3. Applicant Insurance Companies shall have satisfied themselves, that (i) the Variable Contracts allow the substitution of investment in the manner contemplated by the Substitutions and related transactions described herein; (ii) the transactions can be consummated as described in the application under applicable insurance laws; and (iii) that any regulatory requirements in each jurisdiction where the Variable Contracts are qualified for sale, have been complied with to the extent necessary to complete the transactions.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act prohibits any depositor or trustee of a unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. Section 26(b) of the 1940 Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitutions. Applicants maintain that the Substitutions, if implemented, would not raise any of the concerns that Congress sought to address when the 1940 Act was amended to include this provision (e.g., that a substitution might force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring additional sales or surrender charges.) Applicants also maintain that, subject to the terms and conditions summarized in this notice, the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Section 17(a)(1) and (2) of the 1940 Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling to or purchasing a security from such registered investment company. Applicants may be deemed to be affiliates of one another based upon the definition of ''affiliated person'' in Section 2(a)(3) of the 1940 Act. Because the Substitutions and subsequent combination of subaccounts will be effected by means of an in-kind redemption and purchase, Applicants state that the Substitutions may be deemed to involve one or more purchases or sales of securities or property between a registered investment company and its affiliates.

4. Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting the Substitutions and related transactions from the provisions of Section 17(a) of the 1940 Act. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting proposed transactions from the prohibition of Section 17(a) if: (i) The terms of the proposed transaction, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of each registered investment company concerned; and (iii) the proposed transaction is consistent with the general purposes of the 1940 Act.

5. Applicants represent that the terms of the proposed transactions, 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 maintain that the interests of Contractholders will not be diluted and that the Substitutions will not effect any change in economic interest, contract value, or the dollar value of any Variable Contract held by an Affected Contractholder.

6. Applicants also state that the Substitutions will take place in accordance with procedures, adopted by the Board of Trustees of each of the GCG Trust and the ESS Trust, respectively, designed to meet the requirements enumerated in Rule 17a–7 under the 1940 Act, except that transactions be effected in cash. Although the relief afforded by Rule 17a–7 is not available in connection with the Substitutions, Applicants submit that structuring the Substitutions to comply with the requirements of that rule provides a strong basis upon which the Commission may base a finding that the standards necessary to grant an order of exemption pursuant to Section 17(b) of the 1940 Act have been satisfied.

7. Applicants represent that the transactions are consistent with the investment policy of each investment company involved, as recited in the current prospectus relating to each investment company, and the general purposes of the 1940 Act, and do not present any of the conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitutions and related transactions should be granted.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98–19651 Filed 7–22–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23318; 812–11104]

The RBB Fund, Inc. and BEA Associates; Notice of Application

July 16, 1998.

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

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit a fund of funds relying on section 12(d)(1)(G) to invest directly in securities and other instruments.

APPLICANTS: The RBB Fund, Inc. (the ''Company'') and BEA Associates (''BEA''). The requested order also would extend to any existing or future open-end management investment company or series thereof advised by BEA (an ''Upper Tier Fund'') that wishes to invest in a registered open-end management investment company or series thereof that is advised by BEA and is part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) (together with the series of the Company excluding the BEA Long-Short Equity Fund, the ''Underlying Funds'') as the investing Upper Tier Fund.[1]

FILING DATES: The application was filed on April 15, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on

[1] All existing entities that currently intend to rely on the order are named as applicants and any Upper Tier Fund that may rely on this order in the future will do so only in accordance with the terms and conditions of the application.

August 10, 1998, 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 by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, 153 East 53rd Street, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

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

Applicant's Representations

1. The Company, an open-end management investment company registered under the Act and organized as a Maryland corporation, currently consists of twenty-two series (the ''Funds''). BEA, an investment adviser registered under the Investment Advisers Act of 1940, is the investment adviser for twelve of the Funds, including the BEA Long Short Equity Fund (the ''Equity Fund'') and the BEA Long-Short Market Neutral Fund (the ''Market Neutral Fund'').

2. The Equity Fund will seek a total return greater than that of the Standard & Poor's 500 Composite Stock Price Index (the ''S&P 500 Index'') by investing in shares of the Market Neutral Fund, while also investing in S&P 500 Index futures, options on S&P 500 Index futures, and equity swap contracts (collectively, ''Index Securities''). The Market Neutral Fund seeks long-term capital appreciation while maintaining minimal exposure to general equity market risk by taking long positions in stocks that BEA has identified as undervalued and short positions that BEA has identified as overvalued. By investing in shares of the Market Neutral Fund, the Equity Fund seeks to add the return generated by the ''market neutral strategy'' of the Market Neutral Fund. The Equity Fund and the Upper Tier Funds would also like to retain the flexibility to invest in securities and financial instruments, including financial futures, swaps, reverse repurchase agreements, and options on currencies.

3. With respect to the Market Neutral Fund and the Equity Fund, BEA intends to reduce its advisory fees and bear certain expenses to the extent that each Fund's total annual operating expenses (excluding nonrecurring account fees and extraordinary expenses) exceed a specified percentage of net assets, and, in the case of the Market Neutral Fund, a performance adjustment will be applied to the advisory fee of the Market Neutral Fund. Any advisory fee that BEA charges to the Equity Fund or Upper Tier Funds will be for services that are in addition to, rather than duplicative of, services provided to the Market Neutral Fund and the Underlying Funds. Applicants believe that the proposed operation of the Equity Fund and Upper Tier Funds will benefit shareholders by lowering transaction and operational costs.

Applicants' Legal Analysis

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

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) The acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) by a securities association registered under section 15A of the Securities Exchange Act of 1934 or the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G).

3. Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that the Equity Fund's investment policies contemplate that it will invest in Index Securities and other securities and financial instruments.

4. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent the exemption is consistent with the public interest and the protection of investors. Applicants believe that permitting the Equity Fund or other Upper Tier Funds to invest in securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

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

1. Before approving any advisory contract under section 15 of the Act, the board of directors of the Company on behalf of the Equity Fund or Upper Tier Fund, including a majority of the directors who are not ''interested persons'' as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Fund's advisory contract. The finding, and the basis upon which the finding was made, will be recorded fully in the Company's minute books on behalf of the Equity Fund or Upper Tier Fund.

2. Applicants will comply with all provisions of section 12(d)(1)(G) of the Act, except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Equity Fund or an Upper Tier Fund from investing in securities as described in the application.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98–19650 Filed 7–22–98; 8:45 am]

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