owners would benefit from the proposed substitution.

7. Applicants assert that they anticipate that Contract owners will be at least as well off with the array of subaccounts offered after the proposed substitutions as they have been with the array of subaccounts offered prior to the substitutions. Applicants assert that the Substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the Substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values and cash values between and among the same number of subaccounts as they could before the Substitutions.

8. Applicants assert that each of the Substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract or cash values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. Applicants assert that the Substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

9. Section 17(a)(1) of the Act prohibits any affiliated person or an affiliate of an affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

10. Section 17(b) of the Act authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

11. Applicants request an order pursuant to Section 17(b) of the Act exempting them, Pegasus Trust and One Group from the provisions of Section 17(a) to the extent necessary to permit Hartford to carry out the Substitutions.

12. Applicants assert that the terms of the Substitutions, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also assert that the proposed substitutions by Hartford are consistent with the policies of: (a) Pegasus Trust and its Bond Fund, Growth and Value Fund, Mid Cap Opportunity Fund, Growth Fund and Intrinsic Value Fund; and (b) One Group Trust and of its Bond Fund, Diversified Equity Portfolio, Diversified Mid Cap Portfolio, Large Cap Growth Portfolio and Mid Cap Value Portfolio, as recited in the current registration statement and reports filed by each under the Act. Finally, Applicants assert that the proposed substitutions are consistent with the general purposes of the Act.

13. The proposed transactions will be effected at the respective net asset value. The proposed transactions will not change the amount of any Contract owner's Contract or cash value or death benefit or in the dollar value of his or her investment in either of the Accounts. Applicants also state that the transactions will conform substantially with the conditions enumerated in Rule 17a–7. Applicants assert that to the extent that the proposed transactions do not comply fully with the all of the conditions of Rule 17a-7 and each Trust's procedures thereunder, the circumstances surrounding the proposed substitutions will be such as to offer the same degree of protection to each Fund of Pegasus Trust and the affected Funds of One Group Trust from overreaching that Rule 17a-7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business.

14. Applicants assert that because of the circumstances surrounding the proposed Hartford substitutions, Pegasus Trust could not ''dump'' undesirable securities on One Group Trust or have their desirable securities transferred to other advisory clients of Banc One Investment Advisors or to Funds other than those in One Group Trust supporting the Accounts. Nor can Hartford (or any of its affiliates) effect the proposed transactions at a price that is disadvantageous to any Pegasus Trust Fund or One Group Trust Fund. Although the transactions may not be entirely for cash, each will be effected based upon; (a) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7; and (b) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in the respective Trust's registration statement and as required by Rule 22c–1 under the Act. Applicants assert that no brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. In addition, Applicants assert that the boards of trustees of each Trust will subsequently review the Substitutions and make the determinations required by paragraph (e)(3) of Rule 17a–7.

15. Applicants assert that the proposed transactions are consistent with the general purposes of the Act and that the proposed transactions do not present any of the conditions or abuses that the Act was designed to prevent.

**Conclusion**

Applicants assert that, for the reasons summarized above, the substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 99–4631 Filed 2–24–99; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–23699; File No. 812–11428]**

## Morgan Stanley Dean Witter Variable Investment Series; Notice of Application

February 18, 1999.

**AGENCY:** Securities and Exchange Commission (the ''Commission'').

**ACTION:** Notice of application for an order under Section 17(b) of the Investment Company Act of 1940 (''1940 Act'').

**SUMMARY OF APPLICATION:** Applicant seeks an order exempting it from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit the reorganization of Applicant's Capital Appreciation Portfolio (''Capital Appreciation'') into Applicant's Equity Portfolio (''Equity'') the ''Reorganization'').

**APPLICANT:** Morgan Stanley Dean Witter Variable Investment Series (the ''Trust'').

**FILING DATE:** The application was filed on December 9, 1998, and amended and restated on February 12, 1999.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 12, 1999, and should be accompanied by proof of service on Applicant, 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 of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, c/o Barry Fink, Esq., Morgan Stanley Dean Witter Variable Investment Series, Two World Trade Center, New York, New York 10048.

**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 is available for a fee from the Public Reference Branch of the Commission, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

### Applicant's Representations

1. The Trust, an open-end diversified management investment company, is a Massachusetts business trust. It is a series investment company currently comprised of fifteen separate series (the ''Portfolios''), two of which are Capital Appreciation and Equity. The Trust issues a separate series of shares of beneficial interest in connection with each Portfolio and has registered these shares under the Securities Act of 1933 on Form N–1A (File Nos. 2–82510; 811–3692).

