2000, applicant transferred its assets to Money Market Obligations Trust based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on May 10, 2002.

Applicant's Address: 5800 Corporate Dr., Pittsburgh, PA 15237–7000.

Back Bay Funds, Inc. [File No. 811–8339]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 28, 2001, applicant made a liquidating distribution to its sole shareholder based on net asset value. Expenses of $6,000 incurred in connection with the liquidation were paid by Reich & Tang Asset Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on May 2, 2002.

Applicant's Address: 600 Fifth Ave., New York, NY 10020.

Merrill Lynch Asset Income Fund, Inc. [File No. 811–7181];

Merrill Lynch Asset Growth Fund, Inc. [File No. 811–7183]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On July 13, 2000, each applicant transferred its assets to Merrill Lynch Global Allocation Fund, Inc., based on net asset value. Expenses of $51,980 and $51,843, respectively, incurred in connection with the reorganizations were paid by the surviving fund.

Filing Date: The applications were filed on May 7, 2002.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08543–9011.

Olde Custodian Fund [File No. 811–5256]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By September 13, 2001, all shareholders of applicant (other than applicant's distributor) had redeemed their shares at net asset value. Expenses of approximately $38,158 incurred in connection with the liquidation were paid by Olde Asset Management, applicant's investment adviser, and H.R. Block Financial Advisors, Inc., applicant's distributor.

Filing Date: The application was filed on April 24, 2002.

Applicant's Address: 751 Griswold, Detroit, MI 48226.

Global Utility Fund, Inc. [File No. 811–5695]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 21, 2001, applicant transferred its assets to Prudential Utility Fund, a series of Prudential Sector Funds, Inc., based on net asset value. Expenses of $328,125 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on April 30, 2002.

Applicant's Address: Gateway Center Three, 100 Mulberry Street, Newark, NJ 07102–4077.

Program for the Accumulation of Shares of Technology Fund [File No. 811–1146]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On June 8, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $150 incurred in connection with the liquidation were paid by applicant's depositor, Deutsche Investment Management Americas Inc.

Filing Date: The application was filed on April 22, 2002.

Applicant's Address: c/o Deutsche Investment Management Americas Inc., 222 South Riverside Plaza, Chicago, IL 60606.

Battery Park Funds, Inc. [File No. 811–7675]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 29, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $59,000 incurred in connection with the liquidation were paid by applicant's investment adviser, Nomura Corporate Research and Asset Management Inc.

Filing Dates: The application was filed on December 26, 2001, and amended on May 29, 2002.

Applicant's Address: Nomura Corporate Research and Asset Management Inc., 33 Wood Ave. South, 4th Floor, Iselin, NJ 08830.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14136 Filed 6–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25597; File No. 812–12777]

Metropolitan Series Fund, Inc., et al.; Notice of Application

May 30, 2002.

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

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

Applicants: Metropolitan Series Fund, Inc. (''Metropolitan Series'') and MetLife Advisers, LLC (''MetLife Advisers'') (together, the ''Applicants'')

Summary of Application: Applicants seek an order pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the ''Act'') exempting each life insurance company separate account supporting variable life insurance contracts (and its insurance company depositor) that may invest in shares of an existing portfolio of the Metropolitan Series (an ''Existing Fund'') or a ''Future Fund,'' as defined below, from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the Act, and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, to the extent necessary to permit such separate accounts (''VLI accounts'') to hold shares of any Existing Fund or Future Fund (each, a ''Fund'; collectively, the ''Funds'') when the following other types of investors also hold shares of that Fund: (1) A VLI account of a life insurance company that is not an affiliated person of the insurance company depositor of any VLI account, (2) a Fund's investment adviser (representing seed money investments in the Fund), (3) a life insurance company separate account supporting variable annuity contracts (a ''VA account''), and/or (4) a qualified pension or retirement plan (a ''Plan'' or ''Qualified Plan''), as defined below.

