Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–23225 Filed 9–8–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ad–13, SEC File No. 270–263, OMB Control No. 3235–0275

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 collections 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–13, Annual Study and Evaluation of Internal Accounting Control Rule 17Ad–13 requires approximately 200 registered transfer agents to obtain an annual report on the adequacy of internal accounting controls. In addition, transfer agents must maintain copies of any reports prepared pursuant to Rule 17Ad–13 plus any documents prepared to notify the Commission and appropriate regulatory agencies in the event that the transfer agent is required to take any corrective action. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. Small transfer agents are exempt from Rule 17Ad–13.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–13 is one-hundred seventy-five hours annually. The total burden is 35,000 hours annually for transfer agents, based upon past submissions. The average cost per hour is approximately $60. Therefore, the total cost of compliance for transfer agents is $1,300,000.

The retention period for the recordkeeping requirement under Rule 17Ad–13 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under Rule 17Ad–13 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

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 sixty 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, NW., Washington, DC 20549.

Dated: August 31, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23216 Filed 9–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24632; File No. 812–12040]

Brazos Insurance Funds, Notice of Application

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

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

Summary of Application: Applicants seek an order to the extent necessary to permit shares of any current or future series of Brazos Insurance Funds (''Trust'') and shares of any other investment company that is designed to fund variable insurance products and for which John McStay Investment Counsel, L.P. (''Adviser''), or any of its affiliates, may serve now or in the future, as investment adviser, administrator, principal underwriter or sponsor (the Trust and such other investment companies referred to collectively as ''Insurance Products Funds'') to be sold to, and held by, (1) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context; and (3) the Adviser to an Insurance Products Fund and affiliates thereof (the ''Application'').

Applicants: Brazos Insurance Funds and John McStay Investment Counsel, L.P. (collectively, ''Applicants'').

Filing Date: The application was filed on March 23, 2000, and amended and restated on August 18, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 26, 2000, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of your interest, the reason for the request, and the issues you contest. Persons may request notification of the date of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450, 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o Audrey C. Talley, Drinker Biddle & Reath LLP, One Logan Square, 18th and Cherry Streets, Philadelphia, Pennsylvania 19103–6996.

FOR FURTHER INFORMATION CONTACT: Ronald A. Holinsky, Senior Counsel or Lorna MacLeod, 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 is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Adviser, a Delaware limited partnership, is registered as an

investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser for the Trust.

2. The Trust, an open-end management investment company, is a Delaware business trust currently consisting of one series. In the future, additional series of shares may be added to the Trust.

3. Shares of the Trust are offered to separate accounts of both affiliated and unaffiliated insurance companies (''Participating Insurance Companies'') to serve as investment vehicles for variable annuity and variable life insurance contracts (including single premium, scheduled premium, modified single premium and flexible premium contracts). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration.

4. 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 in connection with any variable contract issued by such company. The role of the Insurance Products Funds, so far as the federal securities law are applicable, will be limited to that of offering their shares to separate accounts of Participating Insurance Companies and to Plans and fulfilling any conditions the Commission may impose upon granting the order requested in the application. Each Participating Insurance Company will enter into a fund participation agreement with an Insurance Products Fund in which the Participating Insurance Company invests.

5. An Insurance Products Fund shares may be offered directly to Plans outside the separate account, in reliance on Treasury Regulation § 1.817–(f)(3)(iii).

6. The Plans may choose one or more Insurance Products Fund as the sole investment under the Plan or as one of several investments. Depending on the Plan, Plan participants may or may not be given the right to select among Insurance Products Funds. Insurance Products Funds shares sold to Plans will be held by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act (''ERISA'').

7. An Insurance Products Fund shares may also be offered to the Adviser and its affiliates, in reliance on Treasury Regulation § 1.817–5(f)(3)(i) and (ii).