2. The shares of Capital Appreciation and Equity are currently sold exclusively to four insurance companies (the ''Insurance Companies''), each of which allocates such shares to separate accounts (''Separate Accounts'') established to fund the benefits provided under certain variable annuity contracts and/or variable life insurance contracts (''Contracts'') issued by such Insurance Company. Owners of the Contracts (''Owners'') may choose to have their Contract premiums allocated among the sub-accounts (''Sub-Accounts'') of the Separate Accounts, which Sub-Accounts correspond to the fifteen Portfolios of the Trust. As a result, Owners participate in the performance of the Sub-Accounts and, consequently, in the performance of the applicable Portfolio of the Trust.

3. Although the Insurance Companies, through the Separate Accounts, are, as a technical matter, the shareholders of the Trust, Owners, through their premium allocations to the Sub-Accounts, are the true investors in the Trust, albeit indirectly. On all matters requiring the vote of shareholders of a Portfolio, the Insurance Companies are required to vote their Portfolio shares pursuant to instructions received by those Owners whose Contracts are indirectly invested in the Portfolio (through the applicable Sub-Account). Shares for which no instructions are received in time to be voted are voted by the Insurance Companies in the same proportion as shares for which instructions have been received in time to be voted.

4. Morgan Stanley Dean Witter Advisors Inc. (''MSDW Advisors'' or the ''Investment Manager''), a wholly owned subsidiary of Morgan Stanley Dean Witter & Co., serves as the investment manager to each of the Portfolios. MSDW Advisors, as full compensation for the investment management services furnished to the Portfolios, accrues its investment management fee as a percentage of each Portfolio's average daily net assets. Morgan Stanley Dean Witter Trust FSB (''MSDW Trust'') is the transfer agent of the Trust's Portfolio shares and dividend disbursing agent for payment of dividends and distributions on the shares. MSDW Trust is an affiliate of MSDW Advisors. Morgan Stanley Dean Witter Distributors Inc., also an affiliate of MSDW Advisors, acts without remuneration from the Portfolios as the exclusive distributor of their respective shares.

5. At its meeting held on October 28, 1998 (the ''Meeting''), the Board of Trustees of the Trust (the ''Board''), including all of the Trustees who are not ''interested persons'' (as defined in the 1940 Act) of the Trust, MSDW Advisors and their affiliates (''Independent Trustees''), unanimously approved an Agreement and Plan of Reorganization (the ''Reorganization Agreement'').

6. The Reorganization Agreement provides that on the closing date, Capital Appreciation will transfer all of its assets (other than any cash reserve (as defined in the Reorganization Agreement)) to Equity in exchange for the assumption by Equity of Capital Appreciation's stated liabilities and the delivery of shares of Equity (''Equity Shares''). The number of Equity Shares to be delivered to Capital Appreciation will be determined by dividing the value of Capital Appreciation assets acquired by Equity (net of stated liabilities assumed by Equity) by the net asset value of an Equity Share. Such Equity Shares would be distributed to the shareholders of Capital Appreciation on the closing date, and Capital Appreciation would be liquidated.

7. The Reorganization Agreement provides that any consents and orders of other parties that are deemed necessary by the Portfolios to permit consummation of the Reorganization, which would include the order requested in the application, are required to be obtained as a condition precedent to implementation of the Reorganization.

8. Applicant states that, at the Meeting, the Board, including all the Independent Trustees, on behalf of each of Capital Appreciation and Equity, determined to recommend that shareholders of Capital Appreciation and, in particular, those Owners who indirectly own shares of Capital Appreciation, approve the Reorganization Agreement. In making such determination, the Board determined that the Reorganization is in the best interests of shareholders of each of Capital Appreciation and Equity and those Owners who indirectly own shares of such Portfolios, and that the interests of such shareholders and Owners would not be diluted as a result of the Reorganization. The Board made an extensive inquiry into a number of factors, particularly, the comparative expenses incurred in the operations of Capital Appreciation and Equity. The Board also considered other factors, including, but not limited to: the compatibility of the investment objectives, policies, restrictions and portfolios of Capital Appreciation and Equity; the terms and conditions of the Reorganization which would affect the price of shares to be issued pursuant to the Reorganization; the tax-free nature of the Reorganization; and any direct or indirect costs to be incurred by Capital Appreciation and Equity in connection with the Reorganization.

9. Shareholders of Capital Appreciation will be asked to approve the Reorganization Agreement at a special meeting of shareholders of Capital Appreciation to be held February 24, 1999. Approval of the Reorganization Agreement by the Capital Appreciation shareholders requires the affirmative vote of a majority of the outstanding shares of

Capital Appreciation. The Insurance Companies will vote the shares of Capital Appreciation held in each Separate Account based on instructions received from Owners having in interest in the corresponding Capital Appreciation Sub-Account of the Separate Account. Shares of Capital Appreciation for which no instructions are received in time to be voted will be voted by the Insurance Companies in the same proportion as shares for which instructions have been received in time to be voted.

