custodian,'' [4] the foreign custody manager must determine that, based on its consideration of specified factors, the fund's assets will be subject to reasonable care if maintained with that custodian. The foreign custody manager also must determine that, based on the same factors, the written contract that governs each custody arrangement with the foreign custodian (or the set of depository rules or practices or the combination of a contract and rules or practices) will provide reasonable care for fund assets. The written contract (or equivalent rules or practices) must contain either certain specified provisions, or other provisions that provide the same or a greater level of care for fund assets. In addition, the foreign custody manager must establish a system to monitor the contract that governs each custody arrangement and the appropriateness of maintaining the fund's assets with a particular foreign custodian.

The collections of information required under rule 17f–5 are intended to further the protection of fund assets held in foreign custody arrangements permitted under the rule, which are more flexible than the foreign custody arrangements permitted under the Act. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board considers carefully each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight.

The requirement that each custody arrangement be governed by a written contract (or equivalent rules or practices) that contains specified provisions or other provisions that provide an equivalent level of care is intended to ensure that each arrangement is subject to certain minimal contractual safeguards.[5] The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the foreign custody manager periodically reviews each custody arrangement and takes any action necessary or appropriate when changes in circumstances could threaten fund assets.

The Commission estimates that during the first year when funds are required to comply with the 1997 amendments to rule 17f–5, the boards of directors of approximately 3,690 portfolios that use foreign custody arrangements will delegate responsibility for their arrangements to approximately 15 U.S. bank custodians and approximately 650 investment advisers.[6]

The Commission estimates that the board of each portfolio will expend approximately 2 burden hours during the first year in determining that the board may reasonably rely on each of two delegates to evaluate the portfolio's foreign custody arrangements, for a total of 7,380 burden hours for all 3,690 portfolios. The Commission estimates that each U.S. custodian bank will expend approximately (i) 400 burden hours in determining for some 250 portfolios that a written contract containing required terms governs each foreign custody arrangement and that each contract will provide reasonable care for fund assets; (ii) 96 burden hours in establishing a system for monitoring custody arrangements and contracts; and (iii) 400 burden hours in providing periodic reports to fund boards; for a total of 13,440 burden hours for all 15 U.S. bank custodians. The Commission estimates that each investment adviser will expend approximately (i) 10 burden hours in determining for some 6 portfolios that a written contract containing required terms governs each foreign custody arrangement and that each contract will provide reasonable care for fund assets; (ii) 24 burden hours in establishing a system for monitoring certain arrangements and contracts; and (iii) 10 burden hours in providing periodic reports to fund boards; for a total of 28,600 burden hours for all 650 investment advisers.

The total annual burden of the rule's paperwork requirements for all portfolios, U.S. bank custodians, and investment advisers therefore is estimated to be 49,420 hours. This estimate represents an increase of 40,680 hours from the prior estimate of 8,740 hours. Approximately 30,680 hours of the increase are attributable to updated information about the number of affected portfolios and other entities, and to a more accurate calculation of the component parts of some information burdens. Approximately 10,000 hours of the increase are attributable to the adoption of rule amendments not fully addressed in the prior estimate.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Officer Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 25, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–23612 Filed 9–1–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23414; File No. 812–11158]

Life & Annuity Trust, et al.; Notice of Application

August 26, 1998.

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

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

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[4] ''Eligible foreign custodians'' under the rule generally include foreign banks and trust companies, national or transnational securities depositories, and majority-owned subsidiaries of U.S. banks or bank holding companies. The compliance date for this amended definition of eligible foreign custodian remains June 16, 1998.

[5] The requirement that the foreign custody manager determine that the custody contract (or equivalent rules or practices) will provide reasonable care for fund assets is intended to ensure that the foreign custody manager weights the adequacy of contractual obligations when it determines whether the foreign custodian will maintain the fund's assets with reasonable care.

[6] The Commission estimates that these 3,690 portfolios are divided among approximately 1,327 registered funds within approximately 650 fund complexes that may share the same board of directors, U.S. bank custodian, investment adviser, or all these entities. The board of directors and its foreign custody delegates for a fund complex could therefore meet rule 17f–5's requirements by making similar arrangements for an average of 6 portfolios at the same time. The Commission also estimates that each portfolio has foreign custody arrangements with an average of 10 foreign custodians (i.e., 1 bank and 1 securities depository in each of 5 countries).

