of the Rules).

11. Applicants maintain, therefore, that in adopting Rule 6e–2 the Commission expressly recognized that such 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.'' [1] Applicants state that flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority and, therefore, the corresponding provisions of Rule 6e–3(T) undoubtedly were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2. Applicants argue that these considerations are no less important or necessary when an insurance company funds its separate account on a mixed and shared funding basis, and that such funding does not compromise the goals of the insurance regulatory authorities or of the Commission.

12. Applicants further represent that the Funds' sale of shares to the Qualified Plans should not affect the relief requested in this regard. Shares of the Funds sold to Qualified Plans are held by the trustees of the Qualified Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act of 1974 (''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 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 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 presented by the granting of the requested relief. 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 Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different from that which exists when a single insurer is licensed to do business 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 discussed below are designed 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 Fund.

15. Applicants also argue that affiliation does not eliminate the potential 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 the relevant 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 with mixed funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of contract.

17. Applicants note that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios 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, Applicants have concluded that neither the Code, nor the Treasury regulations nor 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 further note that while there are differences in the manner in which distributions from variable contracts and Qualified Plans are taxed, these differences do not raise any conflicts of interest. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the Funds at their respective net asset values. A Qualified Plan will make distributions in accordance with the terms of the Qualified Plan. A Participating Insurance Company will surrender values from the Separate Account in accordance with the terms of the variable contract.

19. Applicants submit that there is no greater potential for material irreconcilable conflicts arising between the interests of participants under the Qualified Plans and contract owners of Separate Accounts from possible future changes in the federal tax laws than that which already exists between variableannuity contract owners and variable life insurance contract owners.

[1] Investment Company Act Release No. 9104 (Dec. 30, 1975), 8 SEC Docket 932 (proposing Rule 6e–2).

20. In connection with any meeting of shareholders, Applicants represent that the Funds will inform each shareholder, including each Separate Account and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the respective Funds. A Participating Insurance Company will then solicit voting instructions consistent with the ''pass-through'' voting requirement.

21. Applicants state that the ability of the Funds to sell their 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 Qualified Plan participant. Regardless of the rights and benefits of participants under Qualified Plans or contract owners under variable contracts, the Qualified Plans and the Separate Accounts only have rights with respect to their respective shares of the Funds. They can redeem such shares only at their net asset value. No shareholder of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

22. Applicants submit that there are no conflicts between contract owners of Separate Accounts and participants under Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and implement the redemption of their shares from the Funds and reinvest in another funding vehicle, or even hold cash pending suitable investment, without the same regulatory impediments. Based on the foregoing, Applicants have concluded that even if there should arise issues where the interests of contract owners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved in that the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Funds.

23. Applicants state that various factors have kept insurance companies from offering variable annuity contracts and variable life insurance contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public as investment professionals. Applicants argue that use of a Fund as a common investment medium for variable contracts would alleviate these concerns. Applicants submit that mixed and shared funding would benefit Contract owners by: eliminating a significant portion of the costs of establishing and administering separate funds; allowing for a greater amount of assets available for investment by the Funds, thereby promoting economies of scale which permit increased safety of investments through greater diversification and make the addition of new portfolios more feasible; and encouraging more insurance companies to offer variable contracts which may result in increased competition with respect to both variable contract design and pricing, which, in turn, may be expected to result in more product variation and lower charges.

Applicants' Conditions

If the requested Order is granted, Applicants consent to the following conditions:

1. A majority of the Board of Trustees or Directors of each Fund (each, a ''Board'') will consist of persons who are not ''interested persons'' of that 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, disqualification, or bona fide resignation of any trustee(s) or director(s), then the operation of this condition will 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. The Boards will monitor their respective Funds for the existence of any material irreconcilable conflict among the interests of contract owners of all Separate Accounts and the interests of participants under Qualified Plans investing in the respective Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter 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 portfolio of the Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) as applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. The Adviser (or any other investment adviser of a Fund), any Participating Insurance Company, and any Qualified Plan that executes a Fund participation agreement upon becoming an owner of ten percent (10%) or more of the assets of the Fund (referred to herein as a ''Participating Plan''), will report any potential or existing conflicts to the Board. The Adviser, Participating Insurance Companies, and Participating Plans will be responsible for assisting the 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 of each Participating Insurance Company and the Adviser to inform the Board whenever the Participating Insurance Company has determined to disregard contract owners' voting instructions, and, if pass-through voting is applicable, an obligation of the Adviser and a Qualified Plan, to inform the Board whenever the Qualified Plan has determined to disregard voting instructions of Qualified Plan participants. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of the Adviser and of all Participating Insurance Companies and Participating Plans investing in the Funds under their agreements governing participation in each Fund, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Contract owners and, as applicable, Qualified Plan participants.

4. If a majority of the Board of a Fund, or a majority of its disinterested members, determines that a material irreconcilable conflict exists, the Adviser and the relevant Participating Insurance Companies and Participating Plans shall, as appropriate and at their

expense and to the extent reasonably practicable (as determined by a majority of the disinterested members of the Board), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from that Fund and reinvesting such assets in a different investment medium, which may include another portfolio of that Fund, or, submitting the question whether such segregation should be implemented to a vote of all affected Contract owners, and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners, variable life insurance contract owners, or contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation or offering to the affected Contract owners the option of making such a change; and (b) establishing a new registered management investment company (or series thereof) 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 Participating Insurance Company may be required, at the Fund's election, to withdraw its Separate Account's investment in that Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Participating Plan's decision to disregard plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Participating Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, and 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 of a material irreconcilable conflict, will be a contractual obligation of the Adviser and all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Funds and these responsibilities will be carried out with a view only to the interests of Contracts owners and Qualified Plan participants, as applicable.

