Extension: Rule 17Ad–11; SEC File No. 270–261; OMB Control No. 3235–0274.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17Ad–11 Reports Regarding Aged Record Differences, Buy-ins, and Failure to Post Certificate Detail to Master Securityholder Files

Rule 17Ad–11 requires approximately 150 transfer agents to report to issuers and the appropriate regulatory agency in the event that aged record differences exceed certain dollar value thresholds. An aged record difference occurs when an issuer's records do not agree with those of security owners as indicated, for instance, on certificates presented to the transfer agent for purchase, redemption or transfer. In addition, the rule requires transfer agents to report to the appropriate regulatory agency in the event of a failure to post certificate detail to the master securityholder file within 5 business days of the time required by rule 17Ad–10. Also, transfer agents must maintain a copy of each report prepared under Rule 17Ad–11 for a period of three years following the date of the report. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

Because the information required by Rule 17Ad–11 is already available to transfer agents, any collection burden for small transfer agents is minimal. The staff estimates that the average number of hours necessary to comply with Rule 17Ad–11 is one hour annually. The total burden is 150 hours annually for transfer agents, based upon past submissions.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: August 21, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21742 Filed 8–24–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24601; 812–12074]

First American Insurance portfolios, Inc., et al.

August 18, 2000.

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

ACTION: Notice of Application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting exemptive relief from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to permit shares of any current or future series of First American Insurance Portfolios, Inc. (the ''Company'') and shares of any future fund that is designed to fund variable insurance products and for which U.S. Bank National Association (''U.S. Bank'') or any person controlling, controlled by or under common control with U.S. Bank may serve as investment adviser, investment subadviser, administrator, manager, principal underwriter or sponsor (a ''Future Company'') to be offered and sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts (''Variable Contracts'') issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans''); and (3) the Company's or Future Company's investment adviser or a person related to such investment adviser (representing seed money investments in the Company or Future company). (Hereinafter, the term ''Company'' refers to the Company and/or any Future company, as applicable.)

Applicants: First American Insurance Portfolios, Inc.; U.S. Bank National Association.

Filing Date: The application was filed on April 25, 2000, and amended and restated on July 11, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 12, 2000, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o James D. Alt, Esq., Dorsey & Whitney LLP, 220 South Sixth Street, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Jane G. Heinrichs, Senior Counsel, at (202) 942–0699, or Keith E. Carpenter, Branch Chief, at (202) 942–0679, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Company is a corporation organized under the laws of Minnesota on August 27, 1999. The Company is registered under the 1940 Act as an open-end, management investment company. The Company initially offers shares in three separate series, each of which has its own investment objective and policies (such series, together with any future series of the Company or a Future Company, the ''Funds'').

2. U.S. Bank, acting through its First American Asset Management group, serves as the investment adviser to each Fund. U.S. Bank is a national banking association headquartered in Minneapolis, Minnesota, and is a wholly-owned subsidiary of U.S. Bancorp, a publicly held bank holding company registered under the Bank Holding Company Act of 1956. The First American Asset Management group within U.S. Bank provides investment

management services to several open-end and closed-end management investment companies in addition to the Funds and to private accounts such as pension funds, charitable foundation, and trusts.

3. The Company intends to offer its shares to insurance companies as the investment vehicle for their separate accounts that fund variable annuity contracts. Applicants propose that shares of each Fund also be offered to affiliated and unaffiliated insurance companies for their separate accounts as the investment vehicle to fund either variable annuity or variable life insurance contracts. Separate accounts owning shares of the Funds and their insurance company depositors are referred to herein as ''Participating Separate Accounts'' and ''Participating Insurance Companies,'' respectively.

4. The Participating Insurance Companies will establish their own Participating Separate Accounts and design their own Variable Contracts. Each Variable Contract is likely to have certain unique features and to differ from other Variable Contracts supported by the Funds with respect to insurance guarantees, premium structure, charges, options, distribution method, marketing techniques, sales literature and other aspects. Each Participating Insurance Company will enter into a participation agreement with the Company on behalf of its Participating Separate Account, and will have the legal obligation of satisfying all applicable requirements under state and federal law. The role of the Company under this agreement, as far as the federal securities laws are applicable, will be limited to that of offering its shares to separate accounts of various insurance companies and complying with any conditions the Commission may impose upon granting the order requested herein.

