transactions between the Portfolio and Fleet Securities and will not attempt to influence or control in any way the Adviser's placement of orders with Fleet Securities.

7. The exemption will be valid only so long as the Adviser and Fleet Securities operate as separate entities and independent profit centers within the holding company framework of FleetBoston, with their own separate officers and employees, separate capitalizations, and separate books and records.

8. The legal departments of Fleet Securities and the Adviser will prepare amended guidelines for personnel of Fleet Securities and the Adviser to make certain that transactions conducted pursuant to the amended order comply with the conditions set forth in the application and that the parties maintain arm's length relationships. The legal departments will periodically monitor the activities of Fleet Securities and the Adviser to make certain that such guidelines and the conditions set forth in the application are adhered to.

9. The board of trustees of the Trust, including a majority of the trustees who are not interested persons under section 2(a)(19) of the Act and have no direct or indirect financial interest in the transaction, will review, no less frequently than quarterly, each transaction conducted pursuant to the amended order since the last review and will determine that the terms of such transaction were reasonable and fair to the shareholders of the Portfolio and did not involve overreaching of the Portfolio or its shareholders on the part of any person concerned. In considering whether the price paid for the security was reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27216 Filed 10–23–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. IC 24691; File No. 812–12218]

Mutual of America Investment Corporation, et al.

October 17, 2000.

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

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

APPLICANTS: Mutual of America Investment Corporation (the ''Investment Company'') and Mutual of America Capital Management Corporation (''Capital Management'').

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of the Investment Company and shares of any other investment company or portfolio that is designed to fund variable life insurance policies and/or variable annuity contracts (collectively, ''Variable Contracts'') and for which Capital Management or its affiliates may serve in the future as investment adviser, manager, principal underwriter, sponsor, or administrator (''Future Investment Companies'') (collectively with the Investment Company, the ''Investment Companies'') to be sold to and held by (i) separate accounts funding Variable Contracts issued by both affiliated and unaffiliated life insurance companies and (ii) qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') outside the separate account context.

FILING DATE: The application was filed on August 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 Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 7, 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 interests, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Dolores J. Morrissey, President and Chief Executive Officer, Mutual of America Investment Corporation, 320 Park Avenue, New York, New York 10022; copy to J. Sumner Jones, Esq., Jones & Blouch L.L.P., 1025 Thomas Jefferson St., NW., Suite 410 East, Washington, DC 20007–0805.

FOR FURTHER INFORMATION CONTACT: Keith Carpenter, Branch Chief, or Rebecca A. Marquigny, Senior Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Investment Company is a Maryland corporation that is registered under the 1940 Act as an open-end management investment company. It currently has nine investment portfolios (each a ''Fund''): the Equity Index Fund, All America Fund, Mid-Cap Equity Index Fund, Aggressive Equity Fund, Composite Fund, Bond Fund, Mid-Term Bond Fund, Short-Term Bond Fund and Money Market Fund. Currently, the Investment Company sells shares of the Funds to the respective separate accounts of Mutual America Life Insurance Company (''Mutual of America'') and The American Life Insurance Company of New York (''American Life''), an indirect wholly-owned subsidiary of Mutual of America, as investment vehicles for Variable Contracts issued by such companies. The Investment Company may offer additional investment portfolios in the future (each a ''Future Fund'') (the current Funds and the Future Funds are collectively referred to as the ''Funds'').

2. Capital Management is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser to the Investment Company. Capital Management is an indirect wholly-owned subsidiary of Mutual of America.

3. Mutual of America has entered into an agreement to sell American Life to an unaffiliated third party. As of the date of such sale, American Life will no longer be an affiliate of Mutual of America and the Investment Company, and the provisions of Rules 6e–2 and

6e–3(T) under the 1940 Act will no longer be available. As of such date, the Investment Company will enter into separate agreements (each a ''Participation Agreement'') with Mutual of America and American Life covering the sale of Fund shares to such companies and their respective separate accounts.

4. Mutual of America, American Life and all other insurance companies which in the future may purchase shares of the Funds or of the portfolios of the Future Investment Companies through their respective separate accounts to fund Variable Contracts are together referred to as the ''Participating Insurance Companies'' (and individually as a ''Participating Insurance Company''). Each of Mutual of America and American Life as of the date of the sale of American Life, and each of the other Participating Insurance Companies as of the date of its initial purchase of shares of the funds or of portfolios of Future Investment Companies: (a) Will have one or more separate accounts established in accordance with applicable insurance laws (''Separate Accounts'') in connection with the issuance of Variable Contracts and the obligation to satisfy all applicable requirements under both state and federal law; and (b), on behalf of its Separate Accounts, will have entered into a Participation Agreement with each of the relevant Investment Companies. Under the Participation Agreements, the Investment Companies will be obligated, among other things, to offer the shares of their portfolios to the participating Separate Accounts and to comply with any conditions that the Commission may impose upon granting the order requested herein.

