generally provided in the President's Budget for Fiscal Year 1999.

DATES: All changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the Government's in-house cost estimate has not been publicly revealed before this date.

FOR FURTHER INFORMATION CONTACT: The Budget Analysis and Systems Division, NEOB Room 6002, Office of Management and Budget, 725 17th Street, N.W., Washington, D.C. 20503, Telephone Number: (202) 395–6104, FAX Number (202) 395–7230.

Clarence Crawford,

Associate Director for Administration.

February 18, 1998.

Circular No. A–76 (Revised)
Transmittal Memorandum No. 18

To The Heads of Executive Departments and Agencies

Subject: Performance of Commercial Activities

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay costs, as generally provided in the President's Budget for Fiscal Year 1999.

The non-pay inflation factors are for purposes of A–76 cost comparison determinations only. They reflect the generic non-pay inflation assumptions used to develop the FY 1999 Budget baseline estimates required by law. The law requires that a specific inflation factor (GDP FY/FY chained price index) be used for this purpose. These inflation factors should not be viewed as estimates of expected inflation rates for major long-term procurement items or as an estimate of inflation for any particular agency's non-pay purchases mix.

The following factors should be applied per paragraph B, pages 19–21 of the OMB Circular A–76 Revised Supplemental Handbook (March 1996).

Federal pay raise assumptions	Military/ civilian
Effective Date:	
January 1998	2.8
January 1999	3.1
January 2000	3.0
January 2001	3.0
January 2002	3.0
January 2003	3.0
Non-Pay Categories (Supplies and Equipment, etc.):	
FY 1997	2.2
FY 1998	1.9
FY 1999	2.0
FY 2000	2.1
FY 2001	2.2
FY 2002	2.2
FY 2003	2.2

Geographic pay differentials received in 1998 shall be included for the development of in-house personnel costs. The above pay raise factors shall be applied after consideration is given to the geographic pay differentials. The pay raise factors provided for 1999 and beyond shall be applied to all employees, with no assumption being made as to how they will be distributed between possible locality and ECI-based increases.

These updates are effective as follows: all changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the Government's in-house cost estimate has not been publicly revealed before this date.

Agencies are reminded that OMB Circular No. A–76, Transmittal Memoranda 1 through Transmittal Memorandum 14 are canceled. Transmittal Memorandum No. 15 provided the Revised Supplemental Handbook, and is dated March 27, 1996 (**Federal Register**, April 1, 1996, pages 14338–14346). Transmittal Memoranda No. 16 and 17, which provided the last two year's OMB Circular A–76 Federal pay raise and inflation factor assumptions are also canceled.

Sincerely,

Franklin D. Raines,

Director.

[FR Doc. 98–5902 Filed 3–6–98; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23054; File No. 812–10914]

St. Clair Funds, Inc. et al.; Notice of Application

March 2, 1998.

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

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting exemptive 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.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of capital stock of certain series of St. Clair Funds, Inc. (the ''Funds'') or any other investment company (the Funds and such other investment companies referred to collectively as the ''Insurance Product Funds'') for which Munder Capital Management 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 separate accounts (''Separate Accounts'') funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); and qualified pension and retirement plans outside of the separate account context (''Plans'').

Applicants: St. Clair Funds, Inc. (the ''Company'') and Munder Capital Management (the ''Advisor'').

FILING DATES: The application was filed on December 22, 1997, and amended on February 3, 1998.

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 March 27, 1998, and must 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 requester'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, c/o Cynthia Surprise, Esq., State Street Bank and Company, Legal Division, 1776 Heritage Drive, Mail Stop AFB4, North Quincy, Massachusetts 02171.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Attorney, or Kevin M. Kirchoff Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Company is a Maryland corporation and is registered under the 1940 Act as an open-end management investment company. It currently consists of eleven separate series which operate as distinct investment vehicles, five of which are Funds. The Company may in the future issue shares of additional series and/or multiple classes of shares of each Fund.

2. The Advisor is organized as a Delaware general partnership, the partners of which are Woodbridge Capital Management, Inc. (''Woodbridge''), WAM Holdings, Inc. (''WAM''), Old MCM, Inc. and Munder Group, LLC. Woodbridge and WAM are wholly-owned subsidiaries of Comerica Bank—Ann Arbor, which in turn is a wholly-owned subsidiary of Comerica Inc., a publicly-held bank holding company. The Advisor serves as

investment advisers to each of the Funds.

