SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23988; File No. 812–11620]

Maxim Series Funds, Inc. and GW Capital Management, LLC; Notice of Application

September 1, 1999.

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

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

Summary of Application: Applicatns seek an amended order to permit shares of any current of future series of the Maxim Series Fund, Inc. to be sold to and held by qualified pension and retirement plans outside the separate account context (''Qualified Plans'').

Applicants: Maxim Series Fund, Inc. (''Maxim Fund'' or ''Fund'') and GW Capital Management, LLC (the ''Adviser'').

Filing Date: The application was filed on May 26, 1999 and amended and restated on August 25, 1999.

Hearing or Notification of Hearing: An amended order granting the application was be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 27, 1999, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Beverly A. Byrne, Esquire, Great-West Life & Annuity Insurance Company, 8515 East Orchard Road, Englewood, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Ann L. Vlcek, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

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

Applicant's Representations

1. The Adviser serves as investment adviser to each portfolio of the Fund. The Adviser is wholly-owned subsidiary of Great-West Life & Annuity Insurance Company, which in turn is a wholly-owned subsidiary of the Great-West Life Assurance Company.

2. The Fund, a registered, open-end management investment company, was incorporated in Maryland in 1981. The Fund currently consists of 28 series. In the future, additional series of shares may be added to the Fund. Shares of the Maxim Fund are currently offered to separate accounts (''Participating Separate Accounts'') of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies'') to serve as investment vehicles for variable annuity and variable life insurance contracts (collectively, ''Variable Contracts'').

3. On September 2, 1993, the Commission issued an order granting exemptive relief to permit shares of the Maxim Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (Investment Company Act Release No. 19676, the ''Original Order''). Applicants represent that all of the facts asserted in the application for the Original Order and any amendments thereto remain true and accurate in all material respects to the extent that such facts are relevant to any relief on which Applicants continue to rely. Applicants state that the Original Order did not address the sale of shares of the Maxim Fund to Qualified Plans outside the separate account context.

4. Applicants state that changes in the federal tax law have created the opportunity for the Maxim Fund to increase its asset base through the sale of shares of Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying Variable Contracts. Treasury Regulations generally require that, to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, Applicants note that the Treasury 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 of Variable Contracts issued through such segregated asset accounts.

5. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act preceded the issuance of these Treasury Regulations. Thus, applicants assert that the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

Applicants' Legal Analysis

1. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the 1940 Act, granting exemptive relief, to the extent necessary, from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to permit shares of any current or future series of the Maxim Fund to be sold to and held by Qualified Plans under the conditions set forth herein. Applicants submit 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.

2. The Maxim Fund previously requested and received 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 to the extent necessary to permit mixed and shared funding by the Original Order did not address the sale of shares to Qualified Plans. Applicants submit that it is appropriate for the Commission to grant this same relief in connection with the sale of shares of Maxim Fund to Qualified Plans.

3. Section 6(c) of the 1940 Act provides in part that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

In connection with the funding of 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 various provisions of the 1940 Act, including the following: (1) Section 9(a), which makes it unlawful for certain individuals to act in the capacity of employee, officer, or director for a UIT, by limiting the application of the eligibility restrictions in Section 9(a) to affiliated persons directly participating in the management of a registered management investment company; and (2) 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 fund's shares, by allowing an insurance company to disregard the voting instructions of contract owners in certain circumstances.

These exemptions are available, however, only where the management investment company underlying the separate account (the ''underlying fund'') offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' Therefore, Rule 6e–2 does not permit either mixed funding 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 separate account of the same company or of any affiliated life insurance company. Rule 6e–2(b)(15) also does not permit the sale of shares of the underlying fund to Qualified Plans outside of the separate account context.

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) also provides partial exemption from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions, however, are available only where the separate account's underlying fund offers its shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer its shares to variable annuity separate accounts of the life insurer or of an affiliated insurance company. Therefore, Rule 6e–(T) permits mixed funding but does not permit shared funding and also does not permit the sale of shares of the underlying fund to Qualified Plans. As noted above, the Original Order granted the Maxim Fund exemptive relief to permit mixed and shared funding, but did not expressly address the sale of its shares to Qualified Plans outside of the separate account context.

5. Applicants note that if an underlying fund were to sell shares only to Qualified Plan, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. Applicants state that the relief for under Rule 6e–(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 plans.

6. Applicants state that changes in the federal tax law have created the opportunity for the Maxim Fund to increase its asset base through the sale of shares to Qualified Plans. Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts. Treasury Regulations generally require that, to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, Applicants not that the /Treasury 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 account, whithout adversely affecting the status of the investment company as an adequately diversified underlying investment of Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

7. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act preceded the issuance of these Treasury Regulations. Thus, the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–(b)(15) and 6e–3(T)(b)(15).

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

9. Applicants state that the relief granted in Rules 6e–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 what is appropriate in light of the policy and purposes of Section 9. Applicants submit that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act of apply the provisions of Section 9(a) to the many individuals involved in an insurance company complex most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts.

