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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 311 S. Wacker Drive, Suite 4990, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

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

Applicant's Representations

1. Applicant is an open-end, management investment company organized as a Delaware business trust. Applicant has five series: Income, U.S. Government Securities, Core Equity, Aggressive Equity, and International Equity. The individual series of Briar Fund Trust are diversified except for the Aggressive Equity Portfolio which is non-diversified.

2. On October 13, 1994, applicant registered under the Act and filed a registration statement on Form N–1A under the Act and under the Securities Act of 1933. The registration statement became effective on January 20, 1995, and applicant commenced a public offering of capital stock of each series soon thereafter.

3. As of January 1, 1996, applicant had two shareholders, Briar Capital Management, L.L.C. (the ''Adviser'') and Sachem Trust, n.a. (''Sachem''), as trustee with respect to several fund shareholders. Applicant's Board of Trustees (the ''Board'') adopted a plan of liquidation at a special meeting held on January 26, 1996. This action was taken because of the lack of success in attracting additional shareholders and the resulting questions regarding the viability of the Adviser. Applicant's Board also voted to terminate its advisory contract with the Adviser, all of its sub-advisory agreements with Pekin, Singer, Shapiro Asset Management, Inc., Harris Associates L.P., Wassatch Advisors, Inc. and Harding, Loevner Management, L.P., its distribution agreement with S.F. Investments, Inc., its custodian agreement with United Missouri Bank, and its transfer agent and administrative agreements with Sunstone Financial Group, Inc. (collectively, the ''Service Provider Agreements''). The Service Provider Agreements were terminated as of March 31, 1996. At the January 1996 meeting, the Board also adopted a resolution that the portfolios cease accepting additional purchases of shares.

4. On May 13, 1996, Sachem redeemed its shares of applicant, at net asset value, as follows: Income, $9.57 per share; U.S. Government Securities, $9.49 per share; Core Equity, $7.95 per share; Aggressive Equity, $8.85 per share; and International Equity, $8.70 per share. Sachem reinvested in the Lazard Funds, Inc., a fund unrelated to the Adviser, after determining that an investment in those funds would be in the best interests of its trust accounts.

5. On June 1, 1996, the Adviser, as sole shareholder of the Trust and by unanimous written consent, authorized and directed the trust to do all things necessary to accomplish its liquidation. On June 15, 1996, the Adviser redeemed its shares of applicant, at net asset value, as follows: Income, $8.50 per share; U.S. Government Securities, $7.54 per share; Core Equity, $7.03 per share; Aggressive Equity, $7.79 per share; and International Equity, $9.04 per share.[1] As of the filing of the application, all shareholders have redeemed their shares and have received their then current net asset value. Distributions of net investment income and capital gains also have been made, completely liquidating the interests of all shareholders.

6. Applicant disposed of its portfolio securities either in the ordinary course of trading, after soliciting bids, or in a block trade on the advise of the portfolio's sub-adviser.

7. Liquidation expenses, including legal and administrative fees, have been waived by various service providers. The Adviser will bear one time liquidation fees and expenses. All unamortized organizational expenses have been assumed by the Adviser.

8. As of the date of filing the amendment to the application, applicant had no shareholders and no liabilities. All service providers have been paid in full. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

9. Applicant is not making and does not presently propose to make a public offering of its securities, and has no remaining assets.

10. Applicant has filed a certificate of cancellation pursuant to the laws of Delaware.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–15839 Filed 6–16–97; 8:45 am]

BILLING CODE 8010–01–M

[1] On May 21, 1996, applicant entered into an agreement with UMB Bank, n.a. (''UMB''), pursuant to which UMB purchased applicant's foreign dividends and withholding tax reclaim receivables. Applicant had estimated the value of these receivables based on prevailing exchange rates and its assessment of collectability. UMB's estimate of collectability was greater than the Fund's and, as a result, UMB paid the Fund $901.36 more than the Fund's receivable. This increased the NAV by approximately $0.32 per share. The remaining $0.02 increase is due to rounding.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22698; File No. 812–10494]

Pioneer Variable Contracts Trust, et al.

June 10, 1997.

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

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

APPLICANTS: Pioneer Variable Contracts Trust (the ''Trust'') and Pioneering Management Corporation (''Pioneer'' or the ''Manager'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions 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 all similar investment companies that Pioneer or any of its affiliates may in the future serve as manager, investment adviser, administrator, principal underwriter or sponsor to be sold to and held by: (1) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

FILING DATE: The application was filed on January 14, 1997, and amended on April 28, 1997.

