appropriate feature of variable annuities. The existence of products with deferred charges provides investors a valuable choice, and according to Applicants, the Commission and its staff have supported efforts to expand investor choice without sacrificing investor protection. In this context a deferred charge structure also reinforces the intention that the product be held as a long-term investment. Second, the amount of the Contract owners' premiums that will be allocated to the relevant Separate Account, and be available to earn a return for the Contract owners, will be greater than it would be if the charges were deducted from the premiums. Applicants submit that the Commission recognized this in authorizing deferred sales charges for variable annuity contracts pursuant to Rule 6c–8 under the Act.

10. Finally, Applicants assert that their charge structure provides equitable treatment to all Contract owners enrolled in the Principal Protection Feature. Applicants state that they established the charge structure of the Principal Protection Feature so that each Insurer may recover its costs over the life of the guarantee. If Contract owners who selected the Principal Protection Feature could surrender or partially withdraw from the Contracts prior to the Principal Protection Expiration Date without the imposition of the Principal Protection Cancellation Charge, each Insurer may not be able fully to recover its costs. If each Insurer did not assess the Principal Protection Cancellation Charge and instead increased the Principal Protection Fee or added a front-end charge, the Insurer could be charging persisting Contract owners enrolled in the Feature more than may otherwise be necessary to recover the costs attributable to such Contract owners. Accordingly Applicants submit that the Contracts will satisfy the requirements of Rule 22c–1.

11. Section 27(i)(2)(A) of the Act, in pertinent part, makes it unlawful for any registered separate accounting funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless such contract is a redeemable security. Applicants submit that the assessment of a Principal Protection Cancellation Charge should not be construed as a restriction on redemption. Applicants maintain that the Contracts enrolled in the Principal Protection Feature are redeemable securities and that the imposition of the Principal Protection Cancellation Charge upon surrender or partial withdrawal represents nothing more than the deduction of an insurance charge. Moreover, as Applicants previously stated, the charge is only assessed if the Contract owner has elected the Principal Protection Feature. Accordingly, Applicants submit that the Contracts will satisfy the requirements of Section 27(i)(2)(A).

12. Applicants seek the relief requested herein not only with respect to themselves and the Contracts described above, but also with respect to Future Underwriters. Applicants represent that the terms of the relief requested with respect to any Future Underwriter are consistent with standards set forth in Section 6(c) of the Act.

13. Applicants state that, without the requested class relief, exemptive relief for any Future Underwriter would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no issues under the Act not already addressed herein. Applicants state that if the Applicants were to repeatedly seek exemptive relief with respect to the same issues addressed herein, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. Applicants argue that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would, Applicants argue, enhance each Applicant's ability effectively to take advantage of business opportunities as such opportunities arise. Applicants submit, for all the reasons stated herein, that their request for class exemptions 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 Act, and that an order of the Commission including such class relief, should therefore, be granted.

Conclusion

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

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24185 Filed 9–15–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24005; 812–11720]

Vision Group of Funds, Inc. and Manufacturers and Traders Trust Company; Notice of Application

September 9, 1999.

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

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a series of a registered open-end management investment company to acquire all of the assets, subject to the liabilities, of two other series of the investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Vision Group of Funds, Inc. (''Vision Funds'') and Manufacturers and Traders Trust Company (''M&T Bank'').

FILING DATES: The application was filed on July 29, 1999 and amended on September 8, 1999.

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 Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing request should be received by the Commission by 5:30 p.m. on October 4, 1999, and should be accompanied by proof of service on applicants, in the form if 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants: c/o Matthew G. Maloney, Esq, Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street, N.W., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. Vision Funds, a Maryland corporation, is registered under the Act as an open-end management investment company and is currently comprised of ten series, including Vision Growth & Income Fund (''Growth & Income Fund''), Vision Capital Appreciation Fund (''Capital Appreciation Fund'' and together with the Growth & Income Fund, the ''Acquired Funds'') and Vision Mid Cap Stock Fund (the ''Acquiring Fund'' and together with the Acquired Funds, the ''Funds''). The Acquiring Fund is a newly-organized series of Vision Funds.