5. Applicants state that shares of each Fund also may be offered directly to Qualified Plans outside of the separate account context. The Qualified Plans will be pension or retirement plans intended to qualify under sections 401(a) and 501(a) of the Internal Revenue Code of 1985, as amended (''Code''). Many of the Qualified Plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under section 401(k) of the Code. The Qualified Plans also will be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974 (''ERISA''). Applicants assert that the Qualified Plans therefore will be subject to the regulatory requirements under the Code and ERISA including, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and enforcement provisions.

6. Qualified Plans may choose one or more Funds as their sole investments or as one or more of several other investments. Fund shares sold to the Qualified Plans would be held by the trustees of such Plans as required by section 403(a) of ERISA. The trustees or other fiduciaries of the Qualified Plans may vote Fund shares held by the Qualified Plans in their own discretion or, if the applicable Qualified Plan so provides, vote such shares in accordance with instructions from participants in such Plans.

7. Fund shares also may be offered and sold to a Fund's investment adviser or an affiliate thereof, pursuant to Treasury Regulation 1.817–5(f)(3)(ii). Applicants state that this regulation permits such sales as long as the return on shares held by the adviser or such an affiliate is computed in the same manner as for shares held by a separate account; the adviser or such affiliate does not intend to sell shares of the Fund held by it to the public; and the adviser or such affiliate holds such shares only in connection with the creation or management of the Fund. The Applicants anticipate that sales to the adviser or such as affiliate in reliance on this regulation generally will be made for the purpose of providing the seed capital to the Company required by section 14(a) of the 1940 Act.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to section 6(c) of the 1940 Act exempting scheduled and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, sub-adviser, principal underwriter and depositor of such an account) from sections 9(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to variable annuity and variable life insurance separate accounts, to Qualified Plans, and to the Company's investment adviser or a person related to such investment adviser (representing seed money investments required by the 1940 Act).

2. Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the 1940 Act, or the rules thereunder, if and to the extent that such 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) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 5e–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 any affiliated life insurance company. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity or flexible premium variable life insurance separate account of the same company or of an affiliated insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.''

4. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying 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 for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' Moreover, the relief under Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance account owns shares of an underlying investment company that also offers its shares to Qualified Plans. The use of a common investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies and Qualified Plans is referred to as ''extended mixed and shared funding.''

5. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions 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 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) permits mixed funding, but precludes shared funding or selling shares to Qualified Plans. In addition, neither Rule 6e–2(b)(15) nor Rule 6e–3(T)(b)(15) contemplates ''seed capital'' being provided by the investment adviser of a funding vehicle which is not sponsored or advised by an insurance company offering Variable Contracts.

6. Applicants state that current tax law permits the Funds to increase their asset bases through the sale of shares to Qualified Plans. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of the separate accounts funding the Variable Contracts. The Code provides that the Variable Contracts will not be treated as annuity contracts or life insurance contracts for any period in which the underlying assets are not adequately diversified in accordance with regulations issued by the Treasury Department. The regulations generally provide that to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain, however, certain exceptions to this requirement, one of which permits shares of an investment company to be held by trustees of a Qualified 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 Variable Contracts. Treas. Reg. 1.817–5(f)(3)(iii). As a result, applicants assert that Qualified Plans may select the Funds as investment options without endangering the tax status of Variable Contracts issued through Participating Insurance Companies. Similarly, the regulations provide for ''seed capital'' investments by a funding vehicle's manager or by a person related to such manager without endangering the tax status of such Variable Contracts. Treas. Reg. 1.817–5(f)(3)(ii).

7. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury regulations permitting extended mixed and shared funding. Applicants assert that the sale of shares of the same underlying investment company to both separate accounts and Qualified Plans therefore was not contemplated at the time the Commission adopted these Rules.

