Occupational Health and Safety Administration, U.S. Department of Transportation, and U.S. Department of Health and Human Services. Representatives from the Office of Science and Technology Policy, Office of Management and Budget, and States are observer members on ISCORS.

NUREG–1707 is on the NRC website at *http://www.nrc.gov/NRC/*NUREGS/SR1707/index.html. Copies of NUREG–1707 may also be examined or copied for a fee at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001; telephone 202–634–3273; fax 202–634–3343. NRC publications in the NUREG series may also be purchased from one of the following sources:

The Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328, *http://www.access.gpo.gov/su__*docs 202–512–1800

The National Technical Information Service, Springfield, VA 22161–0002, *http://www.ntis.gov/ordernow,* 703–487–4650

For Further Information, Contact: Patricia A. Santiago, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone 301–415–7269; fax 301–415–5398; E-mail *pas2@NRC.GOV*.

Dated at Rockville, Maryland, this 17th day of June, 1999.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–22649 Filed 8–30–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Medical Reports.

(2) *Form(s) submitted:* G–3EMP, G–250, G–250a, G–260, RL–11b, RL–11d.

(3) *OMB Number:* 3220–0038.

(4) *Expiration date of current OMB clearance:* 12/31/1999.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other-for-profit, non-profit institutions, state, local or tribal government.

(7) *Estimated annual number of respondents:* 29,950.

(8) *Total annual responses:* 29,950.

(9) *Total annual reporting hours:* 12,417.

(10) *Collection description:* The Railroad Retirement Act provides disability annuities for qualified railroad employees whose physical or mental condition renders them incapable of working in their regular (occupational disability) or any occupation (total disability). The medical reports obtain information needed for determining the nature and severity of the impairment.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc 99–22548 Filed 8–30–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–19 and Form X–17A–19, SEC File No. 270–148, OMB Control No. 3235–0133

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension on the following rule:

Rule 17a–19 requires National Securities Exchange and Registered National Securities Associations to file a Form X–17A–19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examinating authority may be necessary.

It is anticipated that approximately eight National Securities Exchanges and Registered National Securities Associations collectively will make 3,000 total annual filings pursuant to Rule 17a–19 and that each filing will take approximately 15 minutes. The total burden is estimated to be approximately 750 total annual hours.

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 the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 23, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22549 Filed 8–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23966; File No. 812–11516]

Mitchell Hutchins Series Trust, et al.; Notice of Application

August 24, 1999.

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

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (''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 of exemption to the extent necessary to permit shares of the Mitchell Hutchins Series Trust (''Fund'') and shares of other Insurance Products Funds, as defined below, to be sold to and held by: (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance

companies; and (b) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

Applicants

Mitchell Hutchins Series Trust and Mitchell Hutchins Asset Management Inc.(''Mitchell Hutchins'').

Filing Date

The Application was filed on February 19, 1999, and amended and restated on August 13, 1999.

Hearing or Notification of Hearing

An order (''Order'') granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 20, 1999, and should 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 writer's interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Dianne E. O'Donnell, Deputy General Counsel, Mitchell Hutchins Asset Management Inc., 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, 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 Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (202–942–8090).

Applicants' Representations

1. The fund is a Massachusetts business trust registered under the 1940 Act as an open-end management company. The Fund currently is comprised of thirteen separately managed series, each of which consists of two classes of shares and has its own investment objective and policies. Additional series could be added in the future. Other Insurance Products Funds are those other investment companies or investment company series for which Mitchell Hutchins, PaineWebber Incorporated (''PaineWebber'') or any of their affiliates serve, now or in the future, an investment adviser, administrator, manager, principal underwriter or sponsor and which offer their shares only to insurance company separate accounts.

2. Mitchell Hutchins serves as the investment adviser and administrator for each of the Fund's series. Mitchell Hutchins is a wholly owned asset management subsidiary of Paine Webber, which in turn is a wholly owned subsidiary of Paine Webber Group Inc. (''PW Group''), a publicly held financial services holding company.

3. Pacific Investment Management Company (''PIMCO'') serves as the sub-adviser for Strategic Fixed Income Portfolio. PIMCO is a subsidiary partnership of PIMCO Advisers L.P., a publicly held investment advisory firm.

4. Nicholas-Applegate Capital Management (''NACM''), a California limited partnership, serves as the sub-adviser for Aggressive Growth Portfolio. NACM's general partner is Nicholas-Applegate Capital Management Holdings, L.P., a California limited partnership controlled by Arthur E. Nicholas.

5. Invista Capital Management Inc. (''Invista'') serves as the sub-adviser for Global Growth Portfolio's foreign investments. Invista is an indirect wholly owned subsidiary of Principal Life Insurance Company.

6. The Fund currently offers its shares exclusively to insurance company separate accounts that fund variable annuity contracts. Applicants propose that shares of each Insurance Product Fund be offered to affiliated and unaffiliated insurance companies for their separate accounts as an investment vehicle to fund various insurance products including, among others, variable annuity contracts, variable group life insurance contracts, scheduled premium variable life insurance contracts, single premium and modified single premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively, ''Variable Contracts''). Some of these separate accounts may not be registered as investment companies under the 1940 Act pursuant to the exceptions from registration in Section 3(c)(1), 3(c)((7) and 3(c)(11) of the Act. In addition, Applicants propose that shares of each Insurance Product Fund also be offered directly to Qualified Plans. Separate accounts owning shares of the Insurance Product Funds and their insurance company depositors are referred to herein as ''Participating Separate Accounts'' and ''Participating Insurance Companies,'' respectively.

7. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' The use of a common investment company as the underlying investment medium for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies and for Qualified Plans is referred to as ''extended mixed and shared funding.''

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of person, securities or transactions from any provisions of the 1940 Act or the rules or regulations thereunder, if and to the extend 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.

2. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from the following sections of the 1940 Act: (a) Section 9(a), which makes it unlawful for any company to serve as an investment adviser or principal underwriter of any registered UIT if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2); and (b) Sections 13(a), 15(a) and 15(b) of the 1940 Act, to the extent that those sections might be deemed to require ''pass-through'' voting with respect to an underlying investment company's shares.

3. The exemptions granted by Rule 6e–2(b)(15), however, are available only if the management investment companies underlying the UIT (''underlying funds'') offer their shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or any affiliated life insurance company'' (emphasis added). Therefore, Rule 6e–2

does not permit either mixed or shared funding because 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 account of the same company or of any affiliated or unaffiliated life insurance company. This rule also does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

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) provides partial exemptions from Sections 9(a), and from Sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections might be deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares.

5. The exemptions granted by Rule 6e–3(T) are available only where the UIT's underlying funds offer their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, 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'' (emphasis added). Therefore, Rule 6e–3(T) permits mixed funding but does not permit shared funding. Rule 6e–3(T) also does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

6. Section 817(h) of the Internal Revenue Code of 1986, as amended (''Code''), imposes certain diversification standards on the underlying assets of Variable Contracts held in the portfolios of management investment companies. The Code provides that a Variable Contract shall not be treated as an annuity contract or life insurance contract, as applicable, for any period (and any subsequent period) for which the investments are not adequately diversified in accordance with regulations issued by the Treasury Department. Treasury Regulation § 1.817–5, which establishes diversification requirements for such portfolios, specifically permits, among other things, qualified pension or retirement plans, general accounts and separate accounts to share the same underlying management investment company. As a result, Qualified Plans may invest in Insurance Product Funds without endangering the tax status of Variable Contracts issued through Participating Insurance Companies. Shares of the Insurance Product Funds sold to Qualified Plans would be held by the trustees of those Plans as required by Section 403(a) of the Employee Retirement Income Security Act (''ERISA'').

7. The promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury regulations that made it possible for shares of an investment company to be held by the trustees of Qualified Plans without adversely affecting the ability of separate accounts of insurance companies to hold shares of the same investment company in connection with their variable annuity and variable life contracts. Thus, the sale of shares of the same investment company to separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T) (b)(15).

8. Applicants note that if the Insurance Product Funds were to sell shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided by Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such entities.

9. Applicants are not aware of any stated rationale for excluding separate accounts and investment companies, or series thereof, engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3T (b)(15) or for excluding separate accounts and investment companies, or series thereof, engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Indeed, the Commission's proposed amendments to Rule 6e–2 would eliminate the exclusion of mixed funding from the relief provided under Rule 6e–2(b)(15) and numerous exemptions permitting both mixed and shared funding have been granted since the adoption of Rules 6e–2 and 6e–3.

10. Applicants similarly are not aware of any stated rationale for excluding Participating Insurance Companies from the exemptive relief requested because shares of the Insurance Products Funds may also sell their respective shares to Qualified Plans. The relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to such entities. Because the relief accorded under such Rules is available where shares are offered *exclusively* to separate accounts, Applicants believe that additional exemptive relief is required if shares of Insurance Product Funds are also to be sold to Plans. The Commission has granted numerous exemptions permitting extended mixed and shared funding.

11. Applicants believe that the same policies and considerations that led the Commission to grant exemptions to other applicants for extended mixed and shared funding are present here. Moreover, Applicants believe that the requested exemptions 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.

12. 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 Section 9(a) (1) or (2). However, Rules 6e–2(b)(15) (i) and (ii) and 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company or series thereof.

13. Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) allow an individual disqualified under Section 9(a) (1) or (2) to be an officer, director, or employee of an insurance company, or any of its affiliates that serves in any capacity with respect to an underlying investment company, so long as the disqualified individual does not participate directly in the management or administration of the underlying investment company. Similarly, Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permit an insurance company disqualified under Section 9(a)(3) of the 1940 Act to serve in any capacity with respect to an underlying investment company, provided that the affiliated person of the disqualified company, ineligible under Section 9(a) (1) or (2) of the 1940 Act, does not participate directly in the management or administration of the investment company.

14. The partial relief granted in Rules 6–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and

purposes of Section 9. These 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 Section 9(a) to the many individuals who may be involved in a large insurance company but would have no connection with the investment company funding the separate accounts. Applicants believe that it is unnecessary to limit the applicability of these rules merely because shares of the Insurance Products Funds may be sold in connection with mixed and shared funding. Since the Participating Insurance Companies and Qualified Plans are not expected to play any role in the management or administration of the Insurance Products Funds, Applicants assert that applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants further assert that applying such restrictions would increase the monitoring costs incurred by the Participating Insurance Companies and, therefore, would reduce the net rates of return realized by Variable Contract owners.

15. Moreover, appropriateness of the relief requested will not be affected by the proposed sale of shares of Insurance Products Funds to Qualified Plans. The insulation of the Insurance Product Fund from those individuals who are disqualified under the 1940 Act remains in place. Applying the requirements of section 9(a) because of investment by Qualified Plans would be unjustified and would not serve any regulatory purpose. Since the Qualified Plans are not investment companies and will not be deemed to be affiliated solely by virtue of their shareholdings, no additional relief is necessary.

16. Rules 6e–2(b)915)(iii) and 6e–3(T)(b)(15)(iii) assume that contract owners are entitled to pass-through voting privileges with respect to investment company shares held by a related separate account. However, if the limitations on mixed and shared funding are satisfied, Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through requirements in limited situations. These rules provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company or any contract between an investment company and its investment adviser, when an insurance regulatory authority so requires (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the rules). 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 with regard to certain changes initiated by the contract owners in the investment company's investment policies, principal underwriter or investment adviser.

17. The Commission has deemed exemptions from the pass-through voting requirements as necessary to assure the solvency of the life insurer and the performance of its contractual obligations and therefore has enabled 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. Applicants assert that these considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding. Such funding does not compromise the goals of the insurance regulatory authorities or of the Commission. While the Commission may have wished to reserve wide latitude with respect to the once unfamiliar variable annuity product, that product is now familiar and there appears to be no reason for the maintenance of prohibitions against mixed and shared funding arrangements. Indeed, by permitting such arrangements, the Commission eliminates needless duplication of start-up and administrative expenses and potentially increases an investment company's assets, thereby making effective portfolio management strategies easier to implement and promoting other economies of scale.

18. In addition, the Insurance Products funds' sale of shares to Qualified Plans will have no impact on the relief requested in this regard. Shares of the Insurance Products Funds sold to Qualified Plans would be held by the trustees of said Plans as mandated by Section 403(a) of ERISA. Section 403(a) 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) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (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 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. 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 Qualified Plans since such plans are not entitled to pass-through voting privileges.

19. Even if a Qualified Plan were to hold a controlling interest in an Insurance Product Fund, Applicants do not believe that such control would disadvantage other investors in that Insurance Product Fund to any greater extent than is the case when 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 an Insurance Product Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed or shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

20. The Qualified Plan may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plan in their discretion. Some of the Qualified Plans, however, may provide for the trustees, an investment adviser or another named fiduciary to exercise voting rights in accordance with instructions from participants.

21. Where a Qualified Plan does not provide participants with the right to give voting instructions, the Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among Variable Contract owners and Plan investors with respect to voting of the respective Insurance Product Fund's shares.

22. Where a Plan provides participants with the right to give voting instructions, Applicants likewise submit that there is no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract owners. The purchase of shares of the Insurance Product Funds by Qualified Plans that provide voting rights does not present an complications not otherwise occasioned by mixed or shared funding.

23. Applicants assert that shared funding does not present any conflict of interest issues that do not already exist

when a single insurance company is licensed to do business in several states. For example, when different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. That possibility, however, is no different and no greater than that which exists when a single insurer and its affiliates offer their insurance products in several states, as currently is permitted.

24. In addition, affiliations among insurers do not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below (which are adapted from the conditions included in Rule 6e-3(T)(b)(15)) are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. Similarly, affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard contract owner voting instructions. The potential for disagreement in limited by the requirement that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if a particular state insurance regulator's decision conflicts with the majority of other state regulators or if a Participating Insurance Company's decision to disregard contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, the Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its Participating Separate Accounts' investment in that fund and no charge or penalty will be imposed as a result of such withdrawal.

25. Similarly, there is no reason why the investment policies of an Insurance Products Fund that engages in mixed funding would or should materially differ from what those policies would or should be if that fund only supported variable annuity or only variable life insurance contracts. Hence, there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, 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. Those diversities are of greater significance than any differences in insurance products. An investment company supporting even one type of insurance product must accommodate those diverse factors. The sale of shares to Qualified Plans should not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. There should be very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life contract owners.

26. Moreover, the Code, Treasury regulations, and revenue rulings do not present any inherent conflicts of interest if Qualified Plans and separate accounts invest in the same underlying investment company. As described above, Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. However, Treasury Regulation § 1.817–5(f)(3), which established diversification requirements for such portfolios, specifically permits, among other things, qualified pension or retirement plans, general accounts and separate accounts to share the same underlying management investment company.

27. While there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and a Participating Separate Account or Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account and Qualified Plan will redeem shares of the Insurance Product Funds at their respective net asset value in conformity with Rule 22c-1 under the 1940 Act to provide proceeds to meet distribution needs. The Qualified Plan will then make distributions in accordance with the terms of the Plan. The Participating Life Insurance Company will surrender values from the Participating Separate Account into the general account to make distributions in accordance with the terms of the Variable Contract.

28. It is possible to provide an equitable means of giving voting rights to Participating Separate Account contract owners and Qualified Plans. The transfer agent for the Insurance Product Fund will inform each Participating Insurance Company of each Participating Separate Account's share ownership in the Fund, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e-2 and 6e-3(T), as applicable, and its participation agreement with the relevant Insurance Product Fund. 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 Insurance Product Funds 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.

29. The ability of Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a Qualified Plan participant. As noted above, regardless of the rights and benefits of Qualified Plan participants or contract owners, the Qualified Plans and Participating Separate Accounts only have rights with respect to their respective shares of the Fund. They can only redeem such shares at their net asset value. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

30. There are no conflicts between the contract owners of Participating Separate Accounts and Qualified Plan participants with respect to the state insurance commissioner's veto powers (direct with respect to variable life and indirect with respect to variable annuity) over investment objectives. The basic premise of shareholder voting is that shareholders may not all agree with a particular proposal. While the interests and opinions of shareholders may differ, however, this does not mean that there are any inherent conflicts of interest 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. Trustees of Qualified Plans, on the other hand, can make the decision quickly and redeem their shares of an Insurance Products Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Plans, even hold cash pending

suitable investment. Based on the foregoing, even if there should arise issues where the interests of contract owners and the interests of Qualified Plan participants are in conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, on their own, redeem the shares out of the Insurance Product Funds.

31. There does not appear to be any greater potential for material irreconcilable conflicts arising between the interests of Qualified Plan participants and the contract owners from possible future changes in federal tax laws than that which already exists between variable annuity contract owners and variable life contract owners.

32. Applicants have concluded that even if there should arise issues where the interests of Variable Contract owners and the interests of Qualified Plan participants are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Insurance Product Funds.

33. Various factors have prevented more insurance companies from offering variable annuity and variable life insurance contracts than currently do so. 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 public name recognition as investment professionals. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Products Funds as common investment media for Variable Contracts would ameliorate these concerns. Participating Insurance Companies would benefit not only from the investment advisory and administrative expertise of Mitchell Hutchins and its affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Products Funds available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts. 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. Mixed and shared funding should also benefit Variable Contracts by eliminating a significant portion of the costs of establishing and administering separate funds.

34. Moreover, sale of the shares of Insurance Products Funds to Qualified Plans should further increase the amount of assets available for investment by such funds. This, in turn, should benefit Variable Contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new portfolios to an Insurance Product Fund more feasible.

Applicants' Conditions

To the extent required by the Commission, Applicants consent to the following conditions:

1. A majority of the board of trustees or board directors (each a ''Board'') of each Insurance Products Fund will consist of persons who are not ''interested persons'' thereof, 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 director, then the operation of this condition shall 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 Insurance Products Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all Participating Separate Accounts and the interests of Qualified Plan participants investing in the Insurance Products Fund 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 interpretive 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 the Insurance Products Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners and trustees of the Qualified 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 Plan to disregard the voting instructions of its participants.

3. Participating Insurance Companies, Mitchell Hutchins (or any other investment adviser of an Insurance Products Fund), and Qualified Plans that execute a participating agreement upon becoming an owner of 10% or more of an Insurance Product Fund's assets (collectively, ''Participants'') will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be responsible for assisting the appropriate 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 responsibility includes, but is not limited to, an obligation of each Participating Insurance Company to inform the Board whenever it has determined to disregard voting instructions from contract owners and, when pass-through voting is applicable, an obligation of each Plan to inform the Board whenever it has determined to disregard voting instructions from Plan participants. The responsibilities to report such information and conflicts and to assist the Boards will be contractual obligations of all Participants under their agreements governing participation in the Insurance Products Funds and these agreements shall provide, in the case of Participating Insurance Companies, that these responsibilities will be carried out with a view only to the interests of contract owners, and, in the case of Qualified Plans, that these responsibilities will be carried out with a view only to the interest of Plan participants.

4. If a majority of the Board of an Insurance Products Fund, or a majority of its disinterested members, determines that a material irreconcilable conflict exists, the relevant Participants will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested board members), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, including: (a) withdrawing the assets allocable to some or all of the Participating Separate Accounts or Plans from the Insurance Products Fund or any series thereof and reinvesting such assets in a different investment medium, which may include another series of an Insurance Products Fund or another Insurance Products Fund, or submitting the question of whether such reinvestment should be implemented to

a vote of all affected contract owners and Plan participants and, as appropriate, reinvesting the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies or Plan participants) that votes in favor of such reinvestment, or offering to the affected contract owners and Plan participants 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 Participant's decision to disregard voting instructions of contract owners or Plan participants and that decision represents a minority position or would preclude a majority vote, the Participant may be required, at the election of the Insurance Products Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of 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 Insurance Products Fund, and these responsibilities will be carried out with a view only to the interests of contract owners and Plan participants.

5. For purposes of Condition 4, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Products Fund or Mitchell Hutchins or an affiliate be required to establish a new funding medium for any Participant. No Participting Insurance Company or Qualified Plan shall be required to establish a new funding medium for any Variable Contract or Plan if: (a) an offer to do so has been declined by vote of a majority of the contract owners or Plan participants materially and adversely affected by the material irreconcilable conflict; or (b) pursuant to governing Plan or Variable Contract documents and applicable law, the Plan or Participating Insurance Company makes such decision without a vote of the Plan participants or Variable Contract owners.

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

7. Participating Insurance Companies will provide pass-through voting privileges to contract owners who invest in Participating Separate Accounts so long as the Commission interprets the 1940 Act to require pass-through voting for contract owners. Accordingly, the Participating Insurance Companies will vote shares of an Insurance Products Fund held in their Participating Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each of their Participating Separate Accounts investing in an Insurance Products Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privilege in this manner will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions.

8. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

9. All reports of potential or existing conflicts 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 appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

10. Each Insurance Products Fund will notify all Participants that disclosure in separate account prospectuses or Plan prospectuses or other Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund will disclose in its prospectus that: (a) the Insurance Product Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for Plans; (b) due to differences of tax treatment and other considerations, the interests of various contract owners participating in an Insurance Products Fund and the interests of Qualified Plans investing in that Insurance Product Fund may conflict; and (c) the Board of that Insurance Product Fund will monitor for the existence of any material conflicts and determine what action, if any, should be taken.

11. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in shares of the Insurance Products Fund), and, in particular, each Insurance Product Fund 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(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors or trustees and with whatever rules the Commission may promulgate with respect thereto.

12. If, and to the extent that, Rule 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act 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 any exemptions granted in the Order requested by Applicants, then the Insurance Products Funds and the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent applicable.

13. No less than annually, the Participants shall submit to the Boards of the Insurance Products Funds such reports, materials, or data as such Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the Application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to the Boards shall be a contractual obligation under the agreements governing their participation in the Insurance Products Funds.

14. In the event that a Plan should ever become an owner of 10% or more of the assets of an Insurance Products Fund, such Plan will execute a fund participation agreement including the conditions set forth herein, to the extent applicable, with that Insurance Product Fund. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c) of the 1940 Act, 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.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22550 Filed 8–31–99 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23968; No. 812–11556]

The Union Central Life Insurance Company, et al.; Notice of Application

August 24, 1999.

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

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the ''Act'').

Summary of Application

Applicants seek an order approving the substitution of: (a) Shares of the Balanced Index Portfolio of Carillon Fund (''Balanced Index Portfolio'') for shares of the Capital Portfolio of Carillon Fund (''Capital Portfolio''); and (b) shares of the AIM V.I. Capital Appreciation Fund of the AIM Fund (''AIM Portfolio'') for shares of the American Century VP Capital Appreciation Portfolio of American Century Fund (''American Century Portfolio'').

Applicants

The Union Central Life Insurance Company (''Union Central''), Carillon Account and Carillon Life Account.

Filing Date

The application was filed on March 31, 1999, and amended and restated on July 23, 1999. Applicants represent that they will file a second amended and restated application during the notice period to conform to the representations set forth herein.

Hearing or Notification of Hearing

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission no later than 5:30 p.m. on September 20, 1999, 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 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 Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Union Central Life Insurance Company, 1876 Waycross Road, P.O. Box 40888, Cincinnati, Ohio 45240.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Union Central is a mutual insurance company organized in 1867 under the laws of Ohio. Union Central is primarily engaged in the sale of life and disability insurance and annuities and is currently licensed to operate in all states and the District of Columbia.

2. Carillon Account is a separate account of Union Central that is registered with the Commission as a unit investment trust. Carillon Account is used in connection with Union Central's variable annuity contracts (the ''VA Contracts''). Carillon Life Account is a separate account of Union Central that is registered with the Commission as a unit investment trust. Carillon Life Account is used in connection with Union Central's variable life insurance policies (the ''VUL Contracts,'' collectively with the VA Contracts, the ''Contracts'').

3. The VA Contracts are individual flexible premium, combination fixed and variable annuity contracts. The VA Contracts' variable investment options consist of 12 portfolios. Prior to annunitization, contract owners may transfer accumulation values among the subaccounts or from Carillon Account to Union Central's general account as frequently as they want. The first six transfers in a contract year may be made without charge. A charge (currently $10) is imposed for each transaction in excess of six in a contract year.

4. The VUL Contracts are individual, combination fixed and variable universal life insurance contracts. Contractowners may transfer accumulation values among the subaccounts or from Carillon Life Account to Union Central's general account as frequently as they want. The first twelve transfers in a contract year may be made without charge. A charge (currently $10) is imposed for each transaction in excess of twelve in a contract year.

5. The Contracts permit Union Central (subject to any applicable law) to make additions to, deletions from, or substitutions for, the portfolio shares purchased by any subaccount. Substitutions are specifically permitted if the shares of a portfolio are no longer available for investment, or if in Union Central's judgment, investment in any portfolio would be inappropriate. To the extent required by applicable law, substitutions of shares attributable to a subaccount will not be made unless affected contractowners have been notified of the change and until the Commission has approved the change. In the case of such a substitution, VA Contract owners have the right, within 30 days after notification, to surrender their VA Contract without the imposition of any surrender charge.

6. Applicants proposed the following substitutions: (a) the substitution of shares of the Balanced Index Portfolio for shares of the Capital Portfolio, and (b) the substitution of shares of the AIM Portfolio for shares of the American Century Portfolio.

7. The Capital Portfolio is currently an investment option under each of the Contracts. The Capital Portfolio is managed by Carillon Advisers, Inc. Its investment objective is to provide the highest total return through a combination of income and capital appreciation consistent with the reasonable risks associated with an investment portfolio of above-average quality to investing in equity securities, debt instruments and money market instruments.

8. The expense ratio of the Capital Portfolio for 1998 was 0.79%. The total return of the Capital Portfolio (exclusive of Contract or subaccount charges) was −13.25% and 4.30% respectively for the one-year and five-year periods ending December 31, 1998, and 7.60% for the period from its inception on May 2, 1990 to December 31, 1998.