Filing Date: The application was filed on February 8, 2002, and amended and restated on May 23, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 24, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit

or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Thomas M. Lenz, Esq. and Christopher A. Martin, Esq., Metropolitan Life Insurance Company, 501 Boylston Street, Boston, MA 02116. Copy to Stephen E. Roth, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Martha Atkins, Senior Counsel, or William J. Kotapish, Assistant Director, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. As used herein, a Future Fund is any investment company (or investment portfolio or series thereof), other than an Existing Fund, designed to be sold to VLI accounts and to which Applicants or their affiliates may in the future serve as investment advisers, investment subadvisers, investment managers, administrators, principal underwriters, or sponsors. As used herein, Plan or Qualified Plan means any trust, plan, account, contract, or annuity described in Sections 401(a), 403(a), 403(b), 408(a), 408(b), 414(d), 457(b), 408(k), and 501(c)(18) of the Internal Revenue Code of 1986, as amended (the ''Code''), and any other trust, plan, account, contract, or annuity that is determined to be within the scope of Treasury Regulation 1.817–5(f)(3)(iii).

2. The Metropolitan Series, a Maryland corporation formed on November 23, 1982, is registered under the Act as an open-end management investment company and is comprised of 23 portfolios. As of December 31, 2001, the Metropolitan Series had 3 billion shares of authorized common stock at $0.01 par value per share. Each of the Existing Funds is managed by a Board of Directors (''Board''), and Metropolitan Life Insurance Company (''MetLife''), a New York domiciled life insurance company and wholly owned subsidiary of MetLife, Inc., a publicly owned Delaware corporation, serves as the principal underwriter and distributor of the Existing Funds.

3. MetLife Advisers, a Delaware limited liability company, is the investment adviser for the Metropolitan Series and is registered as an investment adviser under the Investment Advisers Act of 1940, as amended. MetLife Advisers, an indirect wholly owned subsidiary of MetLife, became the investment manager of each portfolio of the Metropolitan Series on May 1, 2001. Prior to that time, MetLife served as investment manager to the Metropolitan Series. Prior to January 1, 2001, MetLife Advisers was a Massachusetts corporation called New England Investment Management, Inc., which was an indirect wholly owned subsidiary of MetLife. On January 1, 2001, New England Investment Management, Inc. converted to a limited liability company named New England Investment Management LLC pursuant to Delaware law. New England Investment Management LLC changed its name to MetLife Advisers, LLC on May 1, 2001.

4. The Existing Funds and Future Funds may offer their shares to VLI and VA accounts (''Participating Separate Accounts'') of various life insurance companies (''Participating Insurance Companies'') to serve as an investment medium to support variable life insurance contracts and variable annuity contracts (together, ''Variable Contracts'') issued through such accounts. Each VLI and VA account is or will be established as a segregated asset account by a Participating Insurance Company pursuant to the insurance law of the Company's state of domicile. As such, the assets of each are or will be the property of the Participating Insurance Company and that portion of the assets of such an account equal to the reserves and other contract liabilities with respect to the account is or will not be chargeable with liabilities arising out of any other business that the Participating Insurance Company may conduct. The income, gains, and losses, realized or unrealized from such an account's assets are or will be credited to or charged against the account without regard to other income, gains, or losses of the Participating Insurance Company. If a VLI or VA account is registered as an investment company, it is or will be a ''separate account'' as defined by Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust. For purposes of the Act, the Participating Insurance Company that establishes such a registered VLI or VA account is the depositor and sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

5. The Funds will sell their shares to registered VLI and VA accounts only if each Participating Insurance Company sponsoring such a VLI or VA account enters into a participation agreement with the Fund. The participation agreements define or will define the relationship between each Fund and each Participating Insurance Company and memorialize or will memorialize, among other matters, the fact that, except where the agreement specifically provides otherwise, the Participating Insurance Company will remain responsible for establishing and maintaining any VLI or VA account covered by the agreement and for complying with all applicable requirements of State and Federal law pertaining to such accounts and to the sale and distribution of variable contracts issued through such accounts. The participation agreements also memorialize or will memorialize, among other matters, the fact that, with regard to compliance with Federal securities laws, unless the agreement specifically states otherwise, the Fund's obligations relate solely to offering and selling its shares to VLI and VA accounts covered.

6. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI and VA accounts of the same insurance company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as ''mixed funding.'' The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI and/or VA accounts of two or more insurance companies that are not affiliated persons of each other is referred to herein as ''shared funding.''

