

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23938; File No. 812-11594]

Dow Target Variable Fund LLC; Notice of Application

August 10, 1999.

AGENCY: Securities and Exchange Commission ("SEC").**ACTION:** Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant seeks an order under Section 6(c) of the Act amending an existing order (Investment Company Act Release No. 23628, Dec. 20, 1998). The amended order would exempt Applicant and any other existing or future open-end management investment company or portfolio thereof that is advised by its investment adviser, Ohio National Investments, Inc. (the "Adviser"), or any entity controlled by or under common control with the Adviser that follows an investment strategy that is the same as one of the two investment strategies described in the application ("Future Funds") from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit their portfolios: (a) to invest up to 10.5% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities; or (b) to invest up to 20.5% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

APPLICANT: Dow Target Variable Fund LLC.**FILING DATE:** The application was filed on March 18, 1999, and amended on July 23, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on August 31, 1999, and must be accompanied by proof of service on Applicant 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 SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549-

0609. Applicant, Dow Target Variable Fund LLC, One Financial Way, Cincinnati, Ohio 45242.

FOR FURTHER INFORMATION CONTACT:

Joyce M. Pickholz, Senior Counsel, 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 SEC, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 [tel. (202) 942-8090].

Applicant's Representations

1. Applicant is a registered, open-end management investment company (File No. 811-09019). It currently consists of twelve non-diversified portfolios, each named after a calendar month (January Portfolio, February Portfolio, etc.) (collectively, the "Dow Target 10 Portfolios"). Applicant proposes to add another twelve non-diversified portfolios, also named after the calendar months (collectively, the "Dow Target 5 Portfolios").

2. Applicant was organized under the laws of Ohio as a limited liability company on September 21, 1998. Under Ohio law, a limited liability company does not issue shares of stock. Instead, ownership rights are contained in membership interests. Each membership interest of Applicant ("Interest") represents an undivided interest in the stocks held in one of Applicant's portfolios.

3. The Interests are not offered directly to the public. The only direct owner of the Ohio National Life Insurance Company ("Ohio National Life") through its variable annuity separate accounts. Those of Ohio National Life's variable annuity owners who have contract values allocated to any of Applicant's portfolios have indirect beneficial rights in the Interests and have the right to instruct Ohio National with regard to how it votes the Interests that it holds in its variable annuity separate accounts.

4. Applicant's investment adviser is Ohio National Investment, Inc. (the "Adviser"), a wholly owned subsidiary of Ohio National Life. First Trust Advisors L.P. ("First Trust") is the sub-adviser to each of Applicant's portfolios.

5. Each of Applicant's Dow Target 10 Portfolios invests approximately 10% of its total assets in the common stock of the ten companies in the Dow Jones Industrial Average (the "Dow") having the highest dividend yield as of the close of business on the next to last

business day of the month preceding the month for which the portfolio is named (the "Stock Selection Date"). These ten companies are popularly known as the "Dogs of the Dow." On or about the first business day of the month for which a portfolio is named, First Trust sets the proportionate relationship among the ten stocks to be held in that portfolio for the next twelve months. At the end of a portfolio's twelfth month, the portfolio will be rebalanced with a new mix of Dogs of the Dow stocks.

6. Each of Applicant's Dow Target 5 Portfolios will invest approximately 20% of its total assets in the common stock of the five companies of the Dogs of the Dow having the lowest per share stock price as of the close of business on the Stock Selection Date. On or about the first business day of the month for which a portfolio is named, First Trust will set the proportionate relationship among the five stocks to be held in that portfolio for the next twelve months. At the end of a portfolio's twelfth month, the portfolio will be rebalanced with a new mix of five Dogs of the Dow stocks.

7. Stocks held in any portfolio are not expected to reflect the entire index, and the prices of Interests are not intended to parallel or correlate with movements in the Dow. Generally, it will not be possible for all of a portfolio's funds to be invested in the prescribed mix of applicable stocks at any given time. However, the Adviser and First Trust will try, to the extent practicable, to maintain a minimum cash position at all times. Applicant represents that normally the only cash items held will represent amounts expected to be deducted as charges and amounts too small to purchase additional proportionate round lots of the stocks.

8. The Dow consists of 30 stocks selected by Dow Jones & Company, Inc. as representative of the broader domestic stock market and of American industry. Dow Jones and Company, Inc. is not affiliated with the Applicant and has not participated, and will not participate, in any way in the creation of the portfolios or the selection of the stocks purchased by the portfolios.