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or 9(a)(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. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

9. Applicants state that the partial relief from section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) in effect limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of that section. Applicants state that the exemptions recognize that applying the pr9ovisions of section 9(a) to the many individuals who may be involved in a large insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the Participating Separate Accounts, is not necessary or appropriate in the public interest nor is it necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants submit that the fact that Participating Insurance Companies may engage in mixed and shared funding does not alter this conclusion. Applicants further state that the sale of shares of an underlying fund to Qualified Plans does not change the fact that applying the prohibitions of section 9(a) to individuals who have no involvement in the underlying fund does not advance the purposes of the 1940 Act.

10. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) under the 1940 Act provide partial exemptions from sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections are deemed to require ''pass-through'' voting with respect to the shares of an underlying fund, by allowing an insurance company to disregard the voting instructions of contract owners with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that a Participating Insurance Company may disregard the voting instructions of its contract owners if such instructions would require an underlying fund's shares to be voted to cause such underlying fund to make (or to refrain from making) certain investments which would result in changes in the sub classification or investment objectives of such underlying fund or to approve or disapprove any contract between such underlying fund and an 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 a Participating Insurance Company may disregard contract owners' voting instructions if the contract owners initiate any change in the underlying fund's investment objectives, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

11. Applicants assert that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that a Variable Contract is primarily an insurance contract, and as such is subject to extensive state insurance regulation. 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 the underlying fund's investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurance company to draw from its general account to cover costs imposed on it by a change approved by contract owners over the insurance company's objection. The Commission, therefore, considered the exemptions provided by Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) necessary ''to assure the solvency of the life insurer and performance of its

contractual obligations by enabling an insurance regulatory authority or life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Applicants assert that Rule 6e–3(T)'s corresponding provisions for flexible premium VLI Contracts presumably were adopted in recognition of the same factors. Applicants submit that these considerations are not less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding, and that such funding does not compromise the goals of the insurance regulatory authorities or of the Commission.

12. Applicants assert that the sale of shares of an underlying fund to a Qualified Plan presents no potential for irreconcilable conflicts of interest among the Qualified Plan participants and Variable Contract holders also owning shares of the underlying fund. Under section 403(a) of ERISA, shares of an underlying fund sold to a Qualified Plan must be held by the trustee(s) of the Qualified Plan, and such trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified 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 trustee(s) are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire, or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions applies, the exclusive authority and responsibility for voting shares of an underlying fund is vested in the plan trustees. Where a named fiduciary to a Qualified Plan appoints an investment managers, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the plan trustees or the named fiduciary. Where a Qualified Plan does not provide participants with the right to give voting instructions, the applicants submit that there is no potential for material irreconcilable conflicts of interest between or among holders of Variable Contracts and participants in Qualified Plans with respect to voting of an underlying fund's shares.

13. Applicants assert that even where a Qualified Plan provides participants with the right to give voting instructions, there is 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 holders of Variable Contracts. Therefore, applicants assert that the purchase of shares of the Company by Qualified Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed or shared funding.

14. Applicants assert that the presence of both VLI Accounts and VA Accounts as shareholders of an underlying fund will not lead to a greater probability of material irreconcilable conflicts than if the underlying fund did not engage in mixed funding. They submit that each type of insurance product is designed as a long-term investment program, and that there is no reason to believe that different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain VLI Contracts, will lead to different investment policies for different types of Variable Contracts. In addition, applicants submit that if an underlying fund engages in mixed funding, there is no reason why the underlying fund would be managed to favor one class of investors over another. Regardless of the type of shareholder in the Company, the investment manager is obligated to manage a Fund solely and exclusively in accordance with that Fund's investment objectives, policies, and restrictions as well as any guidelines established by the Board of Directors responsible for such Fund. Thus, the Funds will be managed in the same manner as any other fund and there is no incentive for any Fund's investment manager to invest to benefit a particular class of shareholders.