7. Applicants propose that each Existing Fund and any Future Fund may offer and sell its shares directly to Qualified Plans. Changes in the Federal tax law have created the opportunity for each Existing Fund and any Future Fund to substantially increase its net assets by selling shares to Qualified Plans. Most of the plans will be pension or retirement plans intended to qualify under Sections 401(a) and 501(a) of the Code. Many of the plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under Section 401(k) of the Code. The plans that qualify under Sections 401(a) and 501(a) will also be subject to, and will

be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), applicable to either defined benefit or to defined contribution profit-sharing plans, specifically ''Title I—Protection of Employee Benefit Rights.'' These plans therefore will be subject to regulatory provisions under the Code and ERISA regarding, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and enforcement. Existing Fund and any Future Fund shares sold to such Qualified Plans would be held by the Trustees of said Plans as required by Section 403(a) of ERISA. As noted elsewhere in this Application, pass through voting is generally not required to be provided to participants in Qualified Plans pursuant to ERISA.

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

9. As a result of this exception to the general diversification requirement, qualified pension and retirement plans may select the Funds as investment options without endangering the tax status of Variable Contracts issued through Participating Separate Accounts as life insurance or annuities, respectively. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI accounts, VA accounts, and Qualified Plans, is referred to herein as ''extended mixed and shared funding.''

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–2(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act. Section 9(a) of the Act provides that it is unlawful for any company to serve as an investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) of the Act, and Rule 6e–2(b)(15)(iii) provides a partial exemption from Sections 13(a), 15(a), and 15(b) of the Act to the extent those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares.

2. The exemptions granted to a registered VLI account by Rule 6e–2(b)(15) are available only where 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,'' and then, only where scheduled premium variable life insurance contracts are issued through such VLI accounts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI account that owns shares of a management company that also offers its shares to a VA account of the same insurance company or any other insurance company. Likewise, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI account that owns shares of a management company that also offers its shares to a VLI account of the same insurance company or any other insurance company that issues flexible premium variable life insurance contracts.

3. In addition, the relief granted by Rule 6e–2(b)(15) under the Act is not available with respect to a scheduled premium VLI account that owns shares of an underlying management company that also offers its shares to VLI or VA accounts funding Variable Contracts of one or more unaffiliated life insurance companies. Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from Section 9(a), and from Sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where 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 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 VLI account, subject to certain conditions. Rule 6e–3(T), however, 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 VLI account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. Also, Rule 6e–3(T) does not contemplate extended mixed and shared funding.

5. Applicants maintain, as discussed below, that there is no policy reason for the sale of Fund shares to Qualified Plans to prohibit or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Notwithstanding, Rule 6e–2 and Rule 6e–3(T) each specifically provide that the relief granted thereunder is available only where shares of the underlying fund are offered exclusively to insurance company separate accounts. In this regard, Applicants request exemptive relief to the extent necessary to permit shares of the Funds to be sold to Qualified Plans while allowing

Participating Insurance Companies and their VLI accounts to enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants note that if the Funds were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided for under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by the trustee of a qualified pension and retirement 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 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).

7. Applicants are not aware of any reason for excluding separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), or for excluding separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Similarly, Applicants are not aware of any reason for excluding Participating Insurance Companies from the exemptive relief requested because the Funds may also sell their shares to qualified pension and retirement plans. Rather, Applicants assert that the proposed sale of shares of the Funds to Qualified Plans, in fact, may allow for the development of larger pools of assets resulting in the potential for greater investment and diversification opportunities, and for decreased expenses at higher asset levels resulting in greater cost efficiencies.

8. Applicants recognize that the reason the Commission did not grant more extensive relief in the area of mixed and shared funding when it adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that Commission concern is not warranted in the context of permitting Qualified Plans to invest in the Funds. Applicants have concluded that the addition of Qualified Plans as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. Even if a material irreconcilable conflict involving Qualified Plans arose, the trustees of (or participants in) the Qualified Plans could simply redeem their shares and make alternative investments.