5. For purposes of condition 4, a majority of the disinterested members of the relevant Board will determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund or the Adviser (or any other investment adviser of the Funds) be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by condition 4 to establish a new funding medium for any variable contracts if an offer to do so has been declined by vote of a majority of contract owners materially affected by the material irreconcilable conflict.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly in writing to the Adviser and to all Participating Insurance Companies and all Participating Plans.

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 contract owners. Accordingly, Participating Insurance Companies will vote shares of the Funds held in their Separate Accounts in a manner consistent with timely voting instructions received from Contract owners. Each Participating Insurance Company will vote Fund shares held in its Separate Accounts for which no timely voting instructions from Contract owners are received, as well as Fund shares held in its general account or otherwise attributed to it, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts investing in a Fund calculates voting privileges in a manner consistent with the Separate Accounts of other Participating Insurance Companies investing in that Fund. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in that Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instruction, as well as shares it owns, in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

8. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in shares of the Funds), and in particular each Fund will either provide for annual meetings (except insofar as 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)) as well as with Section 16(a) of the 1940 Act 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.

9. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) The Fund is intended to be a funding vehicle for all types of variable annuity contracts and variable life insurance contracts offered by various Participating Insurance Companies and for Qualified Plans; (b) the interests of various Contract owners and Qualified Plans investing in the Funds may conflict; and (c) the Board will monitor its respective Fund for any material irreconcilable conflict and determine what action, if any, should be taken in response to such conflict.

10. If and to the extent that Rule 6e–2 or 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this application, then the Funds and/or Participating Insurance Companies, as appropriate, will 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.

11. At least annually, the Adviser, and the Participating Insurance Companies and Participating Plans will submit to the Boards such reports, materials, or data as the Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in this application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the relevant Board. The obligation to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of the Adviser and of all Participating Insurance Companies and Participating Plans

under their agreements governing participation in the Funds.

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

13. None of the Funds will accept a purchase order from a Qualified Plan if, after the entry of the order, such purchase would make the Plan an owner of 10% or more of the assets of a Fund, unless such plan executes a fund participation agreement with such Fund. A Qualified Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Funds, or, if the Qualified Plan is already a Fund shareholder at the date of this application, prior to the date of entry of the Commission order pursuant thereto.

Conclusion

For the reasons stated above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and 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. 96–30084 Filed 11–25–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37965; File No. SR–Amex–96–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Extending Trading Hours To Permit the Execution of Matched Orders for Exchange-Listed Securities Which Are Part of a Basket Trade Being Done in Large Part on the New York Stock Exchange's Crossing Session II

November 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 12, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its trading hours to permit the execution of matched orders for Exchange-listed securities which are part of a basket trade being done in large part on the New York Stock Exchange's (''NYSE'') Crossing Session II. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

When the Exchange implemented an After-Hours Trading Facility for single-sided and matched closing price orders, it determined that it would not, at that time, establish an after-hours crossing session for aggregate-price basket trades similar to the NYSE's Crossing Session II.[3] Some member organizations, however, have noted that the Exchange's lack of such a facility has impaired their ability to effect program trades which include Amex-listed stocks. For example, if a firm wanted to do an after-hours program trade based on the S&P 500 Index, it would cross the component stocks listed on the NYSE during Crossing Session II; it would cross those listed on Nasdaq in-house; but it would have to cross most of the Amex-listed component stocks overseas. Because most of the Amex-listed stocks included in the S&P 500 Index are not 19c–3 securities (that is, they were exchange-listed on or prior to April 26, 1979), Exchange Rule 5 (Off Board Trading) applies and prohibits member firms from acting as principal in an upstairs trade in these securities executed in the United States. Due to the time differences, the Exchange believes that executing the Amex component of the basket trade overseas creates administrative difficulties and increased costs for member firms engaging in these transactions.

The Exchange is proposing to create a facility to permit members and member organizations to execute on the Exchange, after normal trading hours, coupled orders for Amex-listed securities which are part of an aggregate-price basket trade otherwise being done in the NYSE's Crossing Session II. Operationally, the Exchange's After-Hours Trading Facility for aggregate-price coupled orders would work in the same manner as the NYSE's Crossing Session II. Members and member organizations using the facility would transmit a facsimile form which would specify the number of stocks, aggregate number of shares and the dollar value of the securities to be crossed. The trade would be executed, and a report transmitted by facsimile to the initiating firm. At the end of the session (5:15 p.m. New York time) the number of stocks, shares and the dollar value of all baskets traded during the session would be aggregated separately for the Exchange-listed and NYSE-listed components of the baskets, and the totals would be transmitted to the Securities Industry Automation

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As part of its overall after-hours trading plan, the NYSE created a facility for the execution of aggregate-price basket orders involving at least 15 NYSE-listed securities with an aggregate minimum value of one million dollars (''Crossing Session II''). In this facility, which is available from 4:00 p.m. to 5:15 p.m., New York time, a member transmits matched buy and sell orders to the NYSE on a facsimile from listing the number of stocks and shares to be traded and the total dollar value of the basket trade. Transactions effected during Crossing Session II are aggregated and reported on Tape A as an administration message at the close of the session. Only the aggregate share volume and dollar amount of all programs executed during the session are reported. No reports are printed with respect to the individual stocks comprising the baskets. Notwithstanding the foregoing, members and member organizations effecting trades in Crossing Session II are required to submit to the NYSE's Market Surveillance by T+3 the names and the number of shares of each NYSE-listed stock comprising each basket. All NYSE transaction fees are waived for transactions effected during Crossing Session II.