respect to upgrading this envelope to a 3-hour fire rating.

On the basis of the NRC staff evaluations discussed above, and contingent on the installation of area-wide fire detection systems, upgrading the existing Thermo-Lag fire barriers to ensure a minimum 1-hour fire rating, and continued implementation of the administrative controls previously discussed, the staff has concluded that an exemption from the technical requirements of Section III.G.2.c of Appendix R, to the extent that it requires the installation of automatic fire suppression systems, should be granted for fire areas CB–FA–2b, CB–FA–2c, CB–FA–2d, CB–FA–2e, CB–FA–2f, CB–FA–2g, CB–FA–3a, and CB–FA–3b. The staff has concluded that the licensee's exemption request for fire zone FH–FZ–5 should be denied.

IV

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee in the letter dated August 16, 1996, supplemented by letters dated August 28, 1996, and January 3, 1997, for fire areas CB–FA–2b, CB–FA–2c, CB–FA–2d, CB–FA–2e, CB–FA–2f, CB–FA–2g, CB–FA–3a, and CB–FA–3b, is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances are present in that application of the regulation is not necessary to achieve the underlying purpose of the rule, which is to establish fire protection features such that the ability to perform safe shutdown functions in the event of a fire is maintained.

Therefore, contingent on the installation of an area-wide fire detection system in the affected fire areas and upgrading the existing Thermo-Lag fire barriers within the affected fire areas to ensure a minimum 1-hour fire rating, and continued implementation of the administrative controls discussed above, the Commission hereby grants GPU Nuclear Corporation an exemption from the technical requirements of Section III.G.2.c of Appendix R, to the extent that it requires the installation of automatic fire suppression systems, for fire areas CB–FA–2b, CB–FA–2c, CB–FA–2d, CB–FA–2e, CB–FA–2f, CB–FA–2g, CB–FA–3a, and CB–FA–3b, at TMI–1. The request for exemption for fire zone FH–FZ–5, included by the licensee in the same submittal, is denied.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (62 FR 37082).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 11th day of July 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–19063 Filed 7–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company; Diablo Canyon Power Plant, Unit Nos. 1 and 2; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Pacific Gas and Electric Company (the licensee) to withdraw its January 17, 1996, as supplemented by letter dated July 17, 1996, application for proposed amendment to Facility Operating License Nos. DPR–80 and DPR–82 for the Diablo Canyon Power Plant. Unit Nos. 1 and 2, located in San Luis Obispo County, California.

The proposed amendment would have relocated selected technical specifications (TS) in accordance with the Commission's Final Policy Statement (10 CFR 50.36) for relocation of current TS that do not meet any of the screening criteria for retention. These TS would have been relocated to the Diablo Canyon Power Plant Equipment Control Guidelines. This change would also create TS 6.8.4.j, ''Explosive Gas and Storage Tank Radioactivity Monitoring Program.''

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 10, 1996 (61 FR 15991). However, by letter dated July 2, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 17, 1996, as supplemented by letter dated July 17, 1996, and the licensee's letter dated July 2, 1997, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the local public document room located at California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland this 15th day of July 1997.

For the Nuclear Regulatory Commission.

Steven D. Bloom,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–19061 Filed 7–18–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22749: File No. 812–10648]

Hotchkis and Wiley Variable Trust, et al.

July 14, 1997.

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

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

APPLICANTS: Hotchkis and Wiley Variable Trust (the ''Trust'') and Merrill Lynch Asset Management, L.P. (''MLAM'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of the Trust and shares of any other investment company or portfolio that is designed to fund insurance products and for which Hotchkis and Wiley (''H&W'') may serve in the future, as investment adviser, administrator, manager, principal underwriter, or sponsor (''Future Trusts,'' together with Trust, ''Trusts'') to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies and by qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') outside of the separate account context.

FILING DATE: This application was filed on May 9, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be

received by the Commission by 5:30 p.m. on August 8, 1997, and must 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 may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Lawrence A. Rogers, Esq., Merrill Lynch Asset Management, L.P., 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, 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 Public Reference Branch of the Commission.

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the 1940 Act as an open-end, management investment company. The Trust currently consists of three separate portfolios (each, a ''Portfolio''), each of which has its own investment objective or objectives, and policies.

2. H&W, an operating division of MLAM, serves as the investment adviser to the Trust. MLAM is a limited partnership, the general partner of which is Princeton Services, Inc. and the limited partner of which is Merrill Lynch & Co., Inc. MLAM is registered with the Commission as an investment adviser pursuant to the Investment Advisers Act of 1940.

3. Upon effectiveness of the Trust's registration statement, shares of each Portfolio will be offered to insurance companies as investment options for their separate accounts supporting variable annuity contracts (''Current Participating Insurance Companies'').