10. Applicant asserts that Capital Appreciation and Equity have similar investment objectives. Capital Appreciation has an investment objective of long-term capital appreciation and seeks to achieve its objective by investing principally in the common stocks of U.S. companies that, in the opinion of MSDW Advisors, offer the potential for either superior earnings growth and/or appear to be undervalued. Similarly, Equity has a primary investment objective of capital growth through investments, primarily in the common stock of companies believed by MSDW Advisors to have potential for superior growth. Equity has a secondary objective of income, but only when consistent with its primary objective. Capital Appreciation and Equity seek to achieve their respective investment objectives by investing, under normal circumstances, at least 65% of their total assets in common stocks and, in the case of Equity, securities convertible into common stock. Applicant states that both Portfolios have similar investment policies. The material difference in investment policies between Capital Appreciation and Equity include that the former invests significantly in ''lower priced stocks'' which may include smaller capitalized companies, whereas, the latter does not have a stated policy of investing in ''lower priced stocks.'' Further, Capital Appreciation may invest up to 10% of its total assets in foreign securities, whereas Equity has a fundamental investment restriction that it may not invest in foreign securities. Capital Appreciation may invest up to 35% of its total assets in debt securities rated Baa by Moody's Investors Service, Inc. (''Moody's'') or BBB by Standard & Poor's Corporation (''S&P''), whereas, Equity only invests in corporate debt securities rated as low as AA by S&P or Aa by Moody's.

11. Applicant states that once the Reorganization is consummated, the expenses which would be borne by shareholders of the combined Portfolio (Equity) should be substantially lower on a percentage basis than the expenses per share of Capital Appreciation. This is primarily because the management fee rate for the surviving Portfolio (Equity) is 0.25% lower than the contractual management fee rate for Capital Appreciation. Applicant also stated that Capital Appreciation's expense ratio, for its fiscal year ended December 31, 1997, was 0.97% (absent fee waivers and expense assumptions), whereas, the expense ratio for Equity Portfolio was 0.52% during the same period. There are no fee waivers or expense assumptions in effect for Equity.

12. Applicant asserts that, apart from the fact that the future cash value of the Contracts that are indirectly invested in Capital Appreciation would reflect the investment performance and expenses of Equity (instead of Capital Appreciation), the proposed Reorganization would have no economic impact on Contract values, fees or charges under these Contracts. The proposed Reorganization would also have no effect on the rights or interests of Owners, other than reducing by one the number of Trust investment options available to them through the Contracts. The proposed transaction will also not have adverse tax consequences for the Owners because any income or capital gains earned by the respective separate accounts has no effect on the taxation of the Contracts or the Owners.

**Applicant's Legal Analysis**

1. Applicant requests that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting the proposed Reorganization from the provisions of Section 17(a) of the 1940 Act, to the extent necessary to permit Equity to acquire substantially all of the assets of Capital Appreciation in exchange for the Equity Shares, as described above.

2. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of an investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the persons described above, acting as principal, from knowingly purchasing any security or other property from the investment company.

3. Section 2(a)(3) of the 1940 Act defines the term ''affiliated person,'' in relevant part, as: (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum of more of the outstanding voting securities of such other person; and (b) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by such person.

4. Applicant states that because Northbrook Life Insurance Company (''Northbrook''), one of the Insurance Companies, technically owns, through its Separate Accounts, more than 5% of the outstanding shares of Capital Appreciation and Equity, such Insurance Company is arguably a 5% affiliate of both Portfolios. Specifically, Northbrook technically owned more than 95% of the outstanding shares of each of Capital Appreciation and Equity as of November 30, 1998. If such technical ownership is of the type contemplated by Section 2(a)(3) of the 1940 Act, then such Insurance Company, through its Separate Accounts, would be an affiliated person of each of Capital Appreciation and Equity (as a result of that Insurance Company's ''ownership'' of more than 5% of each such Portfolio's shares). As a result, each Portfolio may be an affiliated person (of an affiliated person) of one another. As such, transactions between the two Portfolios may be subject to the prohibitions of Section 17(a) of the 1940 Act. Without conceding that the two Portfolios are affiliated persons of one another (or affiliated persons of affiliated persons), Applicant requests that the Commission grant an exemption from Section 17(a) in connection with the proposed transaction.

5. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in the registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

6. Applicant represents that the terms of the proposed Reorganization, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicant also represents that the proposed Reorganization is consistent with the policies of the two Portfolios as recited in the Trust's current registration statement and reports filed under the

1940 Act and with the general purposes of the 1940 Act. Based on the foregoing and as more fully analyzed below, the Applicant asserts that the Commission would have an appropriate basis from which to grant Applicant an exemptive order pursuant to Section 17(b). In fact, the Commission has exempted substantially similar transactions.