9. Consistent with the Commission's authority under Section 6(c) of the Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request relief for the class consisting of Participating Insurance Companies and their VLI accounts investing in the Existing Funds and Future Funds as well as their principal underwriters that currently invest or in the future will invest in the Funds.

10. There is ample precedent, in a variety of contexts, for granting exemptive relief not only to the applicants in a given case, but also to members of the class not currently identified that may be similarly situated in the future. Such class relief has been granted in various contexts and from a wide variety of the Act's provisions, including class exemptions in the context of mixed and shared funding. Such class exemptions have included, among other things, exemptions permitting the sale of shares by unnamed underlying funds to Participating Separate Accounts and Qualified Plans.

11. The Commission has previously granted exemptive orders permitting open-end management investment companies to offer their shares directly to Qualified Plans in addition to offering their shares to separate accounts of affiliated or unaffiliated insurance companies which issue either or both variable annuity contracts or variable life insurance contracts. The Order sought in this Application is identical to these precedents in all material respects with regard to the conditions Applicants proposed be imposed on Participating Separate Accounts and Qualified Plans in connection with investment in the Funds. The Commission has also granted exemptions similar to those requested herein where a fund's shares would not be sold directly to Qualified Plans. Applicants believe that the same polices and considerations that led the Commission to grant such exemption to other applicants are present here.

12. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) under the Act provide exemptions from Section 9(a) under certain circumstances, subject to 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 management company.

13. Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) under the Act provide, in effect, that the fact that an individual disqualified under Section 9(a)(1) or (2) of the Act is an officer, director, or employee of an insurance company, or any of its affiliates, would not, by virtue of Section 9(a)(3) of the Act, disqualify the insurance company or any of its affiliates from serving in any capacity with respect to an underlying investment company, provided that the disqualified individual did not participate directly in the management or administration of the underlying investment company. Similarly, Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) under the Act provide, in effect, that the fact that any company disqualified under Section 9(a)(1) or (2) of the Act is affiliated with the insurance company would not, by virtue of Section 9(a)(3) of the Act, disqualify the insurance company from serving in any capacity with respect to an underlying investment company, provided that the disqualified company did not participate directly in the management or administration of the investment company.

14. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act from requirements of Section 9 of the Act limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9. 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 Act to 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. Those Rules further recognize that it also is unnecessary to apply Section 9(a) of the Act to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may use a Fund as the funding medium for Variable Contracts. There is no regulatory purpose in extending the Section 9(a) monitoring requirements because of mixed or shared funding.

15. Those individuals who participate in the management or administration of the Funds will remain the same regardless of which Separate Accounts, insurance companies, or Qualified Plans use such Funds. Applying the requirements of Section 9(a) of the Act because of investment by the separate accounts of other insurers and Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contractowners. Moreover, in the case of Qualified Plans, the Plans, unlike separate accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of the Funds except by virtue of its holding 5% or more of a Fund's shares.

16. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Pass-through voting privileges will be provided with respect to all registered variable contractowners so long as the Commission interprets the Act to require pass-through voting privileges for variable contractowners.

17. 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 discussed above 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 contractowners 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 the voting instructions of contractowners if such instructions would result in 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), (b)(7)(ii)(B), and (b)(7)(ii)(C) of the Rules).

18. Rules 6e–2 and 6e–3(T) under the Act recognize that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts, and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contractowners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, Rule 6e–3(T)'s corresponding provisions for flexible premium variable life insurance undoubtedly were adopted in recognition of the same factors.

19. With respect to the Qualified Plans, which are not registered as investment companies under the 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 the assets of most Plans to certain specified persons. Under Section 403(a) of ERISA, shares of a fund sold to a Qualified Plan covered by ERISA must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the 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 Plan and not contrary to ERISA, and (2) 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 stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary to an ERISA-covered Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the ERISA-covered 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.

20. 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 Plan investors with respect to voting of the respective Fund's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

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

22. 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, the purchase of shares of the Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

23. The prohibitions on mixed and shared funding might reflect some concern with possible divergent

interests among different classes of investors. When Rule 6e–2 under the Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, at the time of the adoption of Rule 6e–2, the Commission staff contemplated underlying funds with public shareholders and with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contractowners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and to affect the investment decisions of public shareholders.