5. Applicants also propose that the Investment Companies may offer and sell shares of their portfolios to Qualified Plans that are not funded through Separate Accounts. Such shares sold to Qualified Plans would be held by Plan trustees as required by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). To the extent permitted under applicable law, Capital Management or one of its affiliates may act as investment adviser or trustee to Qualified Plans that purchase shares of the Funds or of portfolios of Future Investment Companies.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust (''UIT'') under the 1940 Act, Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to the extent those sections require ''pass-through'' voting with respect to an underlying fund's shares. These exemptions are available only when all the assets of the UIT are shares of management investment companies ''which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company.'' Accordingly, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or flexible premium variable life insurance separate account of the same 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 the same life insurance company and any affiliated life insurance company is referred to as ''mixed funding.''

2. 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 any underlying fund that also offers its shares to separate accounts funding Variable Contracts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated life insurance companies is referred to as ''shared funding.''

3. Rule 6e–3(T)(b)(15) similarly provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act in connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT. These exemptions are available only where all the assets of the separate account are shares of one or more registered management investment companies which offer to sell their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled 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.'' Accordingly, Rule 6e–3(T) permits mixed funding but does not permit shared funding.

4. Neither Rule 6e–2 nor Rule 6e–3(T) contemplates that shares of an underlying portfolio funding Variable Contracts might also be sold to Qualified Plans. The use of a common management investment company as the underlying investment medium for Qualified Plans as well as for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies is referred to herein as ''extended mixed and shared funding.''

5. Applicants state that changes in the federal tax law have created the opportunity for the Investment Companies to substantially increase their assets by selling shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying Variable Contracts, such as those in the Funds or the portfolios of Future Investment Companies. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the ''Regulations''), adequately diversified. On March 2, 1989, the Treasury Department issued Regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in such portfolios must be held by the segregated asset accounts of one or more life insurance companies. The Regulations, however, contain an exception to this requirement. This exception permits trustees of Qualified Plans to hold shares of an investment company portfolio which are also held by insurance company segregated asset accounts without adversely affecting the status of such portfolio as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)). Applicants maintain that, as a result of this exception to the general diversification requirement, Qualified Plans may select the Funds or the portfolios of Future Investment Companies as investment options without endangering the tax status of the Variable Contracts issued through Participating Insurance Companies.

6. Applicants note that the Commission promulgated Rules 6e–2(b)(15) and 6e–3(T)(b)(15) prior to the issuance of the Regulations which permit shares of an investment company portfolio to be held by the trustee of a

Qualified Plan without adversely affecting the holding of shares in the same portfolio by separate accounts supporting Variable Contracts. Thus, the sale of shares of the same underlying portfolio to both separate accounts and Qualified Plans was not contemplated at the time when Rules 6e–2(b)(15) and 6e–3(T)(b)(15) were adopted.

7. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that investment adviser or principal underwriter is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemption from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to those affiliated individuals or companies that directly participate in the management of the underlying management company.

8. Applicants state that the relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurance company to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) participates in the management or administration of the fund. This partial relief from the requirements of section 9 serves to limit 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 Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act do not require application of section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within such a complex. These rules further recognize that it is unnecessary to apply section 9(a) to individuals in unaffiliated insurance companies (or their affiliated companies) that may utilize an investment company as the funding medium for Variable Contracts. In Applicants' view, no regulatory purpose is served by extending section 9(a) monitoring requirements in the context of extended mixed or shared funding. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Investment Companies. The individuals who manage the Investment Companies will remain the same regardless of which Separate Accounts or Qualified Plans invest in the Investment Companies. Applicants further submit that the costs of such extended monitoring may result in increased costs for Participating Insurance Companies and Qualified Plans and may thereby adversely affect contract owners and Plan participants.

9. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirements with respect to several significant matters. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard contract owners' voting instructions which would change the sub-classification or investment objectives of an underlying fund, or any contract between such a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T)). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that an insurance company may disregard contract owners' voting instructions which would initiate any change in an underlying fund's investment policies, principal underwriter, or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T).