4. Applicants state that, upon the granting of the exemptive relief requested by the Application, the Trust intends to offer shares representing interests in each Portfolio, and any future Portfolios (each, a ''Future Portfolio,'' together with Portfolio ''Portfolios''), to separate accounts of insurance companies, including both the Current Participating Insurance Companies and other insurance companies (''Other Insurance Companies'') to serve as the investment vehicle for variable annuity contracts and variable life insurance contracts (collectively, ''Variable Contracts''). The Current Participating Insurance Companies and Other Insurance Companies which elect to purchase shares of one or more Portfolios are collectively referred to herein as ''Participating Insurance Companies.'' The Participating Insurance Companies will establish their own separate accounts (''Separate Accounts'') and design their own Variable Contracts. Applicants also propose that the Portfolios offer and sell their shares directly to Qualified Plans outside of the separate account context.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them 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, to the extent necessary to permit shares of the Trusts to be offered and sold to, and held by: (1) both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company (''mixed funding''); (2) separate accounts of unaffiliated life insurance companies (including both variable annuity separate accounts and variable life insurance separate accounts) (''shared funding''); and (3) trustees of Qualified Plans.

2. 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 if the separate account is organized as a unit investment trust, all the assets of which 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 insurer. Thus, the exemptions provided by Rule 6e–2 are not available if a scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares to a variable annuity separate account or a flexible premium variable life insurance separate account of the same insurance company, or to an unaffiliated life insurance company. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares to Qualified Plans.

3. Rule 6e–3(T)(b)(15) provides similar partial exemptions in connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust. These exemptions, however, are available only if all 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 contacts or flexible premium variable life insurance contracts or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Thus, the exemptions provided by Rule 6e–3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but are not available if the fund is engaged in shared funding or if the fund sells its shares to Qualified Plans.

4. Applicants state that current tax law permits the Trust to increase its asset base through the sale of its shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying Variable Contracts, such as those in each Portfolio. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the ''Regulations''), adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued

through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

5. The promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Regulations. Applicants state that, given the then-current tax law, the sale of shares of the same investment company to both the separate accounts of insurers and to Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(5) and 6e–3(T)(b)(15).

6. Section 9(a)(3) of the 1940 Act provides, among other things, that it is unlawful for any company to serve as investment adviser or principal underwriter of 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) of the 1940 Act. Rules 6e–2(b)(15) (i) and (ii) and Rule 6e–3(T)(b)(15) (i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

7. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants state that it is unnecessary to apply Section 9(a) to individuals in various unaffiliated Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) that may utilize the Trusts as the funding medium for Variable Contracts. According to Applicants, there is no regulatory purpose in extending the Section 9(a) monitoring requirements because of mixed or shared funding. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management or administration of the Trusts. Moreover, those individuals who participate in the management or administration of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans use the Trusts. Applicants argue that applying the monitoring requirements of Section 9(a) because of investment by other insurers' separate accounts would be unjustified and would not serve any regulatory purpose.

8. Applicants also state that in the case of Qualified Plans, the Plans, unlike the Separate Accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of any of the Trusts by virtue of its shareholders.

Pass-Through Voting

9. Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming that the limitations on mixed and shared funding imposed by the 1940 Act and the rules promulgated thereunder are observed.

10. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the Participating Insurance Companies the right to disregard voting instructions of contract owners. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) each provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T) under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) each provide that the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in the underlying investment company's investment policies, principal underwriter, or any investment adviser (subject to the provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T) under the 1940 Act). Applicants represent that these rights do not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard voting instructions of contract owners only with respect to certain specified items. Applicants also note that the potential for disagreement among Separate Accounts is limited by the requirements in Rules 6e–2 and 6e–3(T) that a Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good faith determinations.

11. Applicants further represent that the offer and sale of Portfolio shares to Qualified Plans will not have any impact on the relief requested in this regard. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under Section 403(a) of ERISA, shares of a fund sold to a Qualified Plan must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Plan expressly provides that the trustee(s) 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 above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

12. Where a named fiduciary to a Qualified Plan 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. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

13. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract owners and Plan investors with respect to voting of the respective Portfolio's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with

respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

14. Some Qualified Plans, however, may provide participants with the right to give voting instructions. Applicants note 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 variable contract owners. Applicants, therefore, submit that the purchase of shares of the Portfolios by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. 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. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

16. Applicants submit that shared funding by unaffiliated insurers, in this respect, is no different that 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) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential for differences in state regulatory requirements. Applicants state that the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the Portfolios. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Portfolio.

17. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. Applicants assert that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

18. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner's voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the relevant Portfolio's election, to withdraw its Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in the Portfolios.

19. Applicants submit that there is no reason why the investment policies of the Portfolios would or should be materially different from what these policies would or should be if the Portfolios funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

20. Furthermore, Applicants assert 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. A Portfolio supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the relevant Portfolio. Mixed and shared funding will broaden the base of contract owners which will facilitate the establishment of additional portfolios serving diverse goals.

