establishing a new position for compliance in this generic letter.

Dated at Rockville, Maryland, this 3rd day of April 1997.

For the Nuclear Regulatory Commission.

**Marylee M. Slosson,**

*Deputy Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–9392 Filed 4–10–97; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Notice of Removal of the Texas Instruments, Incorporated, Attleboro, Massachusetts Site From the NRC Site Decommissioning Management Plan and Termination of the NRC License for the Facility

**SUMMARY:** This notice is to inform the public that the U.S. Nuclear Regulatory Commission is removing the Texas Instruments, Incorporated, Attleboro, Massachusetts site from the NRC Site Decommissioning Management Plan (SDMP). NRC has determined that remediation of residual radioactive contamination, as a result of past operations with NRC licensed material in buildings and in exterior areas on the site, has successfully been completed and the facility meets the current NRC criteria for release for unrestricted use.

**FOR FURTHER INFORMATION CONTACT:** Mark Roberts, Division of Radiation Safety and Safeguards, Region I, 475 Allendale Road, King of Prussia, PA 19406, Telephone: (610) 337–5094.

**SUPPLEMENTARY INFORMATION:** The Texas Instruments, Incorporated site in Attleboro, Massachusetts was identified in 1990 by NRC as a site where residual radioactive contamination was present, as a result of past operations. Radioactive contamination was identified by Texas Instruments in a former burial area on the site. In order to ensure that remediation of the burial area was accomplished in a timely manner, NRC added this site to its SDMP. Contamination in three of the site buildings, as well as additional exterior contamination, was subsequently identified. Texas Instruments has remediated residual contamination in all of these areas, performed radiological surveys throughout the entire site and site buildings, where radioactive materials may have been used, and requested, by letter dated October 29, 1996, that NRC remove the Attleboro, Massachusetts site from the SDMP and terminate the license.

NRC staff has periodically inspected the site remediation activities, reviewed final radiological surveys performed by the licensee's contractors, and performed confirmatory measurements at the site. NRC staff has determined that the facility meets the requirements for release for unrestricted use and has removed the site from the SDMP and terminated the NRC license.

For further details with respect to this action, documents are available for inspection at NRC's Region I office located at 475 Allendale Road, King of Prussia, PA 19406. Persons desiring to review documents at the Region I office should call Ms. Cheryl Buracker at (610) 337–5093 several days in advance to assure that the documents will be readily available for review.

Dated at Rockville, Maryland this 7th day of April 1997.

For the Nuclear Regulatory Commission.

**John W.N. Hickey,**

*Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 97–9394 Filed 4–10–97; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22602; File No. 812–10476]**

### EQ Advisors Trust, et al.

April 4, 1997.

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

**ACTION:** Notice of application for an exemption pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

**APPLICANTS:** EQ Advisors Trust (''Trust''), The Equitable Life Assurance Society of the United States (''Equitable''), Equitable Distributors, Inc. (''EDI''), EQ Financial Consultants, Inc. (''Manager'') and certain life insurance companies and their separate accounts investing now or in the future in the Trust.

**RELEVANT 1940 ACT SECTIONS:** Order requested pursuant to Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

**SUMMARY OF APPLICATION:** Appliants seek exemptive relief to the extent necessary to permit shares of the Trust and any other investment company that is designed to fund variable insurance products and for which Equitable, EDI, the Manager of any of their affiliates may serve as investment adviser, manager, administrator, principal underwriter, or depositor (collectively ''Insurance Products Funds'') to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts issued by affiliated or unaffiliated life insurance companies (''Participating Insurance Companies'') or qualified pension and retirement plans outside of the separate account context (''Plans'').

**FILING DATE:** The application was filed on December 31, 1996, and amended on April 1, 1997.

**HEARING AND 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 must be received by the Commission by 5:30 p.m. on April 29, 1997, and must 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, N.W., Washington, D.C. 20549. Applicants, c/o Jane A. Kanter, Esq., Katten Muchin & Zavis, 1025 Thomas Jefferson Street, N.W., East Lobby, Suite 700, Washington, D.C. 20007–5201.

**FOR FURTHER INFORMATION CONTACT:** Michael B. Koffler, Staff Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

#### Applicants' Representations

1. The Trust is a Delaware business trust which is registered pursuant to the 1940 Act as an open-end, management investment company. The Trust consists of multiple separately managed investment portfolios (''Portfolios'') and may in the future issue shares of additional portfolios.

2. The Trust has adopted a plan pursuant to Rule 18f–3 of the 1940 Act in order to offer multiple classes of shares of each of its Portfolios. Two such classes are currently contemplated and have been preliminarily designated

Class IA and Class IB. In addition, the Trust has adopted a plan pursuant to Rule 12b–1 of the 1940 Act to permit one or more of its classes of shares to pay for the distribution of its shares.

3. The Manager, the investment manager for the Trust, is a corporation organized pursuant to the laws of Delaware and is registered as an investment adviser pursuant to the Investment Advisers Act of 1940. The Manager is responsible for providing investment management and administrative services to the Trust. In the exercise of its responsibility, the Manager selects other registered investment advisers (''Advisers'') for the Trust's portfolios and monitors the Advisers' investment programs and results, reviews brokerage matters, oversees compliance matters and supervises the provision of services by third parties such as the Trust's custodian. The Manager has entered into or will enter into investment advisory agreements with the Advisers that will be primarily responsible for the day-to-day investment program of each Portfolio. The Manager also serves as the principal underwriter for the Trust's Class IA shares. The Manager is an indirect, wholly-owned subsidiary of Equitable.

4. Shares of each Portfolio may be offered to insurance company separate accounts, which are both registered and unregistered under the federal securities laws, that fund variable annuity contracts or variable life insurance policies (''Contracts''). The Trust initially intends to offer its shares to variable annuity and variable life insurance separate accounts established by Equitable.

5. Following the grant by the Commission of the exemptive order requested by the application to which this notice relates, shares of each Portfolio may be offered to variable annuity and variable life insurance separate accounts established by other affiliated and unaffiliated insurance companies.

6. The Participating Insurance Companies will establish their own separate accounts and design their own Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under the federal securities laws. The role of the Insurance Products Funds, so far as the federal securities laws are concerned, will be limited to that of offering their shares to separate accounts of the Participating Insurance Companies and the Plans and of fulfilling the conditions imposed by the Commission provided in the application to which this notice relates.

7. Shares of each Portfolio may also be offered to Plans. The Plans may choose any of the Insurance Products Funds as the sole investment under the Plan or as one of several investment options. Participants in Plans may or may not be given an investment choice depending upon the Plan itself.

8. The Manager and Advisers will not act as an investment manager or investment adviser to any of the Plans that purchase shares of any of the Insurance Products Funds, unless permitted by applicable law.

**Applicants' Legal Analysis**

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit ''mixed'' and ''shared'' funding, as defined below.

2. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. 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 relief provided by the rule also extends to the investment adviser, principal underwriter, and sponsor or depositor of a separate account.

4. The exemptions granted by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of 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. Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated or unaffiliated life insurance company. The use of a common investment company as the underlying investment vehicle for both variable annuity contracts and scheduled or flexible premium variable life insurance contracts is referred to herein as ''mixed funding.'' Also, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to Plans.

5. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common investment company as the underlying investment vehicle for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.'' Moreover, because the relief granted by Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional relief is necessary if the shares of the Insurance Products Funds are also to be sold to Plans.

6. In connection with 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) 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 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. Thus, Rule 6e–3(T)(b)(15) grants an exemption if the underlying management investment company engages in mixed funding, but not if it engages in shared funding. Moreover, because the relief granted by 6e–3(T)(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional relief is necessary if shares of the Insurance Products Funds are also to be sold to Plans.

7. The current tax law permits the Insurance Products Funds to increase their asset base through the sale of their shares to Plans. Section 817(h) of the Internal Revenue Code (''Code'') imposes certain diversification

requirements on the underlying assets of the Contracts invested in the Insurance Products Funds. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance policy for any period in which the underlying assets are not adequately diversified, as prescribed by Treasury regulations. To meet the 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. Treas. Reg. § 1.817–5. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Contracts. Treas. Reg. § 1–817–5(f)(3)(iii).

8. The promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these treasury regulations. Given the then-current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

9. Applicants assert that if the Insurance Products Funds were to sell their shares only to Plans, no exemptive relief would be necessary. Applicants state that none of the relief provided for Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Plans or to a registered investment company's ability to sell its shares to Plans. It is only because the separate accounts investing in the Insurance Products Funds are themselves investment companies seeking relief under Rules 6e–2 and 6e–3(T), and do not wish to be denied such relief if the Insurance Products Funds sell to Plans, that Applicants are applying for the requested relief.

*Disqualification*

10. Section 9(a)(3) of the 1940 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 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These rules provide: (a) that the eligibility restrictions of Section 9(a) shall not apply to persons who are officers, director or employees of the life insurer or its affiliates who do not participate directly in the management or administration of the underlying fund; and (b) that an insurer shall be ineligible to serve as an investment adviser or principal underwriter of the underlying fund only if an affiliated person of the life insurer who is disqualified by Section 9(a) participates in the management or administration of the underlying fund.

