Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: January 11, 1999 (PCN–499), as supplemented November 29, 1999.

Brief description of amendments: The amendments revise Technical Specification 3.7.6 to change the minimum inventory of water maintained in the condensate storage tank (T–120) from 280,000 gallons to 360,000 gallons during plant operation Modes 1, 2, and 3.

Date of issuance: February 22, 2000.

Effective date: February 22, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—162; Unit 3—153.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 18, 2000 (65 FR 2648). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: June 8, 1999 (PCN–495).

Brief description of amendments: The amendments modify the Technical Specifications to (1) reflect that charging flow is not required to mitigate the effects of design-basis small-break loss-of-coolant accidents (SBLOCAs), (2) increase the maximum as-found lift pressure positive tolerance of main steam safety valves from +1 percent to +2 percent of the setting, and (3) list the ABB Combustion Engineering Supplement 2 SBLOCA evaluation model as an acceptable method for determining linear heat rate.

Date of issuance: February 22, 2000.

Effective date: February 22, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—163; Unit 3—154

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 30, 1999 (64 FR 35210)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: January 2, 1998 (PCN–482), as supplemented December 13, 1999.

Brief description of amendments: The amendments revise Technical Specification 3.7.5 to add a note that states: The steam driven AFW [auxiliary feedwater] pump is OPERABLE when running and controlled manually to support plant start-ups, plant shut-downs, and AFW pump and valve testing.

Date of issuance: February 23, 2000.

Effective date: February 23, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—164; Unit 3—155.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register** January 19, 2000 (65 FR 2991), as corrected January 26, 2000 (65 FR 4265)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 23, 2000.

No significant hazards consideration comments received: No

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 19, 1999.

Brief description of amendments: These amendments relocate Technical Specification Section 3/4.8.3, ''Electrical Equipment Protective Devices,'' and the associated bases to the Technical Requirements Manual.

Date of issuance: February 22, 2000.

Effective date: As of date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: 250 and 241.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: April 21, 1999 (64 FR 19566).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 1st day of March 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5477 Filed 3–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24323; File no. 812–11850]

Seligman Portfolios, Inc., et al.

February 29, 2000.

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

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') for exemptions 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) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of Seligman Portfolios, Inc. and shares of any other open-end investment company that is designed to fund insurance products and for which J. & W. Seligman & Co. Inc., or any of its affiliates, may serve, now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (Seligman Portfolios, Inc. and such other investment companies hereinafter referred to collectively, as ''Insurance Products Funds'') to be offered to, sold to and held by (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context.

APPLICANTS: Seligman Portfolios, Inc. (''Seligman Portfolios'') and J. & W. Seligman & Co. Inc. (''Seligman'').

FILING DATE: The application was filed on November 16, 1999, and amended and restarted on January 27, 2000, and February 25, 2000.

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 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 March 23, 2000, 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 SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 100 Park Avenue, New York, New York 10017.

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

SUPPLEMENTARY INFORMATION: 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, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Seligman Portfolios is registered under the 1940 Act as an open-end management investment company. Seligman Portfolios was incorporated under the laws of the State of Maryland under the name Seligman Mutual Benefit Portfolios, Inc., on June 24, 1987. Seligman Portfolios is comprised of fifteen separately managed portfolios (each, a ''Portfolios''), each of which has its own investment objectives and policies. Additional Portfolios may be added in the future.

2. Seligman is an investment adviser registered with the Commission under the Investment Advisers Act of 1940 and serves as the investment adviser of each Portfolio of Seligman Portfolios.

3. Each Portfolio currently offers its shares to variable annuity separate accounts established by Canada Life Insurance Company of America and Canada Life Insurance Company of New York (together, ''Canada Life''), which are life insurance companies that are affiliates of each other. Applicants state that upon receipt of an order requested by the application, Seligman Portfolios intends to offer its shares to Canada Life variable annuity separate accounts and also to variable annuity separate accounts established by life insurance companies that are not affiliated with Canada Life. Applicants contemplate that, following the grant by the Commission of the exemptive order requested by the application, shares of each Portfolio also would be offered to one or more variable life insurance separate accounts established by insurance companies that are not affiliated with Canada Life and possibly to variable life insurance separate accounts established by Canada Life or its affiliates. Canada Life and its affiliates and the other insurance companies to which shares of the Insurance Products Funds will be offered are hereinafter referred to, collective, as ''participating Insurance Companies.''

4. Applicants state that upon the granting of the requested exemptive relief, shares of each Portfolio also would be offered directly to qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') outside the separate account context.

