(Project Gregory) to be constructed in Gregory, Texas and to issue guarantees in an aggregate amount not to exceed $200 million. Project Gregory is a 550 megawatt electric and steam production facility that, once operational, will be a ''qualifying facility'' under the Public Utility Regulatory Policies Act of 1978 and rules thereunder.

In June, 1998, Columbia Electric and LG&E Power Inc. (''LG&E'') entered into an agreement to participate in the development, construction, start-up, operation, maintenance, financing, and ownership of Project Gregory. The assets of Project Gregory will be held by Gregory Power Partners, L.P., a special purpose limited partnership that will be jointly owned by subsidiaries of Columbia Electric and LG&E. Columbia Electric Gregory General Corporation will hold a 1% interest as a general partner of Gregory Power Partners, L.P. and Columbia Electric Gregory Limited Corporation will hold a 49% interest as a limited partner on behalf of Columbia Electric. LG&E Power Gregory IV, Inc. will hold a 1% interest as a general partner and LG&E Power Gregory I, Inc. will hold a 49% interest as a limited partner on behalf of LG&E.

A second special purpose entity, Gregory Partners, LLC will provide administrative and advisory services to Project Gregory. Columbia Electric Gregory Remmington Corporation will hold a 1% interest as member-manager, and Columbia Electric Gregory Member Corporation will hold a 49% interest as a member of Gregory Partners, LLC on behalf of Columbia Electric. LG&E Power Gregory II, Inc. will hold a 1% interest as a member-manager, and LG&E Power Gregory III, Inc. will hold a 49% interest as a member of Gregory Partners, LLC on behalf of LG&E.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29972 Filed 11–6–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23516; File No. 812–11128]

The Wright Managed Blue Chip Series Trust, et al.; Notice of Application

November 2, 1998.

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

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to permit shares of The Wright Managed Blue Chip Series Trust and any similar investment companies for which Wright Investors' Service, Inc., or any of its affiliates may in the future serve as investment adviser, administrator, principal underwriter or sponsor to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated participating life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

Applicants: The Wright Managed Blue Chip Series Trust (the ''Trust'') and Wright Investors' Service, Inc. (''Wright'' or ''the Adviser'').

Filing Dates: The application was filed on April 27, 1998, and amended on August 6, 1998, and October 9, 1998.

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 November 27, 1998, and must be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and this issues contested, Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Mr. A. M. Moody III, Wright Investors' Service, Inc., 1000 Lafayette Boulevard, Bridgeport, Connecticut 06604.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: the following is a summary of the application. the complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW, Washington, DC (tel. (202) 942–8090).

Applicants' Representations

1. the Trust is organized as a Massachusetts business trust and is registered under the 1940 Act as an open-end management investment company. It currently consists of three separate investment portfolios (''Portfolios''), each with its own investment objectives and policies.

2. Wright, a registered investment adviser under the Investment Adviser Act of 1940, is the investment adviser for each Portfolio.

3. the Trust will offer shares of its Portfolios to separate accounts of insurance companies to serve as the investment medium for variable annuity contracts and variable life insurance policies, as well as to qualified pension and retirement accounts and other appropriate investors.

4. The Trust and any other similar investment companies that the Adviser or any of its affiliates may manage or serve as investment adviser, administrator, principal underwriter or sponsor for in the future (the Trust and such similar investment companies are collectively referred to herein as the ''Funds'') would offer shares to separate accounts that are registered under the 1940 Act as unit investment trusts (''Separate Accounts'') and that serve as investment vehicles for variable insurance contracts issued by affiliated and unaffiliated participating life insurance companies. Variable insurance contracts may include variable annuity contracts, variable life insurance contracts and variable group life insurance contracts. Separate accounts to which the shares of the Funds would in the future be offered also include separate accounts that are not registered as investment companies under the 1940 Act pursuant to the exceptions from registration in Sections 3(c)(1) and 3(c)(11) of the 1940 Act. In addition, the Funds may offer shares to separate accounts serving as investment vehicles for other types of insurance products, which may include variable annuity contracts, scheduled premium variable life insurance contracts, single premium variable life insurance contracts, modified single premium variable life insurance contracts, and flexible premium variable life insurance contracts. (All insurance contracts reference in this paragraph are collectively referred to as ''Variable Contracts.'' insurance companies whose separate account or accounts would own share of the Funds are referred to as ''participating insurance companies.'')

5. The Funds also intend to offer shares directly to Qualified Plans

described in Treasury Regulation § 1.817–5(f)(3)(iii).

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) thereof, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to: (a) permit ''mixed'' and ''shared'' funding as defined below; and (b) allow shares of the Funds to be sold to and held by Qualified Plans.

