charges under the Contracts currently being paid by contractowners to be greater after the substitutions than before the substitutions. The substitutions will have no adverse tax consequences to contractowners and will in no way alter the tax benefits to contractowners.

22. Applicants believe that their request satisfies the standards for relief of Section 26(b) because:

(a) Each substitution involves portfolios with similar investment objectives;

(b) after each substitution, affected contractowners will be invested in a Substitute Portfolio whose actual performance, or pro-forma performance, has been better on a historical basis than that of the Eliminated Portfolio; and

(c) after each substitution affected contractowners will be invested in a Substitute Portfolio whose expenses have been less, or are expected to be less on an estimated basis, than those of the Eliminated Portfolio.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 26(b) of the Act approving the substitutions. Section 26(b) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the purposes, terms and conditions of the substitutions are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Substitution is an appropriate solution to the unfavorable relative performance and higher relative expenses of the portfolio to be eliminated. Applicants believe that each Substitute Portfolio will better serve constractowner interests because its performance has been significantly better than the performance of, and its expenses have been lower than the expenses of, the corresponding Eliminated Portfolio. Moreover, Union Central has reserved this right in each of the Contracts and disclosed this reserved right in the prospectus for each Contract.

3. Applicants represent that the substitutions will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the Act:

(a) Each Substitute portfolio has investment objectives that are similar to those of the corresponding Eliminated Portfolio, and permits contractowners continuity of their investment objectives and expectations.

(b) The costs of the substitutions will be borne by Union Central and will not be borne by contractowners. No charges will be assessed to effect the substitutions.

(c) The substitutions will, in all cases, be at net asset values of the respective portfolio shares, without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's accumulation value.

(d) The substitutions will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the substitutions than before the substitutions.

(e) The contractowners will be given notice prior to the substitutions and will have an opportunity to reallocate accumulation value among other available subaccounts without the imposition of any transfer charge or limitation. No transfer:

(i) from a subaccount investing in an Eliminated Portfolio from the date of the notice through the date of the substitutions, or

(ii) for 30 days after the substitutions, of accumulation value that had been transferred to a subaccount that invests in a Substitute Portfolio as a result of the substitutions, will count as one of the limited number of transfers permitted in a contract year free of charge.

(f) Within five days after the substitutions, Union Central will send to affected contractowners written confirmation that the substitutions have occurred.

(g) The substitutions will in no way alter the insurance benefits to contractowners or the contractual obligations of Union Central.

(h) The substitutions will have no adverse tax consequences to contractowners and will in no way alter the tax benefits to contractowners.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22551 Filed 8–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23967; File No. 812–11552]

Target/United Funds, Inc., et al.

August 24, 1999.

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 Target/United Funds, Inc. (''Fund'') and any other similar investment company or investment company series that Waddell & Reed Investment Management Company (''WRIMCO'') or any of its affiliates serve, now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (the Fund and such other investment companies and series thereof, the ''Insurance Products Funds''), to be offered and sold to and held by: (1) Separate accounts funding variable annunity 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.

Applicants

Target/United Funds, Inc. and Waddell & Reed Investment Management Company.

Filing Date

The application was filed on March 30, 1999, and amended and restated on July 16, 1999.

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 Commission by 5:30 p.m. on September 17, 1999, 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 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, NW, Washington, DC 20549–0609. Applicants, c/o Helge K. Lee, Esq., Senior Vice President, Secretary and General Counsel, Waddell & Reed, Inc., 6300 Lamar Avenue, Overland Park, Kansas 66202.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, 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 may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 ((202) 942–8090).

Applicant's Representations

1. The Fund is an open-end management investment company organized as a corporation under the laws of the State of Maryland. The Fund currently consists of eleven separately managed series, each of which has its own investment objective and policies. Additional series could be added to the Fund in the future.

2. WRIMCO is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as the investment manager and accounting services agent for each of the Fund's series.

