

the Plan by: (a) The applicant's shareholders, or (b) an order of the Commission, will be granted a nonqualified stock option to purchase 5,000 shares of common stock, \$.01 par value (the "Common Stock"), of applicant that will vest 50% immediately and 16⅔% on the first, second, and third anniversaries of the date of the grant. Each new Non-employee Director will be granted upon his or her election a nonqualified stock option for a similar number of shares. In addition, beginning with the 1998 annual meeting of shareholders of applicant, each Non-employee Director elected will, on the first business day following the annual meeting, be granted a nonqualified stock option to purchase 2,000 shares of Common Stock. The exercise price of the options will be the closing price of the Common Stock on the American Stock Exchange on the date the option is granted or, if no market for the Common Stock exists, the current net asset value of the shares of the Common Stock. Each option will be exercisable during the period beginning six months after the date of the grant and ending ten years after the date of the grant.

6. In the event that a Non-employee Director's services are terminated because of death, permanent disability, or retirement, any invested options will vest, and the Non-employee Director or, if the Non-employee Director is not living, the Non-employee Director's estate, may exercise his or her options during the one-year period following the date of death, permanent disability, or retirement. The termination of a Non-employee Director's services will not otherwise accelerate the termination date of his or her options. Options may not be assigned or transferred other than by will or the laws of descent and distribution.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its Non-employee Directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal

to issue the options is authorized by the BDC's shareholders, and is approved by order of the SEC upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in paragraph (1) of section 205 of the Advisers Act, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

4. Applicant represents that the Plan and the options that would be granted automatically to current and future Non-employee Directors would comply with the requirements of section 61(a)(3)(B) of the Act. In addition, in support of its application, applicant states that its directors devote substantial time and attention to matters relating to applicant's portfolio companies, thus functioning more like the board of an operating company than the board of a traditional investment company. Applicant relies extensively on the judgment and experience of its directors, and believes that these factors are critical to its success. Further, applicant states that the Plan would provide incentives to the Non-employee Directors to remain on the Board and devote their best efforts to the success of applicant's business.

5. Applicant submits that the terms of the Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Under the Plan, the amount of stock options that would be granted to the six current Non-employee Directors would be 30,000 shares in 1997 and 12,000 shares each year commencing in 1998, or approximately 1% of the 4,300,682 shares of Common Stock outstanding. Applicant submits that, given the relatively small number

of options that may be granted and exercised by Non-employee Directors under the Plan, the exercise of stock options pursuant to the Plan will not have a substantial dilutive effect on the net asset value of applicant's Common Stock. In addition, the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance would not exceed 20% of the outstanding voting securities of the applicant. Further, because the options may not be exercised until six months after the date of grant and 50% of the stock options granted to Non-employee Directors vest on a ratable basis over the three years following the date of grant, the plan provides Non-employee Directors with an incentive to remain with the applicant.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-27656 Filed 10-17-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22851; 812-10356]

Investors Bank & Trust Company, et al.; Notice of Application

October 10, 1997.

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

ACTION: Notice of application for an order under (i) section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") granting relief from section 12(d)(1) of the Act; (ii) sections 6(c) and 17(b) of the Act granting relief from section 17(a) of the Act; and (iii) section 17(d) of the Act and rule 17d-1 to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit the lending agent for certain investment companies to invest cash collateral derived from securities lending transactions in shares of affiliated registered investment companies organized as a master-feeder fund.

APPLICANTS: Investors Bank & Trust Company (the "Bank"); Merrimac Funds (the "Feeder Trust"), on behalf of its Merrimac Cash Fund and Merrimac Treasury Fund, each a series of the Feeder Trust, and each other series of the Feeder Trust established in the future in which cash collateral from securities lending transactions may be invested (collectively, the "Feeder

Funds"); Merrimac Master Portfolio (the "Master Trust"), on behalf of its Merrimac Cash Portfolio and Merrimac Treasury Portfolio, each a series of the Master Trust, and each other series of the Master Trust established in the future in which a Feeder Fund invests (collectively, the "Master Funds"); and all registered management investment companies and series that may participate from time to time as lenders (collectively, the "Lending Funds") in the securities lending program administered by the Bank (the "Program").