2. Section 6(c) authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities, or transactions, from any provision of the 1940 Act, or the rules or regulations thereunder, if and to the extent that such exemption is necessary or 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.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through Separate Accounts, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the Separate Account (''underlying fund'') offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis supplied). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to as ''mixed funding.'' In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies is referred to as ''shared funding.''

4. The relief granted by Rule 6e–2(b)(15) is in no way affected by the purchase of shares of the Funds by Qualified Plans. However, because the relief under Rule 6e–2(b)(15) is available only where shares are offered *exclusively* to separate accounts, additional exemptive relief is necessary if the shares of the Funds are also to be sold to Plans.

5. In connection with the funding of flexible premium variable life insurance contracts issued through a Separate Account, Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T) are available only where the Separate Account's underlying fund offers its shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled [premium variable life insurance] contracts 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'' (emphasis supplied). Therefore, Rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding.

6. The relief granted by Rule 6e–3(T) also is in no way affected by the purchase of shares of the Funds by Qualified Plans. However, because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if the shares of the Funds are also to be sold to Plans.

7. Section 9(a) of the 1940 Act provides that it is unlawful for any person to serve as an investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that person is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provides exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying fund.

8. Applicants state that the partial relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), 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 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 an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert, therefore, that there is no regulatory purpose in extending the monitoring requirements to embrace a full application of the eligibility restrictions of Section 9(a) because of mixed funding or shared funding.

9. Applicants state that the relief requested herein will not be affected by the proposed sale of shares of the Funds to Qualified Plans because the Qualified Plans are not investment companies and will not be deemed to be affiliates by virtue of their shareholdings in the Funds.

10. Sections 13(a), 15(a) and 15(b) of the 1940 Act require ''pass-through'' voting with respect to management investment company shares held by a separate account. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from the pass-through voting requirement. More specifically, the Rules 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 and subject to certain requirements. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to other provisions of Rules 6e–2 and 6e–3(T)).

11. Rules 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts, and is subject to extensive state regulation. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance

regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. Applicants assert that the Commission therefore deemed such exemptions necessary to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same factors.

12. Applicants further represent that the Funds' sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. Shares of the Funds sold to such Plans would be held by the trustees of such Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the assets of the plan, with two exceptions: (a) when the plan expressly provides that the trustee(s) is subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. In any event, there is no pass-through voting to the participants in such plans. 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 Qualified Plans.

13. Applicants submit that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants state that 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. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants submit that the conditions discussed 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 affected Fund. This requirement will be provided for in agreements that will be entered into by participating insurance companies with respect to their participation in the Funds.

15. Rules 6e–2(b)(15) and 6e[3(T)(b)(15) permit an insurance company to disregard contract owners' voting instructions. Applicants submit that this does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Applicants note that Rules 6e–2 and 6e–3(T) both require that disregard of voting instructions by an insurance company be reasonable and based on specific good faith determinations. If the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at a Fund's election, to withdraw its separate account's investment in such Fund. No charge or penalty would be imposed as a result of such withdrawal.

16. Applicants submit that there is no reason why the investment policies of the Funds providing mixed funding would or should be materially different from what those policies would or should be if the Funds funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. In this regard, Applicants note that each type of variable insurance product is designed as a long-term investment program. In addition, each Fund will be managed to attempt to achieve the Fund's investment objective or objectives, and not to favor or disfavor any particular participating insurer or type of variable insurance product.

17. Furthermore, Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. An underlying fund supporting even one type of insurance produce must accommodate these diverse factors in order to attract and retain purchasers.

18. Applicants note that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, the Treasury Regulations, nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

19. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account or the Plan will redeem shares of the Funds at their respective net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Plan, and the life insurance company will make distributions in accordance with the terms of the Variable Contract.

20. With respect to voting rights, Applicants submit that it is possible to provide an equitable means of giving such voting rights to Separate Account contract owners and to the trustees of Qualified Plans. Applicants represent that the transfer agent for the Funds will inform each participating insurance company of its share ownership in each Separate Account, as well as inform the trustees of Qualified Plans of their

holdings. Each participating insurance company will then solicit voting instructions in accordance with the ''pass-through'' voting requirements of Rules 6e–2 and 6e–3(T).

21. Applicants argue that the ability of the Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term if defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of participants under the Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts have rights only with respect to their respective sharesof the Funds. Such shares may be redeemed only at their net asset value. No shareholder of any of the Funds will have any preference over any other shareholder with respect to distribution of assets or payment of dividends.

22. Applicants submit that there are no conflicts between the contract owners of the Separate Accounts and the participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem shares of one underlying fund held by their separate accounts and invest in another underlying fund. Complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, trustees of qualified Plans can make the decision quickly and implement the redemption of their shares from the Funds and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even if there should arise issues where the interests of contract owners and the interests of Qualified Plans are in conflict, the issues can be resolved almost immediately because the trustees of the Qualified Plans can, on their own, redeem the shares out of the Funds.