24. However, for reasons unrelated to the Act, IRS Revenue Ruling 81–225 (September 25, 1981) effectively deprived most variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment medium for most variable contracts (including variable life contracts) in new Section 817(h). Section 817(h) of the Code, in effect, requires that the investments made by variable annuity and variable life insurance separate accounts be ''adequately diversified.'' If a separate account is organized as a unit investment trust that invests in a single fund or series, the separate account will not be diversified. In this situation, however, Section 817(h) of the Code provides, in effect, that the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts.'' Accordingly, a unit investment trust separate account that invests solely in a publicly available mutual fund will generally not be adequately diversified. In addition, any underlying mutual fund, including the Funds, that sells shares to separate accounts, in effect, would be precluded from selling its shares to the public. Consequently, there will be no public shareholders of the Funds.

25. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Where insurers are domiciled in different states, it is possible that the particular state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators of other states in which other insurance companies are domiciled. The fact that a single insurer and its affiliates offer their insurance products in different states does not create a significantly different or enlarged problem.

26. Shared funding by unaffiliated insurers is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer(s) will be required to withdraw its Participating Separate Account's investment in the relevant Fund.

27. The right of an insurance company under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contractowner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contractowners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

28. However, a particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contractowner voting instructions. The insurer's action could arguably be different from the determination of all or some of the other insurers (including affiliated insurers) that the contractholders' voting instructions should prevail, and could either preclude a majority vote approving the change or represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant Fund, to withdraw the Participating Separate Account's investment in such Fund, and no charge or penalty would be imposed as a result of such withdrawal. There is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if it funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program.

29. The Funds will not be managed to favor or disfavor any particular Participating Insurance Company or type of Variable Contract. There is no reason to believe that different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of variable contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case. No one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contractowners is composed of individuals of diverse financial status, age, and insurance and investment goals. A fund supporting even one type of insurance product must accommodate those factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the Existing Funds and any Future Funds. Also, permitting mixed and shared funding will facilitate the establishment of additional Future Funds serving diverse goals. The broader base of contractowners can be expected to provide economic justification for the creation of additional portfolios with a greater variety of investment objectives and policies.

30. Applicants do not believe that the sale of the shares of the Funds 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 contractowners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contractowners in the Participating Separate Accounts or to the participants under the Qualified Plans.

31. Applicants considered whether there are any issues raised under the Code or the Treasury Regulations or Revenue Rulings thereunder if Qualified Plans, VLI accounts, and VA accounts all invest in the same underlying fund. 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.

32. Treasury Department Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817–5(f)(3)(iii)). Thus, Treasury Regulations 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, present any inherent conflicts of interest.

33. 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 Funds. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the Funds at their respective net asset value in conformity with Rule 22c–1 under the Act (without the imposition of any sales charges) to provide proceeds to meet distribution needs. A Variable Contract will make distributions in accordance with the terms of the Contract. Likewise, a Qualified Plan will make distributions in accordance with the terms of the Plan.

34. Moreover, there is analogous precedent for a situation in which the same funding vehicle was used for contractowners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate account. However, long-term capital gains incurred in such separate accounts were taxed on a different basis than short-terms gains and other income with respect to the reserves underlying non-qualified contracts. A tax reserve at the estimated tax rate was established in the separate account affecting only the non-qualified reserves. To the best of Applicants' knowledge, that practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax consequences of distributions with respect to Participating Separate Accounts and Qualified Plans do not raise any material irreconcilable conflicts of interest with respect to the use of an Existing Fund or any Future Fund.

35. Applicants considered whether it is possible to provide an equitable means of giving voting rights to Participating Separate Account contractowners and to Qualified Plans, and determined it is possible, as indicated below. In connection with any meeting of shareholders, the Funds 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 relevant Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

36. Applicants also considered whether there are any conflicts between the contractowners of the Participating Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. 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 Funds and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

37. Based on the foregoing, Applicants have concluded that even if there should arise issues where the interests of contractowners 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 Funds.

38. Finally, Applicants considered whether there is a potential for future conflicts of interest between Participating Separate Accounts and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contractowners of Participating Separate Accounts from possible future changes in the Federal tax laws than that which already exist between variable annuity contractowners and variable life insurance contractowners.