FILING DATES: The application was filed on November 15, 1996, and amendments to the application were filed on June 10, 1997, and September 29, 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 November 5, 1997, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; Merrimac Funds, 200 Clarendon Street, Boston, MA 02116; and Merrimac Master Portfolio, P.O. Box 501, Cardinal Avenue, George Town, Grand Cayman, Cayman Islands, BWI.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942-0526, 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, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942-8090).

Applicants' Representations

1. The Feeder Trust is a Delaware business trust organized under a Master Trust Agreement and registered as an investment company under the Act. The

Feeder Trust has established two series, the Merrimac Cash Fund and the Merrimac Treasury Fund, each of which has three classes (the "Premium Class," the "Institutional Class," and the "Placement Class") of shares. Lending Funds will acquire only Premium Class shares.¹ Shares of the Feeder Trust are sold without a distributor exclusively to "accredited investors" in accordance with the requirements of Regulation D under the Securities Act of 1933. Each Feeder Fund will be a "feeder" in a "master-feeder" structure with the Master Trust and invest all of its investable assets in a Master Fund having the same investment objective and policies as the Feeder Fund.

2. The Master Trust is a New York common law trust established under a Declaration of Trust and registered as an investment company under the Act. The Master Trust has established two series, the Merrimac Cash Portfolio and the Merrimac Treasury Portfolio.² Interests in each Master Fund are offered exclusively to one or more Feeder Funds and to other "accredited investors." Shares of the Master Trust are sold without a distributor and are not subject to a sales load, redemption fee, asset-based sales charge (as defined in rule 2830(b)(8)(A) of the Conduct Rules of the National Association of Securities Dealers), or shareholder servicing fee.

3. The Bank, a wholly-owned subsidiary of Investors Financial Services Corp., is a Massachusetts chartered trust company. The Bank provides domestic and global custody, multi-currency accounting, institutional transfer agency, performance measurement, foreign exchange, securities lending and mutual fund administration services to a variety of financial asset managers, including mutual fund complexes, investment advisers, banks and insurance companies. The Bank acts as agent for its clients for both international and domestic securities lending services.

¹ The Premium Class shares are subject to a \$10 million minimum investment requirement.

² The Merrimac Cash Portfolio may invest in U.S. Treasury bills, notes and bonds, and other instruments issued or guaranteed by the U.S. Government or its agencies or instrumentalities ("U.S. Government Obligations"); securities of U.S. and non-U.S. banks and thrift organizations; corporate debt obligations; asset-backed securities; variable rate obligations; and repurchase agreements that the collateralized by the securities listed above. The Merrimac Treasury Portfolio invests at least 65% of its assets in U.S. Government Obligations. All investments of each Portfolio will qualify as "eligible securities" within the meaning of rule 2a-7 under the Act. Moreover, each Feeder Fund and Master Fund will seek to maintain a stable net asset value by valuing the portfolio using the amortized cost method and will comply with the requirements of rule 2a-7 under the Act.

4. The Bank and one or more of its affiliates will serve as custodian, transfer agent, and administrator to each Feeder Fund and Master Fund. The Bank also will serve as the investment adviser to each Master Fund. Applicants anticipate that one or more entities will serve as a sub-adviser to each Master Fund. The Bank will be responsible for the payment of all fees for the services of any sub-adviser. The Bank will charge each Feeder Fund and Master Fund, as applicable, fees for services it provides as custodian, transfer agent, administrator and investment adviser.

5. From time to time, the Bank will be appointed to serve as lending agent for various Lending Funds.³ The Bank will enter into a securities lending authorization agreement (a "Lending Agreement") with each Lending Fund.⁴ The Lending Agreement will authorize the Bank, as agent for the Lending Fund, to lend portfolio securities of the Lending Fund to each person designated by the Lending Fund as an eligible borrower (each, a "Borrower"), and to enter into a master borrowing agreement with each Borrower (each, a "Borrowing Agreement"). The pool of eligible Borrowers may be modified from time to time by each Lending Fund, acting through its authorized officers.