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, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on July 7, 1997, 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 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, NW., Washington, DC 20549. Applicants, c/o Robert P. Nault, Esq., Pioneering Management Corporation, 60 State Street, 19th Floor, Boston, MA 02109. Copies to Jeffrey S. Puretz, Esq., Dechert Price & Rhoads, 1500 K Street, NW., Suite 500, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Attorney, or Mark C. Amorosi, 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 organized as a Delaware business trust and is registered under the 1940 Act as an open-end management investment company. It currently consists of eight separate investment portfolios (''Series''), each with its own investment objective or objectives and policies.

2. Pioneer, a corporation organized under the laws of the State of Delaware and registered as an investment adviser under the Investment Advisers Act of 1940, serves as investment adviser to each Series.

3. The Trust currently offers shares of its Series to separate accounts of Allmerica Financial Life Insurance and Annuity Company (''Allmerica'') and First Allmerica Financial Life Insurance Company (''First Allmerica'') to serve as the investment medium for variable annuity contracts issued by Allmerica and First Allmerica.

4. The Trust and any other similar investment companies that Pioneer or any of its affiliates may manage or serve as investment adviser, administrator, principal underwriter or sponsor for in the future (the Trust and such similar investment companies are collectively referred to herein as the ''Funds'') would offer shares to separate accounts that are registered under the 1940 Act as unit investment trust (''Separate Accounts'') and that serve as investment vehicles for variable insurance contracts issued by affiliated and unaffiliated life insurance companies. Variable insurance contracts may include variable annuity contracts, variable life insurance contracts and variable group life insurance contracts. Separate accounts to which the shares of the Funds would in the future be offered also include separate accounts that are not registered as investment companies under the 1940 Act pursuant to the exceptions from registration in Sections 3(c)(1) and 3(c)(11) of the 1940 Act. In addition, the Funds may offer shares to separate accounts serving as investment vehicles for other types of insurance products, which may include variable annuity contracts, scheduled premium variable life insurance contracts, single premium variable life insurance contracts, modified single premium variable life insurance contracts, and flexible premium variable life insurance contracts. (All insurance contracts referenced in this paragraph are collectively referred in herein as ''Variable Contracts.'' Insurance companies whose separate account or accounts would own shares of the Funds are referred to herein as ''participating insurance companies.'')

5. The Funds also intend to offer shares directly to Qualified Plans described in Treasury Regulation § 1.817–6(f)(3)(iii).

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptions 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: (a) permit ''mixed'' and ''shared'' funding as defined below; and (b) allow shares of the Funds to be sold to and held by Qualified Plans.

2. Section 6(c) authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities, or transaction, from any provision of the 1940 Act, or the rules or regulations thereunder, if and to the extent that such 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. In connection with the funding of scheduled premium variable life insurance contracts issued through Separate Accounts, Rule 6e–2(b)(15) under the 1940 Act 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 the management investment company underlying the Separate Account (''underlying fund'') offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis supplied).[1] 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 or a flexible premium variable life insurance separate account of the same company of any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' In addition, 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 it shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.''

4. The relief granted by Rule 6e–2(b)(15) is in no way affected by the purchase of shares of the Funds by Qualified Plans. However, because the relief under Rule 6e–2(b)(15) is available only where shares are offered *exclusively* to separate accounts, additional exemptive relief is necessary if the shares of the Funds are also to be sold in Plans.

5. In connection with the funding of flexible premium variable life insurance contracts issued through a Separate Account, Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T) are available

[1] The exemptions provided by Rule 6e–2 also are available to the investment adviser, principal underwriter, and sponsor or depositor of the separate account.

only where the Separate Account's underlying fund offers its shares ''*exclusively* to separate accounts of the life insurer, or of 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 affiliate life insurance company'' (emphasis supplied).[2] Therefore, Rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding.

6. The relief granted by Rule 6e–3(T) also is in no way affected by the purchase of shares of the Funds by Qualified Plans. However, 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 the shares of the Funds are also to be sold to Plans.

7. Section 9(a) of the 1940 Act provides that it is unlawful for any persons to serve as an investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that person 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. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying fund.

8. Applicants state that the partial relief from Section 9(a) provided the 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 Section 9. Applicants state that those 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 an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert, therefore, that there is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed funding or shared funding.

9. Applicants state that the relief requested herein will not be affected by the proposed sale of shares of the Funds to Qualified Plans because the Qualified Plans are not investment companies and will not be deemed to be affiliates by virtue of their shareholdings in the Funds.