8. Applicants state that the Treasury Department Regulations permit such sales as long as the return on shares held by the Adviser and its affiliates is computed in the same manner as for shares held by a separate account, and the Adviser and its affiliates do not intend to sell shares of the Insurance Products Funds held by it to the public. An additional restriction is imposed by the Regulations on sales to the Adviser and its affiliates, who may hold shares only in connection with the creation or management of an Insurance Products Fund. Applicants anticipate that sales in reliance on these provisions of the Regulations generally will be made to the Adviser and its affiliates and generally for the purpose of providing necessary capital required by Section 14(a) of the 1940 Act.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptions 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, to the extent necessary to permit shares of the Insurance Products Funds to be sold to, and held by: (a) Variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company (''mixed'' funding) and separate accounts of unaffiliated life insurance companies (including both variable annuity and variable life separate accounts) (''shared'' funding); (b) Plans; and (c) the Adviser and its affiliates.

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. Applicants assert that the requested exemptions and 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 (the ''Trust Account''), 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 by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or 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 insurance company. In addition, the relief granted by Rule 6e–2(6)(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 a variable annuity separate account of the same insurance company or an affiliated insurance company or to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The relief granted by Rule 6e–2(b)(15) also is not available if the shares of the Insurance Products Funds are sold to Plans or the Advisers.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consists of the shares of one ore 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 schedule contracts or flexible 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, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account. Therefore, the exemptions provided by rule 6e–3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but not available if the fund is engaged in shared funding or if the fund sells shares to Plans or the Advisers. The relief granted by Rule 6e–3(T)(b)(15) also is not available if the shares of the Insurance Products Funds are sold to Plans or the Advisers.

5. Applicants state that the current tax law permits the Insurance Products Funds to increase their asset base

through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of the variable contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of 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 variable contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

6. Applicants also state that the current tax law permits the Insurance Products Funds to sell shares to the Adviser and its affiliates subject to certain conditions (Treas. Reg. § 1.817–(f)(3)(i) and (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 which made it possible for shares of an investment company to be held by a Plan or an investment adviser, or its affiliates, without adversely affecting the ability of shares in the same investment company also to be held by separate accounts of insurance companies in connection with their contracts. Thus, Applicants assert, the sale of shares of the same investment company to separate accounts, Plans, the Adviser and its affiliates could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

8. Applicants assert that if the Insurance Products Funds were to sell only to other Plans, the Adviser and its affiliates, and to separate accounts funding variable annuity contracts, no exemptive relief would be necessary. Applicants state that none of the relief provided under Rules 6e–2 and 6e–3(T) relates to Plans or to the Adviser and its affiliates or to a registered investment company's ability to sell its shares to such purchasers. Exemptive relief is requested only because some of the separate accounts that will invest in an Insurance Products Fund may themselves be investment companies that rely on Rules 6e–2 and 6e–3(T) and need to have the relief continue in place.

9. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). 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 on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company.

10. Applicants state that the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not disqualify the insurance company or any of its affiliates from serving as the underlying investment company's investment adviser or principal underwriter, provided that the disqualified individual does not participate directly in the management or administration of the underlying investment company. Applicants further state that the relief from section 9(a) provided by 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 Section 9. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals who do not directly participate in the admission or management of the Insurance Products Funds. Applicants assert that it also is not necessary to apply the restrictions of Section 9(a) to individuals employed by various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Products Funds as the funding medium for contracts. Applicants do not expect the Participating Insurance Companies to play any role in the management or administration of the Insurance Products Funds.

11. Applicants assert that applying the restrictions of Section 9(a) to individuals employed by Participating Insurance Companies serves no regulatory purpose.

12. Applicants state that the relief requested should not be affected by the proposed sale of the Insurance Products Funds to Plans, the Adviser and its affiliates since Plans, the Adviser and its affiliates are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings.

13. Applicants submit that Sections 13(a), 15(a) and 15(b) of the 1940 Act 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 holders in certain limited circumstances. For example, Applicants state that subparagraph (b)(15)(iii)(B) of Rules 6e–2 and 6e–3(T) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any changes in the investment company's investment policies, 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).

14. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. Applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority to disapprove or require changes in investment policies, investment advisers, or principal underwriters. Applicants also maintain that the Commission has expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owner over the insurer's objection. Applicants state that the Commission deemed such exemptions necessary to assure the solvency of the life insurer and the 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 further state that in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts, and that therefore corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

15. Applicants further represent that the sale of an Insurance Products Fund shares to Plans, the Adviser and its affiliates should not have any impact on the relief requested. Shares of the Insurance Products Funds will be held by the trustees of such Plans as mandated by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Plan trustees have 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 the named fiduciary. Applicants state that there is no pass-through voting to Plan participants. Similarly, the Adviser and its affiliates are not subject to any pass-through voting requirements. Accordingly, Applicants assert that, unlike the case with the insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans, the Adviser and its affiliates.

16. Applicants state that some of the Plans may provide for the trustee(s), investment adviser(s) or another named fiduciary to exercise voting rights in accordance with instructions from Plan participants. Applicants state that, in such cases, the purchase of shares by the Plans does not present any complications not otherwise occasioned by mixed or shared funding.

17. Applicants note that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity and variable life insurance separate accounts. Applicants state that Treasury Regulations § 1.817–5(f)(3)(iii), which established diversification requirements for such funds, specifically permits, among other things, ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, the Treasury regulations nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity separate accounts, variable life separate accounts, and the Advisor and its affiliates all invest in the same management investment company.

18. 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 account or the Plan cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Insurance Products Funds at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the insurance company will make distributions in accordance with the terms of the variable contract.

19. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Plans, the Adviser and its affiliates does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a Plan participant, the Adviser and its affiliates. Regardless of the rights and benefits of participants under Plans, contract owners, or the Adviser and its affiliates under the contracts, the Plans, the Adviser and its affiliates, and the separate accounts of Participating Insurance Companies have rights only with respect to their respective shares of the Insurance Products Funds. No shareholder of any Insurance Products Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

20. Applicants state that there are no conflicts of interest 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 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. To accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans can make the decision quickly and implement redemption of shares from a fund and reinvest the moneys in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Therefore, Applicants assert that even if issues arise whether the interests of the variable contract owners and the interests of Plan participants conflict, the issues can be resolved almost immediately because the trustees of the Plans can, on their own, redeem shares out of an Insurance Products Fund.

21. Applicants submit that shared funding by unaffiliated insurance companies does not present any conflict of interest issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Applicants state that if a particular state insurance regulator's decision conflicts with a majority of other insurance regulators, the affected insurer may be required to withdraw its separate account's investment in an Insurance Products Fund. Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

22. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce.

23. Applicants also assert that affiliation does not eliminate the potential, if any exists, for divergent judgment as to when a Participating Insurance Company can disregard contract owners' voting instructions. Potential disagreement is limited by the requirements that the disregarding of voting instructions be reasonable and based on specific good faith determinations. However, if a Participating Insurance Company's decision to disregard voting instructions represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of an Insurance Products Fund, to withdraw its separate account's investment in that Insurance Products Fund. No charge or penalty will be imposed upon contract owners as a result of such a withdrawal.

24. Applicants submit that there is no reason why the investment policies of an Insurance Products Fund with mixed funding would or should be materially different from what those policies

would or should be if such Insurance Products Fund or series thereof funded only variable annuity contracts or variable life insurance policies. Applicants state that the Insurance Products Funds will not favor or disfavor any particular participating insurer or type of insurance product. Applicants further note that an Insurance Products Fund's adviser is legally obligated to manage the fund in accordance with its investment objective, policies and restrictions as well as any guidelines established by the fund's Board.

25. Applicants assert that with respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Plans, the Adviser, and affiliates of the Adviser. The transfer agent for the Insurance Products Funds will inform each Participating Insurance Company of its share ownership in each separate account, as well as inform the trustees of Plans, the Adviser and its affiliates. The Participating Insurance Company then solicits voting instructions in accordance with Rules 6e–2 and 6e–3(T).