3. The Company initially intends to offer Fund shares to variable annuity and variable life insurance separate accounts established by Kemper Investors Life Insurance Company (''Kemper''). The Company may offer Fund shares to Separate Accounts of additional insurance companies, including insurance companies that are not affiliated with Kemper, to serve as the investment medium for variable annuity contracts and variable life insurance policies (including single premium, scheduled premium, and flexible premium contracts) (collectively, ''Contracts''). These Separate Accounts may or may not be registered under the federal securities laws.

4. The Participating Insurance Companies will establish their own Separate Accounts and design their own Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under the federal securities laws.

5. The Company also may offer shares of the Insurance Product Funds to Plans described in Treasury Regulation § 1.817–5(f)(3)(iii) and Revenue Ruling 94–62.

6. The Plans may choose one or more of the Insurance Product Funds as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given the right to select among Insurance Product Funds, depending on the Plan itself. The trustees of such Plans will hold the Fund shares, as required by Section 403(a) of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). The trustee or custodian of each Plan will have the legal obligation of satisfying all requirements applicable to such Plan under the federal securities laws.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(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 Insurance Product Funds to be sold to Plans.

2. Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the 1940 Act, or the rules 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 a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where the management investment company underlying the separate account offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company.''

4. The use of a common management investment company as the underlying investment medium for both variable annuity and flexible premium variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to as ''mixed funding.'' The use of a common management company as the underlying investment medium for variable annuity or 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 as ''shared funding.'' ''Mixed and shared 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. 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 any other affiliated or unaffiliated company. Therefore, Rule 6e–2(b)(15) precludes mixed and shared funding.

5. The relief granted by Rule 6e–2(b)(15) also is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to Plans.

6. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, similar to those provided by Rule 6e–2. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their 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 offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Thus, Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium variable life insurance separate account, but precludes shared funding or selling to Plans.

7. Applicants state that the current tax law permits the Insurance Product Funds to increase their asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of the Contracts. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

8. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury regulations. Applicants assert that, given the then-current tax law, the sale of shares of the same underlying fund to separate accounts and to Plans could not have been envisioned at the time of the adoption of Rules 6e–2 and 6e–3(T).

9, Applicants assert that if the Insurance Product Funds were to sell their respective shares only to Plans, no exemptive relief would be necessary. Applicants state that none of the relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Plans or to a registered investment company's ability to sell its shares of Plans. Exemptive relief is requested in the Application only because it is possible that some of the separate accounts that will invest in the Insurance Product Funds will be themselves investment companies seeking relief under Rules 6e–2 and 6e–3(T) and thus would otherwise be denied such relief if the Insurance Product Funds were to sell shares to Plans as well.

10. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to, or principal underwriter of, any registered opened investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2 and 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitation on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals of companies that directly participate in the management or administration of the underlying investment company.

11. Applicants state that the relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert 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 who may be involved in a large insurance company complex but who have no involvement in matters pertaining to the investment company funding the separate accounts.

12. Applicants state that there is no regulatory purpose in denying the partial exemptions because of mixed and shared funding and sales to Plans. Applicants assert that sales to Separate Accounts and Plans do not change the fact that the purposes of the 1940 Act are not advanced by applying the prohibitions of Section 9(a) to individuals who may be involved in a life insurance complex but have no involvement in the underlying fund.

13. Applicants submit that Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a ''pass-through voting'' requirement with respect to management investment company shares held by a separate account. Applicants state that Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirements with respect to several significant matters, assuming the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder are observed. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company, or any contract between an underlying investment company and its investment advisor, 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)(B) provide that an insurance company may disregard contract owners' voting instructions with regard to changes initiated by the contract owners as to the investment company's investment policies, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T). In the case of such a change in the investment company's investment policies, in order to disregard a contract owner's voting instructions, the insurance company must make a good-faith determination that such a change would: (a) Violate state law; or (b) result in investment that either (i) would not be consistent with the investment objectives of the separate account, or (ii) would vary from the general quality and nature of investments techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. In the case of such a change in an investment advisor, the insurance company, in order to disregard a contract owner's voting instructions, must make a good-faith determination that either: (a) The advisor's fees would exceed the maximum rate that may be charged against the separate account's assets; or (b) the proposed advisor may be expected to employ investment techniques that either (i) would vary from the general techniques used by the current advisor, or used to manage the investments in a manner inconsistent with the investment objectives of the separate account, or (ii) would result in investments that vary from certain standards.

14. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts and are subject to extensive state regulations of insurance. Applicants maintain, therefore, that in adopting Rule 6e–2, the Commission expressly recognized that state insurance regulators have authority to disapprove or require changes in investment policies, investment advisors, or principal underwriters. Applicants also maintain that the Commission expressly recognized that exemptions from pass-through voting requirements were necessary to assure the solvency of the life insurer and the 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. Applicants assert that flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority, and therefore corresponding provisions of Rule 6e–3(T) presumably were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

15. Applicants assert that the offer and sale of shares of the Insurance Product Funds to Plans will not have any impact on the relief requested in this regard. The trustees of such Plans will hold the shares, as required by Section 403(a) of ERISA, or applicable provisions of the Code. Section 403(c) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees 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. Under one of the two exceptions stated in Section 403(a) applies, the Plan trustees have 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, ERISA permits, but does not require, pass-through voting to the participants in Plans. Accordingly, Applicants assert that, unlike the case with the insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Plans because they are not entitled to pass-through voting privileges.

16. Applicants acknowledge that some Plans may provide participants

with the right to give voting instructions. Applicants assert that there is no reason to believe, however, that participants in Plans generally, or those in a particular Plan, whether as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Therefore, Applicants submit that the purchase of the shares of the Insurance Product Funds by Plans that provide voting rights to participants does not present any complications occasioned by mixed and shared funding.

17. Applicants state that no increased conflict of interest would be presented by the granting of the requested relief. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants note that it is possible that a particular state insurance regulatory body in a state in which a Participating Insurance Company's is licensed to do business could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which the Participating Insurance Company offers its policies. That different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

18. Applicants assert that shared funding by unaffiliated insurers, in this respect, is not different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Applicants thereby assert that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth in the application and later in this notice (which are adapted from the conditions included in Rule 6e–3(T)(b)(15)) are designed to safeguard against, and provide procedures for resolving, and adverse effects that differences among state regulatory requirements may produce. If a particular state 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 Insurance Product Funds.

19. Applicants assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. The potential for disagreement is limited by the requirements that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if a particular insurer's decision to disregard Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, then the insurer may be required, at the election of the relevant Insurance Product Funds, to withdraw its Separate Account's investment in that Insurance Product Fund, and no charge or penalty will be imposed upon the Contract owners as a result of such withdrawal.

20. Applicants submit that there is no reason why the investment policies of an Insurance Product Fund with mixed funding would or should be materially different from what those policies would or should be if such Insurance Product Fund funded only variable annuity or variable life insurance contracts. Applicants state that each type of insurance product is designed as a long-term investment program. Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of the Insurance Product Funds. In addition, permitting mixed and shared funding also will facilitate the establishment of additional Insurance Product Funds serving diverse goals. The broader base of contract owners can be expected to provide economic support for the creation of additional Insurance Product Funds with a greater variety of investment objectives and policies.

21. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants assert that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

22. While there may be differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants state that the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or Plan cannot net purchase payments to make the distributions, the Separate Account or Plan will redeem shares of the Insurance Product Funds at their respective net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

23. Applicants submit that the ability of the Insurance Product 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 Plan. As noted above, regardless of the rights and benefits of participants under the Plans, or Contract owners under the Contracts, the Plans and the Separate Accounts have rights only with respect to their respective shares of the Insurance Product Funds. They only can redeem such shares at their net asset value. No shareholder of any of the Insurance Product Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

24. Applicants assert that there are no conflicts between the Contract owners of the separate accounts and Plan participants with respect to state insurance commissioners' veto powers over investment objectives. A basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. While time-consuming, complex transactions must be undertaken to accomplish redemptions and transfers by separate accounts, trustees of Plans can quickly redeem shares from Insurance Product Funds and reinvest in other funding vehicles without the same regulatory impediments or, as in the case with most Plans, even hold cash pending suitable alternative investment. Applicants maintain that even if there should arise issues where the interests of Contract owners and the interests of

participants in Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Insurance Product Funds.