2. M&T Bank is the investment adviser to the Acquire Funds. M&T Bank is exempt from registration under the Investment Advisers Act of 1940 (the ''Advisers Act'') pursuant to section 202(a)(11)(A) of the Advisers Act. M&T Bank will also act as the investment adviser of the Acquiring Fund. Currently, M&T Bank holds of record 35.13% and 43.81% of the outstanding voting securities of the Growth & Income Fund and the Capital Appreciation Fund, respectively, and thereby holds or shares voting and/or investment discretion with respect to more than 25%of the outstanding voting securities of each of the Acquired Funds.

3. On June 21, 1999, the board of directors of Vision Funds (the ''Board''), none of whom are ''interested persons'' as defined in section 2(a)(19) of the Act (''Disinterested Directors''), approved and entered into an agreement and plan of reorganization between the Acquired Funds and the Acquiring Fund (the ''Reorganization Agreement'' and the transaction, the ''Reorganization''). The Reorganization is expected to occur on or after October 15, 1999. Under the Reorganization Agreement, the Acquiring Fund would acquire all of the assets, subject to the liabilities, of the Acquired Funds in exchange for class A shares of the Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of the corresponding Acquired Fund's shares determined on the closing date of the Reorganization. The value of the assets of the Funds will be determined in the manner set forth in the Funds' then current prospectuses and statements of additional information. The Acquiring Fund shares received by the Acquired Funds will be distributed pro rata by each Acquired Fund to its shareholders and each Acquired Fund will liquidate and dissolve.

4. Applicants state that the investment objectives and policies of the Funds are substantially similar. Each Acquired Fund offers a single class of shares, class A. The Acquiring Fund will offer identical class A shares.[1] No sales load will be imposed in connection with the Reorganization. The Funds will pay the Reorganization expenses.

5. The Board, which is composed entirely of Disinterested Directors, found that the Reorganization is in the best interests of each Acquired Fund, and that the interest of existing shareholders of each Acquired Fund will not be diluted as a result of the Reorganization. During its deliberations, the Board reviewed, among other things: (a) the terms and conditions of the Reorganization Agreement; (b) the investment advisory and other fees projected to be paid by the Acquiring Fund, and the projected expense ratio of the Acquiring Fund as compared to those of each Acquired Fund; (c) the investment objectives, strategies, techniques, investment risks and limitations of the Acquiring Fund and their compatibility with those of each Acquired Fund; (d) that the Funds would pay the expenses of the Reorganization; (e) the potential economics of scale to be gained from combining the assets of the Acquired Funds into the Acquiring Fund; and (f) the anticipated tax-free nature of the Reorganization.

6. The Reorganization is subject to a number of conditions precedent, including: (a) the shareholders of each Acquired Fund will have approved the Reorganization Agreement; (b) applicants will have received exemptive relief from the Commission; (c) a registration statement on Form N–14 relating to the Acquiring Fund and filed with the Commission will have become effective; (d) the receipt of an opinion of counsel with respect to the tax-free nature of the Reorganization; and (e) that each Acquired Fund will have declared and paid a dividend or dividends on its shares which, together with all previous dividends, will have the effect of distributing to its shareholders all of the Acquired Fund's investment company taxable income, if any, its tax-exempt interest income, if any, and all of its net capital gain realized. The Reorganization Agreement may be terminated by the Board and the Reorganization abandoned any time prior to the closing date of the Reorganization. Applicants agree not to make any material changes to the Reorganization Agreement without prior approval of the Commission.

7. The definitive prospectus/proxy statement will be filed with the Commission on or about September 16, 1999 and will be mailed to shareholders of the Acquired Funds at least 20 days before the date of the shareholders meetings scheduled for October 14, 1999.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that they may not rely on rule 17a–8 because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by M&T Bank of more than 5% of the outstanding voting securities

[1] Class A shares of the Funds have a maximum front-end sales load of 5.50% and are subject to a distribution fee under rule 12b–1 under the Act of .25% and shareholder services fees of .25%.

of each of the Acquired Funds, each Acquired Fund may be deemed an affiliated person of an affiliated person of the other Acquired Fund, and the Acquiring Fund. Because of this ownership, each Acquired Fund may be deemed an affiliated person of an affiliated person of the Acquiring Fund for reasons other than having a common investment adviser.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the Board has found that participation in the Reorganization is in the best interests of each Fund, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. In addition, applicants state that the exchange of Acquired Funds' shares for Acquiring Fund shares will take place on the basis of net asset value.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24114 Filed 9–15–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41821; File No. SR–CBOE–99–17]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Operation of the Retail Automatic Execution System

September 1, 1999.