26. Applicants assert that permitting an Insurance Products Fund to sell its shares to the Adviser and its affiliates in compliance with Treasury Regulation § 1.817–5 will enhance fund management without raising significant concerns regarding material irreconcilable conflicts. Applicants state that unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, an Insurance Products Fund may be deemed to lack an insurance company ''promoter'' for purposes of Rule 14a–2 under the 1940 Act. Applicants state that they anticipate that many other Insurance Products Funds man lack an insurance company promoter. Accordingly, Applicants state that such Insurance Products Funds will be subject to the requirements of Section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares.

27. Applicants assert that given the conditions of Treasury Regulation § 1.817–5(f)(3) and the harmony of interest between an Insurance Products Fund and its Adviser or a Participating Insurance Company, little incentive for overreaching exists. Applicants also argue that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants represent that permitting investment by the Adviser and its affiliates will permit the orderly and efficient creation and operation of the Insurance Products Funds, or series thereof, and reduce the expense and uncertainty of using outside parties at the early stages of an Insurance Products Fund's operations.

28. Applicants state that various factors have limited the number of insurance companies that offer variable contracts. These factors include the cost 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. In particular, a number of 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. Applicants state that use of the Insurance Products Funds as a common investment medium for variable contracts and Plans would help alleviate these concerns for smaller life insurance companies because Participating Insurance Companies and Plans will benefit not only from the investment and administrative expertise of the Adviser and its affiliate but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the funds available for mixed and shared funding and permitting the purchase of fund shares by Plans may encourage more life insurance companies to offer variable contracts. Applicants submit that this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants further assert that mixed and shared funding would permit a greater amount of assets available for investment by the Insurance Products Funds thereby promoting economies of scale, by permitting increased safely through greater diversification, or by making the addition of new portfolios more feasible.

29. Applicants believe that mixed and shared funding and sales of the Insurance Products Funds shares to Plans, the Adviser and its affiliates will have no adverse federal income tax consequences.

Applicants' Conditions

Applicants consent to the following conditions if the application is granted:

1. A majority of each Insurance Products Fund's Board of Trustees or Directors (each a ''Board'') shall consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the remaining Board members; (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 Fund for the existence of any material irreconcilable conflict among the interests of the Variable Contract owner of all separate accounts investing in an Insurance Products Fund and of the Plan participants, Plans, and the Adviser or its affiliates investing in the Insurance Products Funds. The Board will determine what action, if any, shall be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Products Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of the Plans; (f) a decision by a participating Insurance Company to disregard the voting instructions of Variable Contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. In the event that a Plan participant should become an owner of 10% or more of the assets of an Insurance Products Fund, such participant will execute a fund participation agreement providing for the conditions of this herein. A Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of an Insurance Products Fund.

4. Participating Insurance Companies, the Adviser and its affiliates, and any Plan that executes a fund participation agreement (collectively ''Participants'') upon becoming an owner of 10% or

more of the assets of an Insurance Products Fund (collectively ''Participants''), will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. 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 by each Participating Insurance Company to inform the Board whenever Variable Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by a Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies and Plans investing in the Insurance Products Funds under their respective agreements governing participation in the Insurance Products Funds, as well as a contractual obligation of any Plan that executes such a participation agreement, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the Variable Contract owners and, if applicable, Plan participants.

5. If it is determined by a majority of the Board, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors) shall 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 Funds or any series thereof and reinvesting such assets in a different investment medium which may include another series of the Insurance Products Funds; (b) submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* annuity or life insurance contract owners, or variable contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a 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 the separate account's investment in an 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 Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of an Insurance Products Fund, to withdraw its investment in the fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Plans that have executed participation agreements under their agreements governing participation in an Insurance Products Fund. These responsibilities will be carried out with a view only to the interests of the contract owners and Plan participants, as appropriate.

6. For the purposes of Condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict. In no event will the Insurance Products Funds or Adviser be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by Condition 5 to establish a new funding medium for any variable contract if a majority of contract owners materially and adversely affected by the material irreconcilable conflict vote to decline such offer. No Plan shall be required by Condition 5 to establish a new funding medium for such Plan if: (a) A majority of Plan 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 Plan makes such decision without a Plan participant.