10. Sections 13(a), 15(a) and 15(b) of the1940 Act require ''pass-through'' voting with respect to management investment company shares held by a separate account. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from the pass-through voting requirement. More specifically, the Rules provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority and subject to certain requirements. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contract owner's voting instructions if the contract owners initiate any change in such company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to other provisions of Rules 6e–2 and 6e–3(T)).

11. Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts, and is subject to extensive state regulation. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. the Commission therefore deemed such exemptions 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 proposal reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Rule 6e–3(T)'s corresponding provisions undoubtedly were adopted in recognition of the same factors.

12. Applicants further represent that the Funds' sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. Shares of the Funds sold to such Plans would be held by the trustees of said Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the assets of the plan with two exceptions: (a) when the plan expressly provides that the trustee(s) is subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is subject to proper directions made in accordance with the term 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 the named fiduciary. In any event, there is no pass-through voting to the participants in such plans. Accordingly, 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 submit 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. In this regard, Applicants state 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 policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants submit that the conditions discussed below (which are adapted from the conditions included in Rule 6e–3(T)(b)(15)) are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's

[2] The exemptions provided by Rule 6e–3(T) also are available to the investment adviser, principal, underwriter, and sponsor or depositor of the separate account.

decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its separate account's investment in the affected Fund. This requirement will be provided for in agreements that will be entered into by participating insurance companies with respect to their participation in the Funds.

15. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit an insurance company to disregard contract owners' voting instructions. Applicants submit that this does not raise any issues different from those raised by the authority to state insurance administrators over separate accounts. Applicants note that Rules 6e–2 and6e–3(T) both require that disregard of voting instructions by an insurance company be reasonable and based on specific good faith determinations. If the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at a Fund's election, to withdraw its separate account's investment in such Fund. No charge or penalty would be imposed as a result of such withdrawal.

16. Applicants submit that there is no reason why the investment policies of the Funds providing mixed funding would or should be materially different from what those policies would or should be if the Funds funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. In this regard, Applicants note that each type of variable insurance product is designed as long-term investment program. In addition, each Fund will be managed to attempt to achieve the Fund's investment objective or objectives, and not to favor or disfavor any particular participating insurer or type of variable insurance product.

17. Furthermore, Applicants submit 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 underlying fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers.

18. 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 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, the Treasury Regulations, nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

19. Applicants note that while there are differences in the manner in which distributions are taxes for variable annuity contracts, variable life insurance contracts and Qualified Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account or the Plan will redeem shares of the Funds at their respective net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Plan, and the life insurance company will make distributions in accordance with the terms of the Variable Contract.

20. With respect to voting rights, Applicants submit that it is possible to provide an equitable means or giving such voting rights to Separate Account contract owners and to the trustees of Qualified Plans. Applicants represent that the transfer agent for the Funds will inform each participating insurance company of its share ownership in each Separate Account, as well as inform the trustees of Qualified Plans of their holdings. Each participating insurance company will then solicit voting instructions in accordance with the ''pass-through'' voting requirements of Rules 6e–2 and 6e–3(T).

21. Applicants argue that the ability of the Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of participants under the Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts have rights only with respect to their respective shares of the Funds. Such shares may be redeemed only at their net asset value. No shareholder of any of the Funds will have 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 the contract owners of the Separate Accounts and the participants under the 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 cannot simply redeem shares of one underlying fund held by their separate accounts and invest in another underlying fund. Complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, trustees of Qualified Plans can make the decision quickly and implement the redemption of their shares from the Funds and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent 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 resolved almost immediately because the trustees of the Qualified Plans can, on their own, redeem the shares out of the Funds.

23. Applicants submit that various factors have limited the number of insurance companies that offer variable annuities and variable life insurance policies. 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 of certain insurers as investment experts. Applicants submit that use of the Funds as a common investment medium for Variable Contracts would help alleviate these concerns. Applicants submit that mixed and shared funding also should benefit variable contract owners by: eliminating a significant portion of the costs of establishing and administering separate funds; creating 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 series more feasible; and encouraging more insurance companies to offer Variable Contracts, which should result in increased competition with respect to both the design and pricing of Variable Contracts, which, in turn, can be

expected to result in more product variation and lower charges.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Trustees or Board of Directors (each a ''Board'') of each of the Funds 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, or bona fide resignation of any Trustee(s) or Director(s), 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 of Trustees or Directors; (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 the contract owners of all Separate Accounts investing in the Funds and all other persons investing in the Funds, including Qualified Plans. 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 being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

3. Participating insurance companies and any Qualified Plan that executes a fund participation agreement with a Fund (collectively, ''Participating Parties'') and the Manager (or any affiliate thereof that may serve as advisor to a Fund) will report any potential or existing conflicts of which it becomes aware to the Board of the relevant Fund. Participating Parties and the Manager 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 includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Parties 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 the contract owners and Qualified Plan participants.