10. The Maximum Fund previously requested and received relief from Section 9(a) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit mixed and shared funding. Applicants submit that the relief previously granted from Section 9(a) to the Maximum Fund will in no way be affected by the proposed sales of shares to Qualified Plans outside of the separate account context. Those individuals who participate in the management or administration of the Maxim Fund will remain the same regardless of whether Qualified Plans invest therein. Applicants maintain that more broadly applying the requirements of Section 9(a) because of investments by Qualified Plans would serve no regulatory purpose. Moreover, Qualified Plans, unlike separate accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act.

11. Applicants state that Rules 6e–2(b)(15(iii) and 6e–3(T)(b)(15(iii) provide exemptions from the pass-through voting requirement 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) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contract owners' voting instructions if

the contract owners initiate certain changes in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules). Applicants request relief from these provisions to the extent necessary to permit shares of the Maxim Fund to be sold to and held by Qualified Plans consistent with the foregoing provisions regarding a Participating Insurance company's ability to disregard voting instructions under certain circumstances.

12. Applicants assert that Qualified Plans, which are not registered as investment companies under the 1940 Act, have no requirement to pass through the voting rights to plan participants. Applicants state that applicable law expressly reserves voting rights to certain specified persons. Under Section 403(a) of the Employee Retirement Income Security Act (''ERISA''), shares of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (1) 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 trustees are subject to proper directions made in accordance with the terms of the Qualified Plans and not contrary to ERISA: and (2) 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 two above exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract holders and Qualified Plan investors with respect to voting of the respective Fund's shares. Accordingly, Applicants state that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans (outside of the separate account context) since the Qualified Plans are not entitled to pass-through voting privileges.

13. Even if a Qualified Plan were to hold a controlling interest in an underlying fund, Applicants believe that such control would not disadvantage other investors in such underlying 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 the Maxim Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

14. Applicants state that 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. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. In sum, Applicants maintain that the purchase of shares of the Maxim Fund by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that they do not believe that the sale of the shares of the Maxim Fund to Qualified Plans outside of the separate account context will increase the potential for material irreconcilable conflicts of interest between among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in an underlying mutual fund. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. Applicants believe that the Treasury Regulations discussed above specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code nor the Treasury Regulations or revenue rulings thereunder presents any inherent conflict of interest.

16. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Maxim Fund. When distributions are to be made, and a Participating Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Participating Separate Account or Qualified Plan will redeem underlying fund shares at net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Qualified Plan will make distributions in accordance with the terms of the Qualified Plan.

17. Applicants maintain that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contract owners and to Qualified Plans. In connection with any meeting of shareholders, the Fund will inform each shareholder, including each Participating Insurance Company and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participating agreement with the 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 Fund 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.

18. Applicants have concluded that even if there should arise issues with respect to a state insurance commissioner's veto powers over investment objectives where the interests of contract owners and the interests of Qualified Plans 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 Fund. Applicants note that the insurance commissioners have been given to 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. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Fund 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.

19. Applicants also state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contract owners of Participating Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

20. Applicants state that the sale of shares of the Maxim Fund to Qualified Plans outside of the separate account context would permit a greater amount of assets available for investment by the Maxim Fund, thereby promoting economies of scale, by permitting increased safety through asset diversification, and by making the addition of new series more feasible. Applicants assert that making the Maxim Fund available to Qualified Plans will encourage more insurance companies to offer Variable Contracts. Applicants believe that this should result in increased competition with respect to both Variable Contract design and pricing, which in turn can be expected to result in more produce variation and lower charges to investors.

21. Applicants assert that, regardless of the type of shareholders in each portfolio of the Maxim Fund, the Adviser is or would be contractually and otherwise obligated to manage each portfolio solely and exclusively in accordance with that portfolio's investment objectives, policies and restrictions as well as any guidelines established by the Board of Directors of the Fund (the ''Board''). The Adviser works with a pool of money and (except in a few instances where this may be required in order to comply with state insurance laws) does not take into account the identity of the shareholders. Thus, each portfolio of the Fund will be managed in the same manner as any other mutual fund. Applicants therefore see no significant legal impediment to permitting the sale of shares of the portfolios of Maxim Fund to Qualified Plans.

22. Applicants state that the Commission has permitted this relief in connection with sales to Qualified Plans. Applicants state that the amended order sought in the application is identical to precedent with respect to the conditions Applicants proposes for the sales to Qualified Plans.

Applicants' Conditions

If the requested amended order is granted, Applicants consent to the following conditions (in addition to the conditions applicable pursuant to the Original Order):

1. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a portfolio (or class thereof) of the Maxim Fund (a ''Qualified Plan Participant'') shall report any potential or existing conflicts to the Board. Such Qualified Plan Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board will all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation on the part of each Qualified Plan Participant to inform the Board whenever voting instructions relating to the Maxim Fund are disregarded. The responsibility to report such conflicts and information, and to assist the Board will be contractual obligations of such Qualified Plan Participants under the agreement governing participation in the Fund and such agreement shall provide that such responsibilities will be carried out with a view only to the interests of participants in a Qualified Plan.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all the separate accounts investing in the Fund and participants in Qualified Plans investing in the Fund. 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 relative proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance contract owners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. If it is determined by a majority of the Board of the Maxim Fund, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Qualified Plans shall, at their own expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps should include: (a) Withdrawing the assets allocable to some or all of the Qualified Plans from the Fund or any portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of the Fund; and (b) establishing a new registered management investment company or managed separate account.

4. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard voting instructions of participants, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund (or portfolio thereof), to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of a material irreconcilable conflict and bearing the cost of such remedial action, will be a contractual obligation of all Qualified Plans under any agreement governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of participants in a Qualified Plan. For purposes of this condition, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any Qualified Plan. Further, no Qualified Plan shall be required by this condition to establish a new funding medium for any Qualified Plan if: (a) a majority of its participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or

(b) pursuant to governing Qualified Plan documents and applicable law, the

Qualified Plan makes such decision without a vote of its participants.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly and in writing to Qualified Plans.

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

7. All reports of potential or existing conflicts received by a Board and all Board actions with regard to determining the existence of a conflict of interest, notifying Qualified Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. The Maxim Fund will disclose in its prospectus that: (a) shares of the Fund may be offered to insurance company separate accounts on a mixed and shared basis and to Qualified Plans; (b) material irreconcilable conflicts may arise between the interests of Variable Contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund; and (c) the Board of the Fund will monitor events in order to identify the existence of any material irreconcilable conflict and determine what action, if any, should be taken in response to such material irreconcilable conflict.

9. No less than annually, Qualified Plan Participants that have executed a participation agreement upon becoming an owner of 10% or more of the assets of a Portfolio (or a class thereof) of Maxim Fund shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Qualified Plan Participants to provide these reports, materials and data shall be a contractual obligation of all the Qualified Plan Participants under the agreements governing their participation in the Funds.

10. The Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10% or more of the assets of the Fund (or portfolio thereof) unless such Qualified Plan executes a fund participation agreement with the Fund, including the conditions set forth herein to the extent applicable. A Qualified Plan will execute a shareholder participation agreement containing an acknowledgment of this condition at the time of its initial purchase of shares of such Fund.

Conclusions

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 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23389 Filed 9–8–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41810; File No. SR–OCC–99–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Acceptance of Letters of Credit for Margin Purposes

August 30, 1999.

On January 22, 1999, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–99–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] to permit OCC to replace its current letter of credit form with a letter of credit form developed by the Uniform Clearing Group (''UCG'').[2] Notice of the proposal was published in the **Federal Register** on June 14, 1999.[3] On August 2, 1999, OCC amended the proposed rule change.[4] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change will amend OCC's Rule 604(c) to incorporate the use of the Uniform Letter of Credit (''ULC'') created by UCG. First, the rule change will require the issuing bank to make payment against the ULC within sixty minutes of presentment of a demand for payment. Second, the rule change will add a new paragraph to Rule 604(c) that gives OCC flexibility in specifying acceptable expiration dates for the ULC. Third, the rule change will delete the provisions of OCC's rules that permit a clearing member to issue instructions to OCC that restrict a previously unrestricted letter of credit or a portion thereof to serve as margin only for the clearing member's customers' accounts. Finally, the rule change will delete the last sentence of Rule 604(c)(4), which allows members to deposit letters of credit denominated in any foreign currency that is a trading currency.

II. Discussion

Section 17A(b)(3)(F) [5] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. As set forth below, the Commission finds that the rule change is consistent with OCC's obligations under the Act.

By shortening the time period from the third banking day to 60 minutes, the proposed rule change should reduce the likelihood that OCC will be unable to fulfill its settlement obligations while it waits for a issuing bank to honor its demand on a letter of credit.

Currently, OCC requires that a letter of credit expire no later than the first day of the next calendar quarter. By allowing letters of credits to be issued with expiration dates more than one calendar quarter in the future, OCC may be able to simplify its record-keeping, and its members may be able to reduce their costs associated with obtaining letters of credit.

According to OCC, clearing members generally do not use the provisions that permit a clearing member to restrict a previously unrestricted letter of credit. Furthermore, placing the restriction on the face of the letter of credit may

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[1] 15 U.S.C. 78s(b)(1).

[2] The UCG is an organization composed of all major securities and futures clearing organizations and depositories in the United States. The members of the UCG include the Boston Stock Exchange Clearing Corporation, The Depository Trust Company, Government Securities Clearing Corporation, MBS Clearing Corporation, National Securities Clearing Corporation, OCC, Board of Trade Clearing Corporation, Chicago Mercantile Exchange, Clearing Corporation of New York, Kansas City Board of Trade, Minneapolis Grain Exchange, New York Mercantile Exchange, Emerging Markets Clearing Corporation, and Clearing Corporation for Options and Securities.

[3] Securities Exchange Act Release No. 41486 (June 7, 1999), 64 FR 31889.

[4] The amendment filed by OCC was a technical amendment to the proposed rule change and as such did not require republication of the notice.

[5] 15 U.S.C. 78q–1(b)(3)(F).