3. The Fund currently offers its shares exclusively to insurance company separate accounts that fund variable insurance products. The Fund's shares are offered only to the separate accounts of United Investors Life Insurance Company (''United Investors''). United Investors receives no payments from the Fund for services in connection with the distribution of the shares. Applicants propose that shares of each Insurance Products Fund be offered to United Investors and/or one or more other insurance companies, whether affiliated or unaffiliated, for their separate accounts as an investment vehicle to fund various insurance products including, among others, variable annuity contracts, variable group life insurance contracts, scheduled premium variable life insurance contracts, single premium and modified single premium variable life insurance contracts, and flexible premium variable life insurance contracts (''Variable Contracts''). Some of these separate accounts may not be registered as investment companies under the 1940 Act pursuant to the exceptions from registration in Sections 3(c)(1), 3(c)(7) or 3(c)(11) of the 1940 Act. In addition, Applicants propose that shares of each Insurance Products Fund be eligible to be offered directly to qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') outside of the separate account context. Separate accounts owning shares of the Insurance Products Funds and their insurance company depositors are referred to herein as ''Participating Separate Accounts'' and ''Participating Insurance Companies,'' respectively.

4. Participating Insurance Companies establish their own Participating Separate Accounts and design their own Variable Contracts. Each such Variable Contract has or will have certain unique features and probably will differ from other Variable Contracts supported by the Insurance Products Funds with respect to insurance guarantees, premium structure, charges, options, distribution method, marketing techniques, sales literature, and other aspects. Each Participating Insurance Company, on behalf of its Participating Separate Account(s), will enter into a fund participation agreement with each Insurance Products Fund in which such Participating Separate Account invests, and will have the legal obligation of satisfying all applicable requirements under state and federal law. The role of the Insurance Products Funds, so far as the federal securities laws are applicable, will be limited to that of offering their shares to separate accounts of various insurance companies and fulfilling any conditions the Commission may impose upon granting the order requested herein.

5. The Plans will be pension or retirement plans intended to qualify under sections 401(a) and 501(c) of the Internet Revenue Code of 1986, as amended (''Code''). A plan may include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under Section 401(k) of the Code. The Plans will also be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), applicable to pension benefit plans, specifically ''Title I—Protection of Employee Benefit Rights.'' The Plans, therefore, will be subject requirements under the Code and ERISA regarding, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and enforcement.

6. The Qualified Plans may choose any of the Insurance Products Funds as their sole investments or as one of several investments. Plan participants may or may not be given an investment choice depending on the Plan itself. Shares of any of the Insurance Products Funds sold to Qualified Plans would be held by the trustees of those Plans as mandated by Section 403(a) of ERISA. WRIMCO (or any other investment adviser to an Insurance Products Fund) may, to the extent permitted by law, act as investment adviser to any of the Qualified Plans that purchase shares of any of the Insurance Products Funds. Applicants state that there likely will be no pass-through voting to the participants in such Qualified Plans as it is not required to be provided to such participants pursuant to ERISA.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available only where 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 variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis added). 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 investment company that also offers its shares to a variable annuity separate account or a flexible premium variable life insurance account of the same company or of any affiliated or unaffiliated 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 is referred to as ''mixed funding.''

2. 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 investment company that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.''

3. Applicants assert that the relief granted by rule 6e–2(b)(15) does not

relate to Qualified Plans, or to a registered investment company's ability to sell its shares to these entities. 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 Insurance Products Funds are also to be sold to Plans. The use of a common investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies and Qualified Plans is referred to as ''extended mixed and shared funding.''

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by rule 6e3(T) 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 contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' (emphasis added). Therefore, Rule 6e–3(T)(b)(15) permits mixed funding for flexible premium variable life insurance separate accounts but does not permit shared funding, because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an investment company that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

5. Applicants assert that if shares of the Insurance Products Funds were sold only to Qualified Plans, exemptive relief under rule 6e–3(T) would not be necessary. Applicants, however, state that because the relief under rule 6e–3(T) is available only if shares are offered exclusively to separate accounts, additional exemptive relief is necessary if the shares of the Insurance Products Funds are also to be sold to Plans.

6. Applicants state that Section 817(h) of the Code imposes certain diversification standards on the assets underlying the Variable Contracts held by the portfolios of the Insurance Production Funds. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts for any period (and any subsequent period) for which the investments are not adequately diversified in accordance with regulations issued by the Treasury Department. Applicants also state that on March 2, 1989, the Treasury Department issued Regulations (Treas. Reg § 1.817–5) which established diversification requirements for the investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations also contain certain exceptions to this requirement, one of which allows trustees of Qualified Plans to hold shares of an investment company without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through separate accounts of insurance companies (Treas. Reg. § 1.817–5(f)(3)(iii)). As a result of this exception to the general diversification requirements, Applicants assert that Qualified Plans may select the Insurance Products Funds as investment options without endangering the tax status of Variable Contracts issued through Participating Insurance Companies.