9. Until the end of the initial month of a portfolio, Interests may be purchased by variable annuity separate accounts of Ohio National Life. After the initial month of a portfolio, no further Interests in that portfolio may be purchased until eleven months later. Interests may be redeemed at any time.

10. Any purchase of Interests made after the initial business day of the month for which the portfolio is named will duplicate, as nearly as is practicable, the original proportionate relationships of the applicable stocks

held by that portfolio. Because the prices of each of the stocks will change nearly every day, the ratio of the price of each to the total price of the entire group of applicable stocks will also change daily. However, the proportion of stocks held by that portfolio will not change materially as a result of the sales of additional Interests after the first business day of the month for which the portfolio is named.

11. Applicant is not a "regulated investment company" under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"). Nonetheless, it does not pay federal income tax on its interest, dividend income or capital gains. As a limited liability company whose interests are sold only to Ohio National Life, it is disregarded as an entity for purposes of federal income taxation. Ohio National Life, through its variable annuity separate accounts, is treated as owning the assets of the portfolios directly and its tax obligations thereon are computed pursuant to Subchapter L of the Code (which governs the taxation of insurance companies). Under current tax law, interest, dividend income and capital gains of Applicant are not taxable to Applicant, and are not currently taxable to Ohio National Life or to contract owners, when left to accumulate within a variable annuity contract.

12. Section 817(h) of the Code provides that in order for a variable contract that is based on a segregated asset account to qualify as an annuity contract under the Code, the investments made by that account must be "adequately diversified in accordance with Treasury regulations.

13. Each portfolio must comply with the Section 817(h) diversification requirements. Therefore, the Adviser and First Trust may depart from the portfolio investment strategy, if necessary, in order to satisfy the Section 817(h) diversification requirements. Under all circumstances, except in order to meet Section 817(h) diversification requirements, the common stocks purchased for each portfolio are chosen solely according to the formula described above and are not based on the research opinions or buy or sell recommendations of the Adviser or First Trust. Neither the Adviser nor First Trust has any discretion as to which common stocks are purchased. Securities purchased for each portfolio may include securities of issuers in the Dow that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

14. The existing order permits Applicant's Dow Target 10 Portfolios to

invest up to 10% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities. Applicant now proposes to extend the relief to permit Applicant's portfolios and Future Funds: (a) to invest up to 10.5% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities; or (b) to invest up to 20.5% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter or investment adviser. Rule 12d3-1 under the Act exempts from Section 12(d)(3) purchases by an investment company of securities of an issuer, except its own investment adviser, promoter or principal underwriter of the affiliates, that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after any such acquisition the acquiring company has invested not more than 5% of the value of its total assets in the securities of the issuer. Each of Applicant's portfolios undertakes to comply with all of the requirements of Rule 12d3-1, except the condition in subparagraph (b)(3) prohibiting an investment company from investing more than 5% of the value of its total assets in securities of a securities related issuer.

2. Section 6(c) of the Act provides that the SEC, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act or any rule or regulation thereunder, if and to the extent that the 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 Act.

3. Applicant states that Section 12(d)(3) was intended: (a) to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses; (b) to prevent potential conflicts of interest; (c) to eliminate certain reciprocal practices between investment companies and securities related businesses; and (d) to ensure that investment companies maintain adequate liquidity in their portfolios.

4. A potential conflict could occur, for example, if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant states that this concern does not arise in this situation. Applicant states that generally, none of Applicant, the Adviser or First Trust has discretion in choosing the common stock or amount purchased. Applicant states that the stock must first be included in the Dow, which is unaffiliated with Applicant, the Adviser or First Trust. In addition, the stock must also qualify as one of the ten companies in the Dow that has the highest dividend yield as of the close of business on the Stock Selection Date. In the case of Dow Target 5 Portfolios, the stock must then qualify as one of the five companies of the Dogs of the Dow that have the lowest per share stock price as of the close of business on the Stock Selection Date.

5. The Adviser and First Trust are obligated to follow the investment formula described above as nearly as practicable. Applicant represents that the only time any deviation from the formula would be permitted would be where circumstances were such that the investments of a particular portfolio would fail to be "adequately diversified" under the Section 817(h) diversification requirements, and would thus cause the annuity contracts to fail to qualify as annuity contracts under the Code. Applicant states that the likelihood of this exception arising is extremely remote. In such a situation, Applicant submits that it must be permitted to deviate from the investment strategy in order to meet the Section 817(h) diversification requirements and then only to the extent necessary to do so. Applicant asserts that this limited discretion does not give rise to the potential conflicts of interest or to the possible reciprocal practices between investment companies and securities related businesses that Section 12(d)(3) is designed to prevent.