6. The Lending Agreement and the Borrowing Agreement will establish, for each transaction, the initial and ongoing collateralization requirements, the types of collateral that may be accepted, and the manner in which the Borrower's return on the collateral (the "Borrower's Rebate") will be established. The Lending Agreement will (i) fix the percentage difference between the Borrower's Rebate and the actual return on the investment of the collateral (the "Net Income") to be retained by the Lending Fund and the percentage to be

³ The Bank will not be an affiliated person of any Lending Fund or an affiliated person of an affiliated person of any Lending Fund within the meaning of section 2(a)(3) of the Act, except that, if any Lending Fund directly or indirectly owns, controls, or holds with the power to vote 5% or more of the shares of a Master Fund, the Bank will be an affiliated person of an affiliated person of the Lending Fund. Moreover, no Lending Fund will be an affiliated person of any Feeder Fund or an affiliated person of an affiliated person of any Feeder Fund, except that a Lending Fund may (i) directly or indirectly own, control, or hold with power to vote more than 5% of the voting securities of a Feeder Fund or a Master Fund, or (ii) be an affiliated person of another Lending Fund that directly or indirectly owns, controls, or holds with the power to vote more than 5% of the voting securities of a Feeder Fund or Master Fund.

⁴ Certain Lending Funds participating in the Program may be management investment companies that hold themselves out as "money market funds" and comply with the requirements of rule 2a-7 under the Act ("Money Market Lending Funds").

paid by the Lending Fund to the Bank, and (ii) authorize the Bank, as agent for the Lending Fund, to negotiate the Borrower's Rebate for each transaction and to commit the Lending Fund to pay the Borrower's Rebate. The Lending Fund will be responsible for paying the Borrower's Rebate and returning the principal amount of the collateral to the Borrower. Each loan will be terminable, at any time, by the Borrower or the Lending Fund.

7. During the term of each loan, the Lending Fund will retain the economic rights of an owner of the securities that are the subject of a loan, including the right to receive from the Borrower all dividends and distributions made with respect to those securities. The Bank will monitor corporate actions with respect to securities loaned by each Lending Fund and will reallocate or terminate loans at the direction of the Lending Fund, as necessary, to enable the Lending Funds to vote those securities.⁵

8. Applicants anticipate that the collateral delivered in connection with most loans will consist of cash. In order to maximize investment return on the securities lending activities, each Lending Agreement will authorize the Bank, as agent for the Lending Fund, to invest the cash in shares of one or more Feeder Funds, in accordance with the terms of the Lending Agreement and instructions received from authorized officers of the Lending Fund.⁶ The Bank, as agent for a Lending Fund, will not purchase shares of any Feeder Fund with cash collateral unless participation in the Program has been approved by a majority of the directors or trustees of the Lending Fund who are not "interested persons" of the Lending Fund within the meaning of section 2(a)(19) of the Act. Such directors or trustees will also evaluate the Program no less frequently than annually, and determine that investing cash collateral in the Feeder Fund is in the best interests of the shareholders of the

Lending Fund. Each Lending Fund will reserve the right to rescind authorization to invest in a Feeder Fund. Moreover, each Lending Fund that authorizes the Bank to invest cash collateral in a Feeder Fund will be provided a copy of the confidential offering circular for such Feeder Fund, and with such other disclosure documents that the Bank determines may be appropriate to ensure that each Lending Fund is fully informed with respect to the investment considerations and risks associated with investing cash collateral in the Feeder Funds.

9. Applicants request an order to permit (i) the Bank, as agent of the Lending Funds, to invest cash collateral derived from loaned securities in shares of the Feeder Trust; and the Lending Funds to purchase from the Feeder Trust, and (ii) the Feeder Trust to sell to the Lending Funds, shares issued by the Feeder Trust. Applicants also request an order to permit the Lending Funds, the Feeder Trust, the Master Trust, and the Bank to effect certain joint transactions incident to the Program.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) provides that the SEC may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) to permit the Bank, as agent of the Lending Funds, to invest cash collateral derived from loaned securities in the Feeder Funds in excess of the limits imposed by section 12(d)(1) of the Act.