7. Applicants state that the promulgation of rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the treasury Regulations which made it possible for shares of an investment company to be held by the trustees of Qualified Plans without adversely affecting the ability of separate accounts of insurance companies to hold shares of the same investment company in connection with their variable annuity and variable life contracts. Thus, Applicants assert that the sale of shares of the same investment company to separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e-3(T)(b)(15).

8. Accordingly, Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act exempting scheduled and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, sub-adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and subparagraph (b)(15) of rules 6e2 and 6e3(T) (and any comparable permanent rule) thereunder, to the extent necessary to permit shares of the Insurance Products Funds to be offered and sold in connection with extended mixed and shared funding.

9. In general, Section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person from acting or serving in various capacities with respect to a registered investment company. More specifically, Section 9(a)(3) provides that it is unlawful for any company to serve as a investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2).

10. Rules 6e2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) however, provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above 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 or administration of the underlying investment company or series thereof. The relief provided by the rules permits a person disqualified under Section 9(a)(1) or (2) to be an officer, director, or employee of an insurance company, or any of its affiliates that serves in any capacity with respect to any underlying investment company, so long as the disqualified individual does not participate directly in the management or administration of the underlying investment company.

11. Applicants state that the partial relief granted in Rules 6e–2 and 6e–3(T) from the requirements of Section 9 of the 1940 Act limits, in effect, the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that section. Applicants state the exemptions contained in Rules 6e–29(b)(15) and 6e–3(T) recognize that it is not necessary for the protection of investors or the purposes fairly intended under the 1940 Act to apply Section 9(a) to the many individuals who may be involved in a large insurance company but would have no connection with the investment company, or any series thereof, funding the separate accounts. Applicants believe that is unnecessary to limit the applicability of the rules merely because shares of the Insurance Products funds may be sold in connection with mixed and shared funding. Applicants state that neither the Participating Insurance Companies nor the Qualified Plans are expected to play any role in the management or administration of the

Insurance Products Funds. Applicants assert that, therefore, applying the restrictions of Section 9(a) serves no regulatory purpose. Furthermore, Applicants assert that applying such restrictions would increase the monitoring costs incurred by the Participating Insurance Companies and, therefore, would reduce the net rates of return realized by Variable Contract owners. Applicants further assert that the relief requested will in no way be affected by the proposed sale of shares of the Insurance Products Funds to Qualified Plans, and that the insulation of the Insurance Products Funds from those individuals who are disqualified under the 1940 Act will remain intact even if shares of the Insurance Products Funds are sold to Qualified Plans. Applicants state that since the Qualified Plans are not investment companies and will not be deemed to be affiliated solely by virtue of their shareholdings, no additional relief is necessary.

12. Subgaragraph (b(15)(iii) of Rules 6e–2 and 6e–3(T) under the 1940 Act assumes that contract owners are entitled to pass-through voting privileges with respect to investment company shares held by a related separate account. However, subparagraph (b)(15)(iii) of Rules 6e–2 and 6e3(T) provides exemptions from the pass-through voting requirement in limited situations, if the limitations on mixed and shared funding are satisfied.

13. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides that an 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 and investment company and its adviser, when an insurance regulatory authority so requires. 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 owners voting instructions with regard to certain changes initiated by the contract owners in the investment company's policies, principal underwriter, or investment adviser. Voting instructions with respect to a change in investment policies may be disregarded only if the insurance company makes a good-faith determination that such change would: (a) Violate state law; or (b) result in investments that either would not be consistent with the investment objectives of the separate account; or (c) result in investments that would vary from the general quality and nature of investments and investment and techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Voting instructions with respect to a change in the principal underwriter may be disregarded if such disapproval is reasonable. Voting instructions with respect to a change in an investment adviser may be disregarded only if the insurance company makes a good-faith determination that: (a) The adviser's fees would exceed the maximum rate that may be charged against the separate account's assets; (b) the proposed adviser may be expected to employ investment techniques that vary from the general techniques used by the current adviser; or (c) the proposed adviser may be expected to manage the investment company's investments in a manner that would be inconsistent with its investment objectives or in a manner that would result in investments that vary from certain standards.