6. Applicant states that the liquidity of a portfolio is not a concern here since each common stock selected is a component of the Dow, listed on the New York Stock Exchange, and among the most actively traded securities in the United States.

7. In addition, Applicant submits that the effect of a portfolio's purchase of the stock of parents of broker-dealers would be *de minimis*. Applicant states that the common stocks of securities related issuers represented in the Dow are widely held with active markets and

that potential purchases by a portfolio represent an insignificant amount of the outstanding common stock and trading volume of any of these issuers. Therefore, Applicant argues that it is almost inconceivable that these purchases would have any significant effect on the market value of any of these securities related issuers.

8. Another possible conflict of interest is where a broker-dealer may be influenced to recommend certain investment company funds which invest in the stock of the broker-dealer or any of its affiliates. Applicant states that because of the large market capitalization of the Dow issuers and the small portion of these issuers' common stock and trading volume that are purchased by a portfolio, it is extremely unlikely that any advice offered by a broker-dealer to a customer as to which investment company to invest in would be influenced by the possibility that a portfolio is invested in the broker-dealer or a parent thereof.

9. Finally, another potential conflict of interest could occur if any investment company directed brokerage to an affiliated broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, Applicant agrees, as a condition of this application, that no company whose stock is held in any portfolio, nor any affiliate of such a company, will act as broker or dealer for any portfolio in the purchase or sale of any security.

10. Applicant seeks relief not only with respect to the Dow Target 10 Portfolios and the Dow Target 5 Portfolios, but also with respect to Future Funds. Applicant states that without the requested class relief, exemptive relief for any Future Fund would have to be requested and obtained separately. Applicant asserts that these additional requests for exemptive relief would present no issues under the Act not already addressed in the application. Further, if Future Funds were to repeatedly seek exemptive relief with respect to the same issues, investors would receive no additional protection or benefit, and investors could be disadvantaged by increased costs from preparing the additional requests for relief. Applicant argues that class relief is appropriate in the public interest because the relief will promote competitiveness in the variable insurance products market by eliminating the need for Future Funds to file redundant exemptive applications, thereby reducing

administrative expenses and maximizing efficient use of resources. Also, eliminating the delay and the expenses of repeatedly seeking exemptive relief would enhance the ability of Future Funds to effectively take advantage of business opportunities as such opportunities arise.

Applicant's Conditions

Applicant agrees that any order granting the requested relief from Section 12(d)(3) of the Act shall be subject to the following conditions:

1. The common stock is included in the Dow as of the Stock Selection Date;

2. With respect to Dow Target 10 Portfolios, the common stock represents one of the ten companies in the Dow that have the highest dividend yield as of the close of business on the Stock Selection Date;

3. With respect to Dow Target 5 Portfolios, the common stock represents one of the five companies with the lowest dollar per share stock price out of the ten companies in the Dow that have the highest dividend yield as of the close of business on the Stock Selection Date;

4. With respect to Dow Target 10 Portfolios, as of close of business on the Stock Selection Date, the value of the common stock of each securities related issuer represents approximately 10% of the value of any portfolio's total assets, but in no event more than 10.5% of the value of the portfolio's total assets;

5. With respect to Dow Target 5 Portfolios, as of close of business on the Stock Selection Date, the value of the common stock of each securities related issuer represents approximately 20% of the value of any portfolio's total assets, but in no event more than 20.5% of the value of the portfolio's total assets; and

6. No company whose stock is held in any portfolio, nor any affiliate thereof, will act as broker or dealer for any portfolio in the purchase or sale of any security for that portfolio.

Conclusion

For the reasons summarized above, Applicant asserts that the order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-21091 Filed 8-13-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23936, 812-11738]

The First Commonwealth Fund, Inc.; Notice of Application

August 9, 1999.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

SUMMARY OF APPLICATION: The First Commonwealth Fund, Inc., requests an order to permit it to make up to twelve distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution plan with respect to its common stock calling for monthly distributions of a fixed percentage of its net asset value.

FILING DATES: The application was filed on August 5, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the requests, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 2, 1999, and should be accompanied by proof of service on the applicant, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Nadya Roytblat, Assistant Director at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

Applicant's Representations

1. The applicant is organized as a Maryland corporation and registered under the Act as a closed-end, non-