10. With respect to Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass-through voting rights to Plan participants. Indeed, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under section 402(a) of ERISA, mutual fund shares sold to a Qualified Plan must be held by the trustees of the Plan. Section 403(a) also provides that Plan trustees) must have exclusive authority and discretion to manage and control the Plan, except: (a) When the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (b) when the authority to manage, acquire, or dispose of Plan assets is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of these two exceptions applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

11. When a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held by the Plan unless the right to vote such shares is reserved to the trustees or the named fiduciary. Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from Plan participants.

12. Applicants state even if a Qualified Plan were to hold a controlling interest in an open-end management investment company, Applicants do not believe that such control would disadvantage other investors in such company to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities in an underlying fund. In this regard, Applicants submit the investment in an underlying fund by a Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed funding or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

13. Applicants state that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. 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. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants further state that shared funding by unaffiliated insurers, in this respect, is no different that the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and subject to differing state law requirements. In Applicants' view, affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. Applicants submit that the conditions set forth in the Application and included in this notice are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences

among state regulatory requirements may produce. If a particular state insurance regulatory's decision conflicts with the position of a majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the Investment Companies. This requirement will be provided for in the Participation Agreements.

15. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the contract owners' voting instructions in certain specific circumstances. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Applicants submit that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

16. Applicants state that a particular insurer's disregard of voting instructions could, nevertheless, conflict with the majority of contract owners' voting instructions and with the determinations of all or some other insurers (including affiliated insurers) that contract owners' voting instructions should prevail. It could either preclude a majority vote approving a change or represent a minority view. If the insurer's judgment represented a minority position or precluded a majority vote, then the insurer might be required, at the relevant Investment Company's election, to withdraw its Separate Account's investment from the affected portfolio. No charge or penalty would be imposed as a result of such withdrawal. This requirement will be provided for in the Participation Agreements.

17. Applicants submit that there is no reason why the investment policies of an underlying fund would or should be materially different depending on whether such underlying fund funds only variable annuity contracts or only variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Applicants represent that each of the Funds and the portfolios of Future Investment Companies will be managed to attempt to achieve its investment objective or objectives, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

18. Applicants state that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, and insurance and investment goals. An underlying fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will broaden the base of contract owners which will facilitate the establishment of additional funds serving diverse goals.

19. As noted above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held in an underlying mutual fund. The Code provides that a Variable Contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with Regulations, adequately diversified.

20. Regulations issued under section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The Regulations, however, contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a Qualified Plan without adversely affecting the ability of such shares also to be held by separate accounts of insurance companies in connection with their Variable Contracts (Treas. Reg. 1.817–5(f)(3)(iii)). The Regulations thus specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that the Code, Regulations and Revenue Rulings thereunder do not present any inherent conflicts of interest.

21. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Investment Companies. If, at the time distributions are to be made, a Separate Account or Qualified Plan is unable to net purchase payments against distributions, each will redeem shares of the relevant underlying funds at their respective net asset values in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds for distribution needs. A Participating Insurance Company will then make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan will then make distributions in accordance with the terms of the Plan.

22. Applicants considered whether, and determined that it is possible, to provide an equitable means of giving voting rights to contract owners in Separate Accounts and, if necessary or desirable, to Qualified Plans. In connection with any meeting of shareholders, the Investment Companies will inform each separate Account and Qualified Plan of its respective shares of ownership in the Funds or the portfolios of Future Investment Companies. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its obligations under Participation Agreements with the Investment Companies. Qualified Plans and Separate Accounts will each have the opportunity to exercise voting rights with respect to their shares in the Funds or the portfolios of Future Investment Companies, although only the Separate Accounts are required to pass-through their votes to contract owners. The voting rights provided to a Qualified Plan with respect to shares of the Funds or portfolios of Future Investment Companies would be no different from the voting rights that are provided to Qualified Plans with respect to shares of mutual funds sold to the general public. Furthermore, if a material irreconcilable conflict arose because a Qualified Plan decided to disregard Plan participants' voting instructions, if applicable, and that decision represented a minority position or precluded a majority vote, a Plan which had entered into a Participation Agreement could be required, at the election of the relevant Investment Company, to withdraw its investment in the particular Fund or portfolio of a Future Investment Company, with no charge or penalty imposed as a result of such withdrawal.