21. Applicants do not believe that the sale of the shares of the Portfolios to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

22. 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. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with Regulations, adequately diversified.

23. Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The Regulations, however, contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817–5(f)(3)(iii)). Thus, the Regulations specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same portfolio of an underlying fund. For this reason, Applicants assert that neither the Code, nor the Regulations, nor the Revenue Rulings thereunder, present any inherent conflicts of interest.

24. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or a

Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Portfolio at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Plan.

25. Applicants state that it is possible to provide an equitable means of giving voting rights to contract owners in the Separate Accounts and to Qualified Plans. In connection with any meeting of shareholders, the Trusts will inform each shareholder, including each Separate Account and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Trust. 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 the Trusts 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 Portfolios to sell their shares directly to Qualified Plans does not create a ''senior security'' as such term is defined under Section 18(g) of the 1940 Act ''Senior security'' is defined under Section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts only have rights with respect to their respective shares of the Portfolio and any Future Portfolio. They only can redeem such shares at net asset value. No shareholder of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants assert that there are no conflicts between the contract owners of the Separate Accounts and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. 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 such redemptions and transfers.

28. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Portfolios and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

29. Applicants also assert that there is no greater potential for material irreconcilable conflicts arising between the interest of participants in the Qualified Plans and contract owners of the Separate Accounts from future changes in the federal tax laws than that which already exist between variable annuity contract owners and variable life insurance contract owners.

30. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Use of a Portfolio as a common investment media for variable contracts would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to variable 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 MLAM and its operating division H&W, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Portfolio, thereby promoting economics of scale, by permitting increased safety through greater diversification, or by making the addition of new Portfolios more feasible. Applicants assert that making the Portfolios available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and 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. Applicants also assert that the sale of shares of the Portfolios to Qualified Plans in addition to the Separate Accounts will result in an increased amount of assets available for investment by such Portfolios. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Portfolios more feasible.

31. Applicants see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. As noted above, Applicants assert that mixed and shared funding will have any adverse Federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of each Trust will consist of persons who are not ''interested persons'' of such Trust, 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 trustees, then the operation of this condition will be suspended: (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 Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, 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 interpretative letter, or any similar action by insurance tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the 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 Qualified Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, H&W, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Portfolio (collectively, the ''Participants'') will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified 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 Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trusts, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Portfolio and reinvesting such assets in a different investment medium, including another Portfolio, or in the case of insurance company participants submitting the question as to whether such separation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners 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 decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Trust, to withdraw such insurer's Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified 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 Plan may be required, at the election of the relevant Trust, to withdraw its investment in such Trust, 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 will be a contractual obligation of all Participants under their agreements governing participation in the Trusts, and these responsibilities will be carried out with a view only to the interests of contract owners and Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will any Trust or H&W be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any variable contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if: (a) A majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes such decision without a Plan participant vote.

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

6. Participating Insurance Companies will provide pass-through voting privileges to all contract owners as required by the 1940 Act.Accordingly, each such Participant, where applicable, will vote shares of the applicable Portfolio held in its Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in the application will be a contractual obligation of all Participating Insurance Companies under their agreement with Trust governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has no received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. Each Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, each Trust 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(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 Trust will act in accordance with the Commission's interpretation of the

requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

8. The Trusts will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Trust will disclose in its prospectus that: (a) Shares of such Trust may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust may conflict; and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

9. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from those terms and conditions associated with the exemptive relief requested in the application, then the Trusts and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

10. The Participants, at least annually, will submit to the Board of each Trust such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in the application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

11. 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 relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

12. The Trusts will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Plan executes an agreement with the relevant Trust governing participation in such Portfolio. A Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any Portfolio.

Conclusion

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

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19030 Filed 7–18–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 21, 1997.

A closed meeting will be held on Thursday, July 24, 1997, at 3:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the mattes may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, July 24, 1997, at 3:00 p.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 17, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–19196 Filed 7–17–97; 11:53 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38839; File No. SR–CBOE–97–10]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Minimum Sizes for Closing Transactions, Exercises, and Responses to Requests for Quotes in FLEX Equity Options

July 15, 1997.

I. Introduction

On February 21, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to amend certain rules pertaining to FLEX Equity Options.

Notice of the proposal was published for comment and appeared in the **Federal Register** on May 16, 1997.[3] No comment letters were received on the proposed rule change, although the CBOE submitted a letter with additional information in support of its proposal.[4] This order approves the Exchange's proposal.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38607 (May 9, 1997), 62 FR 27083.

[4] *See* Letter from William J. Barclay, Vice President, Strategic Planning and International Development, CBOE, to Sharon Lawson, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated April 21, 1997 (''CBOE Letter'').