15. Applicants also assert that shared funding does not present any issues that do not already exist where an underlying fund sells its shares to a single insurance company which is licensed to do business in several or all states. Where insurers offer their contracts in different states, the state insurance regulatory body in one state in which the contracts are offered could require the insurer to take action that is inconsistent with the requirements of insurance regulators of other states in which the contracts also are offered. Applicants assert that the fact that unaffiliated insurers may be domiciled in different states does not create a significantly different or enlarged problem. Shared funding by unaffiliated insurers is, in this respect, no different from the use of the same investment company as the funding vehicle for affiliated insurers, a situation to which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide relief under various circumstances. In any event, applicants contend that the proposed conditions to the order are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

16. Applicants assert that the right of an insurance company in certain circumstances to disregard contract owners' voting instructions regarding shares of an underlying fund that engages in shared funding raises no different issues from those raised by the authority of state insurance administrators over Participating Separate Accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Requiring that only affiliated insurance companies invest in the funds does not eliminate the potential for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. Moreover, the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, applicants state that a particular Participating Insurance Company's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action arguably could be different from the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. Under the proposed conditions, 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 its Participating Separate Account's investment in such Fund, and no charge or penalty would be imposed as a result of such withdrawal.

17. Applicants assert that the sale of the shares of the Company to Qualified Plans will not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Section 817(h) of the

Code imposes certain diversification standards on the underlying assets of VA Contracts and VLI Contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund without jeopardizing the tax status of VLI and VA Accounts. Therefore, applicants argue, neither the Code, the Treasury Regulations, nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, VA Accounts, and VLI Accounts all invest in the same underlying fund.

18. Applicants contend that, while there are differences in the manner in which distributions are taxed for VA Contracts, VLI Contracts, and Qualified Plans, the differing tax consequences do not raise any conflicts of interest. When distributions are to be made and the Participating Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account or the Qualified Plan will redeem shares of the Funds at their net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract. Therefore, applicants contend, distributions and dividends will be declared and paid by the Funds without regard to the character of the shareholder.

19. Applicants contend that the Company's ability to sell its shares directly to Qualified 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 Qualified Plan. Regardless of the rights and benefits of participants under Qualified Plans or Variable Contract owners, the Qualified Plans and Participating Separate Accounts have rights only with respect to their respective shares of the Funds. They can only redeem such shares at their net asset value. No shareholder of the Funds will have any preference over any other shareholder with respect to the distribution of assets or payment of dividends.

20. With respect to voting rights, applicants assert that it is possible to provide an equitable means of giving such voting rights to Variable Contract owners and to the trustees of Qualified Plans. The transfer agent for the Funds will inform each Participating Insurance Company of its share ownership in each Participating Separate Account, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Funds. 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 will be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

21. Applicants assert that the veto power of state insurance commissioners over an underlying fund's investment objectives does not create any inherent conflicts of interest between the contract owners of the Participating Separate Accounts and Qualified Plan participants. 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 such 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. In contrast, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can quickly decide to redeem their interest in the Trust 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. Thus, applicants state, even if issues arise where the interest of contract owners 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 their shares from the Funds.

22. Applicants also assert that the investment of seed capital in the Company presents no potential for irreconcilable conflicts of interest. Seed capital for the Company will be provided by the Company's investment adviser or a person related to such investment adviser (as permitted by Treas. Reg. 1.817–5(f)(3)(ii)) or by the participating insurance companies. Applicants note that Rule 14a–2(b) provides an exemption from the seed capital requirement for investment companies that are sponsored by an insurance company. Because U.S. Bank is not an insurance company, the exemption is not available to the Company, to the extent it might be deemed the sole promoter of the Company.