5. The Participating Insurance Companies will establish their own variable annuity and variable life separate accounts (the ''Separate Accounts'') and design their own variable annuity and variable life insurance contracts (''Contracts''). Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to such Insurance company under state and federal securities law. The role of the Insurance Product Funds, so far as the federal securities laws are applicable, will be to offer their shares to Participating Insurance Companies and their Separate Accounts and to Qualified Plans and to fulfill any conditions that the Commission may impose upon granting the order requested in the application.

Applicants' Legal Analysis

1. 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, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted under Rule 6e–2(b)(15) are available, however, only when all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis supplied). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' in addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying management investment company are offered to variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.''

2. Applicants state that the basis for the relief granted by Rule 6e–2(b)(15) is not affected by the purchase of shares of the Insurance Product Funds by Qualified Plans. However, because the relief under Rules 6e–2(b)(15) and 63–3(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Insurance Product Funds are also to be sold to Qualified Plans.

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares. However, these exemptions are available only where all of the assets of the separate account consist of shares of one or more registered management investment companies which offers their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled [premium variable life insurance] contracts or flexible [premium variable life insurance] contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis supplied). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an investment company that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

4. Applicants state that because the relief granted under Rule 6e–3(T)(b)(15) is available only when shares are offered exclusively to separate accounts, exemptive relief is necessary if shares of the Insurance Product Funds are also to be sold to Qualified Plans.

5. Applicants state that changes in the tax law subsequent to the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) afford the Insurance Products Funds an opportunity to increase their asset base by selling their shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying variable annuity contracts and variable life insurance contracts held in the portfolios of the Insurance Product Funds. The Code provides that such contracts will not be treated as annuity contracts or life insurance contracts for any period (or any subsequent period) for which the investments are not, in accordance with regulations issued by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) (the ''Regulations'') which established specific diversification requirements for investment portfolios underlying variable annuity and variable life contracts. The Regulations generally provide that, in order to meet these 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. However, the Regulations also contain an exception to this requirement that allows shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the status of the investment company as an adequately diversified underlying investment for variable life contracts issued through separate accounts of insurance companies (Treas. Reg. 1.817–5(f)(3)(iii)).

6. Applicants also note that the promulgation of rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations, which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same investment company to separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. In general, Section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from serving in various capacities with respect to an underlying registered management investment company. More specifically, Section 9(a)(3) provides that it is unlawful for any company to serve as investment adviser to 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) of the 1940 Act. However, Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) 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 or administration of the underlying investment company.

8. Applicants state that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that it is unnecessary to apply Section 9(a) to the thousands of individuals who may be involved in a large insurance company but would have no connection with the investment company funding the Separate Accounts. Those individuals who participate in the management or administration of the Insurance Product Funds will remain the same regardless of which life insurance company Separate Accounts invest in their shares. Therefore, Applicants assert that applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants further assert that applying such restrictions would increase the monitoring costs incurred by the Participating Insurance Companies and, therefore, would reduce the net rates of return realized by Contract owners.

9. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement in limited situations, assuming the limitations on mixed and shared funding are satisfied. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company or any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority and subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard voting instructions of contract owners with regard to changes initiated by the contract holders in the investment company's investment policies, principal underwriter or any investment adviser (subject to paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

10. Applicants further represent that the Insurance Products Funds' sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. With respect to Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Applicants state that shares of the Insurance Product Funds sold to Qualified Plans would be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the plan with two exceptions: (a) When the plan expressly provides that the trustees 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 Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions states in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

11. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. 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 Qualified Plans, however, may provide for the trustee, or another named fiduciary to exercise voting rights in accordance with instructions from Plan participants.

12. When a Qualified Plan does not provide participants with the right to give voting instructions, Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among Contract owners and Qualified Plan participants

with respect to voting of an Insurance Product Fund's shares. Accordingly, Applicants note 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 Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

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

14. Applicants assert that no increased conflicts of interest would be presented by the granting of the requested relief. Shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. When different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that the possibility is no different and no greater than that which exists when a single insurer and its affiliates offer their insurance products in several states, as is currently permitted.

15. Applicants state that affiliations do not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, Applicants submit that the conditions set forth in the application and included in this notice are designed to safeguard against 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, the affected insurer may be required to withdraw its Separate Account's investment in the relevant Insurance Products Funds.

16. Applicants further assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. The potential for disagreement 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. However, if the Participating Insurance Company's decision to disregard Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its Separate Account's investment in that Fund, and no charge or penalty would be imposed upon Contract owners as a result of such withdrawal.

17. Applicants submit that no reason exists why investment policies of an Insurance Products Fund with mixed funding would or should be materially different from what they would or should be if such investment company or series thereof funded only variable annuity or only variable life insurance Contracts. Applicants represent that Each Insurance Products fund will be managed to attempt to achieve its investment objective, and will not be managed to favor or disfavor any particular insurer or type of Contract.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance Contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. Those diversities are of greater significance than any differences in insurance products. An investment company supporting even one type of insurance product must accommodate those diverse factors.