3. Applicants believe that the investment of cash collateral by Lending

Funds in the Feeder Funds will provide Lending Funds with the opportunity to maximize returns with less investment risk than if the cash collateral received by each Lending Fund were segregated in a separate account from which purchases and sales of securities would be made. In addition, applicants believe that participation in the Program will permit the Lending Funds to minimize credit risk and interest rate risk through diversification. Applicants also believe that the administrative burdens, such as the daily monitoring of total assets and other investments of the Lending Funds associated with compliance with section 12(d)(1) may impair the ability of the Bank to provide securities lending services to Lending Funds in an economical and administratively efficient manner, and, therefore, may create competitive disadvantages for the Lending Funds relative to other institutional investors that seek to engage in securities lending activities.

4. Applicants submit that the investment of cash collateral received in connection with securities loans by Lending Funds in the Feeder Funds does not give rise to the policy concerns of section 12(d)(1), which include unnecessary duplication of costs (such as sales loads, advisory fees, and administrative costs), and undue influence by the fund holding company over its underlying funds arising from the threat of large scale redemptions of the securities of the underlying investment companies. Applicants state that there will be no layering of sales or distribution charges because shares of the Feeder Funds acquired by the Lending Funds will be sold without a sales charge or redemption fee and the assets allocated to the Lending Funds will not be subject to any asset-based sales charge. Applicants also state that each Master Fund will be structured to accommodate the increased needs of liquidity associated with securities lending transactions by maintaining an appropriate average weighted maturity or effective duration and, therefore, will not be susceptible to control through the threat of large scale redemptions. Accordingly, applicants believe that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 17(a)

1. Sections 17(a) (1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as a principal, to sell any security to, or purchase any security from, such registered investment company. From time to

⁵ The Borrowing Agreement will provide that within three trading days (or such other time period as is the customary settlement period for the loaned securities) of the Lending Fund giving notice of the termination of any loan, the Borrower is required to transfer the loaned securities (or certificates for identical securities) to the Bank, as agent for the Lending Fund, or to the Lending Fund's custodian, and pay to the Bank or to the Lending Fund's custodian the amount of all dividends and distributions that would have been payable to the Lending Fund on or with respect to such securities if they had not been loaned, to the extent not previously paid.

⁶ Cash collateral from transactions in which the lender is a Money Market Lending Fund will not be used to acquire shares of any Feeder Fund that does not comply with the requirements of rule 2a-7.

time, it is possible that a Lending Fund may directly or indirectly own, control, or hold with power to vote 5% or more of the shares of a Feeder Fund, which will result in the Lending Fund being an "affiliated person" of the Feeder Fund. In these circumstances, the purchase or redemption of shares of a Feeder Fund for the same Lending Fund or an affiliated person of such Lending Fund could violate section 17(a) of the Act.

2. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and with the general purposes of the Act. Because section 17(b) could be interpreted to exempt only a single transaction, applicants are also seeking relief pursuant to section 6(c) of the Act to permit the investment of cash collateral in shares of the Feeder Funds as proposed in the application.⁷

3. Section 6(c) provides that the SEC may exempt any person or transaction from any provision of the Act or any rule or regulation 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 Act. Applicants believe that relief is appropriate under section 6(c) of the Act for the same reasons that it is appropriate under section 17(b), as discussed below.

4. Applicants believe that the proposed transactions will be reasonable and fair, and consistent with the general purposes of the Act as well as the policies of each Lending Fund. The Lending Funds will not be able to purchase or redeem shares of the Feeder Funds at a price lower or higher than the per share net asset value of the Feeder Funds, and no sales load, redemption fee, or asset-based sales charge will be charged with respect to shares of the Feeder Funds sold to Lending Funds. Moreover, applicants note that the low fees charged by the Bank for services provided to the Feeder Trust and Master Trust will be subject to intense scrutiny and, therefore, will remain fair and reasonable to the Feeder Trust and the Master Trust, the Feeder Trust's shareholders and the Lending Funds. Finally, the Bank will not purchase shares of any Feeder Fund, as

agent for a Lending Fund, unless the Lending Fund, or an authorized officer of the Lending Fund, has represented to the Bank that (i) its policies generally permit the Lending Fund to engage in securities lending transactions, (ii) such transactions will be conducted in accordance with the securities lending guidelines established in a series of no-action letters issued by the SEC's Division of Investment Management,⁸ (iii) its policies permit the Lending Fund to purchase shares of the Feeder Funds with cash collateral, and (iv) its securities lending activities will be conducted in accordance with all representations and conditions in the application applicable to such Lending Fund.