39. Applicants recognize that the foregoing is not an all-inclusive list but rather is representative of issues which

they believe are relevant to this Application. Applicants believe that the discussion contained herein demonstrates that the sale of shares of the Funds to Qualified Plans does not increase the risk of material irreconcilable conflicts of interest. Further, Applicants submit that the use of the Funds with respect to Qualified Plans is not substantially dissimilar from the Funds' current use, in that Qualified Plans, like Variable Contracts, are generally long-term retirement vehicles.

40. Applicants note that when the Commission last revised Rule 6e–3(T) in 1987, the Treasury Department had not issued the current regulations (Treas. Reg. 1.817–5) which currently make it possible for shares of the Funds to be sold to Qualified Plans without adversely affecting the tax status of the insurer's Variable Contracts. Applicants submit that, although proposed regulations had been published, the Commission did not envision this possibility when it last examined (b)(15) of Rule 6e–3(T) and might well have broadened the exclusivity provision of that paragraph at that time to include Qualified Plans had this possibility been apparent.

41. Various factors have limited the number of insurance companies that offer variable annuities and variable life insurance contracts. These factors include the costs of organizing and operating a fund's medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. For example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own.

42. Use of the Funds as common investment vehicles for Variable Contracts would reduce or alleviate the above-mentioned concerns. Mixed and shared funding, including extended mixed and shared funding, also should provide several benefits to variable contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Funds' investment advisers and subadvisers, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Funds available for mixed and shared funding and extended mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

43. Mixed and shared funding and extended mixed and shared funding benefits variable contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants also assert that the sale of shares of the Funds to Qualified Plans in addition to Separate Accounts of Participating Insurance Companies will result in an increased amount of assets available for investment by such Funds. This may benefit variable contractowners through greater diversification and by making the addition of new portfolios more feasible.

44. Applicants assert that, regardless of the type of shareholder in any of the Funds, the investment advisers and subadvisers are or would be contractually obligated to manage such Fund solely and exclusively in accordance with that Fund's investment objectives, policies, and restrictions as well as any guidelines established by the Board. The investment advisers and subadvisers of each Fund work with a pool of money and do not take into account the identity of the shareholders. Thus, the Existing Funds are and any Future Fund will be managed in the same manner as any other mutual fund.

45. Applicants see no significant legal impediment to permitting mixed and shared funding and extended mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account and Applicants believe, as indicated above, that mixed and shared funding and extended mixed and shared funding will have no adverse federal income tax consequences.

46. Applicants also note that the Commission has issued orders permitting mixed funding and shared funding. Applicants' proposal for mixed and shared funding and extended mixed and shared funding complies in all material respects with the same conditions consented to by the applicants for such orders. Therefore, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of Sections 9(a), 13(a), 15(a), and 15(b) of the Act or Rules 6e–2 or 6e–3(T) thereunder.

Applicants' Conditions for Relief

If the requested order is granted, Applicants consent to the following conditions:

1.A majority of the members of the Board of each Fund will consist of persons who are not ''interested persons'' of such Fund, as defined by Section 2(a)(19) of the Act, and the Rules thereunder, 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 director or directors, then the operation of this condition will 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 or by future rule.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict between and among the interests of the contractholders of all Participating Separate Accounts and of participants of Qualified Plans investing in such Fund and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable Federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative 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 such Fund are being managed; (e) a difference in voting instructions given by variable annuity contractowners, variable life insurance contractowners, and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contractowners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. MetLife Advisers (or any investment adviser to a Fund), and any Participating Insurance Companies and Qualified Plan that executes a participation agreement, upon becoming an owner of 10 percent or more of the assets of any Fund (collectively, ''Participants'') will report any potential or existing conflicts to the relevant