19. Applicants do not believe that the sale of shares to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or 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.

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

21. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity Contracts, variable life insurance Contracts and Qualified Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or Qualified Plan cannot net purchase payments to make the distributions, the Separate Account or the Plan will redeem shares of the Insurance Product Funds at their net asset value in conformity with Rule 22c–1 under the 1940 Act. The Participating Life Insurance Company will make distributions in accordance with the terms of the variable Contract, and the Qualified Plan will make distributions in accordance with the terms of the Plan.

22. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving voting rights to Separate Account Contract owners and to Qualified Plans. Applicants represent that the transfer agent for the Insurance Products Funds will inform each Participating Insurance Company of its share ownership in each Separate Account, as well as inform the trustees of Qualified Plans of their holdings. The Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T). Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of Insurance Products Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds offered to the general public.

23. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a Qualified Plan participant. As noted above, regardless of the rights and benefits of Qualified Plan participants, or Contract holders under Contracts, the Qualified Plans

and the Separate Accounts have rights only with respect to their respective shares of the Insurance Products Funds. They can only redeem such shares at their net asset value. No shareholder of any Insurance Products funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

24. Applicants submit that there are no conflicts between the Contract owners of the Separate Accounts and the Qualified Plan participants with respect to state insurance commissioners' veto powers over investment objectives. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies 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, trustees of Qualified Plans can make the decision quickly and redeem their shares from an Insurance Products Fund and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Therefore, Applicants conclude that even if there should arise issues where the interests of Contract holders and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, on their own, redeem the shares out of the Insurance Products Funds.

25. Applicants also assert that there is no greater potential for material irreconcilable conflicts arising between the interests of Qualified Plan participants and variable Contract owners from possible future changes in federal tax laws than that which already exists between variable annuity and variable life insurance Contract owners.

26. Applicants state that various factors have kept some insurance companies from offering variable annuity and variable life insurance 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 as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Contract business on their own. Applicants submit use of the Insurance Products Funds as common investment media for Contracts would alleviate these concerns. Participating Insurance Companies would benefit not only from the investment advisory and administrative expertise of Seligman, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Products Funds available for mixed and shared funding may encourage more insurance companies to offer Contracts. This should result in increased competition with respect to both Contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants assert that Contract owners would benefit because mixed and shared funding should benefit Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Moreover, sale of the shares of Insurance Products Funds to Qualified Plans should result in an increased amount of assets available for investment by such Funds. This, in turn, should inure to the benefit of Contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new Portfolios more feasible.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Trustees or Board of Directors (each, a ''Board'') of each Insurance Products Fund will consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Insurance Products Fund for the existence of any material irreconcilable conflict between and among the interests of the Contract owners of all Separate Accounts and the interests of participants in Qualified Plans investing in the Insurance Product Funds and determine what action, if any, should be taken in response to any of those conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Products Funds are being managed; (e) a difference in voting instructions given by variable annuity Contract owners and variable life insurance Contract owners and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of plan participants.

3. Participating Insurance Companies and Qualified Plans that execute a fund participation agreement upon becoming an owner of 10% or more of an Insurance Products Fund's shares (''Participants'') and Seligman (or any other investment adviser of an Insurance Products Fund) will report any such potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by a Participating Insurance Company to inform the Board whenever it has determined to disregard Contract owner voting instructions, and, when pass-through voting is applicable, an obligation of each Qualified Plan to inform the Board whenever it has determined to disregard voting instructions from participants in the Qualified Plans.

4. The responsibilities to report such conflicts and information and to assist the Board will be contractual obligations of all Participants investing in Insurance Product Funds under their agreements governing participation in the Insurance Product Funds, and these responsibilities will be carried out with a view only to the interests of Contract owners, and, if applicable, participants in Qualified Plans.

5. If it is determined by a majority of the Board of an Insurance Products Fund, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participants will, at their expense and to the extent reasonably

practicable (as determined by a majority of the disinterested Board members), take whatever steps are necessary to remedy or eliminate the material conflict, including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Insurance Products Fund or any series and reinvesting such assets in a different investment medium, which may include another series of an Insurance Products Fund or another Insurance Products Fund; (b) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed Separate Account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Contract owners' voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Insurance Products Fund, to withdraw its Separate Account's investment in such fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, 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 Insurance Products Fund, to withdraw its investment in such Insurance Products Fund, with no charge or penalty 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 Participants under their agreements governing participation in the Insurance Products Funds, and these responsibilities will be carried out with a view only to the interests of Contract holders and Qualified Plan participants.