C. Section 17(d) and Rule 17d-1

1. Section 17(d) of the Act and rule 17d-1 thereunder prohibit any affiliated person of a registered investment company, acting as principal, from effecting any transaction in connection with any joint enterprise or joint arrangement in which such registered investment company participates. The ownership by a Lending Fund or its affiliates, from time to time, of 5% or more of the shares of a Feeder Fund or Master Fund, could cause such Lending Fund to be an affiliated person of the Feeder Trust or the Master Trust, or an affiliated person of an affiliated person of the Feeder Trust or the Master Trust. In addition, the Bank, as investment adviser for each Master Fund, will be an affiliated person of the Master Trust. As an affiliated person of the Master Trust, the Bank may, from time to time, be an affiliated person of an affiliated person of one or more Lending Funds by virtue of such Lending Fund's interests in the Master Trust. Consequently, the proposed purchase of shares of a Feeder Fund with cash collateral, the redemption of such shares, the sharing of Net Income among the Bank and the Lending Funds, and the payment of fees by the Feeder Trust and the Master Trust to the Bank may constitute a joint transaction for which an exemptive order is required.

2. Rule 17d-1 permits the SEC to issue an order with respect to a joint transaction. In passing on applications for orders under rule 17d-1, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that it

is appropriate to grant an exemption under rule 17d-1 from the restrictions of section 17(d) of the Act.

3. Each Lending Fund will invest in a class of shares of the Feeder Trust on the same basis as every other shareholder of the Feeder Trust investing in the same class of shares, and all shares within a class will be priced in the same manner and will be redeemable under the same terms. In addition, no class of shares of a Feeder Fund in which a Lending Fund invests will be subject to any sales load, redemption fee, or asset-based sales charge. The arrangements regarding the sharing of Net Income between the Bank and each Lending Fund are the product of arm's length negotiations between the Lending Fund and the Bank. Finally, applicants state that the proposed investment of cash collateral by Lending Funds in shares of the Feeder Funds is consistent with the provisions and purposes of the Act.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. No Lending Fund will purchase shares of any Feeder Fund unless participation in the Program has been approved by a majority of the directors or trustees of the Lending Fund that are not "interested persons" of the Lending Fund within the meaning of section 2(a)(19) of the Act. Such directors or trustees will also evaluate the Program no less frequently than annually, and determine that investing cash collateral in the Feeder Fund is in the best interests of the shareholders of the Lending Fund.

2. The Bank will lend portfolio securities of each of the Lending Funds only in accordance with the guidelines specified by such Lending Fund.

3. Cash collateral from loans by Lending Funds will be invested in shares of each Feeder Fund subject to such limitations and guidelines as are specified by the Lending Funds.

4. Cash collateral from loans by Money Market Lending Funds will not be used to acquire shares of any Feeder Fund that does not comply with the requirements of rule 2a-7 under the Act.

5. The shares of a Feeder Fund sold to Lending Funds will not be subject to a sales load or redemption fee and assets of the Feeder Fund and the Master Fund allocable to Feeder Funds will not be subject to any asset-based sales charge (as defined in rule 2830(b)(8)(A) of the Rules of Conduct of the National Association of Securities Dealers).

6. The Bank will not acquire shares of any Feeder Fund on behalf of any

⁷ See *Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).

⁸ See e.g., *Sife Trust Fund* (pub. avail. Feb. 17, 1982).

Lending Fund if, at the time of such acquisition, (i) the Bank is an affiliated person of the Lending Fund or an affiliated person of an affiliated person of the Lending Fund, or (ii) the Lending Fund is an affiliated person of the Feeder Fund or an affiliated person of an affiliated person of the Feeder Fund, in either case, by means other than by directly or indirectly owning, controlling, or holding with the power of vote 5% or more of the shares of a Feeder Fund or a Master Fund by the Lending Fund or an affiliated person of the Lending Fund.