Board. Such Participants will be responsible for assisting the relevant Board in carrying out the Board's 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 each Participating Insurance Company to inform the relevant Board whenever contractowner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligations of all Participating Insurance Companies under their participation agreements with the Funds, and these responsibilities will be carried out with a view only to the interests of the contractowners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested members of such Board, that a material irreconcilable conflict exists, then the relevant Participating Insurance Company or Plan will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested members of the Board), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) withdrawing the assets allocable to some or all of the Participating Separate Accounts from the relevant Fund and reinvesting such assets in a different investment medium, which may include another such Fund, (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners or life insurance contractholders of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners 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 contractowner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw such Participating Insurance Company's 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 Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the relevant Fund and this responsibility, in the case of Participating Insurance Companies, will be carried out with a view only to the interests of contractowners and in the case of Qualified Plans, will be carried out with a view only to the interests of Plan participants. For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will any Fund or MetLife Advisers (or any other investment adviser to a Fund), as relevant, be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any Variable Contracts if an offer to do so has been declined by the vote of a majority of the contractowners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if (a) a majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes each decision without a Plan participant vote.

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

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners whose contracts are funded through a registered separate account so long as the Commission continues to interpret the Act as requiring such pass-through voting privileges. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the applicable Fund held in its Participating Separate Accounts in a manner consistent with voting instructions timely received from contractowners. Participating Insurance Companies will be responsible for assuring that each Participating Separate Account investing in a Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to vote a Fund's shares and calculate voting privileges in a manner consistent with all other Participating Separate Accounts in a Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in the Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares attributable to it in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges to be provided to variable contractowners, MetLife Advisers or any of its affiliates will vote its shares of any Fund in the same proportion as all variable contract owners having voting rights with respect to the relevant Fund.

8. Each Fund will comply with all provisions of the Act requiring voting by shareholders (including persons who have a voting interest in the shares of the Fund), and, in particular, each such Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although the Funds are not, or will not be, the type of trust described in Section 16(c) of the Act), as well as with Section 16(a) of the Act and, if and when applicable, Section 16(b) of the Act. Further, each such 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.

9. Each Fund will notify all Participating Insurance Companies and all Qualified Plans that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each such Fund will disclose in its prospectus that: (a) shares of such Fund may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contractowners participating in such Fund and the interests of Qualified Plans investing in such Funds may conflict; and (c) such Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the Act are amended, or proposed Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules promulgated thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the Order requested in this Application, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, as adopted, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board of each Fund such reports, materials, or data as a Board may reasonably request so that the directors of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in this Application, and said reports, materials and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Funds.

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

13. A Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Fund unless such Plan executes an agreement with the relevant Fund governing participation in such Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any such Fund.

Conclusion

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14137 Filed 6–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25600; File No. 812–12100]

Ameritas Life Insurance Corp., et al.; Notice of Application

May 31, 2002.

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

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

Applicants: Ameritas Life Insurance Corp. (''Ameritas''), and Ameritas Life Insurance Corp. Separate Account LLVA (''Separate Account'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(c) of the 1940 Act to permit the substitution of shares of the Vanguard International Portfolio for the Strong International Fund II.

FILING DATE: The application was filed by Acacia National Life Insurance Company, Acacia National Variable Life Separate Account I and Acacia National Variable Annuity Separate Account II (collectively, the ''Acacia Applicants'') on May 16, 2000, and amended and restated by the Acacia Applicants, Ameritas and Separate Account on October 16, 2001. The filing was amended and restated by Ameritas and Separate Account on February 12, 2002, April 10, 2002, and April 19, 2002. Applicants represent that they will file an amendment to the application during the notice period to conform to the representations set forth herein.

Hearing Or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 21, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Ken Reitz, Esq., Ameritas Life Insurance Corp., 5900 ''O'' Street, Lincoln, NE 68510.

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

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

Applicants' Representations

1. Ameritas is a stock life insurance company organized in the State of Nebraska and currently licensed to sell life insurance in all 50 states and in the District of Columbia. Ameritas is a subsidiary of AmeritasAcacia Mutual Holding Company.

2. The Separate Account was established by Ameritas on August 26, 1995, to receive and invest premiums received from purchasers of certain variable annuity contracts issued by Ameritas. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. In addition, the variable annuity contracts funded by the Separate Account are registered with the Commission under the Securities Act of 1933 (''1933 Act''). The income, capital gains and capital losses incurred on the assets of the Separate Account are