6. For purposes of Condition 5, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Products Fund, Seligman or any of their respective affiliates be required to establish a new funding medium for any Participant. No Participating Insurance Company or Qualified Plan will be required by Condition 5 to establish a new funding medium for any contract if a majority of Contract owners materially and adversely affected by the irreconcilable material conflict vote to decline this offer. No Qualified Plan shall be required by Condition 5 to establish a new funding medium for any such Plan if: (i) A majority of Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer or (ii) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan makes the decision without Qualified Plan participant vote.

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

8. Participating Insurance Companies will be provided pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of an Insurance Product Fund held in their Separate Accounts in a manner consistent with voting instructions timely received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Participating Insurance Companies will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions. Each Qualified Plan will vote as required by applicable law and its governing documents.

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

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

11. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Insurance Products Fund), and, in particular, each Fund will either provide for annual meeting (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Insurance Product Funds are not within the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent Rules 6e–2 and 6e–3(T) are amended (or Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Insurance Products Funds and the Participating Insurance Companies, as appropriate, shall be required to take

such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent applicable.

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

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

Conclusion

For the reasons summarized above, Applicants 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.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42476; File No. SR–NASD–97–89]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving the Proposed Rule Change on a Temporary Basis and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 to the Proposed Rule Change on a Temporary Basis Relating to Bond Mutual Fund Volatility Ratings

February 29, 2000.

I. Introduction

On October 5, 1998,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the NASD Regulation, Inc. (''NASD'' or ''Regulation'' or ''NASDR''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to permit members and associated persons to include bond mutual fund volatility ratings in supplemental sales literature for an 18 month trial period.

A notice of the proposed rule change appeared in the **Federal Register** on November 5, 1998.[4] The Commission received fourteen comment letters concerning the proposed rule change.[5] On November 9, 1998, NASDR filed Amendment No. 2 to clarify a formatting change to NASD Conduct Rule 2210(c).[6] On March 26, 1999, the NASDR filed amendment No. 3, in which it responded to the comment letters and amended the definition of Bond Mutual Fund Volatility Rating to clarify which funds would be subject to the proposal.[7] On August 18, 1999, NASDR filed Amendment No. 4, which amended subsections (b)(1) and (b)(3) by removing language that several commenters found misleading and confusing.[8] This order approves the proposed rule change. Amendment Nos. 3 and 4 are also approved on an accelerated basis.

II. Background

Bond mutual fund volatility ratings are descriptions of the sensitivity of bond mutual fund portfolios to changing market conditions. Currently, NASDR interprets its rules to prohibit members and associated persons from using bond mutual fund volatility ratings in supplemental sales literature. NASD rules do not apply to the use and dissemination of bond mutual fund volatility ratings by non-NASD members, including rating agencies and information vendors that issue the ratings, and mutual fund groups that use the ratings for promotional and marketing purposes.

Specifically, NASD Rule 2210 prohibits the use by members and associated persons of information that is misleading, that contains exaggerated, unwarranted or misleading statements or claims, or that predicts or projects investment results.[9] The NASD currently prohibits the use of bond mutual fund volatility ratings because it believes that judgments of how a bond mutual fund may react to changes in various market conditions may be predictive of fund performance or misleading.

In Notice to Members 96–84 (December 1996), the NASD requested comment on the appropriateness of its current prohibition. A majority of the

[1] On December 12, 1997, the NASD submitted its initial proposal, which could have limited the effectiveness of the disclosure statement and prevented sales literature from containing relevant explanatory information concerning bond mutual fund volatility ratings. After discussions between NASD and the Commission, the NASD field Amendment No. 1 on October 5, 1998, which replaced and superseded the initial proposal.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Rel. No. 40627 (November 2, 1998), 63 FR 60431.

[5] *See infra* note 14.

[6] Letter from John Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 30, 1998.

[7] The amendment to subsection (a) removes the reference to ''bond mutual fund'' and inserts after ''portfolio,'' the phase: ''of an open-end management investment company that invests in debt securities.'' Letter from John Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 25, 1999 (''Amendment No. 3'').

[8] The amendment to subsection (b)(1) removes the prohibition against using '' a single symbol, number or letter'' to describe volatility. The amendment to subsection (b)(3) removes the second sentence that stated, in relevant part, that ''[subjective factors] may be used solely for purposes of determining whether to issue the rating.'' *See* letter from John Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Richard C. Strasser, Assistant Director, Division of Market Regulation and Mercer E. Bullard, Assistant Chief Counsel, Division of Investment Management, Commission, dated August 18, 1999 (''Amendment N. 4''). *See also* letter from Alden S. Adkins, Senior Vice President and General Counsel NASD Regulation, to Katherine A, England, Assistant Director, Division of Market Regulation and Mercer E. Bullard, Assistant Chief Counsel, Division of Investment Management, Commission, dated November 2, 1999.

[9] NASD Manual, Conduct Rules, Rule 2210.