11. Applicants assert that applying the restrictions of Section 9(a) to many individuals in a typical insurance company complex, most of whom will have no involvement in matters pertaining to underlying investment companies funding the separate accounts of the Participating Insurance Companies, would serve no regulatory purpose.

12. Applicants submit that there is no regulatory purpose in denying the partial exemptions because of mixed and shared funding and sales to Plans. Applicants submit that sales to those entities do not change the fact that the purposes of the 1940 act are not advanced by applying the prohibitions of Section 9(a) to persons in a life insurance complex who have no involvement in the underlying fund.

*Pass-Through Voting*

13. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through voting privileges will be provided by the Participating Insurance Companies so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners.

14. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions form Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent these sections have been deemed by the Commission to require pass-through voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its Contract owners in certain circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(15)(b)(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. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard the voting instructions of its Contract owners if the Contract owners initiate any change in the underlying investment company's investment objectives, principal underwriter, or investment adviser, provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T).

15. Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts, and is subject to extensive state regulation. Applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognizes that exemptions from pass-through voting requirements were 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. Applicants state that, in this respect, flexible premium variable life insurance contracts are subject to substantially the same state insurance regulatory authority; therefore, the corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same factors.

16. Applicants further represent that the offer and sale of the Insurance Products Funds' shares to Plans will not have any impact on the relief requested in this regard. Shares of the Insurance Products Funds sold to Plans will be held by the trustee(s) (or custodian(s)) of the Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control Plan investments with two exceptions: (a) when the Plan expressly provides that the Fund Trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the Trustee(s) is (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 two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where 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 to the named fiduciary. In any event, there is no pass through voting to the participants in the Plans. Accordingly, Applicants note that unlike the case with separate accounts of Participating Insurance Companies, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to the Plans.

*Conflicts of Interest*

17. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that 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 states. For example, 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 assert that this possibility is no different and no greater than exists when a single issuer and its affiliates offer their insurance products in several states, as currently is permitted.

18. Applicants submit that affiliations do not reduce the potential for differences in state regulatory requirements. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. In any event, the conditions proposed below (which are adapted from the conditions included in Rule 6e–3(T)(b)(15)) are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulatory decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its separate account's investment in the relevant Insurance Products Fund.

19. Similarly, affiliation does not eliminate the potential for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. The potential for disagreement is limited by the requirement in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations. However, if a 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, then 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 Insurance Product Fund, and no charge or penalty will be imposed as a result of such withdrawal.

20. Applicants submit that there is no reason why the investment policies of an Insurance Product Fund with mixed funding would or should be materially different from what they would or should be if such investment company or portfolio thereof funded only variable annuity contracts or only variable life insurance policies. Hence, there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, the Insurance Product Fund will not be managed to favor or disfavor any particular insurer, type of Contract or Plan.

21. Applicants note 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. An investment company supporting even one type of insurance product must accommodate these diverse factors.

22. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies, such as those held in each separate portfolio of the Insurance Product Funds. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Applicants assert that, therefore, neither the Code, nor the Treasury Regulations, nor the revenue rulings thereunder recognize any inherent conflicts of interests if Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying management investment company.

23. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate accounts or the Plans cannot net purchase payments to make the distributions, the separate accounts or the Plans will redeem shares of the Insurance Products Funds at their net asset value. The Plans will then make distributions in accordance with the terms of the Plans and each Participating Insurance Company will make distributions in accordance with the terms of its Contract.

24. Applicants state that it is possible to provide an equitable means of giving voting rights to Contract owners. Applicants represent that the Insurance Products Funds will inform each Participating Insurance Company of its respective share of ownership in each separate account and will also inform the trustees of the Plans of their respective share in the Insurance Products Funds. The Participating Insurance Companies will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

25. Applicants submit that the ability of the Funds to sell their respective shares directly to Plans does not create a ''senior security'' as defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants under the Plans, or Contract owners under Contracts, the Plans and the separate accounts have rights only with respect to their respective shares of the Insurance Products Funds. They can redeem such shares only at their net asset value. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

26. Applicants assert that there are no conflicts between the Contract owners of the separate accounts and the participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The 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. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, trustees of Plans or participants in participant-directed Plans can make such a decision quickly and implement the redemption of 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. Based on the foregoing, Applicants maintain that even if there should arise issues where the interests of Contract owners and the interests of Plans or participants in Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of an Insurance Products Fund.

27. Applicants assert that various factors have kept more insurance companies from offering Contracts than currently do so. These factors include the costs of organizing and operating a fund medium, the lack of expertise with respect to investment management and the lack of public name recognition as investment experts. 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.