25. Applicants submit that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. In connection with any meeting of shareholders, the Insurance Product Funds will inform each shareholder, including each Separate Account and each Plan, of information necessary for the meeting, including its respective share of ownership in the respective Insurance Product Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

26. Applicants submit that mixed and shared funding should provide benefits to Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Advisor, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment by the Insurance Product Funds, thereby promoting economies of scale, by permitting increased safety through greater diversification and by making the addition of new funds more feasible. Therefore, making the Insurance Product Funds available for mixed and shared funding will encourage more insurance companies to offer Contracts, and this should result in increased competition with respect to both Contract design and pricing, which can be expected to result in more product variation and lower charges to investors. The sale of shares of the Insurance Product Funds to Plans also can be expected to increase the amount of assets available for investment by the Insurance Product Funds and thus promote economies of scale and greater diversification.

27. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to Plans, will have any adverse federal income tax consequences.

28. Applicants state that each Insurance Product Fund will be managed to attempt to achieve the investment adjective of that Insurance Product Fund and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of each Insurance Product Fund's Board of Directors or Board of Trustees (''Board'') shall consist of persons who are not ''interested persons'' thereof, 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 Board member, 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 remaining Board members; (b) for a period of 60 days, if a vote of shareholders is required to file the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Insurance Product Fund's Board will monitor the fund for the existence of any material irreconcilable conflict among the interests of the Contract owners of all Separate Accounts investing in the Insurance Product Funds and of Plan participants investing in the Insurance Produce Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Product Funds are being managed; (e) a difference in voting instructions given by Contract owners and trustees of Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, the Advisor (or any other primary investment adviser of the Insurance Product Funds), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Product Fund (a ''Participating Plan'') will report any potential or existing conflicts of which it becomes aware to the relevant Board. Participating Insurance Companies, the Advisor and Participating Plans will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the appropriate Board whenever Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Participating Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of all Participating Insurance Companies and Plans investing in the Insurance Product Funds under their agreements governing participation in the Insurance Product Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Contract owners.

4. If a majority of an Insurance Product Fund's Board members, or a majority of the disinterested Board members, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Participating Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Board members), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Insurance Product Fund or any portfolio thereof, and reinvesting such assets in a different investment medium, which may include another portfolio of an Insurance Product Fund or another Insurance Product Fund; (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* 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; (c) in the case of

Participating Plans, withdrawing the assets allocable to some or all of the Plans from the Insurance Product Fund and reinvesting such assets in a different investment medium; and (d) establishing a new registered management investment company or managed Separate Account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard Contract owner voting instructions, and this decision represents a minority position or would preclude a majority vote, then that Participating Insurance Company may be required, at the Insurance Product Fund's election, to withdraw its Separate Account's investment in such 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 Insurance Product 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 Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Insurance Product Funds and these responsibilities will be carried out with a view only to the interests of the Contract owners and Plan participants.

5. For purposes of Condition 4, a majority of the disinterested members of the applicable Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict. In no event will the relevant Insurance Product Fund or the Advisor be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Contract if a majority of Contract owners materially and adversely affected by the material irreconcilable conflict, vote to decline such offer. No Participating Plan shall be required by Condition 4 to establish a new funding medium for any Participating Plan if: (a) A majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer; or (b) pursuant to governing Plan documents and applicable law, the Participating Plan makes such decision without Plan participant vote.

6. All Participating Insurance Companies and Participating Plans will be informed promptly in writing of a Board's determination of the existence of an irreconcilable material conflict and its implications.

7. Participating Insurance Companies will provide pass-through voting privileges to Contract owners who invest in registered Separate Accounts so long as and to the extent that the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. As to Contracts issued by unregistered Separate Accounts, pass-through privileges will be extended to participants to the extent granted by issuing insurance companies. Each Participating Insurance Company also will vote shares of the Insurance Product Fund held in its Separate Accounts for which no voting instructions from Contract owners are timely received, as well as shares of the Insurance Product Funds which the Participating Insurance Company itself owns, in the same proportion as those shares of the Insurance Product Funds for which voting instructions from Contract owners are timely received. Participating Insurance Companies will be responsible for assuring that each of their registered Separate Accounts investing in an Insurance Product Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in the Insurance Product Funds will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Product Funds. Each Participating Plan will vote as required by applicable law and governing Plan documents.