4. If it is determined by a majority of the Board of a Fund, or a majority of its disinterested Trustees or Directors, that a material irreconcilable conflict exists, the relevant Participating Parties shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Trustees or Directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) In the case of the participating insurance companies, withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Fund or any series therein and reinvesting such assets in a different investment medium (including another series, if any, of such Fund) or submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) in the case of participating Qualified Plans, withdrawing the assets allocable to some or all of the Qualified Plans from the relevant Fund and reinvesting those assets in a different investment medium; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer'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 Fund's election, to withdraw its Separate Account's investment in the 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 Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Parties under their agreements governing participation in the Funds, and these responsibilities will be carried out with a view only to the interests of the contract owners and participants in Qualified Plans, as applicable.

5. For the purposes of condition 4, a majority of the disinterested members of the relevant Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Manager be required to establish a new funding medium for any Variable Contract or Qualified Plan. No participating insurance company shall be required by condition 4 to establish a new funding medium for any Variable Contract if an offer to do so has been declined by vote of a majority of contract owners materially and adversely affected by the irreconcilable material conflict.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to the Manager and all Participating Parties.

7. As to Variable Contracts issued by Separate Accounts, participating insurance companies will provide pass-through voting privileges to all participants so long as and to the extent that the Commission continues to interpret the 1940 Act to require pass-through voting privileges for Variable Contract owners. As to Variable Contracts issued by unregistered separate accounts, pass-through voting privileges will be extended to participants to the extent granted by the issuing insurance company. Participating insurance companies will be responsible for assuring that each of their registered Separate Accounts participating in a Fund calculate voting privileges as instructed by a Fund with the objective that each such participating insurance company calculate voting privileges in a manner consistent with that of other participating insurance companies. 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 a Fund. Each participating insurance company will vote shares held by Separate Accounts for which it has not received voting

instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received voting instructions.

8. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of a Fund), and in particular the Funds will either provide for annual meetings (except insofar as the Commission may interpret Section 16 not to require such meetings) or, if annual meetings are not held, 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 Sections 16(a) and, if and when applicable, 16(b). Further, the Funds will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Trustees or Directors and with whatever rules the Commission may promulgate with respect thereto.

9. The Funds will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclosure in its registration statement that: (1) Shares of such Fund are offered to insurance company separate accounts offered by various participating insurance companies which fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) due to the differences of tax treatment or other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund may conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken in response to a conflict.

10. No less than annually, the Participating Parties and/or the Manager shall submit to the Boards such reports, materials, or data as each Board may reasonably request so that the Boards 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 relevant Board. The obligations of the Participating Parties to provide these reports, materials, and data to a Board shall be a contractual obligation of all Participating Parties under the agreements governing their participation in the Funds.

11. 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 Manager or Participating Parties 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 shall be made available to the Commission upon request.

12. If an to the extent Rule 6e–2 and Rule 6e–3(T) are 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 or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Funds and/or the Participating Parties, 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.

13. In the event that a Qualified Plan should ever become an owner of 10% or more of the assets of a Fund, such Qualified Plan will executive a fund participation agreement with such Fund. A Qualified Plan will executive an application containing an acknowledgement of this condition at the time of its initial purchase of shares of the Fund.

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 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. 97–15770 Filed 6–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 22700; 812-10502]

Reich & Tang Distributors L.P., et al.; Notice of Application

June 11, 1997.

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

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

APPLICANTS: Reich & Tang Distributors L.P. (''Reich & Tang'') and Equity Securities Trust (''Trust'') (Series 1 and Signature Series), on behalf of themselves and all subsequently issued series (''Subsequent Series'') (collectively with Series 1 and Signature Series, the ''Series'') containing certain types of securities and sponsored by Reich & Tang or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Reich & Tang (collectively with Reich & Tang, the ''Sponsor'')

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order to permit certain terminating Series of the Trust, a unit investment trust (''UIT''), to sell portfolio securities to certain new Series of the Trust.

FILING DATES: The application was filed on December 31, 1996, and amended on April 21, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 7, 1997, and should be accompanied by proof of service on applicants, in the forms of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 600 Fifth Avenue, New York, New York 10020, attention: Peter J. DeMarco.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942-0583, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

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

Applicants' Representations

1. Equity Securities Trust (the ''Trust'') is a UIT registered under the Act that consists of several Series. The Trust is organized under a trust