28. Applicants assert that use of the Insurance Products Funds as common investment media for the Contracts would ameliorate these concerns. Participating Insurance Companies would benefit not only from the investment management and advisory expertise of the Manager and Advisers, but also from the cost efficiencies and investment flexibility afforded by a large pool of assets. Therefore, making the Insurance Products Funds available for mixed and shared funding will 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 changes. Contract owners would benefit because mixed and shared funding should eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that the sale of shares of Insurance Products Funds to Plans should result in an increased amount of assets available for investment by such Insurance Products Funds. This, in turn, should inure to the benefit of Contract owners by promoting economies of scale, by permitting increased safety through greater diversification, and by making the addition of new Portfolios to the Trust or to each of the Insurance Products Funds more feasible.

29. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding.

**Applicant's Conditions**

To the extent required by the Commission, Applicants consent to the following conditions:

1. A majority of the Board of Trustees or Board of Directors (the ''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(s) or director(s), 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. The Boards will monitor their respective Insurance Products Funds for the existence of any material irreconcilable conflict among the interests of the Contract owners of all the separate accounts investing in the Insurance Products Funds and the participants in Plans investing in the Insurance Products Funds. 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 the Insurance Products Funds are being managed; (e) a difference in voting instructions given by variable annuity Contract owners and variable life insurance policy owners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of its participants.

3. Participating Insurance Companies, the Manager, the Advisers, and any Plan that executes a fund participation agreement upon becoming an owner of ten percent (10%) or more of the assets of an Insurance Products Fund (a ''Participating Qualified Plan'') we report any such potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participating Insurance Companies, the Manager, the Advisers, and Participating Qualified Plans 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 appropriate Board whenever voting instructions of Contract owners are disregarded, and, if pass-through voting is applicable, an obligation by each Participating Qualified Plan to inform the Board whenever it has determined to disregard the voting instructions of its participants. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Qualified Plans, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of participants in such Plans.

4. If it is determined by a majority of the Board of an Insurance Products Fund, or by a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) withdrawing the assets allocable to some or all of the separate accounts from the Insurance Products Fund or any portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of an Insurance Products Fund or another Insurance Products Fund; (b) submitting the question of whether such withdrawal should be implemented to a vote of all affected Contract owners and, as appropriate, withdrawing the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one of more Participating Insurance Companies) that votes in favor of such withdrawal, or offering to the affected Contract owners the option of making such a change; (c) withdrawing the assets allocable to some or all of the Plans from the Insurance Products Fund or any portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of an Insurance Products Fund or another Insurance Products Fund; and (d) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard Contract owner 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 Insurance Products Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard its participants' voting instructions, if applicable, and that decision represent 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. 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 Participating Insurance Companies and Participating Qualified Plans under their agreements governing their participation in the Insurance Products Funds, and these responsibilities will be carried out with a view only to the interests of Contract owners and participants in such Plans, as applicable. For purposes of this condition 4, 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 relevant Insurance Products Fund, the Manager or the Advisers be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this condition 4 to establish a new funding medium for any Contract if any offer to do so has been declined by vote or a majority of Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Plan shall be required by this condition 4 to establish a new funding medium for any Qualified Plan if: (a) a majority of its participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Qualified Plan makes such decision without a vote of its participants.

5. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly and in writing to all Participating Insurance Companies and all Plans.

6. Participating Insurance Companies will provide 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 the Insurance Products Funds 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 participating in an Insurance Products Fund 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 their agreements governing their participation in the Insurance Products Fund. Each Participating Insurance Company will also vote shares for which it has not received timely voting instructions from Contract owners as well as shares attributable to it in the same proportion as it votes shares for which it has received voting instructions from Contract owners. Each Plan will vote as required by applicable law and governing Plan documents.

7. All reports of potential or existing conflicts received by a Board, and all Board actions with regard to determining the existence of a conflict of interest, notifying Participating Insurance Companies and Plans 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 shall be made available to the Commission upon request.

8. Each Insurance Products Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund will disclose in its prospectus that: (a) shares of the Insurance Products Fund are offered to insurance company separate accounts on a mixed and shared funding basis and to Plans; (b) material irreconcilable may arise between the interests of various Contract owners participating in the Insurance Products Fund and the interests of Plans investing in the Insurance Products Fund; and (c) the Board of such Insurance Products Fund will monitor events in order to identify the existence of any material irreconcilable conflict and to determine what action, if any, should be taken in response to such material irreconcilable conflict.

9. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Insurance Products Fund), and, in particular, each Insurance Products Fund will either provide for annual shareholder meetings (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, 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 trustees or directors and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or in 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 and shared funding on terms and conditions materially different from any exemptions granted in the Order requested by the Applicants, then the Insurance Products Funds and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extend applicable.

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

12. If a Plan should ever become an owner of ten percent (10%) or more of the assets of an Insurance Products

Fund, such Plan will execute a fund participation agreement with such Insurance Products Fund including the conditions set forth herein to the extent applicable. A Plan will execute an investor application containing an acknowledgment of this condition at the time of its initial purchase of any 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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**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC—22601; File No. 812–10486]**

## General American Life Insurance Company, et al.

April 4, 1997.

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

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (''1940 Act'').

**APPLICANTS:** General American Life Insurance Company (''General American'') and General American Capital Company (''Capital Company'') (collectively, ''Applicants'').

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 17(b) of the 1940 Act granting an exemption from the provisions of Section 17(a) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the assets of General American's Separate Account Twenty (''Separate Account'') to be transferred to the Small-Cap Equity Fund series of Capital Company in exchange for shares of the Small-Cap Equity Fund series.

**FILING DATE:** The application was filed on January 10, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission Secretary 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 April 29, 1997, 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. Any person may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington D.C. 20549. Applicants, c/o Matthew P. McCauley, Esq., General American Life Insurance Company, 700 Market Street, St. Louis, Missouri 63101. Copies to Stephen E. Roth, Esq., Sutherland, Asbill & Brennan, L.L.P., 1275 Pennsylvania Avenue, N.W., Washington, D.C. 20004–2404.

**FOR FURTHER INFORMATION CONTACT:** Joyce Merrick Pickholz, Senior Counsel, or Patrice M. Pitts, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission.

**Applicants' Representations**

1. General American is a mutual life insurance company organized under the laws of Missouri. The Separate Account was established in September 1985 as a separate investment account of General American to support benefits payable under the variable portion of certain group variable annuity contracts issued by General American (''Contracts''). The Separate Account is exempted from the definition of investment company pursuant to Section 3(c)(11) of the 1940 Act, and interests in the Separate Account are exempt securities pursuant to Section 3(a)(2) of the 1940 Act. The Contracts provide retirement benefits under tax-qualified retirement programs.

2. The Separate Account currently consists of a single portfolio of assets, primarily equity securities. The investment objective of the Separate Account is to provide a rate of return that corresponds to the performance of the common stock of small companies, while incurring a level of risk that is generally equal to the risks associated with small company common stock in general. The Separate Account is passively managed to attempt to replicate the return of the bottom capitalization quintile of the New York Stock Exchange traded securities.

3. Capital Company is a registered open-end diversified management investment company organized as a series fund. Capital Company serves as a funding vehicle for variable annuity contracts and variable life insurance policies issued by General American and affiliated insurance companies. Currently, shares of Capital Company are offered to General American Separate Account Two, General American Separate Account Eleven, unregistered separate accounts of General American, and separate accounts of RGA Reinsurance Company, Security Equity Life Insurance Company, Cova Financial Services Life Insurance Company, Cova Financial Life Insurance Company, and First Cova Life Insurance Company, all affiliates of General American.

4. Capital Company consists of seven investment portfolios: the S&P 500 Index Fund; Money Market Fund; Bond Index Fund; Managed Equity Fund; Asset Allocation Fund; International Index Fund; and Mid-Cap Equity Fund. Capital Company offers its shares at net asset value and without sales charge, directly to the separate accounts without an underwriter or distributor. General American pays any distribution expenses and costs arising from any activity intended primarily to result in the sale of shares issued by Capital Company.

5. Conning Asset Management Company (''Adviser'') serves as the investment advisor to Capital Company and to the Separate Account. The advisor is wholly owned by Conning Corporation which, in turn, is wholly owned by General American Holding Company, a wholly owned subsidiary of General American.

6. The Board of Directors of Capital Company has determined that it would be desirable to add a new series to Capital Company to be called the Small-Cap Equity Fund (''Fund'').[1] The Fund's Investment objective will be identical to that of the Separate Account. Because the investment objectives, policies, and restrictions of the Fund would mirror those of the Separate Account, management of General American proposes to transfer the assets of the Separate Account to the Fund (the ''Transfer'') in exchange for shares of the Fund. The Separate Account would in

[1] On February 15, 1997, a post-effective amendment to Capital Company's current registration statement on Form N–1A was filed for the purpose of adding the Small-Cap Equity Fund as a new series of Capital Company. The registration statement (File No. 33–10145) will become effective on May 1, 1997.