14. Applicants state that Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts and are subjects to extensive state regulation. Applicants maintain that in adopting Rule 6e–2, the Commission 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. Applicants also state that the Commission expressly recognized that state insurance regulators have authority to require an insurance company to draw from its general account to cover costs imposed upon the insurance company by a change approved by contract owners over the insurance company's objections. Therefore, the Commission deemed exemptions from pass-through voting requirements necessary ''to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority of the insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Applicants assert that in this respect, flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority and, therefore, the corresponding provisions of Rule 6e–3(T) for flexible premium insurance contracts presumably were adopted in recognition of the same factors.

15. Applicants assert that these considerations are no less important or necessary in connection with mixed and shared funding. Applicants state that mixed and shared funding does not compromise the goals of state insurance regulatory authorities or of the Commission. Indeed, Applicants assert that by permitting these arrangements, the Commission eliminates needless duplication of start-up and administrative expenses and potentially increases an investment company's assets, thereby making effective portfolio management strategies easier to implement and promoting other economies of scale. Applicants further state that the sale of Fund shares to Qualified Plans will not have any impact on the relief requested in this regard. Shares of the Insurance Products Funds sold to Qualified Plans will be held by the trustees of those Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the plan investments 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. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. If a abed 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. Accordingly, Applicant assert that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since such plans are not entitled to pass-though voting privileges.

16. Applicants submit that even if a Qualified Plan were to hold a controlling interest in an Insurance Products Fund, Applicants do not believe that such control would disadvantage other investors in that Insurance Products Fund to any greater extent than is the case when any institutional shareholder holds a controlling interest in the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in an Insurance Products Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed or

shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

17. Applicants generally expect many Qualified Plans to have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plan in their discretion. Some of the Qualified Plans, however, may provide for the trustees, investment advisers or another named fiduciary to exercise voting rights in accordance with instructions from participants. Where a Qualified Plan does not provide participants with the right to given voting instructions, the Applicants submit that there is no potential or material irreconcilable conflicts of interest between or among contract owners and Plan investors with respect to voting of an Insurance Products Fund's shares. Where a Plan provides participants with the right to give voting instructions, Applicants likewise submit that there is no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage contract owners. In this regard, Applicants submit that the purchase of shares of an Insurance Product Fund by Qualified Plans that provide voting rights does not present any complications nor otherwise occasioned by mixed or shared funding.

18. Applicants assert that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert 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 states. Applicants note that it is possible that the state insurance regulatory body in a state in which one Participant Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different and no greater than that which exists when a single insurer and its affiliates offer their insurance products in several states, as currently is permitted.

19. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. For example, 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 Participating Separate Account's investment in the relevant Insurance Products Funds.

20. Applicants also argue 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 requirement that disregarding voting instructions be reasonable and based on specific good faith determinations. However, if Participating Insurance Company's decision to disregard contract owner voting instructions represent a minority position or would preclude a majority vote approving a particular change, the Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its separate account's investment in that fund, and no charge or penalty will be imposed as a result of such a withdrawal.

21. Applicants submit that there is no reason why the investment policies of an Insurance Products Fund that engages in mixed funding would or should materially differ from what those policies would or should be if that fund, or a series thereof, supported only variable annuity or only variable life insurance contracts. Hence, Applicants assert there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants state that the Insurance Products Funds will not be managed to favor or disfavor any particular insurer or type of contract.

22. 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 investment company supporting even one type of insurance product must accommodate these diverse factors. Applicants assert that the sale of shares to Qualified Plans should not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Applicants also assert that regardless of the type of shareholder in each Insurance Product Fund, WRIMCO is or would be contractually or otherwise obligated to manage each Insurance Products Fund solely and exclusively in accordance with that fund's investment objectives, policies and restrictions as well as any guidelines established by the board of directors (or trustees) of each Insurance Products Fund.

23. As noted above, Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5, which establishes diversification requirements for such portfolios, specifically permits, among other things, qualified pension or retirement plans and separate accounts to share the same underlying management 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 Qualified Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

24. Applicants note that while there may be differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, the tax consequences do not raise any conflict of interest. When distributions are to be made, and Participating Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Separate Account or Qualified Plan will redeem shares of the relevant Insurance Products Funds at their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Plan. The Participating Insurance Company will surrender values from the Separate Account into the general account to make distributions in accordance with the terms of the Variable Contract.

25. Applicants also state that it is possible to provide an equitable means of giving voting rights to Participating Separate Account Variable Contract owners and to Qualified Plans. Each Insurance Products Fund or its agent will inform each Participating Insurance Company of each Participating Separate Account's ownership in the Fund shares, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Insurance Products Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of Insurance Products Funds would be no different from the voting rights that are provided to Qualified Plans with respect

to shares of funds sold to the general public.

26. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as this term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant in a Qualified Plan. Regardless of the rights and benefits of participants in the Qualified Plans or contract owners, the Qualified Plans and the Participating Separate Accounts have rights only with respect to their respective shares of the Insurance Products Funds. They can only redeem such shares at their net asset value. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants state that there are no conflicts between the contract owners of Participating Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto power over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish these redemptions and transfers. On the other hand, trustees of Qualified Plans can make the decision quickly and redeem their shares of an Insurance Products Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts, or, as is the case with most plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even if conflicts of interest arise between contract owners and Qualified Plans participants, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, on their own, redeem the shares of the Insurance Products Funds.

28. Applicants assert that various factors have prevented more insurance companies from offering variable annuity and variable life insurance contracts than currently do so. Applicants state that 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 public name recognition as investment professionals. Applicants state that in particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own. Applicants assert that use of the Insurance Products Funds as common investment medium for Variable Contracts would alleviate these concerns. Participating Insurance Companies would benefit not only from the investment advisory and administrative expertise of WRIMCO, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, Applicants assert, making the Insurance Products Funds available for mixed and shared funding may encourage more insurance companies to offer Variable Contracts. This should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges.

29. Applicants also 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. Furthermore, the sale of shares of the Insurance Products Funds to Qualified Plans should further increase the amount of assets available for investment by those funds. This should benefit Variable Contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new portfolios to an Insurance Products Fund more feasible.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the board of directors (''Board'') of each Insurance Products Fund will 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 trustee or director, then the operation of this condition shall be suspended for: (a) For a period of 45 days, if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Insurance Products Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all Participating Separate Accounts and the interests of the participants in Qualified Plans investing in the Insurance Products Fund and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or 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 Products Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of the Qualified 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 voting instructions of its participants.

3. Participating Insurance Companies, WRIMCO (or any other investment adviser of an Insurance Products Fund), and Qualified Plans that execute a fund participation agreement upon becoming an owner of 10% or more of an Insurance Products Fund's assets (''Participants'') will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants 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 of each Participating Insurance Company to inform the Board whenever it has determined to disregard voting instructions from contract owners, and, when pass-through voting is applicable, an obligation of each Plan to inform the Board whenever it has determined to disregard voting instructions from Plan participants. The responsibilities to report such information and conflicts and to assist the Boards will be contractual obligations of all Participants under their agreements governing participation in the Insurance Products Funds and such agreements shall provide, in the case of Participating Insurance Companies, that these responsibilities will be carried out with a view only to the interests of the contract owners, and,

in the case of Qualified Plans, that these responsibilities will be carried out with a view only to the interest of Plan participants.

4. If a majority of the Board of an Insurance Products Fund, or a majority of its disinterested members, determines that a material irreconcilable conflict exists, the relevant Participants will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Board members), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Participating Separate Accounts or Plans from the Insurance Products Fund or any series thereof and reinvesting such assets in a different investment medium, which may include another series of an Insurance Products fund or another Insurance Products fund, or submitting the question of whether such reinvestment should be implemented to a vote of all affected contract owners and Plan participants and, as appropriate, segregating the assets of any appropriate group (*i.e.,* variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies or Plan participants) that votes in favor of such reinvestment, or offering to the affected contract owners and Plan participants the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participant's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participant may be required, at the election of the Insurance Products Fund, to withdraw its investment in such fund, and no charge or penalty will be imposed as a result of the withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Insurance Products Fund, and these responsibilities will be carried out with a view only to the interests of the contract owners and Plan participants.

5. For the purposes of condition 4, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Products Fund, WRIMCO or any of their respective affiliates be required to establish a new funding medium for any Participant. No Participating Insurance Company or Qualified Plan shall be required by condition 4 to establish a new funding medium for any variable Contract or Plan if: (a) An offer to do so has been declined by a vote of a majority of the Variable Contract owners or Plan participants materially and adversely affected by the irreconcilable material conflict; or (b) pursuant to governing Plan or Variable Contract documents and applicable law, the Plan or Participating Insurance Company makes such decision without a vote of the Plan participants or Variable Contract owners.

6. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly in writing to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to contract owners who invest in Participating Separate Accounts so long as the Commission interprets the 1940 Act to require pass-through voting for contract owners. Accordingly, the Participating Insurance Companies will vote shares of an Insurance Products fund held in their Participating Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each of their Participating Separate Accounts investing in an Insurance Products Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges as provided in the Application will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received voting instructions. Each Qualified 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 determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. Each Insurance Products fund will notify all Participants that disclosure in separate account prospectuses or Plan prospectuses or other Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund will disclose in its prospectus that: (a) The Insurance Products Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for Plans; (b) due to the differences of tax treatment and other considerations, the interests of various contract owners participating in an Insurance Products Fund and the interests of Qualified Plans investing in that Insurance Products Fund may conflict; and (c) the Board of that Insurance Products Fund will monitor for the existence of any material conflicts and determine what action, if any, should be taken.

10. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in shares of the Insurance Products Fund), and in particular, each Insurance Products Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(a), and if applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors or trustees and with whatever rules the Commission may promulgate with respect thereto.

11. if, and to the extent that, Rules 6e–2 and 6e–3(T) are 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 Products Funds and the Participants, as appropriate, will take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent applicable.

12. No less than annually, the Participants shall submit to the Boards such reports materials, or data as the Boards may reasonably request so that the Boards may carry out fully the

obligations imposed upon them by the conditions contained in the Application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to the Boards shall be a contractual obligation of all Participating Insurance Companies and Qualified plans under the agreements governing their participation in the Insurance Products Funds.

13. In the event that a Plan should ever become an owner of 10% or more of the assets of an Insurance Products Fund, such Plan will execute a fund participation agreement including the conditions set forth herein, to the extent applicable, with that Insurance Products Fund. A plan will execute an application containing an acknowledge of this condition at the time of its initial purchase of shares of the Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22621 Filed 8–30–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41781; File No. SR–MCC–99–01]

Self-Regulatory Organizations; Midwest Clearing Corporation; Order Approving a Proposed Rule Change Relating to Sponsored Account Fund Deposits

August 23, 1999.

On February 26, 1999, the Midwest Clearing Corporation (''MCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MCC–99–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on May 26, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

MCC sponsors accounts (''sponsored accounts'') at qualified clearing agencies[3] for certain eligible Chicago Stock Exchange specialists, floor brokers, and market makers (''sponsored participants'') to provide them with access to the clearance, settlement, and depository services of the qualified clearing agencies. To cover any losses that MCC may incur from maintaining the sponsored accounts, MCC requires sponsored participants to contribute to MCC's sponsored account fund. A sponsored participant's required contribution to MCC's sponsored account fund currently is the greater of $15,000 (''minimum contribution'') or 110% of the amount calculated pursuant to the formula of NSCC and DTC (''alternative contribution''). According to MCC, both NSCC and DTC require a minimum deposit of $10,000.[4] Therefore, the current minimum amount a sponsored participant must contribute to the sponsored account fund is $22,000, which is based on the alternative contribution formula.[5]

The proposed rule change increases the minimum contribution from $15,000 to $150,000. The increase will be phased-in over a twelve month period. To announce the actual phase-in dates, MCC will issue an administrative bulletin no later than thirty days after the Commission's order approving the proposal. The first phase-in date will be no more than 60 days from the date the bulletin is published and will increase the minimum contribution to $50,000. The second and third phase-in dates will be six months and twelve months from the initial phase-in date and increase the minimum contribution to $10,000 and $150,000, respectively.

II. Discussion

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that increasing the sponsored account fund deposit is consistent with MCC's obligations under Section 17A(b)(3)(F) of the Act because the additional funds should increase the likelihood that MCC will have sufficient funds to settle the securities transactions of a sponsored participant that becomes insolvent.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MCC–99–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22552 Filed 8–30–99; 8:45 am]

BILLING CODE 8010–01–M

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

[2] Securities Exchange Act Release No. 41427 (May 19, 1999), 64 FR 28542.

[3] MCC uses the services of two qualified clearing agencies on behalf of its sponsored participants: the National Securities Clearing Corporation (''NSCC'') and The Depository Trust Company (''DTC'')

[4] Letter from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, Chicago Stock Exchange (March 19, 1999).

[5] Using NSCC's and DTC's minimum deposit of $10,000 each, MCC's alternative contribution formula is as follows: 110% of $10,000 + 110% of $100,000 = $22,000.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before November 1, 1999.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to James E. Rivera, Senior Loan Officer, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, S.W. Suite 6050, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: James E. Rivera, Senior Loan Officer, 202–205–6734 or Curtis B. Rich, Management Analyst, 202–205–7030.