7. Applicant states that the board, including a majority of the Independent Trustees, has reviewed and approved the terms of the Reorganization as set forth in the Reorganization Agreement, including the consideration to be paid or received by all parties. Applicant also states that the Board has independently determined that the proposed Reorganization, as set forth in the Reorganization Agreement and as contemplated by Rule 17a–8 under the 1940 Act, will be in the best interests of the shareholders of each affected Portfolio and of the Owners indirectly invested in each affected Portfolio and that consummation of the Reorganization will not result in the dilution of the current interests of any shareholder or Owner.

8. Applicant states that in determining whether to recommend approval of the Reorganization Agreement to shareholders and Owners, the Board, including a majority of Independent Trustees, inquired into a number of factors, including, among others: the comparative expense ratios of the affected Portfolios; the terms and conditions of the Reorganization Agreement and whether the Reorganization would result in a dilution of shareholder (or Owner) interests; costs incurred by Capital Appreciation and Equity as a result of the proposed Reorganization; and tax consequences of the proposed Reorganization. The Trustees considered, in particular, the potential benefits of the Reorganization to shareholders and Owners, the similarity of investment objectives and policies of the affected Portfolios, the terms and conditions of the Reorganization Agreement which might affect the price of shares (or Owner interests) to be exchanged and the direct or indirect costs to be incurred by the affected Portfolios or shareholders or Owners invested in such Portfolios.

9. Applicant states that the proposed Reorganization will not in any way affect the price of outstanding shares of Equity, nor will it in any way affect the Contract values or interests of Owners indirectly invested therein. Under the Reorganization Agreement, the transfer of assets of Capital Appreciation to Equity, and the issuance of shares of Equity in exchange therefor, will be made on the basis of the relative net asset values of the two Portfolios on the closing date (as described more fully in the Reorganization Agreement). In addition, the aggregate value of Equity Shares to be issued to each Capital Appreciation Sub-Account under the Reorganization will exactly equal the aggregate value of Capital Appreciation shares held by that Sub-Account immediately prior to the proposed Reorganization. As a result, the aggregate value of all Owners' outstanding units of interest of each Capital Appreciation Sub-Account will not change on the closing date as a result of the share exchange phase of the proposed Reorganization. In addition, the Reorganization will have no impact on the value of the Owners' outstanding units of interest in any Equity Sub-Account. The proposed Reorganization will impose no tax liability upon Owners. Applicant asserts that as a result of all of the above, the Reorganization would not dilute the interests of shareholders or Owners currently invested (directly or indirectly) in Capital Appreciation or Equity.

10. Rule 17a–8 under the 1940 Act exempts from Section 17(a) mergers, consolidations or purchases or sales of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser, common directors and/or common officers. Because of the potential affiliations noted above, neither the Portfolios nor the Sub-Accounts may be able to rely on Rule 17a–8. Applicant asserts, however, that: (i) the Reorganization closely resembles transactions intended to be exempted by Rule 17a–8; and (ii) as a condition to the granting of the requested order, the Board has complied with the conditions that Rule 17a–8 requires respecting approval of the Reorganization.

**Conclusion**

Applicant requests an order of the Commission pursuant to Section 17(b) of the 1940 Act exempting the proposed Reorganization from the provisions of Section 17(a) of the 1940 Act. Applicant submits that, for all of the reasons summarized above, the terms of the proposed Reorganization as set forth in the Reorganization Agreement, including the consideration to be paid and received, are reasonable and fair to the Trust, to the affected Portfolios and the shareholders and Owners invested therein and do not involve overreaching on the part of any person concerned. Furthermore, the proposed Reorganization will be consistent with the policies of each of the affected Portfolios as recited in the Trust's registration statement and reports filed under the 1940 Act and with the general purposes of the 1940 Act.

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 99–4635 Filed 2–24–99; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–41067; File No. SR–DTC–98–13]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Frequency of Collection of the Difference Between a Participant's Required Fund Deposit and Its Actual Fund Deposit

February 18, 1999.

On June 11, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–98–13) 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 October 28, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

**I. Description**

DTC requires each of its participants to make a deposit to the participants fund. Currently, DTC calculates daily the amount a participant is required to deposit to the participant's fund (''required fund deposit''). If a participant's required fund deposit exceeds the amount a participant has deposited in the participants fund (''actual fund deposit''), DTC requires the participant to deposit the difference into the participants fund on a monthly basis.

The rule change amends this practice to enable DTC to require a participant to deposit the difference into the participants fund within two business days of the day on which the difference is calculated when two conditions are met. First, the amount of the difference must equal or exceed $500,000. Second,

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

[2] Securities Exchange Act Release No. 40588 (October 22, 1998), 63 FR 57716.