23. Applicants submit that various factors have limited the number of insurance companies that offer variable annuities and variable life insurance policies. 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. Applicants submit that use of the Funds as a common investment medium for Variable Contracts would help alleviate these concerns. Applicants submit that mixed and shared funding also should benefit variable contract owners by: eliminating a significant portion of the costs of establishing and administering separate funds; creating a greater amount of assets available for investment by the Funds, thereby promoting economies of scale which permit increased safety of investments through greater diversification and make the addition of new portfolios more feasible; and encouraging more insurance companies to offer Variable Contracts, which should result in increased competition with respect to both the design and pricing of Variable Contracts, which, in turn, can be expected to result in more product variation and lower charges.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the board of trustees (''Board'') of each of the Funds will consist of persons who are not ''interested persons'' of the Funds, 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. However, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee(s), 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 note 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. The Boards will monitor their respective Funds for the existence of any material irreconcilable conflict among the interests of the contract owners of all Separate Accounts investing in the Funds and all other persons investing in the Funds, including Qualified Plans. 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 any series of the Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

3. Participating insurance companies and any Qualified Plan that executes a participation agreement with a Fund (collectively, ''Participating Parties'') and the Adviser will report any potential or existing conflicts of which it becomes aware to the Board of the relevant Fund. Participating Parties and the Adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Parties under their participation agreements and these agreements will provide that these responsibilities will be carried out with a view only to the interests of the contract owners and Qualified Plan participants.

4. If it is determined by a majority of the Board of a Fund, or a majority of its disinterested trustees, that a material irreconcilable conflict exists, the relevant Participating Parties will, at their 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. These steps may include: (a) withdrawing the assets allocable to some or all of the Separate Accounts of the participating insurance companies from the affected Fund or any series thereof and reinvesting these assets in a different investment medium (including another series, if any, of such Fund) or submitting the question of 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, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the participating Qualified Plans from the

relevant Fund and reinvesting those assets in a different investment medium; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its Separate Account's investment in the Fund, and no change or penalty will be imposed as a result of the 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 Participating Parties under their participation agreements and these responsibilities will be carried out with a view only to the interests of the contract owners and participating in Qualified Plans, as applicable.

5. For the purposes of condition (4), a majority of the disinterested members of the Board of the affected Fund will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any Variable Contract or Qualified Plan. No participating insurance company will be required by condition (4) to establish a new funding medium for any Variable Contract if an offer to do so has been declined by vote of a majority of contract owners materially and adversely affected by the material irreconcilable conflict.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications will be make known promptly in writing to the Adviser and all Participating Parties.

7. As to Variable Contracts issued by Separate Accounts, participating insurance companies will provide pass-through voting privileges to all participants so long as and to the extent that the Commission continues to interpret the 1940 Act to require pass-through voting privileges for Variable Contract owners. As to Variable Contracts issued by unregistered separate accounts, pass-through voting privileges will be extended to participants to the extent granted by the issuing insurance company. Participating insurance companies will be responsible for assuring that each of their registered Separate Accounts participating in a Fund calculate voting privileges as instructed by a Fund with the objective that each such participating insurance company calculate voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Fund will be a contractual obligation of all participating insurance companies under their participation agreements. Each participating insurance company will vote Fund shares held by Separate Accounts for which it has not received voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received voting instructions.

8. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the Fund's shares). In particular the Funds will either provide for annual meetings (except insofar as the Commission may interpret Section 16 not to require such meetings) or, if annual meetings are not held, comply with Section 16(c) of the 1940 Act (although the Trust is not, and the Funds may not be, one of the trusts described in Section 16(c) of the 1940 Act) as well as with Sections 16(a) and, if and when applicable, 16(b). Further, the Funds will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic election of Trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Funds will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its registration statement that: (a) shares of the Fund are offered to insurance company separate accounts offered by various participating insurance companies which fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) due to differences in tax treatment or other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund might at some time conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken in response to a conflict.

10. No less often than annually, the Participating Parties and/or the Adviser will submit to the Boards such reports, materials or data as each Board may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the application. These reports, materials, and data will be submitted more frequently if deemed appropriate by the relevant Board. The obligations of the Participating Parties to provide these reports, materials and data to the Boards will be contractual obligations of all Participating Parties under the participation agreements.

11. All reports received by a Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying the Adviser or Participating Parties of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and these minutes or other records will be made available to the Commission upon request.

12. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from those of any exemptions granted in the order requested in this application, then the Funds and/or the Participating Parties, as appropriate, will take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent these rules are applicable.

13. In the event that a Qualified Plan should ever become an owner of 10% or more of the assets of a Fund, such Qualified Plan will execute a participation agreement with the Fund. A Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of each Fund.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29862 Filed 11–6–98; 8:45 am]

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