23. Applicants contend that permitting the Company to engage in mixed, shared, and extended mixed and shared funding subject to the proposed conditions will benefit the Company's shareholders. First, they state, permitting mixed, shared, and extended mixed and shared funding will provide a greater variety of investment options with lower costs to Participating Insurance Companies and Variable Contract owners. They note that various factors, including the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts to whom the public feels comfortable entrusting their investment dollars, have limited the number of insurance companies that offer VA Contracts and VLI Contracts. Applicants assert that use of the Funds as common investment vehicles for Variable Contracts could reduce or alleviate these concerns. In addition, Participating Insurance Companies will benefit from the cost efficiencies and investment flexibility afforded by a larger pool of funds. Therefore, making the Funds available for mixed and shared funding may encourage more insurance companies to offer Variable Contract design and pricing, which can be expected to result in greater product variation and lower charges. Applicants contend that the sale of shares of the Funds to Qualified Plans in addition to Participating Separate Accounts also could result in an increased amount of assets available for investment by the Funds, again promoting economies of scale and greater diversification.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors of the Company (''Board'') will consist of persons who are not ''interested persons'' of the Company, 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 Director or Directors, 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 Board will monitor the Funds for the existence of any material irreconcilable conflict between the interests of the contract owners of all Participating Separate Accounts and of the participants in Qualified Plans investing in the Funds 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 interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. Participating Insurance Companies, U.S. Bank, or any other investment adviser of the Funds, and any Qualified Plans that execute a fund participation agreement upon becoming an owner of 10% or more of a Fund's assets (''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the 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 responsibility includes, but is not limited to, an obligation of each Participating Insurance Company to inform the Board whenever it has determined to disregard contract owner voting instructions and, when pass-through voting is applicable, an obligation of each Qualified Plan to inform the Board whenever it has determined to disregard voting instructions from Qualified Plan participants. The responsibilities to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Funds, and such agreements shall provide, in the case of Participating Insurance Companies, that these responsibilities will be carried out with a view only to the interests of contract owners, and in the case of Qualified Plans, that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board, or by a majority of its disinterested Directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the Participating Separate Accounts from the applicable Fund or Funds and reinvesting such assets in a different investment medium, which may include another Fund, or submitting the question of whether such reinvestment should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participated Insurance Company's decision to disregard contract owners' voting instructions, and that decision represents a minority position or would preclude a majority vote, then that insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no change or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the Fund's election, to withdraw its investment in the 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 material irreconcilable conflict and bearing the costs of such remedial action will be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Funds and these responsibilities will be carried out with a view only to the interests of contract owners and Qualified Plan participants, respectively.

5. For purposes of Condition 4, a majority of the disinterested Directors will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Company or U.S. Bank be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Variable Contract is an offer to do so has been declined by vote of a majority of contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by Condition 4 to establish a new funding medium for the Qualified Plan if: (a) an offer to do so has been declined by vote of a majority of Qualified Plan participants materially and adversely affected by the material irreconcilable conflict; or (b) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plans makes such decision without a vote of its participants.

6. 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 Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to contract owners who invest in Participating Separate Accounts so long as the Commission interprets the 1940 Act to require pass-through voting for contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Funds held in their Participating 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 the Participating Separate Accounts calculates voting privileges in a manner consistent with all other Participating Insurance

Companies. The obligation to calculate voting privileges in a manner consistent with all other Participating Separate Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Funds. 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 shares for which it has received instructions.

8. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

9. 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 a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. The Company will notify all Participants that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risk of mixed and shared funding may be appropriate. The Company will disclose in its prospectus that: (a) The Funds are intended to be funding vehicles for variable annuity and variable life insurance contracts offered by various insurance companies and Qualified Plans; (b) due to differences of tax treatment and other considerations; the interests of various contract owners participating in the Funds and the interests of Qualified Plans investing in the Funds may conflict; and (c) the Board will monitor for the existence of any material conflicts and determined what action, if any, should be taken.

11. The Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in shares of the Fund), and, in particular, the Company will either provide for annual 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(a) and, if applicable, section 16(b) of the 1940 act. Further, the Company will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rules 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act, or the rules thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by applicants, then the Company and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with the Rules 6e–2 and 6e–3(T), as amended, or Rules 6e–3, as adopted, to the extent applicable.

13. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the investment adviser or its affiliate holding shares in a Fund will vote such shares in the same proportion as all contract owners having voting rights with respect to the Fund; provided, however, that such investment adviser or affiliate shall vote its shares in such other manner as may be required by the Commission or its staff.

14. Any shares of a Fund purchased by the investment adviser or its affiliate will be automatically redeemed if and when the adviser's investment advisory agreement terminates, to the extent required by applicable Treasury regulations. Neither the investment adviser nor its affiliates will sell such shares of the Fund to the public.

15. No less than annually, the Participants shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon its by the Conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board when it so reasonably requests shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds.

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

Conclusion

For the reasons summarized above, applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27215]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 21, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by **September 14, 2000,** to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After **September 14, 2000**, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CP&L Energy, Inc., et al. (70–9659)

CP&L Energy, Inc.(''CP&L Energy''), a public utility holding company claiming an exemption under section 3(a)(1) of the Act under rule 2 under the Act,