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

9. Each Insurance Product Fund will notify all Participating Insurance Companies that Separate Account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Product Fund shall disclose in its registration statement that: (a) The Insurance Product Fund is intended to be a funding vehicle for Contracts offered by various insurance companies, and for Plans; (b) differences in tax treatment or other considerations may cause the interests of various Contract owners participating in the Insurance Product Fund or the interests of Plans investing in the Insurance Product Fund to conflict; and (c) the Board will monitor the Insurance Product Fund for any material conflicts and determine what action, if any, should be taken.

10. Each Insurance Product Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Insurance Product Funds). In particular, each such Insurance Product Fund either will provide for annual shareholder 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, as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Product Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the 1940 Act is amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Insurance Product Funds, Participating Insurance Companies or Participating Plans, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent such rules are applicable.

12. The Participating Insurance Companies and Participating Plans or the Advisor, at least annually, shall submit to each Board such reports, materials or data as each Board may reasonable request so that such Boards may fully carry out the obligations imposed upon them by the conditions stated in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the

participants to provide these reports, materials and data upon reasonable request of a Board shall be a contractual obligation of all participants under their agreements governing participation in the Insurance Product Funds.

13. If a Plan should be come a holder of 10% or more of the assets of an Insurance Product Fund, such Plan will execute a participation agreement with such fund. A Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Product Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–5892 Filed 3–6–98; 8:45 am]

BILLING CODE 2010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39706; File No. SR–AMEX–98–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Extension of the Permissible Maturity of FLEX Equity Options

March 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 5, 1998, 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 and II below, which Items have been prepared by the Exchange. On February 20, 1998, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[2] 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 Amex proposes to amend Exchange Rule 903G to permit flexible (''FLEX'') equity options to have a term of five years in certain circumstances. The text of the proposed rule change is available at the Office of the Secretary, Amex 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 Amex 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 Amex 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

1. Purpose

The Exchange is proposing to allow FLEX equity options[3] traded on the Exchange to have a maturity beyond three years and up to five years in certain circumstances. Currently, FLEX equity options, by operation of Rule 903G, are limited to a maturity of three years.

When the Exchange filed for permission to list and trade FLEX equity options[4] it determined to limit the maturity of these options to three years because, unlike FLEX Index options which were already being traded on the Exchange since August 1993 and which could have a maturity of up to five years, the Exchange was concerned that there would not sufficient liquidity in many equity option classes to support services with a longer term to expiration. Since it has traded FLEX equity options, however, the Exchange has had numerous requests from broker-dealers to extend the maturity of FLEX equity options to five years. Among the reasons the broker-dealer firms have been interested in seeking an extension in the allowable maturity is that these longer expiration FLEX equity options might be used to hedge the longer term issuances of structured products linked to returns of a individual stock. The rule would permit the longer term FLEX equity options to be listed when requested by the submitting member if the Exchange determines that sufficient liquidity exists among Equity FLEX qualified participants. By allowing for the extension of the maturity of FLEX equity options to five years in situations where there is demand for a longer term expiration and where there is sufficient liquidity to support the request, the proposed rule change will better serve the needs of Amex's customers and the Exchange members who make a market for such customers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change:

(i) does not significantly affect the protection of investors or the public interest;

(ii) does not impose any significant burden on competition; and

(iii) does not become operative for 30 days from the date on which it was

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

[2] Amendment No. 1 clarifies the Exchange's course of action when criteria set forth in the proposed rule are met. *See* Letter from Scott G. VanHatten, Legal Counsel, Derivative Securities, Exchange, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, Commission, dated February 19, 1998.

[3] FLEX equity options are flexible exchange-traded options contracts which overlie equity securities. In addition, Exchange equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[4] *See* Exchange Act Release No. 37336 (June 19, 1996), 61 FR 33558 (June 27, 1996).