23. Applicants also considered whether a ''senior security,'' as such term is defined under section 18(g) of the 1940 Act, may be created with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan. Applicants concluded that the ability of the Investment Companies to sell shares of each Fund or portfolio of a Future Investment Company directly to Qualified Plans does not create a ''senior security'' which is defined under Section 18(g) to

include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' Regardless of the rights and benefits of participants under Plans or contract owners under Variable Contracts, the Plans and the Separate Accounts only have rights with respect to their respective shares of the Funds and the portfolios of Future Investment Companies. They only can redeem such shares at net asset value. No shareholder of a Fund or of a portfolio of a Future Investment Company has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

24. Applicants also considered whether there are any conflicts between contract owners of the Separate Accounts and participants under the Plans with respect to state insurance commissioners' veto powers over investment objectives. Applicants note that a basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. That the interests and opinions of shareholders may differ does not mean that inherent conflicts of interest exist between or among shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans, or participants in participant-directed Qualified Plans, can make such decisions quickly and redeem their interests in a fund and reinvest in another funding vehicle without the regulatory impediments faced by the Separate Accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Applicants believe that issues where the interests of contract owners and Qualified Plans are in conflict can be almost immediately resolved since the trustees of (or participants in) the Plans can, on their own, redeem the shares out of underlying funds.

25. Applicants also considered whether there is a potential for future conflicts of interest between Participating Insurance Companies and Qualified Plans as a result of future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts between the interests of participants in Qualified Plans and contract owners of the Separate Accounts resulting from future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

26. Applicants state that the foregoing list, while not all inclusive, is representative of issues which Applicants believe are relevant to this Application. Applicants believe that the discussion contained in the Application demonstrates that the sale of shares of the Funds and of portfolios of Future Investment Companies to Qualified Plans does not increase the risk of material irreconcilable conflicts of interest. Further, Applicants submit that the use of the Funds and portfolios of Future Investment Companies with respect to Qualified Plans is not substantially dissimilar from their anticipated use with respect to Variable Contracts in that both are generally long-term retirement vehicles.

27. Applicants note that various factors have kept more insurance companies from offering Variable Contracts than currently offer them. These factors include 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 public name recognition of certain insurers as investment experts with which the public feels comfortable entrusting their investment dollars. For example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contracts business on their own. Use of investment company portfolios such as the Funds or portfolios of Future Investment Companies as common investment media for Variable Contracts would reduce or eliminate these concerns. Applicants submit that mixed and shared funding also should provide several benefits to Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants maintain that Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Investment Companies, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would make greater amounts of assets available for investment by the Funds and the portfolios of Future Investment Companies, thereby promoting economies of scale, permitting increased safety through greater diversification, and making more feasible the addition of new Funds and portfolios. Therefore, making the Investment Companies available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts, and this should result in increased competition in both Variable Contract design and pricing and hence in more product variation and lower charges. Applicants assert that the sale of shares of the Funds and of portfolios of Future Investment Companies to Qualified Plans, in addition to Separate Accounts, should enhance these results.

28. Applicants submit that, regardless of the type of shareholder in the Funds or portfolios of Future Investment Companies, the Investment Companies are or will be contractually and otherwise obligated to manage those Funds or portfolios solely and exclusively in accordance with their respective investment objectives, policies and restrictions as well as any guidelines established by the Board of Directors of the applicable Investment Company (the ''Board''). The Investment Companies will work with pools of money and will not take into account the identities of shareholders. Thus, each of the Funds and the portfolios of Future Investment Companies will be managed in the same manner as any other mutual fund.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of each of the Investment Companies will consist of persons who are not ''interested persons'' of such investment 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 will be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board of each of the Investment Companies will monitor such investment company for the existence of any material irreconcilable conflict among the interests of the contract owners of all Separate Accounts and the participants under Qualified Plans investing in such investment company and will determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a

variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such investment company are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of 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 voting instructions of Plan participants.

3. The Participating Insurance Companies, any Qualified Plan that executes a Participation Agreement upon becoming an owner of 10 percent or more of the assets of any of the Funds or the portfolios of Future Investment Companies (a ''Participating Qualified Plan''), and Capital Management or any other investment adviser to the Investment Companies (collectively, the ''Participants'') will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the relevant board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contract owners' voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Participating Qualified Plan to inform the relevant Board whenever such Plan has determined to disregard Plan participants' voting instructions. The responsibility to report such information and contracts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies and Participating Qualified Plans under their Participation Agreements with the Investment Companies, and this responsibility will be carried out with a view only to the interests of the conflict owners or Plan participants, as applicable.