SUMMARY: Applicants seek an order pursuant to Section 6(c) of the 1940 Act for 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 to the extent necessary to permit shares of Life & Annuity Trust (''Trust'') and shares of any other investment company or portfolio that is designed to fund insurance products and for which Wells Fargo Bank (''Wells Fargo'') may serve in the future, as investment manager, investment adviser, or administrator (''Future Trusts'') (the Trust together with Future Trusts are the ''Trusts'') to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts (''Variable Contracts'') issued by both affiliated and unaffiliated life insurance companies and by qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') outside of the separate account context.

APPLICANTS: Life & Annuity Trust and Wells Fargo Bank, N.A.

FILING DATE: The application was filed on May 28, 1998. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 21, 1998, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester'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 Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission: 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o C. David Messman, Esq., Wells Fargo Bank, 111 Sutter Street, 18th Floor, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Susan M. Olson, 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, 450 Fifth Street, NW., Washington, DC 20549 (202–942–8090).

Applicants' Representations

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

2. Wells Fargo, a bank as defined in Section 2(a)(5) of the 1940 Act, is a wholly owned subsidiary of Wells Fargo & Company, and serves as the investment adviser and administrator to the Trust.

3. Shares representing interests in each Fund are currently offered to insurance companies (each a ''Current Participating Insurance Company'') as an investment vehicle for separate accounts supporting Variable Contracts.

4. The Trust intends to offer shares representing interests in each Fund, and any other portfolios established by the Trust (''Future Portfolios'') (Fund, together with Future Portfolios are the ''Portfolios'' or each a ''Portfolio''), to separate accounts of both the Current Participating Insurance Companies and other insurance companies (''Other Insurance Companies'') to serve as the investment vehicle for Variable Contracts. The Current Participating Insurance Companies and Other Insurance Companies that elect to purchase shares of one or more Portfolios are collectively referred to herein as ''Participating Insurance Companies.'' The Participating Insurance Companies have or will establish their own separate accounts (''Separate Accounts'') and design their own Variable Contracts. Applicants also propose that the Portfolios may offer and sell their shares directly to Qualified Plans or Plans outside the separate account context.

Applicants' Legal Analysis

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

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust (''UIT'') under the 1940 Act, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. Rule 6e–2(b)(15) provides these exemptions only where all of the assets of the UIT are shares of management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company. Therefore, the relief granted by Rule 62–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers it shares to a variable annuity or flexible premium variable life insurance separate account of the same company.

3. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) similarly provides partial exemptions from Section 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies which offer to sell their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible contracts, or both, or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, Rule 6e–3(T) permits mixed funding while not permitting shared funding.

5. In addition, neither Rule 6e–2 nor Rule 6e–3(T) contemplate that shares of the underlying portfolio funding Variable Contracts might also be soled to Qualified Plans. The use of a common management investment company as the underlying investment medium for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, and the Qualified Plans, is referred to herein

as ''extended mixed and shared funding.''

6. Applicants state that current tax law permits the Trust to increase its asset base by selling 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 Fund. 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 such portfolios 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 Qualified Plans to hold shares of an investment company portfolio, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company portfolio as an adequately diversified underlying investment for variable contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii).

7. Applicants note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations which made it possible for shares of an investment company portfolio to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company portfolio also to be held by the separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same portfolio to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Section 9(a)(3) of the 1940 Act provides 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). Rules 6e-2(b)(15)(i) and (ii) and Rules 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 imposed on mixed and shared funding 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.

9. Applicants state that the partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) under the 1940 Act 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 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 those 1940 Act rules further recognize that it also is unnecessary to apply Section 9(a) of the 1940 Act to individuals in various unaffiliated 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 not regulatory purpose in extending the Section 9(a) monitoring requirements because of extended mixed or shared funding. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Trusts. Those individuals who participate in the management 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) of the 1940 Act because of investment by separate accounts of other insurers or Qualified Plans would be unjustified and would not serve any regulatory purpose.

10. 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. It is not anticipated that a Qualified Plan would be an affiliated person of any of the Trusts by virtue of its shareholders.