I. Introduction

On April 16, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the CBOE's rules governing the operation of its Retail Automatic Execution System (''RAES''). The proposal increases the maximum order sizes of certain RAES-eligible options and authorizes the appropriate Floor Procedure Committees (''FPCs'') of the Exchange to change current procedures governing assignment and price improvement of RAES orders. On May 21, 1999, the CBOE filed with the Commission Amendment No. 1 to the proposal.[3] Notice of the proposal was published in the **Federal Register** on June 17, 1999.[4] The Commission received no comments on the proposal. On August 23, 1999, the CBOE filed Amendment No. 2 to the proposal,[5] on August 31, 1999, the CBOE filed Amendment No. 3 to the proposal.[6]

II. Description of the Proposal

a. Summary

This filing does four things. First, it increases from 20 to 50 contracts the maximum size of orders for equity options and certain classes of index options eligible to be executed through RAES.[7] Second, it authorizes the appropriate FPCs to implement a new RAES order assignment procedure called ''Variable RAES'' (described below) for some or all classes of CBOE options. Third, it allows the appropriate FPCs to authorize automatic RAES ''step-ups'' for price differentials greater than the one ''tick'' differential currently specified in the rules.[8] Fourth, it makes editorial revisions to clarify or update current RAES rules.

b. Previous Partial Approval

The Commission previously granted accelerated approval to a portion of this rule filing. Specifically, on August 23, 1999, the Commission approved Amendment No. 2, which permitted the CBOE to immediately implement Variable RAES in five stocks that are dually listed on both the Philadelphia stock Exchange (''Phlx'') and the CBOE.[9] Amendment No. 2 was filed in tandem with a related rule proposal, SR–CBOE–99–47, which increased the maximum RAES order size from 20 to 50 contracts in options on those five stocks only.[10] SR–CBOE–99–47 became effective on August 23, 1999. The Commission granted immediate approval of Amendment No. 2 to enable Variable RAES to be used on August 23, when the new order size maximum on the five dually traded options went into effect.

c. Order Size Increase

Formerly, the maximum size of RAES-eligible orders was 20 contracts for all classes of equity options (other than the five dually traded classes noted above), all classes of sector index options and all other classes of index options (except options on the S&P 500 Index, the Nasdaq 100 Index, the Dow Jones Industrial Average, and interest rate options).[11] This proposed rule change

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CBOE clarified issues relating to implementation of the new RAES order assignment procedures. *See* letter from Timothy Thompson, Director, Regulatory Affairs, CBEO, to Gordon Fuller, Special Counsel, Division of Market Regulation, SEC, dated May 20, 1999.

[4] *See* Securities Exchange Act Release No. 41501 (June 9, 1999), 64 FR 32568.

[5] Amendment No. 2 is described below. *See* letter from Christopher R. Hill, Attorney, CBOE, to Michael Walinskas, Associate Director, Division of Market Regulation, SEC, dated August 23, 1999.

[6] Amendment No. 3 is described below. *See* letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Gordon Fuller, Special Counsel, Division of Market Regulation, SEC, dated August 31, 1999.

[7] The proposal also effects a minor increase (from 99 contracts to 100 contracts) in the maximum size of RAES orders for options on two indices—the S&P 500 Index and the Nasdaq 100 Index—to bring those size maximums into conformity with size maximums for other index options and interest rate options. *See infra* note 11.

[8] ''Step-ups'' refers to the ability to improve the price at which an order is executed on RAES to match a better price in another market.

[9] Those stocks are Dell Computer Corporation (''DLQ''), International Business Machines (''IBM''), Johnson & Johnson (''JNJ''), Coca-Cola (''KO''), and Ford Motor Company (''F''). Securities Exchange Act Release No. 41782 (August 23, 1999), 64 FR 47881 (September 1, 1999).

[10] Securities Exchange Act Release No. 41823 (September 1, 1999).

[11] The RAES eligibility maximum was formerly 99 contracts for options on the S&P 500 Index and the Nasdaq 100 Index, and 100 contracts for options on the DJIA and interest rate options. To simplify

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