7. Participants will be informed promptly in writing of a Board's determination of the existence of a material irreconcilable conflict and its implications.

8. Participating insurance companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered separate account so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, Participating Insurance Companies will vote shares of the Insurance Products Funds or series thereof held in their registered separate accounts in a manner consistent with timely voting instructions received form contract owners.

In addition, each Participation Insurance Company will vote shares of the Insurance Products Funds, or series thereof, held in its separate accounts for which it has not received timely voting instructions as well as shares it beneficially owns or are attributable to it, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their registered 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 registered separate accounts investing in an Insurance Products Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participating in the Insurance Products Funds. Each Plan will vote as required by applicable law and governing Plan documents.

9. The Insurance Products Funds will notify Participating Insurance Companies and Plans that prospectuses or plan documents disclosure regarding potential risks of mixed and shared funding may be appropriate. The Insurance Products Funds shall disclose in its prospectus that: (a) Its shares are offered to insurance company separate accounts which fund both annuity and life insurance contracts and to Plans; (b) differences in tax treatment or other considerations may cause the interests of various contract owners participating in an Insurance Products Fund and the interest of Plans investing in an Insurance Products Fund to conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

10. All reports of potential or existing conflicts of interest received by the 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.

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

12. The Insurance Products Funds will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of an Insurance Products Fund). In particular, the Insurance Products Funds 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(c) of the 1940 Act (although the fund is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Insurance Funds will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

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

14. No less than annually, the Participants shall submit to the Board of an Insurance Products Fund such reports, materials or data as the Board may reasonably request so that such 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 Plans to provide these reports, materials and data upon reasonable request of a Board shall be contractual obligation of all Participating Insurance Companies and any Plan that has executed a participation agreement under the agreements governing their participation in an Insurance Products Fund.

15. Any shares of a fund purchased by the Adviser or its affiliates will be automatically redeemed if and when the Adviser's investment advisory agreement terminates, to the extent required by applicable Treasury regulations. Neither the Adviser nor its affiliates will sell such shares of the Insurance Products Funds to the public.

16. A Participating Insurance Company, or any affiliate, will maintain at its home office, available to the Commission, (a) a list of its officers, directors and employees who participate directly in the management or administration of the funds or any variable annuity or variable life insurance separate account, organized as a unit investment trust, that invests in the funds and/or (b) a list of its agents who, as registered representatives, offer and sell the variable annuity and variable life contracts funded through such a separate account. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

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. 35–27226]

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

September 1, 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 26, 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 26, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Energy East Corp., et. al. [70–9675]

Energy East Corp. (''Energy East''), P.O. Box 1196, Stamford, Connecticut 06904–1196, a New York corporation and a public-utility holding company exempt from registration under section 3(a)(1) of the Act, by order of the Commission, [1] CIS Service Bureau, L.L.C. (''CIS''), 855 Main Street, Bridgeport, CT 06604, as indirect wholly owned nonutility subsidiary of Connecticut Energy Corp. and The Union Water-Power Company (''UWP''), 526 Western Avenue, Augusta, ME 04330, a wholly owned nonutility subsidiary of CMP Group, Inc. (''CMP Group'') (collectively, ''Applicants'') have filed an application under section 13(b) of the Act and rules 87, 88, 90, and 91 under the Act. [2]

[1] Holding Co. Act Release No. 27128 (Feb. 2, 2000).

[2] Energy East filed two related applications seeking approvals required to complete the proposed acquisitions (''Merger'') by Energy East of CMP Group, a Maine corporation and a public-utility holding company exempt from registration under section 3(a)(1) of the Act, by order of the Commission; CTG Resources, Inc., a Connecticut corporation and a public-utility holding company exempt from registration under section 3(a)(1) by rule 2 under the Act and Berkshire Energy Resources, a Massachusetts corporation and a public-utility holding company exempt from registration under section 3(a)(1) by rule 2 under the Act (File No. 70–9569). By order dated August 31, 2000 (HCAR No. 27224) (''Merger Order'') the