4. If it is determined by a majority of a Board, or a majority of its disinterested members, that a material irreconcilable conflict exists, then the relevant Participant will, at its 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, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts or Participating Qualified Plans from the relevant Fund or portfolio of a Future Investment Company and reinvesting such assets in a different investment medium, including another such Fund or portfolio, or in the case of Participating Insurance Companies 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 contract owners or 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 decision by a Participating Insurance Company to disregard contract owners' voting instructions, and that decision represents a minority position or would preclude a majority vote, then such insurer may be required, at the election of the relevant Investment Company, to withdraw such insurer's Separate Account's investment in such Investment Company, with no charge or penalty imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Participating Qualified Plan's decision to disregard Plan participants' voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, such Plan may be required, at the election of the relevant Investment Company, to withdraw its investment in the relevant Investment Company, with no charge or penalty imposed as a result of such withdrawal. The responsibilities to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be contractual obligations of all Participating Insurance Companies and Participating Qualified Plans under the Participation Agreements, and these responsibilities will be carried out with a view only to the interests of contract owners or Plan participants, as applicable.

For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action would adequately remedy any material irreconcilable conflict, but in no event will any of the Investment Companies or their investment advisers be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Participating Qualified Plan will be required by this Condition 4 to establish a new funding medium for such Plan if (a) a majority of the Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer, or (b) pursuant to documents governing the Plan, the Plan makes such decision without a vote of Plan participants.

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

6. Participating Insurance Companies will provide pass-through voting privileges to all contract owners so long as the Commission continues to interpret the 1940 Act to require such pass-through voting. Accordingly, such Participants, where applicable, will vote shares of the applicable Fund or portfolio of a Future Investment Company held in their Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts investing in a Fund or portfolio of a Future Investment Company calculates voting privileges in a manner consistent with other Participating Insurance Companies. All Participating Insurance Companies will contractually agree to calculate voting privileges as providing in this Application, pursuant to their Participation Agreements with the Investment Companies. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares it owns that are not attributable to Variable Contracts in the same proportion as it votes those shares for which it has received voting instructions. Each Participating Qualified Plan will vote as required by

applicable law and governing Plan documents.

7. Each of the Investment Companies 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 the shares of the respective Funds or portfolio of Future Investment Companies) and, in particular, will either provide for annual meetings (except insofar as the Commission interprets or 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 Investment Companies are not trusts of the type described in section 16(c)), as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. In addition each of the Investment Companies 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 such rules as the Commission may promulgate with respect thereto.

8. Each of the Investment Companies will notify all Participants that it may be appropriate to include in Separate Account or Plan prospectuses or other disclosure documents disclosure regarding potential risks of mixed and shared funding. Each of the Investment Companies will disclose in its prospectus that: (a) Shares of such investment company may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and, if applicable, to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such investment company and the interests of Qualified Plans investing in such investment company, if applicable, may conflict; and (c) its Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any conflict.

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

10. The Participants, at least annually, will submit to each relevant Board such reports, materials, or data as such Board reasonably may request so that the directors may fully carry out the obligations imposed upon the Board by the conditions set forth in the Application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by such Board. The obligations of Participating Insurance Companies and Participating Qualified Plans to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation under the Participation Agreements.

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

12. None of the Investment Companies will accept a purchase order from a Qualified Plan if such purchase would make such Plan an owner of 10 percent or more of the assets of one of the Funds or the portfolios of Future Investment Companies unless such Plan executes a Participation Agreement with the relevant Investment Company that includes the conditions set forth in the Application to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any such Fund or portfolio.

Conclusion

For the reasons summarized above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c), 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.

[FR Doc. 00–27217 Filed 10–23–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24695; 812–11746]

Provident Institutional Funds, et al.; Notice of Application

October 18, 2000.

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

ACTION: Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit a registered open-end management investment company to enter into repurchase agreements with an affiliated person.

Applicants: Provident Institutional Funds (the ''Fund''), the PNC Financial Services Group, Inc. (''PNC''), and blackRock Advisors, Inc. (''BlackRock'').

FILING DATES: The application was filed on August 12, 1999, and amended on October 18, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 November 8, 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, NW., Washington, DC 20549–0609. Applicants, c/o BlackRock Financial Management, 345 Park Avenue, New York, New York 10154.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Special Counsel, at (202) 942–0572, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

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