7. In connection with all matters requiring a vote of shareholders of a Feeder Fund, the Bank will pass through voting rights to those Lending Funds that have a beneficial interest in such Lending Fund.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-27657 Filed 10-17-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 22852; File No. 812-10534]

New England Life Insurance Co et al.; Notice of Application

October 10, 1997.

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

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") granting relief from rule 6e-2(c)(1) and from certain provisions of the Act and rules thereunder specified in paragraph (b) of rule 6e-2; and from sections 2(a)(32) and 27(i)(2)(A) of the Act and rules 6e-2(b)(12) and 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary: (1) To permit them to offer and sell certain "hybrid" variable life insurance policies with modified scheduled premiums ("Policies"); and (2) to permit certain other persons which may become the principal underwriter for such Policies ("Future Underwriters") to offer and sell such Policies.

APPLICANTS: New England Life Insurance Company ("NELICO"), New England Variable Life Separate Account ("Variable Account"), and New England Securities Corporation ("New England Securities").

FILING DATE: The application was filed on February 28, 1997 and amended and restated on October 3, 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 by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 4, 1997, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester'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 Fifth Street, N.W., Washington, D.C. 20549; Applicants, c/o Marie C. Swift, Esq., New England Life Insurance Company, 501 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Attorney, or Kevin Kirchoff, Branch Chief, at (202) 942-0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. 20549 (tel. (202) 942-8090).

Applicants' Representations

1. NELICO is a Massachusetts stock life insurance company and is a wholly owned subsidiary of Metropolitan Life Insurance Company ("MetLife").

2. The Variable Account was established as a separate investment account of NELICO on January 31, 1983, under Delaware law, and became subject to Massachusetts law when NELICO changed its domicile to Massachusetts on August 30, 1996. The Variable Account is registered under the Act as a unit investment trust. The Variable Account currently consists of eighteen investment sub-accounts, each of which invests its assets in a different portfolio of the New England Zenith Fund (the "Zenith Fund"), the Variable Insurance Products Fund (the "VIP Fund"), and the Variable Insurance Products Fund II (the "VIP Fund II").

3. New England Securities, which will act as the principal underwriter for the Policies, is registered with the Commission as a broker-dealer under

the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. ("NASD").

4. Scheduled premiums for the Policy are payable until the insured reaches age 100. The scheduled premium amount depends on the face amount of the Policy, the insured's age, sex (if the Policy is sex-based), and underwriting class, the frequency of premium payments and any rider benefit premiums. Scheduled premiums for substandard and automatic issue classes reflect additional premiums that are charged for Policies in those categories. If all scheduled premiums are paid when due, the Policy will not lapse and will retain its minimum death benefit guarantee, even if unfavorable investment experience has reduced the cash value to zero.¹

5. The Policy also provides considerable flexibility with respect to the timing and amount of premium payments. An owner of a Policy may make unscheduled payments at any time that the Policy is in force on a premium-paying basis (except any period during which scheduled premiums are being waived pursuant to a waiver-of-premium rider), provided that the unscheduled payment is at least \$25 (or at least \$10 for certain Policies) and, if required by NELICO, the insured has submitted evidence of insurability satisfactory to NELICO. In addition, NELICO's consent is required if, in order to satisfy tax law requirements, the payment would increase the Policy's death benefit by more than it would increase the cash value. NELICO reserves the right to prohibit or limit the amount of unscheduled payments under a Policy covering a substandard risk insured or under an automatic issue Policy.

6. An owner of a Policy may plan to make a certain amount of unscheduled payments, subject to NELICO's administrative procedures. Each net unscheduled payment will be allocated to the same sub-accounts as net scheduled premiums. At the owner's request, NELICO will include the amount of any unscheduled payments, planned to be made on the Policy anniversary, in the premium notice sent to the owner. However, the owner is required to pay only the scheduled

¹ A Policy may terminate when a Policy loan plus accrued interest exceeds the Policy's cash value, less the applicable Surrender Charge, on the next loan interest due date (or, if greater, on the date the calculation is made). NELICO notifies the Policy owner of such pending termination, and the Policy will terminate 31 days thereafter unless NELICO has received sufficient repayment to eliminate the excess Policy loan.