11.Rules 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 the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder are observed.

12. Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying 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 Rule 6e-2 and 6e-3(T) under the 1940 Act.

13. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in such insurance company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other 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).

14. 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 the Employee Retirement Income Security Act (''ERISA''), shares of a portfolio 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.

15. 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 direction. 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.

16. 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 holders 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 required to pass-through voting privileges.

17. Applicants state that even if a Qualified Plan were to hold a controlling interest in a Portfolio, Applicants do not believe that such control would disadvantage other investors in such Portfolio to any greater extent than is the case where any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Portfolio by a Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

18. Where a Plan provides participants with the right to give voting instructions, Applicants see 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 holders. The purchase of shares of Portfolios by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

19. Applicants state that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. 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.

20. Applicants state that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) 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, if any exists, for differences in state regulatory requirements. In any event, 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.

21. 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. 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.

22. Applicants state that a particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' 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 Trust's election, to withdraw its Separate Account's investment in such Portfolio. 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.

23. 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.

24. Applicants state 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.

25. 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.

26. As noted above, Section 817(h) of the Code imposes certain diversification

standards on the underlying assets of Variable Contracts held in an underlying mutual fund. 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 prescribed in the Treasury Department, adequately diversified.

27. 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. However, the Regulations 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 such shares 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 underlying fund. For this reason, Applicants have concluded that neither the Code, nor Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest.

28. 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 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.

29. Applicants determined 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 agreement with a Trust concerning participation in the relevant Portfolio. 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 Portfolios 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.

30. Applicants further concluded that the ability of the Trusts to sell shares of Portfolios directly to Qualified Plans does not create a senior security. ''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 Separate Accounts only have rights with respect to their respective shares of the Portfolios. They only can redeem such shares at net asset value. No shareholder of a Portfolio has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

31. Applicants submit that there are no conflicts between the contract owners of the Separate Accounts and of the 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.

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

33. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests 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 exists between variable annuity contract owners and variable life insurance contract owners. Applicants recognize that the foregoing is not an all inclusive list, but rather is representative of issues which they believe are relevant. Applicants believe that the sale of shares of the Portfolios to Qualified Plans does not increase the risk of material irreconcilable conflicts of interest. Further, Applicants submit that the use of the Portfolios with respect to Qualified Plans is not substantially dissimilar from the Portfolio's anticipated use, in that Qualified Plans, like Variable Contracts, are generally long-term retirement vehicles.

34. 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 Wells Fargo, 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 economies of scale, by permitting increased safety through greater diversification, or by making the addition of new Portfolios more feasible. Therefore, 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.

35. Applicants submit that, regardless of the type of shareholder in a Fund or Future Portfolio, Wells Fargo is or would be contractually and otherwise obligated to manage the Fund or such Future Portfolio solely and exclusively in accordance with that portfolio's investment objectives, policies and restrictions as well as any guidelines established by the Board of Trustees or Directors of such Trust (the "Board"). Wells Fargo will work with a pool of money and will not take into account the identity of the shareholders. Thus, each Fund and any Future Portfolio will be managed in the same manner as any other mutual fund.

36. 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 not 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, or Trusts, 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, Wells Fargo, 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 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 reasonable 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 segregation 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 participating 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 Wells Fargo 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 irreconcilable 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, such Participants, 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 obligations to calculate voting privileges as provided in the Application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not 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 (although the Trust are not trusts of the type described in the 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 Trust will notify all Participants that separate account prospectus disclosure regarding potential risk of mixed and shared funding may be appropriate. Each Trust will disclose in its prospectus that: (a) shares of Trust may be offered to insurance company separate accounts for both variable annuity and variable life insurance contracts and, if applicable 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, if applicable 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 any exemptions granted in the Order requested in the Application, then the Trust 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 the 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 that includes these conditions to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Portfolio.

Conclusion

For the reasons summarized above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Johathan Katz,

Secretary.

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SMALL BUSINESS ADMINISTRATION

[License No. 07/07–0101]

Bome Investors, Inc.; Notice of Issuance of a Small Business Investment Company License

On February 26, 1997, an application was filed by Bome Investors, Inc. at 8000 Maryland Avenue, Suite 1190, St. Louis, Missouri 63105, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA