3. A majority of the Board of each Affiliated Lending Fund (including a majority of the Independent Trustees of the Affiliated Lending Fund), will initially and at least annually thereafter determine that the investment of Cash Collateral in Shares of an Investment Fund is in the best interests of the shareholders of the Affiliated Lending Fund.

4. Investment in Shares of an Investment Fund by a particular Lending Fund will be consistent with such Lending Fund's investment objectives and policies. A Lending Fund that complies with rule 2a–7 under the Act will not invest its Cash Collateral in an Investment Fund that does not comply with the requirements of rule 2a–7.

5. Investment in Shares of an Investment Fund by a particular Lending Fund will be in accordance with the guidelines regarding the investment of Cash Collateral specified by the Lending Fund in the Securities Lending Agreement. A Lending Fund's Cash Collateral will be invested in a particular Investment Fund only if that Investment Fund has been approved for investment by the Lending Fund and if that Investment Fund invests in the types of instruments that the Lending Fund has authorized for the investment of its Cash Collateral.

6. The Shares of an Investment Fund will not be subject to a sales load, redemption fee, any asset-based sales charge, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers).

7. An Investment Fund will not acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98–21170 Filed 8–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23372; File No. 812–11090]

Barr Rosenberg Variable Insurance Trust, et al.

July 31, 1998.

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

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (''Act'') granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 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 Barr Rosenberg Variable Insurance Trust (the ''Trust'') and any other investment company that is designed to fund insurance products and for which Rosenberg Institutional Equity Management or its affiliates may serve as investment manager, investment adviser, investment sub-adviser, administration, manager, principal underwriter or sponsor (together with the Trust, ''Trusts'') to be sold to and held by: (i) Variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; (ii) qualified pension and retirement plants (''Qualified Plans'' or ''Plans'') outside of the separate account context; and (iii) the Trusts' investment adviser (representing seed money investments in the Trusts).

Applicants: Barr-Rosenberg Variable Trust (the ''Trust'') and Rosenberg Institutional Equity Management (''RIEM'').

Filing Date: The application was originally filed on March 24, 1998, and amended and restated on June 23, 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, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 25, 1998, and should be accompanied by proof of services 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 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, NW., Washington, DC 20549. Applicants, c/o Edward H. Lyman, Esq., Rosenberg Institutional Equity Management, 4 Orinda Way, Building E, Orinda, California 94563.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, 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 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end, management investment company. The Trust currently consists of one investment portfolio (the ''Fund'').

2. RIEM serves as the investment manager to the Trust. RIEM is registered with the Commission as an investment adviser pursuant to the Investment Advisers Act of 1940.

3. The Trust may offer each series of its shares to separate accounts (''Participating Separate Accounts'') registered under the Act as unit investment trusts (''UITs'') of various life insurance companies (''Participating Insurance Company'') and to Plans qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended (the ''Code''). Certain Participating Separate Accounts (''VLI Accounts'') support variable life insurance contracts (''VLI Contracts''). Other Participating Separate Accounts (''VA Accounts'') support variable annuity contracts (''VA Contracts,'' together with VLI Contracts, ''Variable Contracts'').

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 6(c) of the Act exempting them from Section 9(a), 13(a), 15(a), and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts to be offered and sold to, and held by: (a) VA Accounts and VLI Accounts of the same life insurance company or of any affiliated life insurance company (''mixed funding''); (b) VA Accounts and VLI Accounts of unaffiliated life insurance companies (''shared funding''); (c) trustees of Qualified Plans; and (d) the Trusts' investment adviser (representing seed money investments in the Trust or Future Trust).

2. Rule 6e–2(b)(15) under the Act provides partial exemptions from: (a) Section 9(a), which makes it unlawful for certain individuals and companies to act in certain capacities with respect to registered investment companies; and (b) Sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections might be deemed to require ''pass-through'' voting with respect to the

shares of a registered management investment company underlying a UIT (an ''underlying fund'') to VLI Accounts supporting scheduled premium VLI Contracts and to their life insurance company depositors, investment advisers, and principal underwriters. The exemptions granted by the Rule are available, however, only if an underlying fund offers its shares exclusively to VLI Accounts of a single Participating Insurance Company or an affiliated insurance company, and then, only if scheduled premium VLI Contracts are issued through such VLI Accounts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI Account that owns shares of an underlying fund that engages in mixed funding by also offering its shares to a VA Account or to a flexible premium VLI Account of the same company or of any affiliated life insurance company. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the underlying fund engages in shared funding by offering its shares to VA Accounts and VLI Accounts of unaffiliated life insurance companies. Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

3. Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI Accounts supporting flexible premium variable life insurance contracts and their life insurance company depositors, investment advisers and principal underwriters. The exemptions granted by the Rule are available, however, only where the Trust offers its shares exclusively to separate accounts of the Participating Insurance Company, or of any affiliated insurance company, offering either scheduled premium contracts or flexible premium contracts, or both, or which also offer their shares to VA Accounts of the Participating Insurance Company or of an affiliated life insurance company. Therefore, Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium VLI Account, subject to certain conditions. However, Rule 6e–3(T)(b)(15) does not permit shared funding because the relief granted is not available with respect to a VLI Account that owns shares of an underlying fund that also offers its shares to separate accounts (including VA Accounts and flexible premium and scheduled premium VLI Accounts) of unaffiliated Participating Insurance Companies. Also, Rule 6e–3(T)(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

4. Applicants state that current tax law permits the Trust to sell its shares directly to Qualified Plans. Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts, such as those in the Trust. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not adequately diversified in accordance with regulations issued by the Treasury Department. On March 1, 1989, the Treasury Department adopted regulations (Treas. Reg. 1.817–5) (the ''Regulations'') which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

5. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations. Thus, the sale of shares of the same investment company to both Participating Separate Accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), and, therefore, Applicants assert that the restrictions of such Rules do not evidence an intent of the Commission to prevent extended mixed funding.

6. Section 9(a)(3) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a) (1) or (2). Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) limit the application of the eligibility restrictions of Section 9(a) to affiliated persons of a life insurance company that directly participate in the management of the underlying registered management investment company under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by Rule 6e–2(b)(15)(i) and Rule 6e–3(T)(b)(15)(i) permits persons who are affiliated persons of a life insurance company or its affiliates who otherwise would be disqualified under Section 9(a) to serve as an officer, director, or employee of an underlying fund, so long as any such person does not participate directly in the management or administration of such underlying fund. In addition, Rule 6e–2(b)(15)(ii) and Rule 6e–3(T)(b)(15)(ii) permit a Participating Insurance Company to serve as the underling fund's investment adviser or principal underwriter, provided that none of the insurance company's personnel who are ineligible pursuant to Section 9(a) of the Act participate in the management or administration of the underlying fund.

7. Applicants assert that the partial relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits the amount of monitoring of a Participating Insurance Company's personnel that is 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 Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that applying the provisions of Section 9 to the many individuals in a large insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the Participating Separate Accounts, is not necessary or appropriate in the public interest nor is it necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act. Moreover, applicants assert that disallowing the relief permitted by Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) because the Trusts will sell their shares to Qualified Plans would serve no regulatory purpose. Applicants assert that the sale of shares of an underlying fund to Qualified Plans does not change the fact that the purposes of the Act are not advanced by applying the prohibitions of Section 9(a) to individuals who may be involved in a life insurance complex but have no involvement in the underlying fund.

8. Rule 6e–2(b)(15)(iii) and Rule 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections might be deemed to require ''pass-through'' voting with respect to the shares of an underlying fund, by allowing an issuance company to disregard the voting instructions of contract owners with respect to several

significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) permit a Participating Insurance Company to disregard the voting instructions of its contract owners if such instructions would require an underlying fund's shares to be voted to cause such underlying fund to make (or to refrain from making) certain investments which would result in changes in the subclassification or investment objectives of such underlying fund or to approve or disapprove any contract between such underlying fund and an investment adviser when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) permit a Participating Insurance Company to disregard contract owners' voting instructions if the contract owners initiate any change in the underlying fund's investment objectives, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii)and (b)(7)(ii) (B) and (C) of the Rules). Applicants assert that these rights do not raise any issues different from those raised by the authority of state insurance administrators over separate accounts.

9. Applicants assert that the reason the Commission did not grant more extensive relief in the area of mixed and shared funding when it adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that Commission concern is not warranted in the context of permitting shared funding or permitting Qualified Plans to invest in the Trust and that the addition of owners of Variable Contracts supported by separate accounts of unaffiliated life insurance companies and Qualified Plans as eligible shareholders will not increase the risk of material irreconcilable conflicts among shareholders.

10. Voting rights of shares sold to Qualified Plans are expressly reserved to certain specified persons and are not required to be passed through to Qualified Plan participants. Under Section 403(a) of the Employee Retirement Income Security Act (''ERISA''), shares of an underlying fund sold to a Qualified Plan must be held by the trustee(s) of the Qualified Plan, and such trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, the exclusive authority and responsibility for voting shares of an underlying fund is vested in the plan trustees. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

11. If a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

12. If 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 owners of Variable Contracts and participants in Qualified Plans with respect to voting of an underlying fund's shares. Accordingly, unlike the case with Participating Separate Accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans because the Qualified Plans are not entitled to pass-through voting privileges.

13. Applicants further note that there is no reason to believe that participants in Qualified Plans which provide participants with the right to give voting instructions generally, or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract owners. Applicants, therefore, submit that the purchase of shares of the Trusts by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

14. Applicants state that the presence of both VLI Accounts and VA Accounts as shareowners of an underlying fund will not lead to a greater probability of material irreconcilable conflicts than if the underlying fund did not engage in mixed funding. Similarly, shared funding does not present any issues that do not already exist where an underlying fund sells its shares to a single insurance company which sells contracts in several states. A state insurance regulatory body in one state could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that unaffiliated insurers may be domiciled in different states does not create a significantly different or enlarged problem.

15. Applicants assert that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential for differences in state regulatory requirements. Applicants state that the conditions summarized below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer may be required to withdraw its Participating Separate Account's investment in the Trusts. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Trust.

16. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act give the insurance company the right to disregard the voting instructions of the contract owners. Applicants assert that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Requiring that only affiliated insurance

companies invest in the Trust does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. Moreover, the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

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

18. Applicants assert that there is no reason why the investment policies of the Portfolios would or should be materially different from what these policies would or should be if the Portfolios funded only VA Contracts or VLI Contracts. Each type of insurance product is designed as a long-term investment program. The Fund will be managed in the same manner as any other mutual fund and there is no incentive for the Fund's investment manager to invest to benefit a particular class of shareholders. In addition, the Board of Trustees has a fiduciary duty to oversee the Trusts' investment adviser and ensure that the Trusts are managed in a way that does not discriminate against any Trust shareholders.

19. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to particular insurance product. Each pool of VA and VLI Contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A Portfolio supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding as well as permitting sales of Qualified Plans will provide benefits to the Trusts' shareholders. Among other things, Participating Insurance Companies and Variable Contract owners will benefit from a greater variety of investment options with lower costs.

20. Applicants do not believe that the sale of the shares of the Trusts to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Applicants assert that there are either no conflicts of interest or that there exists the ability by the affected parties to resolve the issues without harm to the contract owners in the Participating Separate Accounts or to the participants under the Qualified Plans.

21. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with the Regulations, adequately diversified.

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

23. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, the differing tax consequences do not raise any conflicts of interest. If the Participating Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account or the Qualified Plan will redeem shares of the Fund at their net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract. Therefore, distributions and dividends will be declared and paid by the Fund without regard to the character of the shareholder.

24. Applicants that state it is possible to provide an equitable means of giving voting rights to Variable Contract owners and to the trustees of Qualified Plans. The transfer agent for the Fund will inform each Participating Insurance Company of its share ownership in each Participating Separate Account, 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 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 the Trusts will be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

25. Applicants submit that the ability of the Trusts to sell their shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the Act, with respect to any contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of Variable Contract owners or participants under the Qualified Plans, the Qualified Plans and the Participating Separate Accounts have rights only with respect to their respective shares of the Trusts. They can only redeem such shares at their net asset value. No shareholder of the Trusts will have any preference over any other shareholder with respect to distribution of assets or payment of dividends.

26. Applicants assert that the veto power of state insurance commissioners over an underlying fund's investment objectives does not create any inherent conflicts of interest between the contract owners of the Participating Separate Accounts and Qualified Plan participants. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist

between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers.

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

28. Applicants also assert that the investment of seed capital in the Trust presents no potential for irreconcilable conflicts of interest. Seed capital for the trust will be provided by the Trust's investment adviser or by Participating Insurance Companies.

29. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Use of a Trust as a common investment medium for variable contracts would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Trusts' investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Portfolio, thereby promoting economics of scale, by permitting increased safety through greater diversification, or by making the addition of new Portfolios more feasible. Applicants assert that the sale of shares of the Trusts to Qualified Plans in addition to the Separate Accounts will result in an increased amount of assets available for investment by such Trusts. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Portfolios more feasible.

30. Applicants assert that granting the exemptions requested by Applicants will not compromise the regulatory purposes of Sections 9(a), 13(a), 15(a) and 15(b) of the Act or Rules 6e–2(b)(15) or 6e–3(T)(b)(15) thereunder.

Applicants' Conditions

1. Applicants have consented to the following conditions:

a. A majority of the Board of each Trust will consist of persons who are not ''interested persons'' of such Trust, as defined by Section 2(a)(19) of the Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (i) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

b. Each Board will monitor its respective Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) 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; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of such Trust are being managed; (v) a difference in voting instructions given by VA contract owners, VLI contract owners, and Plan investors or the trustees of a Qualified Plan that does not provide voting rights to its investors; (vi) Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

c. Each Trust will disclose in its prospectus that: (i) Shares of such Trust may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (ii) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust may conflict; and (iii) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict. Each Trust shall also notify the Qualified Plan trustees and Participating Insurance Companies that similar prospectus disclosure may be appropriate in Participating Separate Account prospectuses or any Plan prospectuses or other Plan disclosure documents.

d. Each Trust will comply with all provisions of the Act requiring voting by shareholders, including Sections 16(a), 16(b) (when applicable) and 16(c) (even though the Trust is not a trust of the type described therein).

e. RIEM will report any material irreconcilable conflicts or any potential material irreconcilable conflicts between or among the interests of VLI Contract owners, VA Contract owners and Plan participants to the Trust's Board of Trustees and will assist the Board in carrying out the Board's responsibilities under these conditions. Such assistance will include, but not be limited to, providing the Board, at least annually, with all information reasonably necessary for the Board to consider any issues raised by such existing or potential conflicts.

f. All reports sent by Participating Insurance Companies or Qualified Plans to the Board of Trustees of a Trust or notices sent by the Board of Trustees to Participating Insurance Companies or Qualified Plans notifying the recipient of the existence of or potential for a material irreconcilable conflict between the interests of VA Contract owners, VLI Contract owners and Plan participants as well as Board deliberations regarding such conflicts or such potential conflicts shall be recorded in the board meeting minutes of the Trust or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

2. In addition to the foregoing conditions, Applicants consent to the following conditions and represent and agree that if the exemptions requested are granted, a Trust will not sell shares to any VLI Account unless such

Account's Participating Insurance Company enters into a participation agreement with the Trust containing provisions that require the following:

a. A majority vote of the disinterested trustees of a Trust shall represent a conclusive determination as to the existence of a material irreconcilable conflict between or among the interests of VLI Contract owners, VA Contract owners and Qualified Plan investors. For the purpose of subparagraph (e) below, a majority vote of the disinterested trustees of that Trust shall represent a conclusive determination as to whether any proposed action adequately remedies any material irreconcilable conflict between or among the interests of VLI Contract owners, VA Contract owners and Qualified Plan investors. The Trust shall notify each Participating Insurance Company and Qualified Plan in writing of any determination of the foregoing type.

b. Each Participating Insurance Company will monitor its operations and those of the Trusts for the purpose of identifying any material irreconcilable conflicts or potential material irreconcilable conflicts between or among the interests of Qualified Plan investors, VA Contract owners and VLI Contract owners.

c. Each Participating Insurance Company will report any such conflicts or potential conflicts to a Trust's Board of Trustees and will provide the Board, at least annually, with all information reasonably necessary for the Board to consider any issues raised by such existing or potential conflicts or by these conditions. Each Participating Insurance Company will also assist the Board in carrying out its responsibilities under these conditions including, but not limited to: (i) Informing the Board whenever it disregards VLI Contract owner or VA Contract owner voting instructions; and (ii) providing, at least annually, such other information and reports as the Board may reasonably request. Each Participating Insurance Company will carry out these obligations with a view only to the interests of owners of its VLI Contracts and VA Contracts.

d. Each Participating Insurance Company will provide ''pass-through'' voting privileges to owners of registered VA Contracts and registered VLI Contracts as long as the Act requires such privileges in such cases. Accordingly, such Participating Insurance Companies, where applicable, will vote Trust shares held in their Participating Separate Accounts in a manner consistent with voting instructions timely received from owners of such VLI and VA Contracts. Each Participating Insurance Company will vote Trust shares owned by itself (*i.e.*, that are not attributable to VLI Contract or VLI Contract reserves) in the same proportion as instructions received in a timely fashion from VA Contract owners and VLI Contract owners and shall be responsible for ensuring that it and other Participating Insurance Companies calculate ''pass-through'' votes for VLI Accounts and VA Accounts in a consistent manner. Each Participating Insurance Company also will vote Trust shares held in any registered VLI Account or registered VA Account for which it has not received timely voting instructions in the same proportion as instructions received in a timely fashion from VA Contract owners and VLI Contract owners.

e. In the event that a material irreconcilable conflict of interest arises between VA Contract owners or VLI Contract owners and Qualified Plan participants, each Participating Insurance Company will, at its own expense, take whatever action is necessary to remedy such conflict as it adversely affects owners of its VA Contracts or VLI Contracts up to and including: (i) Establishing a new registered management investment company, and (ii) withdrawing assets attributable to reserves for the VA Contracts or VLI Contracts subject to the conflict from the Trust and reinvesting such assets in a different investment medium (including another Fund of the Trust) or submitting the question of whether such withdrawal should be implemented to a vote of all affected VA Contract owners or VLI Contract owners, and, as appropriate, segregating the assets supporting the contracts of any group of such owners that votes in favor of such withdrawal, or offering to such owners the option of making such a change. Each Participating Insurance Company will carry out the responsibility to take the foregoing action with a view only to the interests of owners of its VA Contracts and VLI Contracts. Notwithstanding the foregoing, each Participating Insurance Company will not be obligated to establish a new funding medium for any group of VA Contracts or VLI Contracts if an offer to do so has been declined by a vote of a majority of the VA Contract owners or VLI Contract owners adversely affected by the conflict.

f. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard the voting instructions of VLI Contract owners or VA Contract owners and that decision represents a minority position or would preclude a majority vote at any Fund shareholder meeting, then, at the request of the Trust's Board of Trustees, the Participating Insurance Company will redeem the shares of the Trust to which the disregarded voting instructions relate. No charge or penalty, however, will be imposed in connection with such a redemption.

g. Each Participating Insurance Company and VLI Account will continue to rely on Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(15), as appropriate, and to comply with all of the appropriate Rule's conditions. In the event that rule 6e–2 and/or Rule 6e–3(T) is amended, or any successor rule is adopted, each Participating Insurance Company and VLI Account will instead comply with such amended or successor rule.

h. Each Participating Insurance Company will maintain at its home office available to the Commission a list of its officers, directors and employees who participate directly in the management and administration of any separate account organized at a UIT or of any Fund. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

3. In addition to the foregoing conditions, Applicants consent to the following conditions and represent and agree that if the exemptions requested are granted, the Trust will not sell shares of any Fund to a Qualified Plan if such sale would result in the Qualified Plan owning 10% or more of that Fund's outstanding shares unless the Qualified Plan first enters into a participation agreement with the Trust containing provisions that require the following:

a. The trustees or plan committees of the Qualified Plan will: (i) Monitor the Qualified Plan's operations and those of the Trusts for the purpose of identifying any material irreconcilable conflicts or potential material irreconcilable conflicts between or among the interests of Qualified Plan participants, VA Contract owners and VLI Contract owners; (ii) report any such conflicts or potential conflicts to a Trust's Board of Trustees; (iii) provide the Board, at least annually, with all information reasonably necessary for the Board to consider any issues raised by such existing or potential conflicts and any other information and reports that the Board may reasonably request; (iv) inform the Board whenever it (or another fiduciary) disregards the voting instructions of Qualified Plan participants (of a Qualified Plan that provides voting rights to its participants); and (v) ensure that the Qualified Plan votes Trust shares as

required by applicable law and governing Qualified Plan documents. The trustees or plan committees of the Qualified Plan will carry out these obligations with a view only to the interests of Qualified Plan participants in its Qualified Plan.

b. In the event that a material irreconcilable conflict of interest arises between Qualified Plan investors and VA Contract owners, VLI Contract owners or other investors in the Trust, each Qualified Plan will, at its own expense, take whatever action is necessary to remedy such conflict as it adversely affects that Qualified Plan or participants in that Qualified Plan up to and including: (i) Establishing a new registered management investment company, and (ii) withdrawing Qualified Plan assets subject to the conflict from the Trusts and reinvesting such assets in a different investment medium (including another Fund of the Trusts) or submitting the question of whether such withdrawal should be implemented to a vote of all affected Qualified Plan investors, and, as appropriate, segregating the assets of any group of such participants that votes in favor of such withdrawal, or offering to such participants the option of making such a change. Each Qualified Plan will carry out the responsibility to take the foregoing action with a view only to the interests of Qualified Plan investors in its Qualified Plan. Notwithstanding the foregoing, no Qualified Plan will be obligated to establish a new funding medium for any group of participants or Qualified Plan investors if an offer to do so has been declined by a vote of a majority of the Qualified Plan's participants or Qualified Plan investors adversely affected by the conflict.

c. If a material irreconcilable conflict arises because of a Qualified Plan trustee's (or other fiduciary's) decision to disregard the voting instructions of Qualified Plan participants (of a Qualified Plan that provides voting rights to its participants) and that decision represents a minority position or would preclude a majority vote at any shareholder meeting, then, at the request of the Trust's Board of Trustees, the Qualified Plan will redeem the shares of that Trust to which the disregarded voting instructions relate. No charge or penalty, however, will be imposed in connection with such a redemption.

4. Applicants also represent and agree that if the exemptions requested are granted, a Trust will not sell shares of any Fund to a Qualified Plan until the Qualified Plan executes an application containing an acknowledgment of the condition that the Trust cannot sell shares of any Fund to such Qualified Plan if such sale would result in that Qualified Plan owning 10% or more of that Fund's outstanding shares unless that Qualified Plan first enters into a participation agreement as described above.

Conclusion

For the reasons summarized above, Applicants assert 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 Act.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98–21172 Filed 8–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26901]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

July 31, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 24, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 24, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation et al (70–9305)

Entergy Corporation ("Entergy"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, and its wholly owned subsidiary, Entergy Power, Inc. ("EPI"), Parkwood Two Building, 10055 Grogan's Mill Road, Suite 500, The Woodlands, Texas 77380, (collectively, "Declarants"), have filed a declaration under section 12(c) and 12(d) of the Act and rules 44, 46 and 54 under the Act.

In accordance with an order dated August 27, 1990 (HCAR No. 25136), EPI was formed to, among other things, supply electricity at wholesale to nonassociate companies and to acquire ownership interests in Unit No. 2 of the Independence Steam Electric Generating Station ("ISES 2")[1] and related assets, as well as other utility assets. EPI presently owns a 21.5% undivided ownership interest in ISES 2, a 10.75% undivided ownership interest in certain land and common facilities at the Independence Steam Electric Generating Station ("Independence Station"), and a 10.75% undivided ownership interest in the Certificate of Environmental Compatability and Public Need ("Certificate") for the Independence Station. EPI also owns a 10.75% undivided ownership interest in certain leases, mine facilities and mine equipment located in Wyoming ("Wyoming Property"), all of which is used to supply coal to the Independence Station.[2]

EPI now proposes to sell, prior to December 31, 1999, a portion of its interest in ISES 2 and related property to East Texas Electric Cooperative, Inc. ("ETEC"), for a total purchase price of approximately $30 million, representing an approximation of the present market value of the assets. Specifically, ETEC will acquire from EPI (1) a 7.13% undivided ownership interest in ISES 2 (equivalent to 60 megawatts of capacity); (2) a 3.56% undivided ownership interest in the land and

[1] The Independence Steam Electric Generating Station is a two-unit, coal-fired electric generating facility located near Newark, Arkansas.

[2] By order dated August 2, 1996 (HCAR No. 26549), EPD sold a portion of its interest in ISES 2 and related property to City Water & Light Plant of Jonesboro ("City Water & Light") for a purchase price of approximately $37.5 million. In the sale, City Water & Light acquired from EPD (1) a 10% undivided ownership interest in ISES 2 (equivalent to 84 megawatts of capacity); (2) a 5% undivided ownership interest in the Certificate; (3) 5% undivided ownership interest in the land and common facilities at the Independence Station; and (4) 5% undivided ownership interest in the Wyoming Property.